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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - 53

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THE STATE OF NEW YORK ex rel.
ERIC RASMUSEN,

Plaintiff,

Index No.
100175/2013

-against-

CITIGROUP INC.,

Defendant.

-----X

MOTION
60 Centre Street
New York, New York
May 17, 2017

B E F O R E:

HONORABLE CHARLES RAMOS, JUSTICE

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Senior Court Reporter

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2 THE COURT: Good morning everyone.

3 This is a question to the array. I haven't seen
4 any papers from the State of New York, has the Attorney
5 General of the State of New York appeared in any context at
6 all in this case?

7 MR. POLUBINSKI: Your Honor, Ed Polubinski.

8 To my knowledge, no, other than declining to
9 intervene several years ago.

10 THE COURT: This is your motion to dismiss?

11 MR. POLUBINSKI: That's right, your Honor.

12 THE COURT: There is the lectern, please use it
13 (indicating).

14 MR. POLUBINSKI: Great, thank you.

15 Good morning, your Honor. Ed Polubinski, I'm here
16 from Citigroup.17 As your Honor is aware, this a qui tam action, a
18 qui tam tax case, brought by a business who claims, as your
19 Honor is aware, that my client, Citigroup, defrauded the
20 State of New York in connection with his taxes because it
21 followed official I.R.S. guidance on how to treat so-called
22 net operating loss deductions.23 THE COURT: Is it the contention that net operating
24 losses are not to be carried forward under the New York Tax
25 Law?

26 MR. POLUBINSKI: I believe, your Honor, that it's

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2 the plaintiff's contention that they should be limited,
3 because plaintiff would contend that the transactions, the
4 creditor he engaged in in the 2008/2009 timeframe, according
5 to plaintiff, should have constituted a change in control.

6 THE COURT: I see.

7 MR. POLUBINSKI: And that the I.R.S., which Citi
8 relied on, expressly says that they were not to.

9 So there are three dispositive reasons, your Honor,
10 that we offered in our papers, separate dispositive reasons
11 for why this case should be dismissed.

12 The first is: The plaintiff's cause of action is
13 barred by the public disclosure bar under the New York False
14 Claims Act.

15 The second is: There was no false claim at all
16 because Citi's tax recording is correct.

17 And the third is: Even if there was incorrect
18 reporting of Citi's taxes, the plaintiff has failed to
19 allege sufficiently that Citi knowingly --

20 THE COURT: Is this the city or the state?

21 MR. POLUBINSKI: It is the State of New York. I
22 represent Citigroup. So apologies for the shorthand, your
23 Honor.

24 THE COURT: Be careful.

25 MR. POLUBINSKI: I will, of course, try to be a
26 little clearer on that. So my client, Citigroup.

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The third reason the claim fails is that he failed to allege that Citigroup knowingly made a false statement because it relied on the only official government guidance, and then it disclosed what it did in this -- in its 10-K's.

So, I will start with the public disclosure bar. As your Honor is aware, the New York Law contains a public disclosure bar which requires that a claim be dismissed if substantially the same allegations or transactions were publicly disclosed until the relator is an original source.

In this case, the relator conceded he is not an original source. And I think it's undisputed that the actual alleged facts at issue in this case were amply disclosed in the public.

And, in fact, they were the subject of considerable press attention in the news media, they were the subject of the lengthy Congressional report that was issued in early 2010.

And to top that all off, relator himself published a policy paper, itself based entirely on public facts that alleges the same things that he now alleges in this complaint.

So what relator says is that even though he concedes that all of these facts are public, he claims that the public disclosure bar does not bar his claims because he alone suggests that he alone alleges the Citi's New York

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taxes were wrong or were fraudulent.

Respectfully, your Honor, the relator is wrong on both accounts, both on the law and on the facts. On the law, it's not the case that a relator should take publicly disclosed facts, say that they amount to fraud and somehow avoid the public disclosure bar.

THE COURT: The relator is the whistleblower. Did all he do was read the newspaper?

MR. POLUBINSKI: Your Honor is right. And, in fact, directly on point in the Jamaica Hospital case issued in 2011, the quoted that I like in that case reads: "When the material elements of the fraud is already in public domain, the government has no need for a relator to bring the matter to its attention."

On the facts here there's no doubt, substantially, the same allegations and transactions were publicly disclosed. New York follows and incorporates the federal law of net operating loss deductions.

So what that means is that a disclosure about one's federal NOL's, net operating loss deductions, is also a disclosure as to the state operating losses deductions.

And, in fact, relator's central claim here is that the Citi somehow committed fraud by following the I.R.S. notices, which he claims were inconsistent with the Federal Internal Revenue Code. Those facts, as your Honor, noted

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2 were amply disclosed in many different sources. The
3 allegations themselves were also made in the news media and
4 also by relator himself in his complaint.

5 Realtor also argues, second argument, is that the
6 Court should not consider Citigroup's publically filed
7 10-K's as public disclosures.

8 There are two reasons why this is wrong: First is
9 that this is irrelevant. As an initial matter, even if the
10 relator were correct and even if Citi's public disclosures
11 were somehow not to be considered under the False Claims
12 Act, the public disclosure would still apply even if the
13 Citi SEC filings were not considered.

14 And the reason for that is even setting aside the
15 10-K's, substantially the same allegations and transactions
16 were disclosed in the news media and in relator's own paper.

17 But in addition to that, and this is important as
18 well, your Honor, is that relator wrongfully suggested he
19 can bring a qui tam case based on allegations that were
20 fully disclosed in a company's 10-K's.

21 There is a host of federal case law that states to
22 the contrary. Jamaica Hospital case that I cited to your
23 Honor also supports the same conclusion, and there is no
24 court that holds otherwise. So that's the public disclosure
25 bar.

26 The second independent reason for dismissal here is

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the relator has not alleged a false statement, and the reason for that is that Citi's tax reporting -- Citigroup's tax reporting, even accepting all of plaintiff's allegations to be true, was accurate and correct.

And there are a couple of clear undisputed points on this as a place to start. First, that no one disputes that Citigroup followed the I.R.S. notices. Likewise, I don't think anybody disputes that New York follows federal law and the law of net operating loss deductions.

And then on top of that, I don't think anybody suggests that there is any contrary authority from the state that tells us that we should not be following the I.R.S. notices. So, in other words, no state tax authority has said you should not follow the I.R.S. notices in your net operating loss deduction reporting.

And as I mentioned at the very start of the argument, the Attorney General has declined to intervene in this case.

Relator doesn't claim that Citi's federal taxes are wrong, at least as far as I can tell, but instead he says that Citi's New York taxes were wrong because he claims that New York law does not incorporate the I.R.S. notices. But relator is wrong on that, as well, and some bedrock principles of New York law.

The first is that New York law borrows expressly

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2 from the federal law in defining taxable income. And in
3 particular, Section 1453(a) provides that the taxable income
4 that a taxpayer corporation would need to report in New York
5 is what the taxpayer is required to report to the U.S.
6 Treasury Department.

7 There is no dispute that Citi did exactly that;
8 reported precisely what it was required to report under
9 1453(a).

10 In addition to that, the definition of net
11 operating loss also borrows expressly from the -- 1453(k)(1)
12 says that a net operating loss in the state shall be
13 presumably the same as the net operating loss deduction
14 allowed under Section 172 of the Internal Revenue Code.

15 Both the Court of Appeals and the Third Department
16 in an opinion that was affirmed by the Court of Appeals have
17 made clear that the word "presumably" in that statute does
18 not mean that a taxpayer is free to imply his own
19 interpretation that is different from the federal
20 interpretation.

21 Instead, it means only that it's in the statute to
22 afford a taxpayer with an opportunity to have a hearing, if
23 there's a claim of accuracy in it's federal reporting.
24 There's no claim of accuracy here.

25 And the last point is that there is a long line of
26 New York authority that makes clear that New York interprets

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2 its Tax Law in accordance with federal law wherever
3 possible. The relator says those authorities don't apply to
4 informal guidance like the I.R.S. notices that are at issue
5 here, but that's wrong.

6 There is nothing in the authorities that we cite
7 that limits in any way the kinds of federal authorities that
8 the state looks to.

9 In fact, a quote from Michaelson, the Court of
10 Appeals case on this, is instructive. It says that New York
11 Income Tax Law evinces strong intent to conform to federal
12 authority wherever possible, and the authority is not
13 limited in any way.

14 So at the end of the day, the relator may not like
15 the notices, but they are the law. And New York State
16 follows those interpretations in the absence of contrary
17 interpretation from New York State.

18 The last independent basis for dismissal, your
19 Honor, is that even if Citigroup's tax treatment were
20 somehow incorrect, plaintiff has failed to allege
21 sufficiently that Citigroup acted with the requisite state
22 of mind.

23 The False Claim Act is a fraud statute, it doesn't
24 entitle people to recover from pure innocent misstatements.
25 Instead, plaintiff must allege that the defendant acted
26 knowingly. And the relator has not come close here. At

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2 most, the word "knowingly" appears three times in the
3 statute.

4 The plaintiff just simply reciting the elements of
5 the claim, that is clearly not enough. And, in fact, the
6 allegations here are affirmatively inconsistent with
7 Citigroup's knowledge of any false statement.

8 As I've said before, Citigroup followed the only
9 official guidance that was out there. That guidance, the
10 notices, say on their face, quote, "taxpayers may rely on
11 rules described in this notice."

12 New York State follows federal law. There is no
13 contrary New York State interpretation. And then Citigroup,
14 did disclose in it's 10-K's that it was relying on the
15 notices. None of that, of course, is remotely consistent
16 with knowingly making a false claim. For that reason,
17 plaintiff failed to allege knowledge.

18 Unless your Honor has further questions, those are
19 the reasons upon which we ask that the Court to dismiss the
20 claim.

21 THE COURT: Thank you.

22 MR. POLUBINSKI: Thank you.

23 THE COURT: Plaintiff.

24 MR. SINATRA: Good morning, your Honor.

25 THE COURT: Good morning.

26 MR. SINATRA: John Sinatra from Hodgson for the

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2 plaintiff relator, Eric Rasmusen.

3 What we've got to do here, your Honor, is go a
4 little bit deeper; deeper into the specifics and deeper into
5 some exceptions and not spend all of the time just on the
6 general rules because the case, it is our view, that the
7 case has to be decided a little bit deeper than that; on the
8 specifics and on the exceptions.

9 Regarding public disclosure, there's a lot of law
10 out there on the robust federal public disclosure provision,
11 including a lot of federal case law. But what's going on
12 here is we've got to apply the New York State False Claims
13 Act and the federal disclosure bar provided in that statute.
14 So the announcements here must adhere to that statute.

15 Before I get there, Judge, let me cover a couple of
16 points.

17 One is that what was out there in the public
18 domain, what was out there and discussed in a lot of
19 different places, was how Citigroup handled its federal tax
20 return and what it did in its federal tax return with
21 respect to net operating losses. That was what was out
22 there in public.

23 THE COURT: What was it that your client discovered
24 that no one else did?

25 MR. SINATRA: He discovered, your Honor, that
26 Citigroup was also applying the same net operating loss

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2 deductions and he adduced that --

3 THE COURT: How did he discover that, by reading
4 the newspaper and reading the 10-K's?

5 MR. SINATRA: By reading the 10-K's, your Honor, is
6 the only way he could have adduced it.

7 But --

8 THE COURT: Isn't that a public disclosure?

9 MR. SINATRA: Except, except under the New York
10 False Claims Act, which is in Section 190 (9)(b) -- 190
11 (9)(b)(ii), where the state makes it clear that its public
12 policy is different.

