
Retaliation Charges

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

11-4-1982

Excerpt from Palma Incherchera's Deposition, pages 60-74

Lewis M. Steel '63

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PALMA INCHERCHERA, on behalf of herself
and all other similarly situated,

Plaintiffs,

INDEX NO.824930(RWS)

-against-

SUMITOMO CORP. OF AMERICA,

Defendant.
-----X

Deposition of plaintiff, PALMA
INCHERCHERA, taken by defendant, pursuant to
Notice dated October 14, 1982, held at the
offices of Messrs. WENDER, MURASE & WHITE,
400 Park Avenue, New York, New York 10022, on
November 4, 1982, at 2:15 p.m., before
ROSE MARIE LUDWIG, a Shorthand Reporter and
Notary Public within and for the State of
New York.

Prestige Reporting Service

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15 Park Row
New York, New York 10038

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A P P E A R A N C E S :

Messrs. STEEL & BELLMAN
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351 Broadway
New York, New York 10013

BY: LEWIS M. STEEL, ESQ.,
of Counsel

Messrs. WENDER, MURASE & WHITE
Attorneys for Defendant
400 Park Avenue
New York, New York 10022

BY: DON T. CARMODY, ESQ., of Counsel
LANCE GOTTHOFFER, ESQ.
JIRO MURASE, ESQ.
-and-
PETER J. GARTLAND, ESQ.

ALSO PRESENT:

YOSYIHISA NAKAYAMA

--oOo--

1
2 additional individuals who were employed by the defendant
3 and who left the employ of the defendant, whom you
4 claim to represent by the Complaint and Notice of Motion?

5 MR. STEEL: You are asking her for the
6 names of other women?

7 MR. CARMODY: Yes.

8 A No. So many come and go, it's difficult
9 to remember all of them.

10 I don't represent all women of the company

11 Q Do you recall the names of any individuals
12 presently employed by the defendant who have stated
13 to you that they have been discriminated against by
14 the defendant's employment policies?

15 A Yes, but I will not mention their names
16 because I don't know if they will be retaliated against.
17 They are fearful of losing their jobs.

18 Q Have they ever expressed to you a concern
19 about being fearful for their jobs?

20 A Yes.

21 Q Would you please identify those individuals
22 who have stated that?

23 MR. STEEL: No. I wish to make a motion
24 in court with reference to that.

25 MR. CARMODY What will be the basis of the

1
2 motion in court?

3 MR. STEEL: I will seek a protective
4 order.

5 MR. CARMODY: On what basis?

6 MR. STEEL: When you get the motion papers,
7 you will find out.

8 MR. CARMODY: I will state for the record
9 that the defendant certainly is aware of the
10 fact that the retaliation which you are referring
11 to by innuendo, it would be a violation of the
12 Federal Law and the defendant would have absolutely
13 no intention and would not discriminate against
14 individuals in its employ, or otherwise, for
15 the reasons that you are referring to.

16 MR. STEEL: I thank you for saying that.
17 I appreciate your putting that on the record.

18 The problem is that women, as Ms. Incherchera
19 has indicated, have expressed fear to her that
20 if their names are mentioned during these proceedings,
21 that something bad could happen to them relating
22 to their jobs.

23 Before I proceed to have those names made
24 public, I would like to have direction from the
25 court.

1
2 She represents a class of people, and
3 those people have expressed that fear to her.
4 You are proceeding now under an expedited order
5 to get information relating to the class action
6 motion. Those names of those people do not go
7 to the class action motion.

8 Therefore, it seems appropriate for me
9 to get some direction from the court. That is
10 what I intend to do.

11 BY MR. CARMODY:

12 Q Ms. Incherchera, how often have those
13 statements been made to you?

14 A It's an everyday occurrence.

15 Q It happens every day?

16 A Statements are made to me from time to
17 time. People come up to me every day.

18 Q Which is it, from time to time or almost
19 every day?

20 A Almost every day.

21 Q When was the last time that a statement
22 was made to you?

23 A Yesterday.

24 Q When was the last time before that that
25 a statement was made to you?

1
2 A The day before.

3 Q When was the last time before that, that
4 that statement was made to you?

5 A Last week.

6 Q Was a statement like that made to you
7 before you filed the Complaint in this action?

8 A Yes.

9 Q How often were the statements made to
10 you before you filed the Complaint in this action?

11 A As I said before, it's an everyday occurrence.
12 Women are kept at their particular level,
13 secretary or clerical. Women complain about it constantly.
14 They complain to me because they know that I am involve

15 Q Let us make one thing clear. The st
16 I am asking you about are those statements
17 Mr. Steel is objecting to, those state
18 people have said that they fear f her.

19 How often have
20 to you?

21 A I do.

22 Q When wa made
23 in the employ of this c
24 feared for her job?

25 A This week. the individual

1
2 Q When was the last time before this week
3 that a female employee said that to you?

4 A Last week.

5 Q What was the statement this week that
6 the female employee stated to you?

7 A That she felt her boss, who has the same
8 position she has, the same title she has, is still
9 above her, making more money than she is, having more
10 responsibility than she does.

11 She has the title, but she doesn't have
12 anything else to go with it. It's a dummy title.

13 Q Ms. Incherchera, I am asking you what
14 that individual said to you that convinced you that
15 the employee was fearful for her job, in fear of losing
16 her job.

17 A She did not want me mentioning her name
18 because she thought Sumitomo would take action against her.

19 Q She stated to you not to use her name
20 because Sumitomo might take action against her?

21 A Yes.

22 Q Was there anyone present when she made
23 that statement besides you and she?

24 A No.

25 Q What was the statement that the individual

1
2 made last week that you testified about a moment ago?

3 A That she was training her assistant manager,
4 and she was only a clerk. Yet they gave her the
5 responsibility to train him, and he was an assistant
6 manager and she was nothing but a clerk.

7 He was getting paid much more than she
8 was. She was teaching him the work.

9 Q Is that your answer?

10 A Yes.

11 Q I would ask you what she said to indicate
12 to you, or upon which you conclude, that she was fearful,
13 in fear of losing her job.

14 A She told me not to mention her name because
15 they may fire her.

16 Q Was there anyone present when she made
17 that statement to you?

18 A No.

19 Q I am asking you to tell me how many times
20 that has occurred, those statements have been made
21 to you by female employees of the defendant since you
22 filed this Complaint in this action.

23 A It's a frequent occurrence. Approximately,
24 I would say that it's a daily thing of being discriminated
25 against.

As far as someone coming to me, is that what you are asking?

Q I am asking how often those statements were made to you?

A Once a week, once every two weeks.

Q I will ask you to please identify the person who made the statement to you this week.

MR. STEEL: I have indicated that I will make a motion with regard to that.

MR. CARMODY: What is the basis for the motion?

MR. STEEL: I believe this is a class action. These are class members. They have expressed fear to my client as to what might happen to them.

I think I should seek direction from the court as to what to do about that situation.

MR. CARMODY: There was nothing in Ms. Incherchera's testimony about the statement that was made to her this week by a female employee which even begins to warrant her conclusion, or your conclusion, that that employee is fearing for her job.

MR. STEEL: That is untrue. She stated

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2 that the employee stated that the employee feared
3 for her job.

4 MR. CARMODY: That was not her testimony.

5 MR. STEEL: We heard differently, then.

6 It is not necessary for you to get that
7 information now because it does not go to the
8 issues raised by the Rule 23 motion.

9 MR. CARMODY: We will take a short recess.

10 (Short recess taken.)

11 MR. STEEL: Let me put on the record
12 that that is your third break in this short afternoon
13 session. It was over a fifteen-minute duration.

14 BY MR. CARMODY:

15 Q Ms. Incherchera, you testified a few moments
16 ago about a conversation this week with a female employee
17 of the defendant.

18 Do you recall that testimony?

19 A Yes.

20 Q Is that a typical conversation or a typical
21 complaint or expression of discrimination by a female
22 employee to you--

23 MR. STEEL: Objection to form.

24 Q The statement that was made by that individual,
25 is that statement similar to statements that have been

made to you?

MR. STEEL: Objection to form.

You may answer.

A Yes.

Q Are there any other statements which female employees of the defendant have made which are unlike the statement that was made to you by the female employee this week?

MR. STEEL Objection as to form.

Q Please answer.

A Yes.

Q Please tell me about those statements by female employees to you which are not similar to the one that had been made to you by the female employee this week.

A I didn't understand your question.

They are similar.

MR. CARMODY: Does that satisfy you that the names of the people who have made those statements would be relevant to this proceeding in light of Rule 23?

MR. STEEL: I think it is an issue of law in this case which is based on the fact . . .

As a matter of fact, the papers annexed

1
2 to the moving papers relate to Sumitomo's admission
3 in the United States Supreme Court of a preference.

4 So that what individuals may have said
5 to this particular plaintiff may at some point
6 in time be relevant on the merits, I am not disputing
7 that.

8 I am saying that in light of their expressed
9 fear to this plaintiff, who is a class representative,
10 and in light of the fact that you do not need
11 that answer at this point in time to determine
12 the class action question, I would like to get
13 a ruling from the court as to under what conditions
14 those names should be revealed.

15 That is all I am suggesting.

16 MR. CARMODY: The plaintiff is testifying
17 that she is claiming to represent all female
18 employees of the defendant. She has testified
19 that female employees of the defendant have made
20 statements, which are typical statements made
21 by other employees of the defendant.

22 I would like the identities of those class
23 members.

24 MR. STEEL: I have told you why I need
25 a ruling. I have indicated that in my view,

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2 at least, on the issue that Judge Sweet said
3 we should expedite this deposition and move forward,
4 which was, namely, to give you information to
5 oppose the class action motion, you do not need
6 that name.

