
Avagliano v. Sumitomo: District Court
Proceedings

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

6-14-1979

Plaintiff's Memo of Law in Support of Motion for Reargument and for Dismissal of Counterclaims

Lewis M. Steel '63

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

SUMITOMO SHOJI AMERICA, INC.,

Defendant.
-----X

77 Civ. 5641 (CHT)

*cert of F
service
attached*

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR RE-
ARGUMENT AND FOR DISMISSAL OF
COUNTERCLAIMS 2, 3 AND 4

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Of Counsel
LEWIS M. STEEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LISA M. AVIGLIANO, et al., :
 :
 : Plaintiffs, :
 :
 : -against- : 77 Civ. 5641 (CHT)
 :
 : SUMITOMO SHOJI AMERICA, INC., :
 :
 : Defendant. :
-----X

ARGUMENT

I.

ASSUMING THE CORRECTNESS OF THE COURT'S RULING THAT COUNTERCLAIMS 2, 3 AND 4 DO STATE CAUSES OF ACTION UNDER STATE LAW, THESE COUNTERCLAIMS NONETHELESS SHOULD BE DISMISSED UNDER THE THEORY OF KNAPP ENGRAVING CO.

The three counterclaims which are the subject matter of this motion essentially assert that plaintiffs have commenced a baseless and invalid action against defendant in order to inflict intentional damage without justification, and benefit thereby in the process.

The torts alleged to have been committed in these three counterclaims arise, if at all, under State law. Therefore, this Court should look to the law of New York to determine whether it should allow the defendant to proceed with these counterclaims at the present time.

This case should, therefore, be handled in accordance with the doctrine established in Knapp Engraving Co. v. Keystone Photoengraving Corp., 1 A.D.2d 170, 148 N.Y.S.2d 635 (1st Dept. 1956). In that case, Justice Botein was faced with precisely the same situation which is presently before this Court. The allegations in the complaint were virtually identical to the allegations here, and Justice Botein ruled that the counterclaim in that case did offer the technical ingredients of a prima facie tort. Nonetheless, the Botein court dismissed the counterclaim at the present time because of public policy considerations. The court ruled that such a cause of action could divert the progress of plaintiff's main stream of evidence and could well "make a shambles of controversies already sufficiently complex." The court concluded:

Assuming, as we must in such an equation that both the plaintiff's complaint and the defendant's counterclaims are meritorious, it would appear that there is grave danger that the merits of plaintiff's claim could easily be obscured or flounder under the impact of so dramatic a counterclaim. Or, just as mischievous, the merits of defendant's claim may be prejudiced by the presentation of plaintiff's case.

On the other hand, if after trial, it turns out that the plaintiff's action was without basis, defendant could proceed with a separate action . . .

(1 A.D.2d at 172-3).

The federal courts have adopted the same public policy. Rosemont Enterprises, Inc. v. Random House, 261 F.Supp. 691, 698 (S.D.N.Y. 1966); Selas Corp. of America v. Wilshire Oil Co. of Texas, 344 F.Supp. 357, 359-60 (E.D. Pa. 1972).

The above cited cases should be applied to the instant situation. Here, female employees of a large corporation are seeking vindication of their federal rights. Most assuredly, the issues will be complex. They will involve statistics, questions concerning job qualifications, the existence or non-existence of tracks within the company for promotional opportunities, etc. To intertwine these issues with a personal attack on the good faith of the individual plaintiffs for filing this action would result in precisely the damage sought to be avoided by Justice Botein in Knapp Engraving Co.

Dated: New York, New York
June 14, 1979

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LISA M. AVIGLIANO, et al., :
 :
 : Plaintiffs, : 77 Civ. 5641 (CHT)
 :
 : -against- : CERTIFICATE OF SERVICE
 :
 : SUMITOMO SHOJI AMERICA, INC., :
 :
 : Defendant. :
-----X

This is to certify that copies of Plaintiffs' Memorandum of Law in Support of Motion for Reargument and for Dismissal of Counterclaims 2, 3 and 4 were served, this 14th day of June, 1979, via first-class mail, postage prepaid, upon:

Wender, Murase & White
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Equal Employment Opportunity Commission
Attn.: Lutz Alexander Prager
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Washington, D.C. 20506



LEWIS M. STEEL