
Avagliano v. Sumitomo: On Remand to the
District Court

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

Fall 9-13-1982

Affidavit in Opposition to Motion for Costs

Wender Murase & White

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
LISA M. AVIGLIANO, et al.,

Plaintiffs-Appellees,

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant-Appellant.
-----x

RECEIVED SEP 13 1982

AFFIDAVIT IN
OPPOSITION TO MOTION
FOR COSTS

Docket No. 80-7418

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

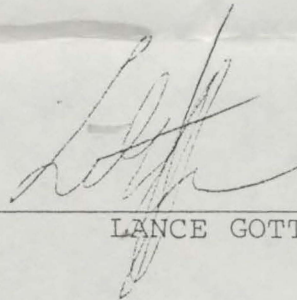
LANCE GOTTHOFFER, being duly sworn, deposes and says:

1. I am a member of the firm of Wender Murase & White, counsel for the defendant-appellant, and a member of the bar of this Court. I am fully familiar with the facts set forth herein, and submit this affidavit in opposition to the renewed motion of plaintiffs-appellees for costs.

2. As summarized in the affidavit of Lewis Steel, submitted in support of plaintiffs' motion, on February 17, 1981, this Court denied plaintiffs' application for costs in connection with the above-referenced proceeding. In so doing, the Court apparently rejected his argument then advanced by plaintiffs, i.e., that plaintiffs were the "prevailing party" on the appeal herein and thus entitled to their costs. It suffices to say that this determination was correct in light of the Court's disposition of the substantive issues appealed to it.

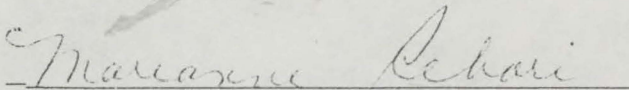
3. Plaintiffs' renewed application for costs is based entirely upon subsequent proceedings in other courts, and is not based upon any proceedings had herein. But the issue is whether plaintiffs were the prevailing parties in this Court, and none of the subsequent proceedings relied on by plaintiffs have any relevance to this issue. As such, the renewed motion presents no reason for this Court to reconsider or reverse its earlier determination that each party bear its own costs in respect of this appeal.

4. For the foregoing reasons, the initial decision of this Court should be adhered to, and plaintiffs' motion for costs should be denied.



LANCE GOTTHOFFER

Sworn to before me this
13th day of September, 1982.



MARIANNE REBORI
NOTARY PUBLIC, State of New York
No. 4699667
Qualified in Nassau County
Commission Expires March 30, 1983

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
a corporation, and knows the contents thereof; and the same
foregoing 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

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.

Check Applicable Box

☐ Affidavit of Personal Service

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

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

on 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.

80-7418

Year 19

**UNITED STATES COURT OF APPEALS
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Defendant-Appellant.

**AFFIDAVIT IN OPPOSITION
TO MOTION FOR COSTS**

WENDER, MURASE & WHITE

Attorneys for **Defendant-Appellant**

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