13 The State of New York wants cases brought that
14 would otherwise be barred under the federal statute, if what
15 we're dealing with -- if the public disclosure comes from
16 something just like this, an SEC report, SEC findings.

17 The state statute specifically --

18 THE COURT: Hang on. All of a sudden you've
19 deviated from quoting from the statute.

20 MR. SINATRA: I was about to quote from the
21 statute.

22 THE COURT: This is 1450, correct?

23 MR. SINATRA: No. No. No, we're not there yet.

24 THE COURT: Not there yet?

25 MR. SINATRA: We're not there yet.

26 The New York State False Claims Act --

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THE COURT: Which exhibit is that?

MR. SINATRA: It was attached to my affirmation as the Tax Law.

THE COURT: As?

MR. SINATRA: The Tax Law.

THE COURT: It was a tab?

MR. SINATRA: Right. But we're still at the State Finance Law first, your Honor.

THE COURT: And that's what I'm looking for.

MR. SINATRA: That's not a section in the affirmation.

THE COURT: Does anyone have a copy of the section you're referring to so I can look at the section itself instead of your characterization of it?

MR. POLUBINSKI: Your Honor, we have one in a very, very small type book. I would be happy to hand it up.

THE COURT: I'll do the best I can. I am half blind from looking at computer screens.

(Handing.)

THE COURT: Thank you.

MR. POLUBINSKI: You're welcome.

THE COURT: Now, which section are you relying on?

MR. SINATRA: Sure. 190.

THE COURT: Subsection?

MR. SINATRA: Nine.

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THE COURT: Certain actions barred?

MR. SINATRA: Correct. Then under that it is (b).

THE COURT: The Court shall dismiss unless -- and I'm going to skip some -- unless the qui tam the plaintiff is an original source of the information.

MR. SINATRA: The Original Source Doctrine is an exception to the public disclosure rule. We don't claim to be an original source, but that is only an issue if the public disclosure rule applies in the first place.

THE COURT: Then we have to dismiss.

MR. SINATRA: No, your Honor. Whether or not we're the original source is irrelevant, because the public disclosure rule doesn't apply in the first place. And (b)(ii), towards the end of that provision where we're at where we need to be, or under any federal, state or local law, rule or program.

THE COURT: Under (ii)?

MR. SINATRA: Yes.

THE COURT: Let me read it.

MR. SINATRA: Sure.

(Pause taken.)

THE COURT: How does the 10-k not satisfactory this provision?

MR. SINATRA: I think a 10-k does satisfactory this provision. And that is an exception to the public

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2 disclosure rule, your Honor.

3 THE COURT: Now I'm not following your logic at
4 all.

5 MR. SINATRA: Sure. The flush language of (b) sets
6 out the rule.

7 THE COURT: It says: "Providing such information
8 shall not be deemed 'publicly disclosed' in a report or
9 investigation because it was disclosed or provided pursuant
10 to article six" -- that is not applicable.

11 MR. SINATRA: Right.

12 THE COURT: "Or any other federal, state or local
13 law, rule or program enabling the public to request, receive
14 or view documents or information in the possession of public
15 officials or public agencies."

16 You're saying a 10-K does not satisfactory that?

17 MR. SINATRA: No. No. We're saying the 10-K's does
18 satisfy that.

19 THE COURT: Does satisfy that, but it doesn't
20 satisfactory the exception?

21 MR. SINATRA: Which is the exception in the general
22 rule, in (b); which says that you dismiss if there is
23 something substantially similar out there in public. And
24 what (ii) is saying, except in this situation.

25 THE COURT: But doesn't (b) require your client to
26 be the original source of the information?

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2 MR. SINATRA: No. The Original Source Doctrine
3 would be an exception if the public disclosure bar applied
4 in the first place.

5 THE COURT: Wait a minute. Am I reading the
6 section wrong? It says "the Court shall dismiss the action
7 under this article, unless opposed by the state -- the state
8 is not taking a position -- or an applicable local
9 government -- not here -- or unless the plaintiff is an
10 original source of the information. They're not. We know
11 the plaintiff is not; correct?

12 MR. POLUBINSKI: Agreed, right.

13 THE COURT: Then there is's comment: "If
14 substantially the same allegations or transactions as
15 alleged in the action were publicly disclosed."

16 MR. POLUBINSKI: Your Honor, if I may.

17 THE COURT: Yes.

18 MR. POLUBINSKI: So --

19 THE COURT: I don't understand how that still gets
20 us off the hook here.

21 MR. SINATRA: I guess I overlooked that the
22 semi-colon is in (ii).

23 THE COURT: What is your take on this, please?

24 MR. POLUBINSKI: Thank you, your Honor.

25 So, Section 190(b)(2) here does clearly apply to
26 SEC rules. The language that Mr. Sinatra is quoting here is

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2 language that was inserted into the statute specifically
3 aimed at FOIL -- F-O-I-L -- exceptions and the federal
4 equivalent.

5 Essentially, the language stands for the
6 proposition, if the relator goes and receives information
7 and receives it in response to a FOIL request or a FOIA
8 request under the New York law, that's not public
9 disclosure.

10 But it certainly does not change the decades of law
11 that's already out there that says that SEC reports do
12 qualify for federal reports for purposes of (b)(ii). So you
13 can look to SEC reports as federal disclosure for purposes
14 of dismissing under the public disclosure bar.

15 And, that is in addition to the fact -- the point
16 which I've already made, your Honor. That even if you were
17 to set aside Citi's SEC filings, there would still be more
18 than enough information available in the public domain and
19 Congressional report and the news media and relator's own
20 article.

21 THE COURT: Well, the relator doesn't allege that
22 he discovered this on his own, he doesn't.

23 MR. POLUBINSKI: Agreed. Exactly, your Honor.

24 MR. SINATRA: But, your Honor, we're the provider
25 in that section. "Provided that such information shall not
26 be deemed publicly disclosed in a report or investigation

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2 because it was disclosed, or provided pursuant to article
3 six of the Public Officers Law, or under any other federal,
4 state or local law, rule or program, enabling the public to
5 request, receive or view documents or information in the
6 possession --

7 THE COURT: That's a FOIL request.

8 MR. SINATRA: Except that we've got article six of
9 the Public Officer's Law. Or under any other federal --
10 federal, state or local --

11 THE COURT: Where does your client say he got this
12 information? Only from the 10-K; is that the allegation in
13 the complaint?

14 MR. SINATRA: Certainly with respect to the New
15 York State, the only place it could have come from is from
16 the 10-K.

17 THE COURT: It wasn't in the newspaper?

18 MR. SINATRA: No.

19 THE COURT: You're saying this is not just a FOIL
20 request?

21 MR. SINATRA: Nope. The section in (b)(ii) is not
22 just for FOIL.

23 THE COURT: You can have your opinion; I can have
24 mine.

25 MR. SINATRA: Of course, your Honor.

26 THE COURT: Let's go on.

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2 MR. SINATRA: There's one last wrinkle, your Honor,
3 and that is the state regulation that the Attorney General
4 issued on this very point.

5 If in case this Court, your Honor, is inclined to
6 dismiss on public disclosure for federal report grounds, the
7 State AG has issued a regulation, which is 13 NYCRR cited in
8 our brief, 400.5, that requires the Attorney General to
9 oppose the dismissal, if the dismissal is going to be based
10 solely on alleged public disclosure.

11 THE COURT: That's why I asked, where is the
12 Attorney General's Office?

13 MR. SINATRA: I think that before this Court can
14 dismiss on that basis, the Court has to grapple over that
15 issue; what to do about the regulation when the AG is not
16 here?

17 THE COURT: I don't second guess the Attorney
18 General, I rule on cases. That's what I do.

19 What is the false statement that you are alleging?

20 MR. SINATRA: Certainly, Judge, the New York State
21 tax filing. The tax return submitted to the State of New
22 York was the false statement.

23 THE COURT: What was false about it?

24 MR. SINATRA: Because it takes the net operating
25 loss deductions when it shouldn't have. And the reason
26 there on the merits, your Honor --

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2 THE COURT: Why does that constitute a false
3 statement? They're not misrepresenting anything, they're
4 just saying this is the net operating loss which we have
5 taken under the federal statute; we're taking it here.

6 There's no false statement. They're not hiding the
7 fact that they had some additional income and they are not
8 inflating a loss. They're being very open and candidly
9 saying, we're going to take the NOL's.

10 MR. SINATRA: What they're candidly saying is that
11 we're taking the NOL's and they're properly -- by
12 implication, that they're properly taking them.

13 THE COURT: Is there any case law that says that we
14 can say that they are making a false statement by
15 implication? We're talking about fraud here.

16 MR. SINATRA: I believe the state takes the
17 position that false tax filings are false statements.

18 THE COURT: Anybody files an erroneous tax return,
19 that gives a relator the right to come into court and seek a
20 portion of the recovery?

21 MR. SINATRA: If that's done with the requisite
22 scienter; if it's done knowingly and deliberately, with
23 disregard or reckless; that is the scienter piece of it.

24 THE COURT: But you don't deny that the defendant
25 complied with the federal guidelines?

26 MR. SINATRA: Citigroup did comply.

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2 THE COURT: It's one thing to say that they did
3 something wrong -- and we all know, hopefully, what
4 something wrong is -- but it's kind of hard to say that
5 somebody did something wrong when they've complied with the
6 instructions given to them by the government.

7 MR. SINATRA: Right. The I.R.S. told Citigroup --

8 THE COURT: You just don't agree with what the
9 government has done?

10 MR. SINATRA: We're talking about two different
11 things. What the I.R.S. did vis-a-vis the federal tax
12 return, it's different from what's owing under the New York
13 State Tax Law. And that's where we've got our tab in there.

14 THE COURT: So if I file a tax return and I make a
15 mistake on my tax return and I take a loss and I'm not
16 entitled to take this, this gives you your client the right
17 to bring a lawsuit against me?

18 MR. SINATRA: If the dollar amount thresholds are
19 satisfied.

20 THE COURT: Yes. Assuming I'm not a judge because
21 I can never get to the threshold.

22 MR. SINATRA: And if you did it with the requisite
23 scienter, your Honor, yes.

24 THE COURT: And the requisite scienter comes from
25 where?

26 MR. SINATRA: Also in the New York law. The New

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2 York False Claims Act, it requires such a statement to be
3 made in order to be actionable, to be made with the
4 requisite scienter, as I've just stated.

5 THE COURT: What other, than the fact that they
6 knowingly did it?

7 MR. SINATRA: They knowingly did it and they should
8 have known that the New York applied it differently.

9 Your Honor, that's where we have Section 1453,
10 which takes the entire net income right from the federal
11 return, which is great, and that's where Citigroup wants you
12 to focus on, but 1453(k)(1) speaks more specifically as to
13 net operating losses, and specifically incorporates the
14 Internal Revenue Code.

15 And the most important thing to take away here,
16 your Honor, is that the Internal Revenue Code is still on
17 the books what would have barred the net operating loss
18 deductions, if it weren't for the I.R.S. notice.

19 The I.R.S. notice is an free pass to Citigroup;
20 don't take -- you may take the net operating loss deductions
21 that are otherwise barred.

22 And if I might, your Honor --

23 THE COURT: But doesn't the state follow form then?

24 MR. SINATRA: I'm sorry, I didn't hear that.

25 THE COURT: Doesn't the state follow form? That
26 is, we follow -- doesn't the State of New York follow the

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2 federal form?

