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| Islam v Citibank, N.A. |
| 2003 NY Slip Op 30222(U) |
| July 21, 2003 |
| Supreme Court, New York County |
| Docket Number: 113981-02 |
| Judge: Carol R. Edmead |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. CAROL EDMEAD

PRESENT: _____
Justice

PART 35

Islam, Aftab

INDEX NO. 113981-02

MOTION DATE 7/11/03

MOTION SEQ. NO. 03

MOTION CAL. NO. 55

- v -

Citibank, NA

The following papers, numbered 1 to 17 were read on this motion to/for Renew/reargue

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-10

11-17

SCANNED
AUG 04 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion
Based upon the accompanying memorandum decision, it is hereby

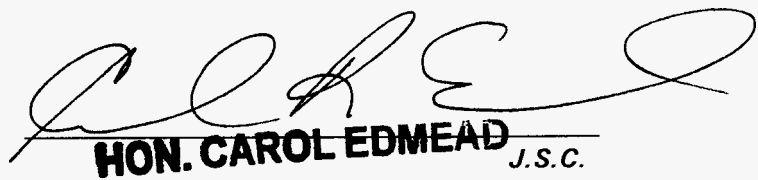
ORDERED that plaintiff's motion for renewal and reargument is granted; and it is further

ORDERED that upon renewal and reargument, plaintiff's motion to compel is again held in
abeyance pending additional action as previously directed.

This constitutes the decision and order of the court.

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: 7/21/03


HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

..... x
Aftab Islam,

Plaintiff,

Index No. 113981/02

-against-

Citibank, N.A.,

Defendant.

-----x

Carol R. Edmead, J.S.C.:

MEMORANDUM DECISION

Pro se plaintiff, Aftab Islam, moves for reargument and renewal of this Court’s order, dated May 14,2003, and upon the grant of such renewal and reargument, for “such relief as may be just, proper and equitable.” In opposition, defendant argues that, among other things, Mr. Islam failed to offer any new relevant facts warranting such relief. It is worthy to note that in such order, this Court only ordered that Mr. Islam’s motion to compel was held in abeyance, pending his voluntary discontinuance or a motion by defendant for summary judgment or dismissal of the action.

An application for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered in the prior motion” (CPLR § 2221(d)(2)). A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and . . . contain reasonable justification for the failure to present such facts on the prior motion” (CPLR § 2221(e)(2), (3)). To the extent plaintiff now relies on information which was not previously before this Court, and argues that the Court overlooked and misapprehended certain facts, plaintiff’s motion to renew and reargue is granted.

In the instant motion, Mr. Islam denies that the deposit of a check made payable to him was made at his insistence. In support, Mr. Islam notes that his counsel's letter to him concerning the check, dated January 15, 2002, there is no language indicating that the deposit was made at his "insistence." The Court observes, however, that in Judge Lehner's decision, Judge Lehner remarked that "the submitted papers [before him] further establish that at the defendant's [Mr. Islam's] insistence and direction the instant amount was deposited into an account at Citibank . . . under defendant's control" (see Order [J. Lehner] pg. 2). Such a remark, evidently based on information before J. Lehner, was made by a Court with concurrent jurisdiction. This Court may take judicial notice of and/or adopt the conclusions of such court.

Mr. Islam points out that according to the notice from Citibank, dated February 27, 2002, the \$100.00 withdrawal, upon which this Court relied, was made by Citibank as a service charge, and not by him. Mr. Islam also points out that the \$22,323.61 deduction from his account was also made by Citibank pursuant to J. Lehner's order.¹ Therefore, Mr. Islam argues that this Court wrongfully attributed these withdrawals to him. The Court acknowledges its oversight in this regard. In light of this oversight, whether Mr. Islam received the February 15, 2002 order is immaterial, given that such withdrawals made subsequently thereto were made by Citibank and not Mr. Islam.

What would remain, therefore, is this Court's concern as to whether the February 13, 2003

¹ By order to show cause of February 11, 2002 for an Order of Attachment, J. Lehner granted interim injunctive relief restraining Citibank from allowing the transfer or hypothecation from a certain account of Mr. Islam in the sum of \$40,142. On February 15, 2002, Judge Lehner issued a supplementary order which directed that no transfer of assets, except living expenses for Mr. Islam (who was already incarcerated), were to be taken from the Citibank account.

withdrawals' constitute a disregard of the February 11, 2002 restraining order. Mr. Islam insists that such order was irrelevant and without effect since (1) it was never provided to him or Citibank³ and (2) was superceded by the supplemental order, dated February 15, 2002 which was received by Citibank on February 15, 2002. Mr. Islam argues that any withdrawals made prior to February 15, 2002 were made before any restrictions against his account were effective, and were legitimately made by other signatories to the account not subject to J. Lehner's order.

This Court opines that the February 11, 2003 order by J. Lehner was nonetheless signed and effective as of February 11, 2002. Furthermore, the Court notes that it is undisputed that J. Lehner's February 11, 2002 order restrained Mr. Islam and "all other persons" from transferring or paying any assets of Mr. Islam other than for normal living expenses. It is unclear whether Mr. Islam had notice of the February 11, 2003 order, and therefore, whether the withdrawals from his account on February 13, 2003 were attributable to Mr. Islam. However, this Court adheres to its prior decision to hold Mr. Islam's motion for discovery in abeyance, and reiterates its invitation for dispositive motions.

The Court declines to address Mr. Islam's remaining contentions as to, among other things, the negligence of Citibank, the merits of the orders of attachment, and the propriety of J. Lehner's June 4, 2002 decision, as they are outside the scope of this renewal and reargument motion.

² On February 13, 2002, two days after the initial order was signed, \$40,040. was withdrawn from the Citibank account from a California location. On February 13, 2002, a check for \$16,000. was written by one of the signatories to the Citibank account and that money was withdrawn from the account.

³ Mr. Islam contends that Citibank was not provided with the order, given that it was not accepted by Citibank until February 14, 2002 when it was served upon Citibank.

Accordingly, upon renewal and reargument, plaintiff's previous motion to compel is again held in abeyance pending additional action as previously directed.

This constitutes the decision and order of the court.

Dated: July 21, 2003

ENTER: 

J.S.C.

HON. CAROL EDMED

