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Retaliation Charges

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

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1981

## Defendant's First Amended Answer and Counterclaims

Lewis M. Steel '63

## FIRST AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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LISA M. AVIGLIANO, DIANNE CHENICEK,	:	
ROSEMARY T. CRISTOFARI, CATHERINE	:	
CUMMINS, RAELEN MANDELBAUM, MARIA	:	
MANNINA, SHARON MEISELS, FRANCES	:	77 Civ. 5641 (CHT)
PACHECO, JOANNE SCHNEIDER, JANICE	:	
SILBERSTEIN, REIKO TURNER, ELIZABETH	:	
WONG,	:	FIRST AMENDED
	:	ANSWER AND
On Behalf of Themselves And All Others	:	<u>COUNTERCLAIMS</u>
Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
SUMITOMO SHOJI AMERICA, INC.,	:	
	:	
Defendant.	:	

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Sumitomo Shoji America, Inc. ("Sumitomo"), by its attorneys, Wender, Murase & White, for its Answer to the Complaint, alleges as follows:

## I

RESPONSES TO PLAINTIFFS' PLEADINGS

1. Except as hereinafter expressly admitted or denied, Sumitomo denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the Complaint.
2. Admits so much of paragraph 1 of the Complaint as alleges that plaintiffs purport to bring this action pursuant to the statutes and other provisions of law referred to therein, and denies any violation of said statutes or provisions of law.
3. Admits so much of Paragraph 2 of the Complaint as alleges that the persons named therein are females.

4. Admits the allegations of Paragraphs 4 and 5 of the Complaint.

5. Admits so much of Paragraph 6 of the Complaint as alleges that the five persons named therein are former employees of Sumitomo, and denies the remaining allegations of said paragraph 6.

6. Admits the allegations of Paragraph 7 of the Complaint.

7. Admits so much of Paragraph 8 of the Complaint as alleges that plaintiffs purport to bring this action as a class action, and denies the remaining allegations of said Paragraph 8.

8. Denies the allegations of Paragraph 9 of the Complaint.

9. Denies the allegations of Paragraphs 12 through 13, inclusive, of the Complaint.

10. Denies that plaintiffs are entitled to the relief prayed for or any part thereof.

II.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

11. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

12. This Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

13. Sumitomo's employment practices are proper and permissible and are sanctioned and privileged pursuant to the Treaty of Friendship, Commerce & Navigation between the United States and Japan, and applicable statutes, rules, regulations and practices.

FOURTH AFFIRMATIVE DEFENSE

14. Sumitomo's employment practices are proper, permissible and justified because they are founded upon and exist pursuant to bona fide occupational qualifications and business necessity.

FIFTH AFFIRMATIVE DEFENSE

15. All or portions of the plaintiffs' claims are barred by applicable statutes of limitations and unclean hands.

SIXTH AFFIRMATIVE DEFENSE

16. Plaintiffs lack standing to assert the claims made in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

17. The statutes and other provisions of law pursuant to which plaintiffs purport to bring this action do not provide the relief demanded in the Complaint.

AMENDED COUNTERCLAIMS

18. Jurisdiction of the within counterclaims is invoked pursuant to 28 U.S.C. §§1331 and 1343 and the doctrine of ancillary jurisdiction.

19. Upon information and belief, plaintiffs, on a date or dates unknown to defendant Sumitomo but prior to commencing certain proceedings referred to hereinafter, entered into a conspiracy to coerce Sumitomo to accede to plaintiffs' demands for assignment to work for which they were not qualified, and for payment of additional compensation to which they were not entitled, and to retaliate against Sumitomo for its refusal to make such assignments or pay such additional compensation, by harassing Sumitomo and by injuring Sumitomo in its business and trade.

20. Upon information and belief, as part of carrying out their conspiracy, plaintiffs in bad faith, vexatiously, willfully and wrongfully commenced spurious and frivolous administrative proceedings before the Division of Human Rights of the Executive Department of the State of New York (the "Division of Human Rights"), and before the United States Equal Employment Opportunity Commission (the "EEOC"), making baseless claims in such proceedings that Sumitomo had discriminated against them. In the course of such proceedings, Sumitomo was subjected to interference with its person and property by the purported issuance against it by the EEOC of administrative subpoenas which were, upon information and belief, issued by the EEOC in violation of its own rules and regulations at the instance of and with the cooperation of plaintiffs, and as a result of which Sumitomo was required to spend substantial amounts of time and money responding thereto.

21. Both the proceedings before the Division of Human Rights and before the EEOC were terminated by such agencies with no action being taken and with no finding by either agency of reasonable or probable cause for the making of such claims by plaintiffs.

22. Upon information and belief, during the pendency of both of the aforesaid administrative proceedings plaintiffs interfered therewith for the purpose of preventing such proceedings from coming to determinations on the merits because plaintiffs were aware that such determinations would likely be adverse to them, and because in any event plaintiffs' purpose in bringing such proceedings was not to obtain a determination on the merits but instead was to coerce Sumitomo to accede to their demands for assignment to work for which they were not qualified and for payment of additional compensation to which they were not entitled.

23. Upon information and belief, in furtherance of carrying out such conspiracy, plaintiffs also commenced the within action. The within action, upon information and belief, is brought by plaintiffs in bad faith and vexatiously, and is willfully and wrongfully brought for the purpose of coercing Sumitomo into acceding to plaintiffs' improper and unjustified demands concerning work assignments and additional compensation and in retaliation for Sumitomo's refusal to accede to such demands.

