

**Weil, Gotshal & Manges LLP v Fashion Boutique of
Short Hills, Inc.**

2005 NY Slip Op 30055(U)

November 22, 2005

Supreme Court, New York County

Docket Number: 0100630/6302

Judge: Richard B. Lowe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: RICHARD B. LOWE III

PART 56

Index Number : 100630/2003
WEIL GOTSHAL & MANGES LLP

vs
FASHION BOUTIQUE

Sequence Number : 008
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH AGENCY'S WRITING MEMORANDUM DECISION

FILED

NOV 23 2005

NEW YORK COUNTY CLERK'S OFFICE

Dated: 11/22/2005

RICHARD B. LOWE III J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 56

-----X

WEIL, GOTSHAL & MANGES LLP,

Plaintiff,

Index No. 100630/03

-against-

FASHION BOUTIQUE OF SHORT HILLS, INC.,
ANNETTE C. FISCHER, and RANDI FISCHER,

**DECISION
AND ORDER**

Defendants.

-----X

FASHION BOUTIQUE OF SHORT HILLS, INC.,

Counterclaim-Plaintiff,

. -against-

WEIL, GOTSHAL & MANGES LLP,
HELENE D. JAFFE and ROBERT G. SUGERMAN,

FILED
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Counterclaim-Defendants.

-----X

RICHARD B. LOWE, III, J.:

Defendants Fashion Boutique of Short Hills, Inc., Annette C. Fischer and Randi Fischer (together "Fashion Boutique") move the court for leave to reargue and to reconsider its October 11, 2005 decision, which granted in part and denied in part the production of documents plaintiff Weil, Gotshal & Manges LLP (Weil Gotshal) claims as privileged.

BACKGROUND

The underlying facts in this litigation and the documents which were submitted to the court for an in camera inspection on September 21, 2005 and are at dispute here, have been

discussed at length in the court's October 11, 2005 decision as well as in previous decisions and, as such, will not be presented here.

DISCUSSION

The defendants urge the court for leave to reargue its application for production of documents Weil Gotshal claims as privileged and to reconsider the court's decision dated October 11, 2005 as to their production, arguing that the court misunderstood the arguments made and misapplied the law.

A motion for reargument addressed to the discretion of the court is designed to afford a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied any controlling principle of law; its purpose is not to serve as a vehicle to permit the unsuccessful party to argue, once again, the questions previously decided (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992], *lv to app dismissed in part, den. in part*, 80 NY2d 1005 [1992]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]).

The defendants assert two arguments in its motion to reargue and to reconsider. The first deals with documents concerning Weil Gotshal's alleged conflict of interest in representing the entity Prada. The documents at issue here include Documents 28, 29, 30, 102, and 103 of Weil Gotshal's First Privilege Log, Documents 2-8 of its Second Privilege Log, the October 5, 2000 Preliminary Clearance Report, and the clearance report for the Prada USA/Duty Free Apparel Matter generated January 4, 2001. The essence of defendants' argument is that the court's decision is contrary to the decisions rendered by the various trial courts of the state and, accordingly, this court ought to bind itself to the decisions of those courts concerning the issue before it. The court rejects this argument as unpersuasive. First, the court notes that defendants'

argument was already considered and decided in the court's October 11, 2005 decision, which duly considered decisions made by various sister courts on this issue and found them inapposite¹. Secondly, and more importantly, the court neither overlooked nor misapprehended the relevant facts as provided, and applied the controlling principle of law in determining that such documents were privileged and not subject to production. Finally, while the court is reminded that there may be a "debilitating conflict of interest" that existed while Weil Gotshal represented Fashion Boutique (*see Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills*, 10 AD3d 267, 271 [1st Dept 2004]), such an alleged conflict does not in and of itself overturn the privilege asserted by Weil Gotshal. Based on the foregoing, the motion to reargue and to reconsider as to these documents is denied.

The second argument relates to documents concerning Robert Davis (Davis). Such documents at issue include Documents 30,102, and 103 of Weil Gotshal's First Privilege Log and Documents 2-8 of its Second Privilege Log. The basic thrust of defendants' argument is that the court misapprehended defendants' argument in the first instance, asserting that because Helene Jaffe, an attorney at Weil Gotshal answered a factual question during her deposition as to what Davis told Jaffe to tell the defendants regarding Weil Gotshal's conflict of interest, such "disclosure" abrogated the attorney-client privilege and documents should be produced. The court again reiterates the fact that this argument was considered in its October 11, 2005 decision and was rejected. The court reviewed the facts as presented and found defendants' argument

¹ Indeed, defendants' reliance on *Bank Brussels Lambert v Credit Lyonnais (Suisse) S.A.*, 220 F Supp 2d 283 (SD NY 2002) and *Bolton v Weil, Gotshal & Manges LLP* (Sup. Ct., New York County, Sep. 16, 2005, Madden, J.) is misplaced. The court in *Bank Brussels* dealt with the issue of conflict of interest checks with regards to current clients as to that client (*see* 220 F Supp 2d at 287). The issue in *Bolton* involved conflicts of interests in joint representations, where the court obviously found that there was no exception because the parties were jointly represented with the party seeking discovery (*see* slip op, at 8). Here, the conflict of interest checks dealt with Prada, not Fashion Boutique, and furthermore, there was no joint representation among the parties.


overly and unduly broad, and, accordingly, rejected Fashion Boutique's contention that privilege was waived. The defendants fail to show that the court did not consider the arguments asserted. Based on its previous decision, the court again rejects defendants' arguments as to the production of the documents related to Davis, and denies defendants' motion to reargue and for reconsideration.

CONCLUSION

This litigation is at the point of trial, and both parties have had more than enough time to gather evidence as to the various issues to be tried. The motion to reargue is denied and the October 11, 2005 decision stands.

Dated: November 22, 2005

ENTER:



RICHARD D. LOWE, III, J.S.C.
RICHARD D. LOWE III

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