

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARMINE A. LOPRESTI,

CV-02-6492 (SJ) (VVP)

Plaintiff,

-against-

PLAINTIFF'S REPLY
IN OPPOSITION
TO FURTHER
SANCTIONS

CITIGROUP, INC., et al.,

Defendants.

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RESIGNATION OF MR. DUGHI

In a press release dated January 13, 2005, Citistreet announced the retirement of Mr. Dughi. It was posted on the Citistreet website, citistreetonline.com.

MISPLACED RELIANCE

Mr. Lender relies on the Delaware case of Elf Altochem North America, Inc v. Jaffari, 727 A.2d 286, 288, to support his contention that a Joint venture can be both a Limited Liability Company and a Joint Venture at the same time.

To the contrary. Mr. Lender again misleads the court for he failed to read a few lines down from his quote, to inform this court, that the Delaware court specifically states that the Limited Liability Company is a **separate legal entity** from the Joint Venture. When the court discusses the joint venture forming an LLC, it states:

"The certificate of formation is a relatively brief and formal document that is the first statutory step in creating **the LLC AS A SEPARTATE LEGAL ENTITY**". (emphasis supplied)

The mere fact that a joint venture can be a member of an LLC in Delaware or in New York, does not mean that an LLC can be a both an LLC and a joint venture at the same time, or *vice versa*, particularly so far as third parties are concerned.

An LLC is a totally different legal business entity from a joint venture, as stated by the Delaware court, and as stated by the Court of Appeals in New York at Weisman v. Awnair Corp of America, 3 N.Y.2d 444.

Weisman has been modified by other decisions, under circumstances however that would not effect third parties. The holding that an entity can not operate or exist in more than one form, as to the outside world is still operative in both New York and in Delaware.

WHEREFORE, in view of the foregoing, it is respectfully submitted that further and additional sanctions are not warranted against plaintiff or his counsel.

Dated: February 2, 2005
Freeport, New York

/s

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