

Abacus Fed. Savs. Bank v Carol John Mee Lim

2011 NY Slip Op 33034(U)

November 17, 2011

Supreme Court, New York County

Docket Number: 108378/2003

Judge: Jane S. Solomon

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

JANE S. SOLOMON

PRESENT: _____
Justice

PART 55

Index Number : 108378/2003
ABACUS FEDERAL SAVINGS
vs.
LIM MEE JOHN CAROL
SEQUENCE NUMBER : 010
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE 8/25/11
MOTION SEQ. NO. _____

tion to/for _____

No(s) 4-3
No(s) 4-5
No(s) _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the emailed memorandum decision and order.*

FILED

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: Nov. 17, 2011

[Signature] _____ J.S.C.
JANE S. SOLOMON

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
ABACUS FEDERAL SAVINGS BANK,

Plaintiff,

-against-

Index No. 108378/03

CAROL JOHN MEE LIM, ZHONG GUI MO,
ZHONG CHENG MO, XIAO MING MO, FRANCES ENG,
ANDERS ENG, MIKATA JAPANESE CUISINE, INC.,
NA FANG MO A/K/A MONA FANG, TIFFANY
INTERNATIONAL TRADE, INC. D/B/A TIFFANY
ENTERTAINMENT GROUP, INC., TIFFANY HAIR/
NAIL SALON, INC., WORLD START CO., INC.,
ORIENTAL GEM FINE ARTS & CRAFTS, INC.,
C&G PRIME REALTY, LLC, CHINA CERAMICS
IMPORTS, INC., JACKY LIANG, THOMAS FUNG,
WAI KWAI LI, CHUN YANG WONG, CHUNKO PANG,
LAI MIND MAN, JOHN DOES 1 through 100, and
COMPANIES A through ZZ,

DECISION and ORDER

Defendants.

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
JANE SOLOMON, J.S.C.:

Plaintiff Abacus Federal Savings Bank (the "Bank")
moves, pursuant to CPLR 2221(d), for leave to reargue the October
18, 2010 motion and cross-motion to dismiss, filed by certain
defendants, which was granted by a decision and order dated June
15, 2011 (Prior Order, annexed to Notice of Motion, Ex. P). The
motion is denied for the reasons below.

The relevant facts are set forth in the Prior Order.
This case arises from allegations of fraud by the Bank against
its former Canal Street branch manager, defendant Carol John Mee
Lim ("Lim"). A criminal complaint was made against Lim, but she
fled before she was arrested. This action, commenced in 2003,
seeks to recover the money allegedly misappropriated by her.

In response to demands for disclosure by the other

defendants, the Bank claimed that it had documents filling thirty bankers boxes. The relevance of this material to any defendant, other than Lim, was not disclosed. The Bank's senior operations officer appeared for deposition in response to an interim order directing the Bank to produce a witness with personal knowledge of the material in the boxes. He was unable to describe how any of the Bank's documents pertain to a claim against the defendants (Prior Order, 3-4).

Defendants Zhong Cheng Mo, Xiao Ming Mo, Oriental Gem Fine Arts & Crafts, Inc., C&G Prime Realty LLC and China Ceramics Imports, Inc. moved to dismiss the complaint pursuant to CPLR 3126 due to the Bank's failure to provide evidence of liability. Defendants Frances Eng, Anders Eng and Mikata Japanese Cuisine, Inc. cross-moved for the same relief. The motions were granted. The Prior Order stated that "In the eight years that this case has been pending, plaintiff has offered not a shred of evidence that any of the moving defendants has committed an actionable wrong against it" (Prior Order, 4).

"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 the relevant facts, or misapplied any controlling principle of law [and] ... is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided [or] ... to provide a party an opportunity to advance arguments different from those tendered on the original application" (Foley

v Roche, 68 AD2d 558, 567-568 [1st Dept 1979]).

The Bank repeats its contention that it discharged its obligations to inform defendants of the bases for its fraud claims against them by making the thirty bankers boxes available for inspection, even as it refuses to specify how any documents relate to this lawsuit. This contention ignores the fact that I issued an order directing that the Bank produce a witness with knowledge of the documents; this direction was made specifically to address defendants' concern that copying and reviewing thirty boxes of material is unduly burdensome in light of the Bank's inability, after years of litigation, to articulate how any material therein is relevant to its claims against these defendants (Second Interim Order and Transcript, dated March 28, 2011, *Aff. of Pei Pei Cheng, Esq.*, Exhibits A and B).

The Bank now relies upon documents not submitted as part of the prior motion and cross-motion; this is patently improper on a motion to reargue (CPLR 2221[d][2]). The Bank refers to documents showing that Frances Eng pleaded guilty to a criminal offense in the United States District Court; the insufficiency in the Bank's argument that her plea amounts to an admission of civil culpability in this action was discussed in the August 13, 2009 decision and order denying the Bank's motion for summary judgment (affirmed, 75 AD3d 472 [1st Dept 2010]).

The Bank's attorney contends, in his memorandum of law, that there is evidence of defendants' liability (that evidence was notably absent in the prior motion). The Bank's attorney

previously has expressed an opinion about the sufficiency of its evidence, but that was not at issue. The Bank was required to "put up or shut up" (Transcript, Cheng Aff., Ex. B, 11) with a knowledgeable witness. It did not, and the Bank does not articulate how the court misapprehended or overlooked any relevant fact or legal principle in the Prior Order.

Finally, at the close of the Prior Order, the Bank was directed to file a report on the status of the litigation with respect to all remaining parties. A status report was filed indicating that the matter was "inactive" as to all defendants but those were dismissed from the case in the Prior Order. In other words, nothing remains to be litigated in this action. Accordingly, it hereby is

ORDERED that the motion to reargue is denied; and it further is

ORDERED that the complaint is dismissed, and the Clerk is directed to enter judgment accordingly with costs and disbursements to the appearing defendants as taxed.

Dated: November 17, 2011

ENTER:
FILED

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE, S.C.
JAMES A. SULLIVAN