3 MR. SINATRA: It exactly says that as to entire net
4 income, but it says something different with net operating
5 losses. It doesn't want to know what you put on the bottom
6 of your federal tax return. It wants to know what's
7 calculable under the federal tax law.

8 And the Bosch (phonetic) case from the New York
9 Court of Appeals says, when a federal regulation -- even as
10 high as a regulation, never mind the sub-regulatory guidance
11 -- but when the federal regulation is the opposite of a
12 federal statute, the state agencies must apply the federal
13 statute.

14 THE COURT: So you are faulting the state and
15 Citigroup, okay.

16 MR. SINATRA: Thank you, your Honor.

17 MR. POLUBINSKI: Your Honor --

18 THE COURT: Sure.

19 MR. POLUBINSKI: If I may. I have just a handful
20 of points in rebuttal, which I believe will be helpful.
21 Maybe not.

22 THE COURT: Please.

23 MR. POLUBINSKI: The first one is just to address
24 400.5, which is one of the regulations that Mr. Sinatra
25 addressed in the context of the public disclosure bar. That
26 is the regulation that he claims would have required the

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2 Attorney General to oppose dismissal here.

3 Your Honor, that regulation doesn't apply here for
4 two reasons. The regulation reads that the attorney general
5 must oppose in a case that would be dismissed solely because
6 of alleged disclosures in a federal report. There are two
7 reasons why it doesn't apply here.

8 The first is that the Attorney General didn't
9 intervene, as your Honor noted.

10 But the second is, even if the attorney general had
11 intervened, this regulation wouldn't apply because the
12 federal reports are not the only disclosure here and the
13 sole basis for dismissal.

14 Instead, as your Honor pointed out, the news media
15 and other sources reported precisely on plaintiff's
16 allegations. And plaintiff himself issued his own public
17 article which contained all of his allegations, as well.

18 Your Honor, as you've pointed out in terms of the
19 propriety of the Citi's tax reporting, the New York State
20 law does follow form for all the reasons I've identified in
21 my opening argument.

22 The Bosch case, which Mr. Sinatra cited, was a
23 situation in which the state itself had issued a regulation
24 that was contrary to federal regulation. And the Court
25 held, in that case where the state drew up the regulation,
26 you follow state's regulation, and you can follow the

Proceedings

1
2 state's interpretation of the federal law.

3 As your Honor noted, the state has not appeared in
4 this case and has never taken a contrary position here.

5 Finally, your Honor, I guess to end on the last
6 point, which is the plaintiff has not sufficiently alleged
7 knowledge. If there is one case that I would ask your Honor
8 to read on the knowledge point, it is chief Judge Lippman's
9 opinion in the SPRINT case.

10 I direct your attention to Page 113. That
11 discussion is instructive because it shows a stark
12 difference between that case in which the Court of Appeals
13 held that plaintiff had in fact alleged knowledge, and this
14 case where the plaintiff clearly hasn't.

15 Just a couple of the differences. One of them is
16 SPRINT actually chose not to follow the available government
17 guidance there. Obviously, Citigroup did follow the
18 available government guidance here.

19 The second point is that SPRINT was an outlier in
20 that case. It was alleged that the industry as a whole
21 followed the government guidance and SPRINT did not.

22 The last point is that SPRINT received explicit
23 warnings from the state. Not only has Citigroup never
24 received a warning from the state, but the states never took
25 the position that Citigroup was not permitted to rely on
26 federal guidelines.

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Unless your Honor has anything further, we ask that the complaint be dismissed.

THE COURT: Gentleman, the motion is granted. The case is dismissed.

Thank you very much. Get a copy of the transcript, I'll so order it.

MR. SINATRA: Thank you, your Honor.

THE COURT: Thank you.

* * * * *

Certified to be a true and accurate transcription of the minutes taken in the above-captioned matter.



Denise M. Paternoster, RPR

Senior Court Reporter

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