

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

IRENE B. PALMER

Case No. 03-11604-MAM-13

Debtor

IRENE B. PALMER,
on behalf of herself and all others
similarly situated,

Plaintiff

vs.

Adv. No. 03-01135

HOMEcomings FINANCIAL
NETWORK, INC.

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, Homecomings
Financial Network, Inc., 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 plaintiff is a debtor in chapter 13 case in this Court who was allegedly charged fees by the defendant for actions taken by attorneys for Homecomings postpetition. Homecomings filed proofs of claim in the debtor's case and did not disclose the "post[ing], charg[ing], or assess[ing]" of any such fees. The complaint filed on behalf of the debtor alleges that this action has been taken throughout the country in the cases of debtors in numerous bankruptcy courts. Homecomings denies the allegations.

LAW

Homecomings 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 plaintiff disputes 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.*

Homecomings asserts that, in light of recent case law, this Court should reconsider its view that nationwide class certification is appropriate. Homecomings 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.

Homecomings 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. Homecomings 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 Homecomings 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.


Homecomings 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 Homecomings Financial Network, Inc's motion without prejudice to Homecomings reasserting some or all of its arguments at or after the class certification hearing.

IT IS ORDERED that the motion of Homecomings Financial Network, Inc. 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