

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

TRACY D. SLAUGHTER

Case No. 02-14399-MAM-13

Debtor

TRACY D. SLAUGHTER and
MARK D. FLEMING, on behalf of
themselves and all others
similarly situated

Plaintiffs

vs.

Adv. No. 01-01035-MAM

MBNA AMERICA BANK, N.A.

Defendant

**ORDER GRANTING MOTION OF
JAMES AND CHRISTEL HAYES TO INTERVENE**

Steve Olen and Royce Ray, Olen, Nicholas & Copeland, Attorneys for the Plaintiffs
Donald J. Stewart, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Attorneys for the
Plaintiffs

Phillip D. Anker and Matthew P. Previn, Wilmer, Cutler & Pickering, Attorneys for the
Defendant

Matthew C. McDonald and Kirkland E. Reid, Miller, Hamilton, Snider & Odom, LLC.,
Attorneys for the Defendant

This case is before the Court on the motion of James and Christel Hayes to intervene as named plaintiffs in this action pursuant to Fed. R. Bankr. P. 7024(b)(2) and 7023(d). This 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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons listed below, the Court is granting the motion of the Hayes to intervene.

FACTS

This case is a class action commenced by named plaintiffs Tracy Slaughter and Mark Fleming for a determination that MBNA America Bank, N.A. filed proofs of claim in bankruptcy cases that included improper postpetition interest or other fees and charges. MBNA vigorously disputes the allegations of the complaint.

This case was commenced on February 18, 2003. A motion to dismiss the case was filed on April 7, 2003 and ruled upon on July 3, 2003. A hearing on the class certification motion is scheduled on September 12, 2003. MBNA has also filed a motion for partial summary judgment alleging that Tracy Slaughter has no viable claim against MBNA and that she should be dismissed from this case.

The plaintiffs candidly admit that the Hayes are seeking to intervene, in part, because Ms. Slaughter's claim may not survive the summary judgment motion. The plaintiffs also state that it is not unusual for chapter 13 debtors not to complete their chapter 13 plans and they desire to have another plaintiff for this reason too.

MBNA asserts that the Court should not grant the intervention motion at all or should wait to rule until the class certification hearing. MBNA alleges that at that hearing it will offer proof that the Hayes have no claim against MBNA.

LAW

The Hayes seek to intervene in this case as a class representative and they bear the burden of proving that the intervention should be allowed pursuant to Fed. R. Bankr. P. 7024(b). *Richman v. First Woman's Bank (In re Richman)*, 104 F. 3d 654, 658 (4th Cir. 1997). The Hayes have alleged that they are members of the class and MBNA admits as much in its

response. MBNA's assertion that the Hayes have no claim is based upon the de minimis nature of the claim and the fact that MBNA believes that the Hayes' claim is not ripe. But as the plaintiffs framed their cause of action, the Hayes would be members of the class even if their claim is very small.¹


The issues of whether the size of the claim or its ripeness are grounds for dismissal of their action are separate from whether they are legitimate members of the class as constituted. The Hayes have shown that they are members of the class.

Pursuant to Rule 7024(b) the motion must be timely. *Stallworth v. Monsanto Co.*, 558 F.2d 252, 263 (5th Cir. 1977). "Timeliness is to be determined from all the surrounding facts and circumstances." *In re Sun Laboratories, Inc. of Atlanta, Inc.*, 171 B.R. 686, 687 (M.D.Ga. 1994) (citing *Stallworth*). Since this motion was made in the first five months of the case, prior to class certification, it is timely. There is no prejudice to MBNA alleged or shown.

Therefore, it is appropriate to grant the motion and allow the Hayes to intervene.

IT IS ORDERED that the motion of James Roger Hayes and Christel Hayes to intervene in this case as plaintiffs is GRANTED.

Dated: August 13, 2003


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE

¹In this case and in the other similar class action cases this Court has presided over, the claims of individual plaintiffs tend to be quite small. Postpetition interest charges, late fees, attorneys fees, etc. are not large sums--several hundred dollars or less. This is one of the reasons that a class action suit is one of the only ways these debtors can get recourse.