

SUPREME COURT OF NIGERIA
25TH FEBRUARY, 2010 SC. 14/2003
CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE,
A. M. MUKHTAR, W. S. N. ONNOGHEN,
C. M. CHUKWUMA-ENEH, JJSC

1. SANI ABACHA FOUNDATION FOR
PEACE & UNITY
 2. LT. GENERAL J. T. USENI (RTD.)
 3. ALHAJI IDI FARUK APPELLANTS
 4. ALHAJI MOHAMMED MAKARFI
 5. CHIEF IKENNA NDUAGUBA
 6. ALHAJI MOHAMMED ABACHA
AND
UNITED BANK FOR AFRICA PLC. RESPONDENT
-

BANKING - Actions - Claim for interest - Requirements - Claimant must not only plead the claim - But must also plead facts in support of the claim - Showing that the he is entitled to it (H1)

BANKING - Actions - Claim for interest - Justification - Whether pleaded - Plaintiffs did not plead any facts - In justification of their claim for interest (H2)

FACTS

The plaintiffs/appellants sued defendant/respondent before the High Court of Federal Capital Territory, Abuja, claiming the sum of N25,300,000.00 (twenty five million, three hundred thousand naira) being money wrongfully and/or negligently "transferred" from appellants' Account with the Abuja branch of the respondent bank. Appellants also claimed interest on the sum at the rate of 21% (twenty one percent) per annum from 7/7/98, the date on which the "transfer" was made, until final liquidation of the sum.

After hearing, the learned trial judge gave judgment to appellants in terms of their claim. Aggrieved, respondent appealed to Court of Appeal which allowed the appeal in part, in that while affirming the judgment of trial court on the principal claim, it set aside the award of interest. The court held that appellants did not make out a

case for the award of interest as they failed to aver to facts in their statement of claim such as would entitle them to an award of interest on the principal sum. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in its finding the “There is no iota of evidence adduced by the plaintiff/Respondent in support of the rate of interest pleaded.””

HELD (Unanimously dismissing the appeal per **OGUNTADE JSC**)
BANKING - Actions - Claim for interest - Requirements

1. A close perusal of the Plaintiffs’ Statement of claim reveals that the plaintiffs never pleaded any facts in support of a claim for interest.

A plaintiff, in order to succeed in a claim for interest must show how the entitlement for such interest arose i.e. whether by law, by contract or agreement, or plead facts showing that the claim is part of the loss or special damages which the defendant’s wrong doing imposed on him. It is not enough to merely say that the plaintiff is claiming interest. The basis of the claim for interest must be made manifest on the pleadings. (p. 472 B)

Claim for interest - Justification - Whether pleaded

2. In this case, the claim for interest as shown in paragraph 26(5) of the Statement of claim reads:

“5 A consecutive and cumulative claim of interest on the said at the rate of 21% per annum until payment.”

The above however is no more than a claim. The plaintiffs did not plead any facts in justification of the claim. Did they obtain loan from other sources upon which they paid interest following the defendant’s refusal to give them their N25.3m. as per contract? Was the money transferred out of plaintiffs’ fixed deposit account on which interest was receivable by plaintiffs which said interest the defendant’s default denied them? Was there an agreement between plaintiffs and the defendant making interest payable in the event the defendant failed to pay to plaintiffs their money on demand? Was there a banking practice, custom or usage which made interest payable in the circumstances in which this default occurred? In these vital areas, there was a complete blank in plaintiffs case. (p. 473 B)

NOTABLE POINT OF INTEREST **CHUKWUMA-ENEH.JSC**

1. Bank deposits are loans from customers

It is a settled principle of banking law that any money paid into a bank belongs to the banker from the moment of such payment; thus creating as between the banker and the customer a debtor/customer relationship. Indeed, what the Banker pays out is its own money. I may cite with approval the underlying principle in this regard as per Idigbe J. (as he then was) in R. V. OKON (1933-1966) 1 NBLR 241 at 253 to the effect that;

“When money is paid by a customer into the bank there is a contract between the banker and the customer in which the banker receives the money as a loan from the customer against the promise by the banker to honour the customer’s cheque or other orders of the customer.....”

The above cited cases are clearly confirmatory of the debtor/customer relationship of a banker and its customer in circumstances as in this case. (p. 479 E)

REPRESENTATION

J. C. Ezike Esq., for the appellants.

Oluwakemi Balogun Esq., for the respondent with Moyosore Onigbanjo Esq.

CASES REFERRED TO

R. V. DAVENPORT (1954) 38 CAR 37 at 41

R. V. OKON (1933-1966) 1 NBLR 241 at 253

Udechukwu v. Okwuka (1956) 1 F.S.C. 70, at p. 71

R.C.C. (Nig.) v. R.P.C. Ltd. [2005] 10 NWLR (Pt.934) 615

Hasten (Nig.) Ltd. V. A.C.B. Plc. [2002] 12 NWLR (Pt. 782)623

Ekwunife v. Wayne (W.A) Ltd. [1989] 5 NWLR (Pt.122) 422 at 445

U.B.N Plc vs Scopk (Nig) Ltd (1998) 12 NWLR (Pt.578) 439 AT 475

Chatlam & Dover Railway v. S. E. Railway (1893) A. C. 429, at p.434

LEAD JUDGMENT BY OGUNTADE JSC

The appellants were the plaintiffs at the High Court of the Federal Capital Territory, Abuja where they claimed against the respondents as follows:

- B *"1. The sum of N25,300,000.00 (Twenty-five million, three hundred thousand Naira only) being money wrongfully and/or negligently "transferred" from the plaintiffs' Account No. 201078886 with the ABUJA BRANCH of the Defendant bank.*
- C *2. Further or in the alternative, the plaintiffs claim the said sum as a debt which debt the defendant has failed to pay despite repeated demands.*
- 3. In the further alternative, the plaintiffs claim the said sum as their money converted by the defendant.*
- D *4. Further, or in the alternative, the plaintiffs claim the said sum as money had and received by the Defendants to the Plaintiffs' use.*
- 5. A consecutive and accumulative claim of interest on the said at the rate 21% per annum from 7/7/98 until payment."*

E The parties filed and exchanged pleadings. On 8/3/2000, Saleh CJ gave judgment in favour of plaintiffs/appellants for N25.3m. The judgment debt was to attract interest at the rate of 21% from 7/7/98 until payment of the judgment debt.

F The defendant was dissatisfied with the judgment. It brought an appeal before the Court of Appeal sitting at Abuja (hereinafter referred to as the court below). The plaintiff also brought a cross-appeal. It is however relevant for the purpose of this appeal to consider only the result of the appeal by the defendant. The court below

G affirmed the judgment of the trial court on the principal claim but allowed the appeal on interest. It set aside the said award of 21% interest.

H The plaintiffs were dissatisfied with that aspect of the judgment of the court below which set aside the award of 21% interest by the trial court. In the appellants' brief filed, the single issue for determination was identified as the following:

"Whether the Court of Appeal was right in its finding the "There is no iota of evidence adduced by the plaintiff/Respondent in support of the rate of interest pleaded.?"

The respondent's counsel in his brief adopted the issue for determination as formulated by the appellant.

The issue for determination in this appeal is easy to resolve in the light of the evidence preferred at the trial court and the argument of counsel before this Court. The relevant facts in a nutshell are these:

The defendant was a banker to the plaintiffs. On 7-7-98, it was discovered that the defendant without authority transferred the sum of N25.3m. out of the plaintiffs' account. The plaintiffs brought the suit at the trial court to recover the said amount. Judgment was given in their favour. The trial court however awarded to plaintiffs interest on the judgment debt at the rate of 21 per cent from 7-7-98 until payment. The court below, as stated earlier, found that there was no basis for the award of interest at the rate of 21%. This is the simple issue to be resolved in this appeal.

Now at page 173 of the record of proceedings, the court below per Muntaka-Coomassie J.C.A. (as he then was) reasoned thus:

"I have carefully gone through the pleadings and the evidence adduced in proof thereof before the lower court and I found as a fact that the rate of interest of 21% per annum was pleaded in paragraph 26(4) of the statement of claim but same was vehemently denied in paragraph 25 of the statement of defence which placed the onus of proof squarely on the plaintiffs/respondents. See. Section 137 of the Evidence Act. However, there is no iota of evidence adduced by the plaintiff/respondents in support of the rate of interest pleaded. Pleadings are mere averment and it requires evidence on the part of the plaintiffs to prove the facts pleaded. Any pleaded fact, it goes without saying, that was not proved or supported by evidence is deemed abandoned. See AJUWON V. AKANNI (1993) 12 SCNJ 32; HYACINTH NZERIBE V. DAVE ENGINEERING CO. LTD. (1994) 9 SCNJ 197.

It is true that the prevailing rate of interest was 21% per annum as submitted by the respondents counsel, where is the evidence to that effect on the record to support the claim. In the case of U.B.N V. SPOK LTD. (Supra) this court had stated the legal position as follows:-

'It is trite law that the courts from time immemorial are reluctant to award interest generally.

LADON, CHATHAM 4 DOVER RY V. SOUTHEASTERN RY (1993)

A.C. 429, thereby giving the rule of law that interest must not only be pleaded but also strictly proved. BARCLAYS BANK D.C.O. V. YESUFU ALABI (1961) ALL NLR 536.'

In view of the above, I hold that the respondent had totally failed to prove the 21% interest per annum claimed in paragraph 2.6(4) of the statement of claim. I therefore resolve this issue in favour of the Appellant."

It is the above extract of the judgment of the court below that the plaintiffs are displeased with. They have argued in their brief that the court below was wrong to have come to the above finding. **A close perusal of the Plaintiffs' Statement of claim reveals that the plaintiffs never pleaded any facts in support of a claim for interest.**

A plaintiff, in order to succeed in a claim for interest must show how the entitlement for such interest arose i.e. whether by law, by contract or agreement, or plead facts showing that the claim is part of the loss or special damages which the defendant's wrong doing imposed on him. It is not enough to merely say that the plaintiff is claiming interest. The basis of the claim for interest must be made manifest on the pleadings.

In *Ekwunife v. Wayne (W.A) Ltd. [1989] 5 NWLR (Pt.122) 422 at 445*, this court per Nnaemeka-Agu J.S.C. discussed the position thus:

"Interest may be claimed as a right where it is contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. See: London, Chatlam & Dover Railway v. S. E. Railway (1893) A. C. 429, at p.434. Where interest is being claimed as a matter of right, the proper practice is to claim entitlement to it on the writ and plead facts which show such an entitlement in the statement of claim. In Nigeria, as the law is that a statement of claim supersedes the writ, (for which see Udechukwu v. Okwuka (1956) 1 F.S.C. 70, at p. 71; [1956] SCNLR 189; Ekpan & Anor. V. Uyo (1986) 3 N.W.L.R. (Pt.26) 63, if even it was not claimed on the writ but facts are pleaded in the statement of claim and evidence given which show entitlement thereto, the court may, if satisfied with the evidence, award interest. Adjudication on the plaintiff's right to interest in such a case is, like on any

other issue in the case, based on the evidence placed before the court. The evidence called at the trial in such a case will also establish the proper rate of the interest and the date from which it should begin to run - whether from the accrual of the cause of action or otherwise. As far as I am aware, there is no law in Plateau State, or indeed in any other State of the Federation, which regulates the award^B of this class of interest."

See also R.C.C. (Nig.) v. R.P.C. Ltd. [2005] 10 NWLR (Pt.934) 615.

In this case, the claim for interest as shown in paragraph^C 26(5) of the Statement of claim reads:

"5 A consecutive and cumulative claim of interest on the said at the rate of 21% per annum until payment."

The above however is no more than a claim. The plaintiffs did not plead any facts in justification of the claim. Did they obtain loan from other sources upon which they paid interest following the defendant's refusal to give them their N25.3m. as per contract? Was the money transferred out of plaintiffs' fixed deposit account on which interest was receivable by plaintiffs which said interest the defendant's default denied them? Was there an agreement between plaintiffs and the defendant making interest payable in the event the defendant failed to pay to plaintiffs their money on demand? Was there a banking practice, custom or usage which made interest payable in the circumstances in which this default occurred? In these vital areas, there was a complete blank in plaintiffs case.^F

In the appellants' brief before this Court, counsel reproduced that argument it had made before the lower court thus:^G

"In the last sentences at page 33 (i.e. pages 31 & 32 of the record herein) of the record P.W.1 claimed and proved that the prevailing rate of interest- 'the going rates of interest was - 21 %. This evidence was neither challenged nor rebutted and is therefore deemed to be admitted. Indeed, the defendant being a bank should have rebuffed this evidence if it was a wrong statement of the going rate of interest". PW2, an employee and Accountant of the defendant at the branch where the plaintiffs said account was maintained, even though he was under subpoena, tendered exhibits 9 & 10 and gave both^H

oral and documentary evidence of the rate of interest in line with the authorities and the Plaintiffs' case. PW.2 explained, based on the entries in Exhibit 10 that "as at 1997, interest (was) 24%. I see Exhibit 10 at no time is (sic) interest under 21%. It is noteworthy that Exhibit 10 (the Statement of Account) contained the varying interest rates from time to time. This witness was not cross-examined on this point or at all. And his evidence was never rebutted."

With respect to counsel, I think, he completely misunderstood the reasoning of the court below. The issue is not as to the correctness or otherwise of the rate of interest. The issue, rather is as to the basis of the plaintiffs' entitlement to interest whatever the rate of interest may be. The question is: Did the plaintiffs on their pleadings or evidence state how and why the circumstances of this case impose on the defendant the duty to pay them (the plaintiffs) any interest at all whatever the rate may be?

Appellants' counsel has in his brief before us relied on *Hasten (Nig.) Ltd. V A.C.B. Plc. [2002] 12 NWLR (Pt. 782)623*. It seems to me that the decision of this Court in that case does not support the argument of appellant's counsel. In that case, the plaintiff not only pleaded the rate of interest claimed but also the basis or circumstances justifying the claim. In paragraph 14 of the Further Amended Statement of Claim, the plaintiff pleaded thus:

"14. As a result of the defendant's negligence, the plaintiff has suffered in its trade and business as it has not been able to find sufficient funds to carry on its business as traders and contractors and has been forced sometimes to borrow money from finance houses at the rate of 15% monthly interest to carry on its business."

It is manifest that in the *Hasten* case (above) unlike the instant appeal, the plaintiff had not only pleaded the rate of interest claimed but had gone further to plead the basis of the claim i.e. that the defendant's default imposed on it the necessity to seek loans at high rates of interest to carry on its business. This in my view clearly explains the reasoning of the court below with which I respectfully agree.

This appeal therefore has no merit. It is dismissed with N50,000.00 costs in favour of the respondent.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Oguntade, JSC in this appeal. I agree entirely with it and, for the reasons given therein I too, dismiss the appeal. I make no order as to costs.

MUKHTAR JSC

In the High Court of the Federal Capital Territory, Abuja, the appellants claimed the following reliefs:-

"1. The sum of N25,300,000.00 (Twenty-five million, three hundred thousand Naira only) being money wrongfully and/or negligently "transferred" from the Plaintiffs' Account No. 201078886 with the ABUJA BRANCH of the Defendant bank.

2. Further, or in the alternative, the plaintiffs (sic) claim the said sum as a debt arising from the contract of banker/customer between the parties which debt the defendant has failed to pay despite repeated demands.

3. In the further alternative, the plaintiffs (sic) claim the said sum as their money converted by the Defendant.

4. Further, or in the alternative, the plaintiffs (sic) claim the said sum as money had and received by the Defendants to the plaintiff uses.

5. A constructive and cumulative claim of interest on the said at the rate (sic) 21% per annum, from 7/7/98 until payment."

The defendant filed its defence and witnesses gave evidence. In his judgment which was in favour of the plaintiffs the learned trial Chief judge concluded thus:-

"1st defendant in my view improperly without either 1st plaintiff consent or knowledge or court order displayed here to that extent and authority transferred N25.3m belonging to 1st plaintiff from its account to 1st defendant suspense account. This to my mind is money improperly had and received and defendant is hereby adjudicated to return it with interest at the rate of 21% per annum from 7/7/98 until payment".