24. Upon information and belief, plaintiffs, also as part of and in furtherance of their wrongful conspiracy, have engaged in various other wrongful acts to disrupt the business of Sumitomo and injure it in its person and property, including by failing to perform their work properly, by engaging

in acts of insubordination, by making divers misrepresentations about Sumitomo, by making attempts to induce other employees to breach their fiduciary duties to Sumitomo, by making efforts to purloin confidential documents and business records of Sumitomo, by coercing female employees not to accept promotions from Sumitomo during the pendency of this litigation, and by harassing and treating openly with scorn and contempt those employees who refused to accede to plaintiff's wrongful efforts thus to injure Sumitomo, all to the detriment and injury of Sumitomo.

25. As a result of the foregoing, defendant Sumitomo has been injured in its person and property and has accrued attorneys' fees and other costs. Further, by reason of plaintiffs' maintenance of the wrongful proceedings heretofore described, and this litigation, defendant Sumitomo has been injured in that it has been required to retain as employees one or more of the plaintiffs herein notwithstanding the fact that good and sufficient cause for their discharge exists, and has been required to give raises and other remuneration to one or more plaintiffs in excess of that to which they were properly entitled, for fear that were Sumitomo to do otherwise it would be subject to charges of wrongful retaliation, notwithstanding the fact that any such action by Sumitomo should have been justified, proper and not retaliatory.

26. As a result of the foregoing, Sumitomo has sustained the following damages to date:

- a) Attorneys' fees: \$125,000
- b) Retention of plaintiffs: \$65,000
- c) Lost personnel time and other incidental and/or consequential damages: \$40,000

AS AND FOR A FIRST COUNTERCLAIM

27. Paragraphs 18 through 26 hereof are hereby incorporated by reference and repeated as though realleged in full.

28. Plaintiffs have instituted in bad faith, vexatiously willfully and wrongfully a spurious and frivolous Title VII action against defendant Sumitomo, knowing full well that such action has no basis in fact or law.

29. As a result of plaintiffs' wrongful conduct in commencing such spurious and frivolous Title VII action, defendant Sumitomo, pursuant to 42 U.S.C. §2000(e)(5), is entitled to its attorneys' fees herein, and claims recovery against plaintiffs of attorneys' fees in the amount of \$125,000 expended to date; and because plaintiffs' actions were willful and malicious, further prays punitive damages in the amount of \$250,000.

AS AND FOR A SECOND COUNTERCLAIM

30. Paragraphs 18 through 26 and 28 and 29 hereof are hereby incorporated by reference and repeated as though realleged in full.

31. Plaintiffs have instituted in bad faith, vexatiously, willfully and wrongfully a spurious and frivolous federal administrative proceeding and a spurious and frivolous federal civil action against defendant Sumitomo, knowing full well that such proceeding and action had, and have, no basis in fact or law, for the purpose of coercing and harassing Sumitomo.

32. Plaintiffs have tortiously abused the federal administrative and judicial process.



33. As the result of the foregoing, defendant Sumitomo has been injured and claims \$230,000 in damages to date, and because plaintiffs' actions were willful and malicious, further prays punitive damages in the amount of \$250,000.

AS AND FOR A THIRD COUNTERCLAIM

34. Paragraphs 18 through 26, 28 and 29 and 31 and 32 hereof are hereby incorporated by reference and repeated as though realleged in full.

35. Plaintiffs have instituted in bad faith, vexatiously, willfully and wrongfully spurious and frivolous federal and state administrative proceedings and a spurious and frivolous federal civil action against defendant Sumitomo, knowing full well that such proceedings and action had, and have, no basis in fact or law for the purpose of coercing and harassing Sumitomo.

36. Plaintiffs have deliberately and intentionally abused process under New York State Law.

37. As the result of the foregoing, defendant Sumitomo has been injured and claims \$230,000 in damages to date, and because plaintiffs' actions were willful and malicious, further prays punitive damages in the amount of \$250,000.

AS AND FOR A FOURTH COUNTERCLAIM

38. Paragraphs 18 through 26, 28 and 29, 31 and 32 and 35, 36 and 37 hereof are hereby incorporated by reference and repeated as though realleged in full.

39. Plaintiffs have instituted in bad faith, vexatiously, willfully and wrongfully spurious and frivolous

federal and state administrative proceedings and a spurious and frivolous federal civil action against defendant Sumitomo, knowing full well that such proceedings and action had, and have, no basis in fact or law, for the purpose of coercing and harassing Sumitomo and have acted otherwise to disrupt and injure the business and trade of Sumitomo.

40. Plaintiffs have deliberately and intentionally inflicted temporal economic harm upon defendant Sumitomo without privilege or justification.

41. As the result of the foregoing, Sumitomo has been injured and claims \$230,000 in damages to date, and because plaintiffs' actions were willful and malicious, further prays punitive damages in the amount of \$250,000.

WHEREFORE, defendant-counterclaimant Sumitomo Shoji America, Inc., prays judgment as follows:

- (1) That the complaint herein be dismissed with prejudice;
- (2) That it be awarded judgment on its first counterclaim in the amount of \$125,000 actual damages, plus \$250,000 in punitive damages, jointly and severally against each of the plaintiffs named herein;
- (3) That it be awarded judgment on its second counterclaim in the amount of \$230,000 actual damages, plus \$250,000 in punitive damages, jointly and severally against each of the plaintiffs named herein;
- (4) That it be awarded judgment on its third counterclaim in the amount of \$230,000 actual

damages, plus \$250,000 in punitive damages, jointly and severally against each of the plaintiffs named herein;

- (5) That it be awarded judgment on its fourth counterclaim in the amount of \$230,000 actual damages, plus \$250,000 in punitive damages, jointly and severally against each of the plaintiffs named herein;
- (6) That it be awarded the costs of this action, including reasonable attorney's fees; and
- (7) That it be awarded such other and further relief as to this Court may seem just and proper.

WENDER, MURASE & WHITE

By

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