
Avagliano v. Sumitomo: District Court
Proceedings

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

8-23-1978

LMS Affidavit in Response to Defendant's Motion for an Order Fixing a Briefing Schedule

Lewis M. Steel '63

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

LISA M. AVIGLIANO, et al., : 77 Civ. 5641 (CHT)

Plaintiffs,

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant,

: AFFIDAVIT IN RESPONSE TO
DEFENDANT'S MOTION FOR AN
ORDER FIXING A BRIEFING
SCHEDULE.

----- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LEWIS M. STEEL, being duly sworn, deposes and says:

I am a member of the firm of Eisner, Levy, Steel & Bellman, P.C., attorneys for plaintiffs, and file this affidavit in response to defendant's motion for an Order fixing a briefing schedule in the above captioned matter.

1. Plaintiffs oppose the schedule suggested by defendant's counsel in his affidavit dated August 15, 1978. That schedule in effect stays these proceedings until the Equal Employment Opportunity Commission (EEOC) notifies the parties and the Court of the opinion of the State Department with regard to the treaty question raised by this matter, and further delays Sumitomo's requirement to file its brief until fourteen business days after said notification.

2. Plaintiffs believe that this schedule creates unnecessary delay in the resolution of the defendant's motion to dismiss plaintiffs' complaint. Plaintiffs have been seeking to obtain judicial resolution regarding defendant's legal defenses since March of this year. On March 16, 1978, I communicated with defendant's counsel, asking him to provide me with the identification of certain treaties, statutes, regulations, and practices which defendant alleged in a third affirmative defense made it immune from this lawsuit. I told counsel that I wanted this information so that I could make a motion to strike. At a hearing before Magistrate Raby, relating to objections which defen-

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dant had filed in response to interrogatories, both sides agreed that the defendant would file a motion to dismiss based upon its treaty defense by April 28, 1978. Shortly before that date, defendant's counsel contacted me and asked for an extension of time on the ground that a person in his office was sick. I consented. Thereafter, defendant's counsel sought an additional extension of time so that his client could consult with the Japanese government about the fact that EEOC intended to file an amicus brief relating to Sumitomo's counterclaim. I would not agree to this extension, and as a result defendant moved before Magistrate Raby for the extension. This motion was granted, over my opposition. I attach hereto a copy of the minutes of the hearing before Magistrate Raby, dated May 9, 1978. Thereafter, Sumitomo finally filed its motion to dismiss, but compelled me to ask for extensions of time to respond by refusing to provide me with a copy of the legislative history relating to the treaty, which it referred to in its moving brief. As a result, I was compelled to obtain the material from the Library of Congress in Washington, D.C., and was delayed thereby.

3. On June 27, 1978, the day before Sumitomo was required to file its reply brief, counsel asked me for a further indefinite extension of time in order to see what, if any, action EEOC was going to take with regard to the treaty motion. I refused, and Sumitomo's counsel obtained an ex parte order granting an extension. Sumitomo apparently bases its need for an extension on the claim that it may have to file a response to any brief EEOC files, and this would be a burden.

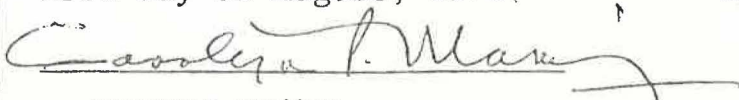
4. Plaintiffs fail to perceive how Sumitomo would be burdened. First, Sumitomo presumably knows its legal position quite well with regard to its treaty defense as it has already filed a brief. Second, I am informed by George Lehner, a United States State Department attorney, that during the same period of time when counsel for Sumitomo was complaining to this Court that a reply brief would burden his client, counsel had flown to

Washington to make a presentation to the State Department in an attempt to influence the Department's position with regard to the treaty. Obviously, therefore, Sumitomo has done its legal homework and has demonstrated that it is perfectly willing to burden itself over the legal issues at stake in this motion when it feels the burden is to its benefit. In conclusion, counsel believes that defendant at this point in time could file its reply brief with a minimum of time and effort. If it did so, of course, it would be moving one step closer toward resolution of the issues it raised in its motion to dismiss.

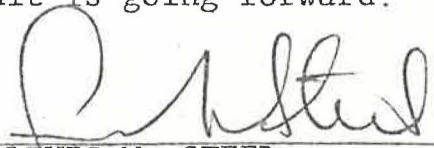
5. Plaintiffs further point out that they face a severe detriment as a result of this case being maintained in limbo. Many of the plaintiffs have been at Sumitomo for some years, and have been restricted to low paying clerical jobs. They allege that only this lawsuit can change this picture. Obviously, however, these plaintiffs suffer if this case is delayed, as they lose the opportunity for career advancement during its pendency. Some of the plaintiffs have already left Sumitomo's employment. Obviously, Sumitomo would like to see others leave, as their departure could have an affect on the prosecution of this lawsuit. Additionally, the defendant has obtained the benefit of a stay of discovery, which was entered by the Magistrate as a result of the pending motion to dismiss. This stay has in turn affected plaintiffs' ability to obtain information with regard to the class certification motion they must file.

6. It is therefore respectfully requested that the defendant be required to file its reply brief forthwith. If the State Department renders an opinion with regard to the treaty question, and if EEOC determines to file an amicus brief, defendant will not be under a severe burden if it feels compelled to respond to any new material which may appear in any of these documents. In any event, plaintiffs will be equally burdened, but will be assured that this lawsuit is going forward.

Sworn to before me this
23rd day of August, 1978.



CAROLYN P. MANNING
Notary Public, State of New York
No. 01-7700450
Qualified in Bronx County
Expires March 30, 1982

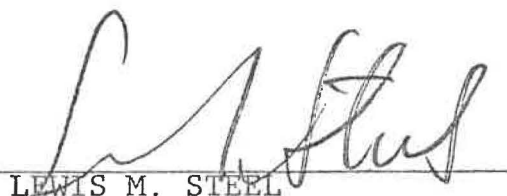

LEWIS M. STEEL

CERTIFICATE OF SERVICE

This is to certify the copies of the foregoing Affidavit in Response to Defendant's Motion for An Order Fixing A Briefing Schedule, together with copies of the minutes of the hearing before Magistrate Raby, were forwarded this 23rd day of August, 1978, via first class mail, postage prepaid, as follows:

J. Portis Hicks, Esq.
Wender, Murase & White
400 Park Avenue
New York, N.Y. 10022

John Schmelzer, Esq.
Equal Employment Opportunity Commission
Appellate Section
2401 E Street, NW
Washington, D.C. 20506


LEWIS M. STEEL