7 For example, even if you were to get the
8 name of the person, and even if you were to go
9 and interview that person--which raises a question
10 as to your rights to interview members of the
11 class that is one thing that I would want before
12 the Judge, as to your rights in those areas--
13 and even if that particular individual was to
14 say, hypothetically, "I didn't have that
15 conversation with Palma Incherchera," that would
16 be a question of fact which would be perhaps
17 relevant on the ultimate disposition of this
18 case.

19 But I believe that, as I have spelled
20 out in the moving papers, that on the issues
21 of typicality, there could be no clearer case
22 in the world than this case.

23 Ms. Incherchera has testified that prior
24 to the Avigliano Case, no women had any titles,
25 whether they were dummy titles or not. It has

1
2 only been after the Avigliano Case that some
3 women have gotten titles.

4 I suggest that that goes to the issue
5 of typicality. But the best evidence of that
6 is your EE01 reports which are attached to the
7 moving papers which showed that, certainly when
8 Avigliano was filed, you did have no women who
9 occupied other than clerical positions. That
10 goes to the question of typicality.

11 MR. CARMODY: What you are saying is
12 that we are not entitled to the identify of a
13 class member?

14 MR. STEEL: I am not saying that. I
15 am saying that due to the fact that fear has
16 been expressed to my client with regard to exposure
17 of the names, and due to the fact that you are
18 seeking an expedited deposition because of our
19 pending class motion, I have decided that the
20 most appropriate procedure is to have you take
21 the deposition and reserve that question which
22 does not go to the class issue.

23 And as to how and if you are entitled
24 to these things, for later resolution by the
25 Judge.

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2 MR. CARMODY: I do not see how we can
3 continue. Not only have you directed her not
4 to answer that question, but you have also directed
5 her not to answer a substantial number of questions.

6 Under the Rules of Procedure, she is to
7 answer the questions in spite of the rulings
8 you make, unless you seek a protective order.

9 MR. STEEL: Let me suggest to you that
10 there are other areas that you may wish to explore
11 with regard to this deposition at this time relating
12 to the question of class action. I suggest that
13 you explore those areas.

14 I am here with my client so that you can
15 have the opportunity to explore those areas.

16 We indicated that we would be available
17 tomorrow. I suggest that you not cut this deposition
18 off, which Judge Sweet indicated should be done
19 on an expedited basis, because we are essentially
20 dealing with factual questions.

21 I suggest that you get as much information
22 as you can, because if you cut it off, I will
23 go back to court and indicate that I think you
24 are not serious about trying to develop information
25 in many different areas, or as many areas as

possible, in response to the class action motion.

And I will ask the court to certify the class now.

MR. CARMODY: I think we can satisfy the Judge that we have made every effort to proceed expeditiously.

MR. STEEL: You have totally frustrated the deposition to this point. If I were you, counsel, and were competent in defending the areas of the class action, I can think of many areas that you have not gone near.

You may not choose to go near them at all, ever.

I suggest that if you cut off this deposition now without going into those areas, I would suggest that an adequate effort has been made to certify the class.

It is up to you. I am not going to change my position.

I think I have instructed her not to answer, really, only in two areas.

One area related to what I perceived to be her legal knowledge. I do not think that is an appropriate area. I could be wrong, but

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2 if the court thinks her knowledge of the intricacies
3 of legal, technical issues is of interest, I
4 will be so instructed. That is one area.

5 The second area has been with regard to
6 this issue of the fear of other employees and
7 how that should be handled.

8 Rule 23 has other areas that you may wish
9 to explore before I indicate to a Judge that
10 I believe that the issue is right for resolution.

11 I think you are only interested in delay
12 right now.

13 MR. CARMODY: I will take another short
14 recess.

15 MR. STEEL: I think you should consult
16 with your client and co-counsel, and decide what
17 you are going to do and let me know.

18 Certainly, we cannot finish this deposition
19 with you not being in attendance and asking questions.

20 MR. CARMODY: We will take a short recess
21 at this point.

22 (Short recess taken.)

23 MR. STEEL: While counsel is looking
24 through his notes, I would like to indicate that
25 we have taken a break of more than twenty minutes

STEEL & BELLMAN, P.C.

Attorneys at Law

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Richard F. Bellman
Lewis M. Steel
Gina Novendstern

July 22, 1983

BY HAND

William Lai
Equal Employment Opportunity
Commission
90 Church Street
New York, New York 10007

Re: Palma Inchechera vs. Sumitomo Corp. of Am.
Charge no. 021-83-1382

Dear Mr. Lai:

Enclosed please find the affidavit we discussed today on the telephone. As I explained to you, Ms. Dooley has requested that this affidavit be kept confidential. She fears that her job and conditions of employment will be in jeopardy if Sumitomo learns that she has filed an affidavit with the EEOC. You assured me that the Commission would treat Ms. Dooley as a confidential witness.

In order that you may contact Ms. Dooley directly, her address and phone number are as follows: 610 Ovington Avenue, Brooklyn, New York 11209, telephone no. 238-6863.

Thank you for your anticipated cooperation.

Very truly yours,


Gina Novendstern

GN:NM
Enclosure