

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

RALPH BOWMAN and
BRENDA BOWMAN

Case No. 03-10016-MAM-13

Debtors

RALPH BOWMAN and
BRENDA BOWMAN

Plaintiffs

vs.

Adv. No. 04-01038

BANK ONE, NATIONAL ASSOCIATION

Defendant

**ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO APPEAL
AND RECOMMENDING DENIAL OF THE MOTION TO WITHDRAW
REFERENCE AND GRANTING PLAINTIFFS' MOTION TO STRIKE
JURY DEMAND**

Steve Olen, Steven L. Nicholas, Royce A. Ray, III, Mobile, AL, Attorneys for the
Plaintiffs

Donald J. Stewart, Mobile, AL, Attorney for the Plaintiffs

Jeffery J. Hartley, Mobile, AL, Attorney for the Defendant

Alan Maclin, Mark G. Schroeder, Brent R. Lindahl, Minneapolis, MN, Attorneys for the
Defendant

This case is before the court on the motions of defendant, Bank One, for leave to appeal and for withdrawal of the reference and on the motion of the plaintiffs, Ralph and Brenda Bowman, to strike the defendant's jury demand. The court has jurisdiction to hear the motion for leave to appeal and the motion to strike the jury demand pursuant to 28 U.S.C. § § 157 and

1334 and the Order of Reference of the District Court. These matters are core proceedings pursuant to 28 U.S.C. § 157(b)(2) and the court has the authority to enter final orders. As to the motion to withdraw the reference, the District Court has the authority to enter an order in that matter and this court will forward the motion to the District Court together with this order as its report and recommendation. 28 U.S.C. § 157(d). For the reasons indicated below, the court is denying the motion for leave to appeal, recommending that the District Court deny the motion to withdraw the reference, and granting the motion of the plaintiffs to strike the defendant's jury demand.


FACTS

The facts in this case, at least at this stage of the case, are identical to the facts pleaded in two other cases also before the court at this time: *Thigpen v. Matrix Financial Services Corp.* and *Brannan v. Wells Fargo Home Mortgage, Inc.* The court adopts the fact recitations in those case opinions. The court has based its rulings to date in those cases on the allegations of the complaint only. The *Brannan* case has the same motions pending in it and the complaint is virtually identical. The arguments raised by plaintiffs and defendants in the two cases are very similar. The court therefore adopts the ruling made in the *Brannan* case by reference and attaches a copy to this order.

IT IS ORDERED that :

1. The motion of the plaintiffs, Ralph and Brenda Bowman, to strike the jury demand of the defendant, Bank One, is GRANTED;
2. The motion of the defendant, Bank One, for leave to appeal is DENIED; and
3. This order is be considered as a report and recommendation to the District Court as to the defendant's motion to withdraw the reference and the court recommends that the motion be denied.

Dated: August 2, 2004


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE