
Court of Appeals

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

2-21-1980

Amended Notice of Motion for Rehearing with Suggestion for En Banc Consideration

Lewis M. Steel '63

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REC'D FEB 25 1980

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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*(NOT ADMITTED IN NEW YORK)

February 21, 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:

Pursuant to our discussion, enclosed herewith is the original and three copies of an amended Notice of Motion. The amendment is to correct minor typographical errors in the original.

Very truly yours,


J. Portis Hicks

JPH:PR

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

Enclosures: 4

HAND DELIVERY

NOTICE OF ENTRY

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.,

WENDER, MURASE & WHITE

Attorneys for

Office and Post Office Address

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

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

the day of 19
at M.

Dated,

Yours, etc.,

WENDER, MURASE & WHITE

Attorneys for

Office and Post Office Address

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

To

Attorney(s) for

Index No.

Year 19

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMITOMO SHOJI AMERICA, INC.,

Petitioner,

v.

LISA M. AVIGLIANO, et al.,

Respondents.

===== **AMENDED NOTICE OF
MOTION FOR REHEARING
WITH SUGGESTION FOR
EN BANC CONSIDERATION** =====

WENDER, MURASE & WHITE

Attorneys for

Office and Post Office Address, Telephone

400 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10022

(212) 832-3333

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....
Attorney(s) for

WENDER, MURASE & WHITE

STATE OF NEW YORK, COUNTY OF

ss.:

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

Check Applicable Box

- Certification By Attorney
- Attorney's Affirmation

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

shows: deponent is

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.:

Check Applicable Box

- Individual Verification
- Corporate Verification

being duly sworn, deposes and says: deponent is the 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 as to those matters deponent believes it to be true.

the of in the within action; deponent has read the foregoing a corporation, 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.:

is over 18 years of age and resides at

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

Check Applicable Box

- Affidavit of Service By Mail
- Affidavit of Personal Service

On 19 deponent served the within attorney(s) for upon 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.

On 19 at upon deponent served the within

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

(Tenney, J.) pursuant to 28 U.S.C. §1292(b).

Issue(s) presented by this motion:

(1) Should petitioner be permitted to appeal an interlocutory Order which was certified by Judge Tenney of the Court 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, 1979. 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 21, 1980



J. Portis Hicks