

ANTHONY J. PASQUARIELLO & ASSOCIATES, P.C.
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Fairfield, New Jersey 07004
(973) 276-5005

NO ORAL ARGUMENT
REQUESTED

Anthony J. Pasquariello, Esq. (AP 0191)
Counsel to Plaintiff Merrill Lynch, Pierce, Fenner & Smith Inc. and
Counterclaim Defendant Merrill Lynch Bank USA

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MONMOUTH COUNTY
	:	
Plaintiff,	:	Docket No. MON-L-2530-03
	:	
-vs-	:	<i>Civil Action</i>
	:	
JOSEPH CONTE, PATRICIA ANN CONTE, ANN MARIE CONTE, and MONMOUTH CONSUMER INDUSTRIES, INC.,	:	CERTIFICATION OF ANTHONY J. PASQUARIELLO, ESQ. IN SUPPORT OF MOTION: (1) TO AMEND THE AMENDED COMPLAINT TO INCLUDE ADDITIONAL DEFENDANT TO ALLEGE SUCCESSOR LIABILITY; AND (2) TO EXTEND DISCOVERY DEADLINE
Defendants.	:	(Return Date: April 16, 2004, at 9:00 a.m.)
PATRICIA ANN CONTE,	:	
Defendant/Counterclaim Plaintiff,	:	
	:	
-vs-	:	
	:	
MERRILL LYNCH BANK, USA,	:	
	:	
Plaintiff/Counterclaim Defendant.	:	

I, Anthony J. Pasquariello, of full age, hereby certify and state as follows:

1. I am an attorney-at-law licensed to practice in the State of New Jersey and am the principal member of Anthony J. Pasquariello Associates, P.C., counsel to Plaintiff Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS") and Counterclaim Defendant Merrill Lynch Bank, USA ("ML Bank") (MLPFS and ML Bank shall be collectively referred to herein as "Merrill Lynch"). As such, I am fully familiar with the facts set forth herein and am authorized to make this Certification in support of

Merrill Lynch's Motion: (1) to Amend the Amended Complaint to include an additional Defendant to allege successor liability; and (2) to extend the discovery deadline as to the additional Defendant.

Request To Amend The Amended Complaint To Include An Additional Defendant To Allege Successor Liability

2. Merrill Lynch seeks to amend the Amended Complaint to include an additional Defendant, as to which Merrill Lynch will assert successor liability, for the following reasons which were only recently discovered:

- a. At the deposition taken of Defendant Ann Marie Conte (Menges) by Merrill Lynch on March 1, 2004, Ms. Conte, as President of Defendant Monmouth Consumer Industries, Inc. ("MCI"), testified that MCI sold substantially all of its assets to either Abe Greenberg (sic?) or Gempack (sic?), without definitively identifying the buyer;
- b. At the deposition taken of Defendant Joseph Conte by Merrill Lynch on March 1, 2004, Mr. Conte testified that Abe Greenberg (sic?) was President of MCI at some point.

3. Here, the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading. Therefore, the within requested amendment relates back to the date of the original pleading. A true and correct copy of the Amended Complaint to be filed in this matter is annexed hereto as Exhibit "A."

4. The caption will be amended to read as follows:

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.

v.

JOSEPH CONTE, PATRICIA ANN CONTE, ANN MARIE
CONTE, and MONMOUTH CONSUMER INDUSTRIES, INC.
and _____

PATRICIA ANN CONTE

v.

MERRILL LYNCH BANK, USA

5. No Motion seeking this or similar relief was previously filed with this Court, except that the original Defendant was changed from Merrill Lynch Bank, USA to Merrill Lynch, Pierce, Fenner & Smith Inc.

Request To Extend Discovery Deadline As To The Additional Defendant

6. Prior to filing the within Motion seeking extension of the discovery deadline per the Best Practices Rules, the undersigned counsel to Merrill Lynch requested the consent of my adversary, George W.C. McCarter, Esq., counsel to Defendants Joseph Conte, Ann Marie Conte and Monmouth Consumer Industries, Inc. and Defendant/Counterclaim Plaintiff Patricia Ann Conte (the "Defendants")¹.

7. The discovery deadline for the above-referenced matter expires on April 8, 2004.

¹ It is either necessary or practical to require the adversary's consent to extension of a discovery deadline under the facts presented because discovery is being requested solely to obtain information from newly added Defendant(s), not other Defendant(s) unless otherwise requested.

8. To date, Merrill Lynch has answered the Defendants' Interrogatories, conducted depositions of the Defendants and Counterclaim Plaintiff and has provided documents per the Defendants' Request To Produce.

9. The Defendants have conducted depositions of Merrill Lynch's employees, answered Merrill Lynch's Interrogatories, produced documents and conducted depositions of employees of Merrill Lynch.

10. On March 1 and 2, 2004, the undersigned conducted the depositions of Defendants Joseph Conte, Ann Marie Conte (Menges) and Defendant/Counterclaim Plaintiff Patricia Conte.

11. As set forth above, at the March 1 deposition, Ann Marie Conte (Menges) testified that substantially all of the assets of Defendant Monmouth Consumer Industries ("MCI") was sold to either "Abe Greenberg (sic?) or Gempack (sic?)."

12. On March 17, 2004, the undersigned served Ann Marie Conte (Menges) with a Notice for Deposition and for the Production of Documents to take further depositions regarding the sale of MCI's assets.

13. No Trial Date has yet been set in this civil action and, thus, no prejudice will befall the Defendants or any other interested party by granting the discovery deadline extension requested herein.

14. The extension of the discovery deadline is requested for the following reasons:

- a. To accommodate the depositions to be taken by Merrill Lynch of the further persons or entities to be deposed by Merrill Lynch as part of the within civil action; and
- b. In the event the Defendants fail to abide any of the discovery propounded by Merrill Lynch, Merrill Lynch will be required, per the Best Practices Rules, to file an appropriate Motion to compel appropriate discovery (obviously, a Motion to compel such discovery would necessarily be returnable beyond the current discovery deadline).

15. Therefore, as set forth above, the discovery to be taken is of a very limited nature and is requisite to developing the facts of the within civil action to develop the "successor liability" theory. As set forth above, no prejudice will be befall the Defendants by virtue of extending the discovery deadline as requested herein.

I hereby certify that the foregoing statements made by me are true. If any of the foregoing statements made by me are wilfully false, I am subject to punishment.



ANTHONY J. PASQUARIELLO, ESQ.

Dated: March 18, 2004

ANTHONY J. PASQUARIELLO & ASSOCIATES, P.C.
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Fairfield, New Jersey 07004
(973) 276-5005

NO ORAL ARGUMENT
REQUESTED

Anthony J. Pasquariello, Esq. (AP 0191)
Counsel to Plaintiff/Counterclaim Defendant Merrill Lynch Bank USA and
Merrill Lynch, Pierce, Fenner & Smith Inc.

MERRILL LYNCH BANK USA,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MONMOUTH COUNTY
Plaintiff,	:	
	:	Docket No. MON-L-2530-03
-vs-	:	
	:	Civil Action
JOSEPH CONTE, PATRICIA ANN CONTE,	:	
ANN MARIE CONTE, and MONMOUTH	:	CERTIFICATION OF JOHN DONLON IN
CONSUMER INDUSTRIES, INC.,	:	SUPPORT OF MOTION PER R. 4:9-3
	:	AMENDING PLEADING, INCLUDING
Defendants.	:	CAPTION, TO CORRECTLY IDENTIFY SOLE
PATRICIA ANN CONTE,	:	PLAINTIFF AS MERRILL LYNCH, PIERCE,
	:	FENNER & SMITH INC.
Defendant/Counterclaim Plaintiff,	:	(Return Date: February 6, 2004, at
	:	9:00 a.m.)
-vs-	:	
	:	
MERRILL LYNCH BANK, USA,	:	
	:	
Plaintiff/Counterclaim Defendant.	:	

I, John Donlon, being of full age, hereby certify and state as follows:

1. I am a First Vice President and Assistant General Counsel of Merrill Lynch Office of General Counsel. As such, I am familiar with the facts set forth herein and I submit this Certification in support of this Motion seeking entry of an Order per R. 4:9-3, to correctly identify sole Plaintiff as Merrill Lynch, Pierce, Fenner & Smith Inc., and such other relief as may be just and equitable.

