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

PRESENT: CE Ramos PART 39

Index Number : 600309/2008

NYS SUPERINTENDENT OF BAKS

VS.

JUGOBANKA A.D.

SEQUENCE NUMBER : 002

REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

Motion is decided in accordance with accompanying Memorandum Decision

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

Dated: 9/9/08

HON. CHARLES E. RAMOS, 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: COMMERCIAL DIVISION

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In the Matter of the Application of the Superintendent of Banks of the State of New York for court approval pursuant to the New York Banking Law of the settlement of a Dispute regarding the liquidations of JUGOBANKA A.D., BEOGRAD NEW YORK AGENCY and BEOGRADSKA BANKA A.D., BEOGRAD NEW YORK AGENCY, New York-licensed foreign Banking agencies.

Index No. 600309/08

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Charles Edward Ramos, J.S.C.:

The Superintendent of Banks of the State of New York (Superintendent) sought this Court's approval for the settlement of a dispute concerning competing rights to administer the liquidation of the local operations of two defunct Yugoslavian banks, Jugobanka A.D., Beograd and Beogradska Banka, A.D., Beograd (together, Jugobanka). The Court denied the relief sought by the Superintendent, on April 18, 2008. The Superintendent now moves for leave to reargue (CPLR 2221 [a]).

Background

In the early 1990s, Yugoslavia slid into disunity and ethnic violence, and war eventually caused the disintegration of the country. In 1992, the United States government imposed economic sanctions on the regime of the former Yugoslavia. Consequently, in 1993, U.S. Treasury Department closed Jugobanka's New York-licensed agencies (Agencies), and seized their assets and records. Nearly a decade later, Jugobanka was declared insolvent by the government of the Republic of Serbia, formerly Yugoslavia.

In January 2002, pursuant to banking law provisions

authorizing the Superintendent to determine the fate of local operations of insolvent foreign banks, the Superintendent took possession of the Agencies in order to liquidate Jugobanka's local assets, before the remainder was to be remitted to Serbia.

Thereafter, the Serbian government appointed the Deposit Insurance Agency (DIA) as Jugobanka's representative, and sought to challenge the Superintendent's authority over the Agencies' assets. The DIA instituted bankruptcy proceedings in Serbia and in the United States, pursuant to § 304 of the Bankruptcy Code, that governs cases filed in U.S. bankruptcy courts that are ancillary to a foreign bankruptcy proceeding. The DIA sought to compel the Superintendent to turn over the Agencies' assets for administration in Serbia, and obtained a TRO.

Protracted litigation ensued involving the Superintendent's jurisdiction over the Agencies' assets in light of the New York Banking Law (NYBL), preemption principles, and sovereign immunity. While appeals were pending in the Second Circuit, the U.S. Congress repealed § 304 of the Bankruptcy Code, and enacted a new provision governing ancillary relief in cross-border bankruptcy cases. The Second Circuit held that the Superintendent's claim of sovereign immunity was defeated, and remanded the petition to Bankruptcy Court to determine whether the DIA was entitled to enjoin litigation against Jugobanka in U.S. courts.

In 2007, the parties began settlement negotiations, and a settlement was proposed that sought to end the dispute between

the Superintendent and DIA over the right to administer liquidation of Jugobanka. It was executed by both parties, conditioned on this Court's approval.

The Settlement provided for the Superintendent's retention of sixty percent of the Agencies' assets for local administration, while the remaining forty percent would be remitted to the DIA for repatriation to Serbia. In January 2008, the Bankruptcy Court partially lifted the TRO in order to permit the parties to carry out the terms of the settlement (Settlement).

Thereafter, the Superintendent sought this Court's approval for the Settlement, and maintaining that it was within its authority to take steps to insure that assets remain to cover a portion of the claims of the Agencies' local creditors, while limiting the litigation risk of complete repatriation of the assets to Serbia for administration there.

This Court denied the Superintendent's motion, on the ground that NYBL § 618 (1) (a) does not require the Superintendent to obtain the court's approval for a settlement of a dispute over competing rights to administer the liquidation of banks, or the rights of parties under the Bankruptcy Act (Exhibit 2, annexed to the Declaration of Qian Gao, Esq.).

Discussion

A motion to reargue is directed to the sound discretion of the court (CPLR 2221 [d]). Leave to reargue "shall be based upon matters of fact or law allegedly overlooked by the court in

determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (*id.*).

In support of its motion for leave to reargue, the Superintendent argues that NYBL § 618 requires the Court to determine whether the Superintendent validly executed its authority in engaging in the Settlement.

NYBL § 618 (1)(a), the relevant provision at issue, states,

> "The superintendent is authorized, upon taking possession of any banking organization, to liquidate the affairs thereof and to do all acts and to make such expenditures as in his or her judgment are necessary to conserve its assets and business ... The superintendent may, upon an order of the supreme court (...), (i) sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by such banking organization, (ii) compromise claims against such banking organization, other than deposit claims, and (iii) sell or otherwise dispose of all or any of the real and personal property of such banking organization wherever situated (emphasis added).

In undertaking statutory interpretation, courts should attempt to effectuate the intent of the Legislature by giving effect to the plain meaning of the statute (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583 [1998]). Further, a court cannot by implication supply into a statute a provision or phrase for which it is reasonable to suppose that the Legislature intended to omit (McKinney's Cons. Laws of NY, Book 1, Statutes § 240 at 411).

The plain reading of NYBL § 618 (1)(a) makes evident that upon taking possession of a banking organization, the Superintendent is required to obtain court approval for the compromise of "bad or doubtful debts" held by bank, for the compromise of claims against the bank, and to sell or dispose of

property of the bank.

The statute does not make any mention of the need for court approval for the compromise of a dispute of the nature at issue here, involving challenges to the Superintendent's authority to administer the liquidation of a failed bank's assets vis-a-vis a representative of a foreign bankruptcy estate.

Therefore, the Legislature's failure to include in the statute any language requiring the Superintendent to obtain court approval for the compromise at issue here, while expressly requiring such approval for compromises involving other issues, is necessarily intentional and not inadvertent (*In re Turner*, 307 AD2d 828, 830 [1st Dept 2003]). Consequently, this Court is not at liberty to imply the requirement that the Superintendent obtain the court's approval into NYBL § 618. "Legislative silence ... does not create a vacuum inviting judicial creativity" (*id.*).

Moreover, the NYBL, that governs the Superintendent's authority to seize assets of a failed foreign bank licensed in New York, grants the Superintendent considerable discretion with respect to liquidation and other matters involving their business and property (NYBL § 606; *matter of Liquidation of new York Agency and Other Assets of Bank Credit and Commerce International, S.A.*, 90 NY2d 410, 420 [1997]). Subject to a foreign bankruptcy estate's rights under the Bankruptcy Code, the Superintendent's broad authority presumably includes compromises to challenges to its authority to administer liquidation in the

first instance.

Therefore, this Court's Order denying the Superintendent's motion for court approval of the Settlement need not be disturbed.

Accordingly, it is

ORDERED that the motion for leave to reargue is denied.

Dated: September 9, 2008

ENTER:

J.S.C.

HON. CHARLES E. RAMOS