

1999 WL 1044386

Only the Westlaw citation is currently available.

United States District Court, S.D. New York.

OFFICIAL COMMITTEE OF THE UNSECURED
CREDITORS OF COLOR TILE, INC., Plaintiff,

v.

INVESTCORP S.A., Investcorp International Inc.,
Cip Limited, Corporate Equity Limited, Acquisition
Equity Limited, Funding Equity Limited, Planning
Equity Limited, Elias N. Hallack, Nemir A. Kirdar,
Michael L. Merritt, Paul W. Soldatos, Jon P. Hedley,
Charles J. Philippin, E. Garrett Bewkes, III, Walter
F. Loeb, Coopers & Lybrand, L.L.P., Investcorp
Bank, E.C., ABF Acquisition Corp., Investcorp
Holdings Limited, Window Investments Limited,
Shades International Limited, Shades Investments
Limited, Blinds Equity Limited, Blinds Holdings
Limited, Aibc Investcorp Finance B.V., Investcorp
Investment Holdings Limited, Acquisition Capital
Limited, Corporate Capital Limited, Funding Capital
Limited, and Planning Capital Limited, Defendants.

No. 97 CIV. 9261(MGC).

|
Nov. 18, 1999.

Attorneys and Law Firms

Kaye, Scholer, Fierman, Hays & Handler, LLP, New
York, By [Peter M. Fishbein, Esq.](#), for Plaintiff.

Dewey Ballantine LLP, New York, By [Harvey Kurzweil,
Esq.](#), [Joanna R. Swomley, Esq.](#), [John F. Collins, Esq.](#),
[Lawrence Brocchini, Esq.](#), for all Defendants except
Coopers & Lybrand L.L.P.

MEMORANDUM OPINION

[CEDARBAUM, J.](#)

*1 Plaintiff, the Official Committee of Unsecured
Creditors of Color Tile, Inc. (the "Committee"), moves

for reconsideration of my September 24, 1999 decision
granting the motion of certain defendants to dismiss
counts eight through twelve of the Committee's Second
Amended Complaint. I granted that motion because the
Complaint failed to allege that these defendants controlled
a majority of Color Tile's board of directors at the
time of the 1995 Avoidance and thus did not rebut
the presumption that the board exercised its business
judgment.

[Local Civil Rule 6.3](#) requires that the Committee
demonstrate that I "overlooked matters or controlling
decisions which, had they been considered, might
reasonably have altered the result." [Donahue v. Pendleton
Woolen Mills, Inc.](#), 719 F.Supp. 149, 151 (S.D.N.Y.1988)
(citations and internal quotation marks omitted). The
Committee does not contend that I overlooked any
matters or controlling decisions in granting the motion
to dismiss. Rather, the Committee revives its previous
assertion that the Complaint does in fact allege that
the defendants controlled a majority of the board. I
considered and rejected this contention in reaching my
previous decision, and accordingly deny the Committee's
motion for reconsideration.

The Committee also seeks leave to submit a Third
Amended and Consolidated Complaint. In accordance
with the policy of freely granting leave to amend, the
Committee has already been given the opportunity to
amend its Complaint twice since the original Complaint
was filed. The Committee is represented by very capable
lawyers and should by now have filed its best complaint.
Moreover, the Committee does not demonstrate in
its submission that amending the Complaint would
adequately remedy the defects. The Committee's request
for leave to amend is therefore denied. *See* [Salinger v.
Projectavision, Inc.](#), 972 F.Supp. 222, 236 (S.D.N.Y.1997)
("Three bites at the apple is enough").

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 1999 WL 1044386