

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

EDWARD LEE JORDAN and
DEBORAH DIANE JORDAN

Case No. 99-13242-MAM-13

Debtors

EDWARD LEE JORDAN and
DEBORAH DIANE JORDAN and
DOTTIE JEAN BALL WILLIS,
on behalf of themselves and all others
similarly situated,

Plaintiffs

vs.

Adv. No. 03-01132

GMAC MORTGAGE CORPORATION

Defendant

**ORDER DENYING DEFENDANT'S MOTION TO DETERMINE THAT
PLAINTIFFS' NATIONWIDE CLASS ALLEGATIONS BE STRICKEN**

C. Lee Reeves, Attorney for Defendant, Birmingham, AL
Thomas M. Hefferon and James W. McGarry, Attorney for Defendant, Washington, D.C.
Steve C. Olen, Steven L. Nicholas, Royce A. Ray, III, Attorneys for Plaintiffs, Mobile,
AL

This case came before this Court on the motion of the Defendant, GMAC Mortgage Corporation, to determine that plaintiffs' nationwide class allegations be stricken. This Court has jurisdiction to hear this motion pursuant to 28 U.S.C. § § 157 and 1334 and the Order of Reference of the District Court. This motion 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 indicated

below, the Court is denying the motion without prejudice.

FACTS

The plaintiffs are debtors in chapter 13 cases in this Court who were allegedly charged fees by the defendant for actions taken by attorneys for GMAC postpetition. GMAC filed proofs of claim in the debtors' cases and did not disclose the "post[ing], charg[ing], or assess[ing]" of any such fees. The complaint filed on behalf of the debtors alleges that this action has been taken throughout the country in the cases of debtors in numerous bankruptcy courts. GMAC denies the allegations.

LAW

GMAC has filed a motion seeking to strike the nationwide class allegations in the complaint and has requested that the Court limit the class to a district wide one only. The plaintiffs dispute the propriety of this action, particularly prior to completion of discovery and the class certification hearing.

This Court has had other similar cases filed by plaintiffs against other defendants. E.g., *Noletto v. Nationsbanc Mortgage Corp.(In re Noletto)*, Adv. 99-1120, *Slick v. Norwest Mortgage, Inc. (In re Slick)*, Adv. No. 99-1136, *Dean v. First Union Mortgage Corp.(In re Dean)*, Adv. No. 99-1144. This Court has, in all instances, ruled that class certification on a nationwide basis is appropriate when the particular facts of the case warrant it. *Id.* GMAC asserts that, in light of recent case law, this Court should reconsider its view that nationwide class certification is appropriate. GMAC also asserts that this determination can and should be made before the class certification hearing is held. The Court will first address the procedural propriety of the motion and then the substance.

A.

GMAC argues that a court determination of the scope of the class in this case, before the certification hearing, is proper because the grounds upon which it seeks a decision are strictly legal in nature. GMAC cites hornbook and caselaw that support such a motion's propriety. E.g., *Earnest v. General Motors Corp.*, 923 F. Supp. 1469 (N.D. Ala. 1996); 7A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1760 (2d ed. 1986); *Kubany v. School Board of Pinellas County*, 149 F.R. D. 664 (M.D. Fla. 1993). The Court agrees that, in appropriate circumstances, a motion to narrow or restrict or deny definition of any class is correct. However, in this case, such a motion is premature at least.

The cases cited by GMAC hold that, if a cause of action, on its face, does not meet the requirements of Fed. R. Civ. P. 23, then a court does not need to hold a class certification hearing and the court can deny the certification request before any hearing. E.g., *Earnest, supra* at 1473 (“[T]he court finds that the proposed class is so broad, amorphous, and vague that it fails to meet the minimum standard of definiteness.”); *Kubany, supra*. at 666 (no requirements for a class action were met). This case involves a situation in which, if what the plaintiffs allege is true, a class would be appropriate. The allegations of the complaint, if true, establish the requirements for a class.

B.

GMAC asserts that a nationwide class would not be appropriate in this case for four main reasons: (1) Other bankruptcy courts have ruled that they do not have jurisdiction to handle class action claims; (2) Bankruptcy courts in other jurisdictions are subject to differing state law, case law, and local procedures; (3) Orders and debtor agreements in cases will impact the propriety of

relief; and (4) Practical problems of manageability and due process support limitations on the scope of the class. The court has addressed all of these issues in rulings in other cases with similar fact patterns except issue #1. *E.g.*, *Noletto v. Nationsbanc Mortgage Corp. (In re Noletto)*, Case No. 98-13813, Adv. No. 99-1120, Order Granting Class Certification (Bankr. S.D. Ala. December 29, 2000); *Powe v. Chrysler Financial Corp. (In re Powe)*, Case No. 98-10935, Adv. No. 99-1121, Order Denying Debtor's Motion to Strike Chrysler's Amended Motion to Strike, Denying Defendant's Motion for Summary Judgment and Granting Debtor's Motion for Class Certification (Bankr. S.D. Ala. June 1, 2001); *Powe v. Chrysler Financial Corp. (In re Powe)*, Case No. 98-10935, Adv. No. 99-1121, Order Granting Judgment to Chrysler Financial Corporation (Bankr. S.D. Ala. May 10, 2002); *Dean v. First Union Mortgage Corp. (In re Dean)*, Case No. 00-11321, Adv. No. 99-1144, Order Awarding Judgment to Plaintiffs (Bankr. S.D. Ala. May 10, 2002). The Court will not restate what it has already consistently ruled. The reasoning in those rulings is incorporated by reference.

The Court has considered very carefully the argument that other bankruptcy courts have ruled that they either have no jurisdiction at all to handle class action suits or that they should limit their jurisdiction to their own district or state. With all due respect, this Court disagrees with those courts. *Noletto v. Nationsbanc Mortgage Corp. (In re Noletto)*, 244 B.R. 845 (Bankr.S.D. Ala. 2002). The fact that other courts have concluded that they lack jurisdiction does not preclude this court from holding otherwise since the rulings of the other courts are not binding in this district or circuit. Therefore, the Court concludes it should deny GMAC Mortgage Corporation's motion without prejudice to GMAC reasserting some or all of its arguments at or after the class certification hearing.

IT IS ORDERED that the motion of GMAC Mortgage Corporation for a determination that plaintiffs' nationwide class allegations should be stricken is DENIED without prejudice.

Dated: January 3, 2007


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE