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LICENSED & ADMITTED
SUPREME COURT OF THE UNITED STATES OF AMERICA
U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT
U.S. COURT OF INTERNATIONAL TRADE
OTHER U.S. FEDERAL COURTS
STATES OF NEW YORK & MICHIGAN ONLY
LONDON COURT OF INTERNATIONAL ARBITRATION

Via ECF

Our Ref:
Your Ref:

24 June 2009

Hon. Joanna Seybert
United States District Judge
United States District Court
For the Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *People of the State of New York v. Gerrod T. Smith*,
Case No. CV 08 4422, EDNY

Dear Judge Seybert:

This firm represents Gerrod T. Smith, the Defendant in the above action, and is in response to Plaintiff's motion to remand and memorandum filed on the 19th of June, 2009. (docs. 6-7).

In its Order, dated the 3rd of June, 2009, the Court stated:

This case has already been removed to this Court. To the extent that Plaintiff intended its filing to be a motion to remand [doc. 3 filed on the 2nd of December, 2008], the Court directs Plaintiff to file a memorandum of law in support of its motion.

24 June 2009

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Subsequently, on the 19th of June, 2009, Plaintiff filed two documents, a "Motion to remand to State Court memorandum of law" (doc. 6) and a "Memorandum in Support re Order" (doc. 7).

As the Defendant previously pointed out in his letter dated the 3rd of December, 2008, (doc. 4), the Plaintiff waived its statutory right to motion for remand under 28 U.S.C. § 1447(c) by failing to file within the statutory thirty (30) day window, which expired on the 1st of December, 2008. The Plaintiff fails to respond to this point of law.

Plaintiff's motion filed on the 19th of June, 2009, (doc. 6), is plainly filed as a motion, and styled as a motion in the docket text, and is accompanied by the separate filing of a memorandum in support, (doc. 7), even though the text of the two documents appears identical. The document is a memorandum titled "Petitioner's Memorandum of Law in Support of its Cross-Motion to Remand." However, there is no cross-motion on the docket.

Assuming, *arguendo*, Plaintiff intended its filing on the 2nd of December, 2008, and/or on the 19th of June, 2009, to be a motion to remand, Plaintiff's memorandum fails to cite any statutory authority under which it is entitled to bring a motion to remand. Any such motion was waived and is foreclosed, since the thirty (30) day window under § 1447(c) expired on the 1st of December, 2008.

Therefore, to the extent either of Plaintiff's filings may be construed as a motion to remand, it must be denied.

Very Truly Yours,

MOORE INTERNATIONAL LAW OFFICES, P.C.

BY:



Scott Michael Moore
Attorney at Law

Counsel for Defendant, Gerrod T. Smith

Cc: Opposing Counsel via ECF