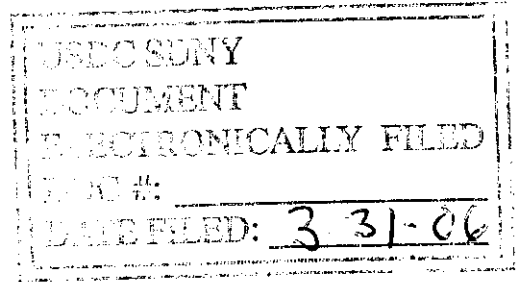


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X

KEN WIWA, et al., :

Plaintiffs, :

-against- :

ROYAL DUTCH PETROLEUM COMPANY and :  
SHELL TRANSPORT AND TRADING :  
COMPANY, :

Defendants. :

-----X

KEN WIWA, et al., :

Plaintiffs, :

-against- :

BRIAN ANDERSON, :

Defendant. :

-----X

96 Civ. 8386 (KMW) (HBP)

01 Civ. 1909 (KMW) (HBP)

MEMORANDUM OPINION  
AND ORDER

PITMAN, United States Magistrate Judge:

By notice of motion filed December 23, 2003 (Docket Item 95 in 96 Civ. 8386), plaintiffs move to strike defendants' reply brief filed in connection with a motion to dismiss or in the alternative for leave to file a surreply brief. For the reasons set forth below, the motion is denied in all respects.

Plaintiffs motion arises out of the fact that defendants improperly raised a number of new issues for the first time in their reply. See generally Riverkeeper, Inc. v. Collins, 359

F.3d 156, 166 n.11 (2d Cir. 2004); Evangelista v. Ashcroft, 359 F.3d 145, 155 n.4 (2d Cir. 2004); Knipe v. Skinner, 999 F.2d 708, 710-11 (2d Cir. 1993); A & E Prods. Group, L.P. v. Mainetti USA, Inc., 01 Civ. 10820 (RPP), 2004 WL 169741 at \*6 (S.D.N.Y. Jan. 27, 2004); Morris v. Dapolito, 297 F. Supp.2d 680, 689 n.7 (S.D.N.Y. 2004). I have today issued a report and recommendation disposing of the motion to dismiss. As noted in footnote 3 at page 19 of the report and recommendation, I did not consider the new matter raised by defendants for the first time in reply that was not properly responsive to the plaintiffs' opposition papers.

Since I have not considered new matter improperly raised by defendants for the first time in reply, there is no need to strike defendants' reply papers or to permit plaintiffs to file surreply papers. Accordingly, plaintiffs' motion is denied in all respects.

Dated: New York, New York  
March 31, 2006

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

Copies mailed to:

Jennifer M. Green, Esq.  
Beth Stephens, Esq.  
Maria C. LaHood, Esq.  
Center for Constitutional Rights  
666 Broadway  
7th Floor  
New York, New York 10012

Judith Brown Chomsky, Esq.  
Law Offices of Judith Brown Chomsky  
Post Office Box 29726  
8120 New Second Street  
Elkins Park, Pennsylvania 19027

Anthony DiCaprio, Esq.  
Michael Ratner, Esq.  
Ratner, DiCaprio & Chomsky, LLP  
80 Eighth Avenue  
Suite 711  
New York, New York 10011

Carey R. D'Avino, Esq.  
Stephen A. Whinston, Esq.  
Keino Robinson, Esq.  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, Pennsylvania 19103-6365

Rick Hertz, Esq.  
EARTHRIGHTS International  
1612 K Street N.W.  
Suite 401  
Washington, District of Columbia 20006

Rory O. Millson, Esq.  
Thomas G. Rafferty, Esq.  
Michael T. Reynolds, Esq.  
Adrienne K. Wheatley, Esq.  
Christopher Vergonis, Esq.  
Cravath, Swaine & Moore, LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019-7475