Dissatisfied, the defendants appealed to the Court of Appeal, and the plaintiffs also cross-appealed. Both appeals were allowed in

part. The plaintiffs/Cross-appellants were not satisfied, and have appealed to this court. Parties exchanged briefs of argument, which were adopted at the hearing of the appeal. The single issue for determination raised in the appellants' brief of argument is, whether the Court of Appeal was right in its finding that there is no iota of evidence adduced by the plaintiffs/respondents in support of the rate of interest pleaded. The respondent adopted the said issue.

At this juncture I will examine the salient pleadings of the plaintiffs/appellants which I will also reproduce hereunder. They read:-

"4. The 1st plaintiff is a customer of the Defendant and operates current Account No. 201078886 at the ABUJA KAURA NAMODA STREET BRANCH of the Defendant.

7. The plaintiffs say that in August 1998, based on its latest statement of Account as confirmed by the said Hadiza Adamu, it demanded payments through 2 cheques Nos.00234849 and 002349450 made out respectively in favour of its creditors Messrs Nahaman Construction and Real Estate Company. Limited and Sheraton Hotels and Towers Limited in the respective sums N18,073,670 (Eighteen Million, Seventy Naira) and N9,624,167 (Nine Million, Six Hundred and Twenty Four thousand, One Hundred and Seventy Naira).

8. Without any reference, notice or advice to the Plaintiffs, the Defendant dishonoured the said two cheques duly drawn on the said account and payable at the aforesaid branch.

9. The Plaintiffs learned (sic) of the said dishonour of the said cheques through the said beneficiaries of the said cheques.

10. The Plaintiffs' repeated demands for explanation were ignored by the Defendant who belatedly only sent a statement of Account showed that a sum of N25,300,000.0 (Twenty five Million, three Hundred Thousand Naira) was "transferred" from the said account to an undisclosed beneficiary or account on 7/7/98.

11. It is a material case of the Plaintiffs that the said "transfer" was made without their mandate or prior knowledge, or order of court or lawful authority.

16. The beneficiaries of the said cheques threaten (sic) the Plaintiffs with civil action and criminal prosecution for the dishonour of the said cheques because they gave value of them on the footing of the services they rendered to the plaintiffs..

21. In the further alternative, the Plaintiffs (sic) contend that the Defendant has converted the said sum by purporting to “transfer same without any authority of the Plaintiffs or the law.

22. In the further alternative, the Plaintiffs (sic) contend that the said sum was money had and received by the Defendant to their use. B

23. The Plaintiffs will further contend that at all times materials to this case the rated interest charged by the defendant in the ordinary course of business was well above 21% per annum.”

In as far as the interest claimed, (which is the thrust of this appeal) is concerned, the evidence given by the plaintiff witness (PW1) in this respect is as follows:- C

“We did not ask the Bank to transfer any amount from that account apart from writing a cheque, we ask (sic) court to direct the Bank to refund the money back to us N25,300,000.00 and also D interest at the on going rate of 21%.”

As can be seen from both the pleadings and the evidence reproduced supra, it is very clear that the appellants did not aver or prove how and why they became entitled to the interest they claimed. Was the interest in respect of what they would have gained or what would have accrued to them if the sum wrongfully transferred or removed from their account (which they have pleaded and proved was a current account) was not removed? The pertinent question I would like to ask at this juncture is, if the said N25.3m alleged to have been wrongfully transferred from the plaintiffs’ current account was not transferred, but remained in account No. 201078886, would it have attracted interest? I find it necessary to ask this question because the plaintiff did not prove that such transfer simpliciter should have attracted interest per se. The plaintiffs/appellants did not prove that in the event of the cheque being dishonoured they ventured into an alternative transaction to meet their contractual obligation, for which they had to pay interest. This leads me to the case of Haston. A.C.B. PLC 2002 12 NWLR part 782 623 heavily relied upon by the learned counsel for the appellants. The purport of the decision in that case is distinguishable from the instant case, and cannot be said to be on all fours. In the light of the above reasonings I subscribe to the finding of the court below which reads:- E F G H

“Pleadings are mere averment and it requires evidence on the

part of the plaintiffs to prove the facts pleaded. Any pleaded fact, it goes without saying, that was not proved or supported by evidence is deemed abandoned.....”

In the case of U.B.N. vs. SPOK LTD (supra) this court had stated the legal position as follows:-

B *“It is trite law that the courts from time immemorial are reluctant to award interest generally. LADON, CHATHAM 4 DOVER RY VS. SOUTHEASTERN RY (1993) A.C. 429 thereby giving the rule of law that interest must not only be pleaded but also strictly proved. Barclays bank A.C.O. v. YESUFU ALABI (1961) ALL NLR 536”*

C In view of the above, I hold that the respondent had totally failed to prove the 21% interest per annum claimed in paragraph 26 (4) of the Statement of Claim.

D For the foregoing, and in addition to the reasoning in the lead judgment of my learned brother, Oguntade JSC., I am in full agreement that this appeal lacks merit and should be dismissed? I hereby dismiss the appeal in its entirety. I abide by the consequential orders made in the lead judgment.

E

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Abuja.

F I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

The issue in this appeal is very narrow. Is there evidence on record in proof of the fact that the appellants are entitled to prejudgment interest?

G I agree with the lower court that the appellants pleaded the payment of interest at the rate of twenty-one percent (21%) but the basis of that claim of entitlement was not pleaded neither is there any iota of evidence on record to prove same. It is settled law that where interest is being claimed as a matter of right, the facts of that entitlement must be pleaded by the claimant followed by evidence to establish same. It is only when the court is satisfied, after reviewing the pleadings and evidence that it may award same. See U.B.N Plc vs Scopk (Nig) Ltd (1998) 12 NWLR (Pt.578) 439 AT 475.

H The appeal is consequently dismissed for lack of merit.

I abide by the consequential orders made in the lead judgment of my learned brother, OGUNTADE JSC, including the order as to costs.

Appeal dismissed.

B

CHUKWUMA-ENEH JSC

I have had the privilege of reading in draft the judgment in this matter prepared by my Learned brother Oguntade JSC, with which I agree entirely.

C

If I must emphasize particularly, I agree with the reasoning in the lead judgment that the central issue in this appeal which the appellant has apparently not adverted to has been condensed in the question:

“Did the plaintiffs on their pleadings or evidence state how and why the circumstances of this case impose on the defendant the duty to pay them (the plaintiffs) any interest at all whatever the rate may be?”

The foregoing question as rightly premised has identified what is really in issue here, that is, as to ascertaining the basis of the plaintiffs’ entitlement to interest on the sum claimed particularly against the notion that it is a settled principle of banking law that any money paid into a bank, belongs to the banker from the moment of such payment; thus creating as between the banker and the customer a debtor/customer relationship. Indeed, what the Banker pays out is its own money. I may cite with approval the underlying principle in this regard as per Idigbe J. (as he then was) in R. V. OKON (1933-1966) 1 NBLR 241 at 253 to the effect that;

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“When money is paid by a customer into the bank there is a contract between the banker and the customer in which the banker receives the money as a loan from the customer against the promise by the banker to honour the customer’s cheque or other orders of the customer.....” See also FOLEY V. HILL 2 H.L.C. 28, and R. V. DAVENPORT (1954) 38 CAR 37 at 41.

H

The above cited cases are clearly confirmatory of the debtor/customer relationship of a banker and its customer in circumstances as in this case. And so, it is incumbent on the plaintiffs in the circumstances of this matter to prove as has been well established in the case

of EKWUNIFE V. MAYNE (W.A.) LTD. (1989) 5 NWLR (Pt.122) 422
at 445 per Nnaemeka-Agu JSC and as lucidly expatiated upon in the
lead judgment, as a matter of sine qua non the basis of the plaintiffs'
entitlement to interest they claim, that is to say, whether the same has
arisen by reason of an agreement between the parties or under a
B mercantile custom or under a principle of equity such as breach of a
trustee/cestui que trust relationship. See: EKWUNIFE V. MAYNE (W.A.)
LTD. (Supra).

There is no gain saying that there are no averments of facts in
C the plaintiffs' pleadings in this case in regard to the basis for the claim
to interest, for instance, as to whether it has arisen from a banking
practice, custom or usage to pay interest in such circumstances as
here. The appeal therefore, has no basis.

In the result, I agree with the lead judgment that the appeal on
D the whole, lacks merit and should be dismissed. I dismiss it and en-
dorse the orders in the lead judgment.

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