

Anwar et al v. Fairfield Greenwich Limited et al PAUL WEISS RIFKIND WHARTON & GARRISON LLP

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March 5, 2014

By Facsimile

The Honorable Victor Marrero
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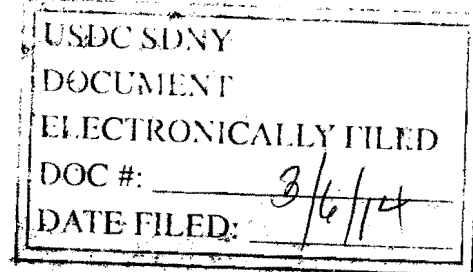
Anwar, et al. v. Fairfield Greenwich Limited, et al.,
No. 09-cv-118 (VM) (FM)

Dear Judge Marrero:

We represent defendants The Citco Group Ltd., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Global Custody N.V., Citco Bank Nederland, N.V., Dublin Branch, and Citco Fund Services (Bermuda) Ltd. (collectively, the "Citco Defendants"). We are writing on behalf of the Citco Defendants, defendant PricewaterhouseCoopers LLP, and defendant PricewaterhouseCoopers Accountants, N.V. (collectively, the "Anwar Defendants") in response to the letter dated February 28, 2014, from the Anwar plaintiffs ("Pls.' Ltr.," ECF No. 1247) concerning the Supreme Court's decision in Chadbourne & Parke LLP v. Troice, No. 12-79, 2014 WL 714697 (U.S. Feb. 26, 2014).

In their letter, the Anwar plaintiffs assert that Chadbourne "obviates any need for reconsideration" of this Court's SLUSA rulings. (Pls.' Ltr. at 1.) But the Anwar Defendants, unlike the defendants in the Standard Chartered Bank ("SCB") cases, have

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The Honorable Victor Marrero  
United States District Judge

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not requested leave to file further motions concerning SLUSA at this time. Consequently, there is currently no application or motion before the Court that asks the Court to take any further action on the SLUSA issues presented by *Anwar*. The *Anwar* Defendants do not now seek reconsideration of the SLUSA issues presented by *Anwar* in light of *Chadbourne*.

To be sure, the *Anwar* Defendants believe that SLUSA, as interpreted in *Chadbourne*, precludes the claims asserted against those defendants for reasons similar to those set forth in the letter dated March 3, 2014, from the *SCB* defendants to Your Honor. (ECF No. 1246.) The *Anwar* Defendants also continue to believe, however, that this Court should defer any further decision on the SLUSA issues presented by *Anwar* until the Second Circuit issues a decision in *In re Kingate Management Limited Litigation*, No. 11-1397 (2d Cir. argued Apr. 9, 2013). *Kingate*, like *Anwar*, is an action by investors in so-called Madoff “feeder funds” against, among other defendants, the administrator and the independent auditors for the funds. Judge Batts dismissed all of the *Kingate* plaintiffs’ claims as precluded by SLUSA. *Kingate*, No. 09 Civ. 5386 (DAB), 2011 WL 1362106, at \*5-9 (S.D.N.Y. Mar. 30, 2011). As the sole additional basis for her decision, Judge Batts also ruled that plaintiffs’ claims were barred by New York’s Martin Act. *Id.* at \*9-10. As the parties to the *Kingate* appeal have acknowledged, however, that basis for her decision is no longer viable after the decision of the New York Court of Appeals in *Assured Guaranty (UK) Ltd. v. J.P. Morgan Investment Management Inc.*, 962 N.E.2d 765 (N.Y. 2011). See, e.g., Brief for Defendants-Appellees Tremont (Bermuda) Ltd. *et al.* at 45 n.23, *Kingate*, No. 11-1397 (2d Cir. Aug. 20, 2012), ECF No. 126. Accordingly, the briefing in *Kingate* before the Second Circuit focused on the SLUSA issues. The Second Circuit appears to have held *Kingate* until the Supreme Court decided *Chadbourne*. The parties to *Kingate* have filed letters with the Second Circuit debating the consequences of *Chadbourne* for that appeal. *Kingate*, No. 11-1397 (2d Cir. letters filed Feb. 27 & 28, 2014), ECF Nos. 240, 242. The *Kingate* appeal thus appears ready for decision by the Second Circuit.

After the Second Circuit decides *Kingate*, this Court and the parties to *Anwar* are likely to be far better positioned to assess precisely how the principles announced in *Chadbourne* should apply in the factual setting of *Anwar*. If, on the other hand, this Court were to revisit the SLUSA issues presented by *Anwar* before the Second Circuit decides *Kingate*, this Court might well be asked to revisit those same issues yet again following the Second Circuit’s decision in *Kingate*. The latter course, it seems to us, would not be an efficient deployment of judicial resources.

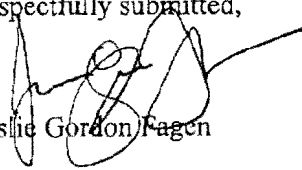
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The Honorable Victor Marrero  
United States District Judge

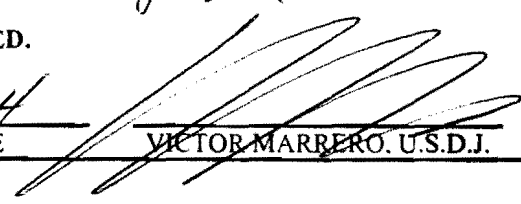
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If, however, the Court is inclined to revisit the SLUSA issues presented by the SCB cases before the Second Circuit decides *Kingate*, the *Anwar* Defendants respectfully request that they be given the opportunity to participate in any briefing or conferences on those issues.

Respectfully submitted,

  
Leslie Gordon Fagen

cc: All counsel of record (by e-mail)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by <u>the cited Defendants</u> .	
<b>SO ORDERED.</b>	
<u>3-6-14</u> DATE	 VICTOR MARRERO, U.S.D.J.