
Court of Appeals

Sumitomo Shoji America, Inc. v. Avagliano, 457
US 176 - Supreme Court 1982

2-15-1980

Notice of Motion for Rehearing with Suggestion for En Banc Consideration

Lewis M. Steel '63

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NOTICE OF ENTRY

Index No. 8460

Year 19 80

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMITOMO SHOJI AMERICA, INC.,

Petitioner,

v.

LISA M. AVIGLIANO, et al.,

Respondents.

NOTICE OF MOTION REHEARING WITH SUGGESTION FOR EN BANC CONSIDERATION

Attorney for Petitioner
Office and Post Office Address, Telephone

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Attorney's Affirmation shows: deponent is

Check Applicable Box

the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Individual Verification the foregoing being duly sworn, deposes and says: deponent is in the within action; deponent has read and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Corporate Verification the a of corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

being duly sworn, deposes and says: deponent is not a party to the action,

is over 18 years of age and resides at

Affidavit of Service By Mail On 19 deponent served the within upon attorney(s) for in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit of Personal Service On 19 at upon

the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....
The name signed must be printed beneath

below pursuant to 28 U.S.C. §1292(b)?

Brief Statement of the Facts:

Judge Tenney of the Court below entered an Order on June 5, 1979 denying petitioner's motion to dismiss the complaint for failure to state a claim. Such June 5, 1979 Order was certified for Appeal by the Court below by Order dated August 9, 1979, as amended on November 29, 1979. A timely Petition for permission to Appeal was filed with this Court pursuant to 28 U.S.C. §1292(b) on December 10, 1979, and supplemented on December 28, 1980. By Order of this Court dated January 24, 1980 such motion to appeal was denied without opinion. (See Petition for Rehearing En Banc)

Summary of the Argument:

Judge Tenney properly certified the June 5, 1979 Order for appeal. If this Court denied the motion to appeal on discretionary grounds, this Court should reconsider and permit an appeal because of the exceptional importance of the issues presented. (See Petition for Rehearing En Banc)

Dated: February 15, 1980



J. Portis Hicks

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BURTON Z. ALTER
CAROL SEABROOK BOULANGER
JONATHAN H. CHURCHILL
PETER A. DANKIN
WILLIAM L. DICKEY*
SAMUEL M. FEDER*
PETER FIGDOR
JOHN J. FINLEY
PETER J. GARTLAND
J. PORTIS HICKS
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ALDEN MYERS
PETER J. NORTON
ROGER L. SELFE*
IRA TENSARD WENDER
JOHN TOWER WHITE
*(NOT ADMITTED IN NEW YORK)

WENDER, MURASE & WHITE

ATTORNEYS-AT-LAW
400 PARK AVENUE
NEW YORK, NEW YORK 10022

(212) 832-3333
CABLE WEMULAW
DOMESTIC TELEX 125476
INTERNATIONAL TELEX 220478 or 236562
TELECOPIER (212) 752-5378

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February 15, 1980

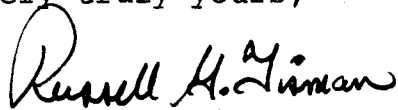
Lewis M. Steel, Esq.
Eisner, Levy, Steel & Bellman
351 Broadway
New York, New York 10013

Re: Sumitomo Shoji America, Inc., v.
Lisa M. Avigliano, et al.

Dear Mr. Steel:

Enclosed herewith is a Notice of Motion for Rehearing or Rehearing En Banc which the clerk requested we submit, together with a copy of a letter submitted to the Clerk.

Very truly yours,


Russell G. Tisman

RGT/cs

enclosure

RECEIVED FEB 19 1980

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JOHN TOWER WHITE
*(NOT ADMITTED IN NEW YORK)

February 15, 1980

Mr. Arthur Heller, Clerk
United States Court of Appeals
For the Second Circuit
Foley Square
New York, New York

Re: Sumitomo Shoji America, Inc.
v. Avigliano, #79-8460

Dear Mr. Heller:

Enclosed herewith is the original and three
copies of the Notice of Motion which you requested.

Very truly yours,

Russell G. Tisman

RGT/cs

enclosure

cc: Lewis M. Steel, Esq. ✓
Harain D. Figueroa, Esq.
Marcia B. Ruskin, Esq.