

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

MICHAEL F. POWE
Debtor.

Case No. 98-10935-MAM-13

MICHAEL F. POWE
Plaintiff,

THERESA MOORE BALLARD,
Intervenor,

Case No. 98-13377-WSS-13

v.

Adv. No. 99-1121

CHRYSLER FINANCIAL CORPORATION, L.L.C.
Defendant.

**ORDER DENYING MOTION FOR
RECONSIDERATION AND AMENDMENT
OF THE COURT'S ORDER OF JULY 3, 2002**

Steve Olen, Mobile, Alabama, Attorney for the Plaintiff
Steven L. Nicholas, Mobile, Alabama, Attorney for the Plaintiff
Donald J. Stewart, Mobile, Alabama, Attorney for Plaintiff
C. Lee Reeves, Birmingham, Alabama, Attorney for Chrysler Financial Corp., L.L.C.
Rhonda L. Nelson, San Francisco, California, Attorney for Chrysler Financial Corp, LLC

This matter came before the Court on the motion of Chrysler Financial Corporation (“CFC”) requesting the Court reconsider and amend its order of July 3, 2002. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is denying the motion.

CFC seeks reconsideration or amendment of the July 3, 2002 order on three grounds:

(1) the Court erroneously found Chrysler had an “agreement” with the plaintiffs to produce only

proofs of claim that contained attorneys fees; (2) the Court improperly shifted the burden of proof to CFC to prove that there was no fee in each proof of claim or that “the fee was disclosed or approved in another manner.” Order p. 4; and (3) the Court does not have core jurisdiction over the proofs of claim that now remain at issue. The Court will address each issue in turn.

1.

The Court stated that CFC and the plaintiffs had an agreement that CFC would produce only proofs of claim that included attorneys fees when it answered plaintiffs’ discovery requests. The Court believes, from the evidence provided at the last hearing, that the word “agreement” correctly describes the parties’ postures. CFC’s attorneys indicated in all communications with plaintiffs that it was providing only proofs of claim with fees. The plaintiffs agreed to this limitation on disclosure. The plaintiffs’ original requests were for broader production. Another word that might describe the situation as well is “understanding.” The fact is that plaintiffs had a right to rely on CFC’s statements as to what was being produced. There was no convincing contrary evidence produced to show that CFC did not tell plaintiffs it was producing only claims with fees. Therefore, whether the facts present an “agreement,” or an “understanding” or a fact pattern in which, even without a formal agreement, plaintiffs had a right to rely on CFC statements, the Court’s decision is the same. The word will not be changed in the order.

2.

CFC alleges that the Court has erroneously shifted the burden of proof to it in any further proceedings in this case. The Court concludes that it has not improperly shifted the burden.

As stated in the July 3, 2002 order at the trial of this case on the merits, “the burden of proving an undisclosed fee was included in [the] . . . claims [of Chrysler] was on the debtor plaintiffs.” Order p. 3. At trial, the Court found that the plaintiff class did not meet that burden.

This failure of proof was found because the Court thought plaintiffs had given the Court no claims with undisclosed fees.¹

The plaintiffs, in their motion to reconsider, alleged that the Court was wrong about what plaintiffs' evidence proved due to the CFC claims production. The Court was not aware that CFC had told plaintiffs that it had instructed its outside counsel to produce only claims with fees. Therefore, if the evidence at trial included any proofs of claim with no fees disclosed, then the plaintiffs had met their burden of proof as to those debtors. Since CFC produced only claims with fees (or so the plaintiffs understood and they relied on that understanding), then plaintiffs needed to do no more to meet their burden of proof in their case in chief than to introduce the proofs of claim with no fees disclosed. They did that. *See, e.g.*, footnote 11 at page 7 of order dated May 10, 2002.

At that point, as in any case, the burden of proof shifts to the defendant to disprove the plaintiffs' prima facie case. This is the posture of the case at this juncture as to proofs of claim with no disclosures. CFC must now go forward to show that the claims involved included no fees and these claims were produced in error or that "the fee was disclosed or approved in another manner." Order p. 4. If Chrysler cannot do this, the case, as to the undisclosed fees, is like other cases of this Court with completely undisclosed fees and the Court's conclusions of law in those cases will likely be applicable. *Slick v. Norwest Mortgage, Inc. (In re Slick)*, Case No. 98-14378, Adv. No. 99-1136, Order Awarding Judgment to Plaintiffs (Bankr. S.D. Ala., May 10, 2002); *Harris v. First Union Mortgage Corp. (In re Harris)*, Case No. 96-14029, Adv. No. 99-1144, Order Awarding Judgment to Plaintiffs (Bankr. S.D. Ala., May 10, 2002).

¹The Court held that as to claims in which fees were disclosed, there was no relief it could award.

3.

Chrysler alleges that the Court does not have core jurisdiction over the claims of the class members who remain. The proofs of claim filed in the Southern District of Alabama did disclose any attorneys fees charged. Therefore, Chrysler asserts, since no debtor from this district is a member of the class who will be receiving a judgment in his or her favor (if any such judgment is entered), then this Court lacks core jurisdiction.

The Court will not reiterate its ruling on jurisdiction in this order, but its position is the same. *In re Noletto*, 244 B.R. 845 (Bankr. S.D. Ala. 2000). Once the case was certified, jurisdiction over all of the claims was proper. Even if this Court does not have core jurisdiction, the court reports and recommends to the District Court so that it can adopt this Court's findings and conclusions pursuant to Fed. R. Bankr. P. 9033 if appropriate. To hold that the class is improper, after certification, because the claims of the initial class representatives are found not to be actionable, would be inappropriate. Their ultimate lack of standing should not prejudice the rights of the remaining potential class members who will lose their claims if this action is dismissed. A new class representative may be substituted. *In re Noletto*, 281 B.R. 60 (Bankr. S.D. Ala. 2001).

In a separate order the Court is addressing CFC's related argument that this case should be dismissed due to the class representatives' lack of standing. That order and its reasoning are incorporated by reference.

IT IS ORDERED that Chrysler Financial Corporation's motion for reconsideration and amendment of the Court's order of July 3, 2002 is DENIED.

Dated: August 23, 2002

/s/ Margaret A. Mahoney
MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE