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JUDGE: M. A. Mahoney

PARTIES: Claude Joseph Noletto, Jr., Terry Lynn Noletto, Nationsbanc Mortgage Corp., Rocky Dwayne Sheffield, Homeside Lending, Inc., Catherine D. Slick, Norwest Mortgage, Inc.

CHAPTER: 13

ATTORNEYS: S. Olen, S. Nicholas, D. Stewart, J. J. Hartley, T. M. Hefferon, J. H. Culver, H. A. Callaway, III

DATE: 11/15/00

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CLAUDE JOSEPH NOLETTO, JR. and
TERRY LYNN NOLETTO
Debtors.

Case No. 98-13813-MAM-13

CLAUDE JOSEPH NOLETTO, JR. and
TERRY LYNN NOLETTO
Plaintiffs,

v.
NATIONS Banc MORTGAGE CORP.
Defendant.

Adv. No. 99-1120

ROCKY DWAYNE SHEFFIELD
Debtor.

Case No. 97-10511-MAM-13

ROCKY DWAYNE SHEFFIELD
Plaintiff,

v.
HOMESIDE LENDING, INC.
Defendant.

Adv. No. 99-1124

CATHERINE D. SLICK
Debtor.

Case No. 98-14378-MAM-13

CATHERINE D. SLICK
Plaintiff,

v.
NORWEST MORTGAGE, INC.
Defendant.

Adv. No. 99-1136

**ORDER DENYING PLAINTIFFS' REQUEST TO OFFER VIDEOTAPED
DEPOSITION TESTIMONY AT CLASS CERTIFICATION TRIALS**

Steve Olen and Steven Nicholas, Mobile, AL, Attorneys for the Plaintiffs
Donald Stewart, Mobile, AL, Attorney for the Plaintiffs
Jeffery J. Hartley, Mobile, AL, Attorney for HomeSide Lending, Inc. and Nationsbanc
Mortgage Corp.
Thomas M. Hefferon, Washington, DC, Attorney for HomeSide Lending, Inc.
John H. Culver, Charlotte, NC, Attorney for Nationsbanc Mortgage Corp.
Henry A. Callaway, III, Mobile, AL, Attorney for Wells Fargo Home Mortgage
f/k/a Norwest Mortgage, Inc.

These cases are before the Court on the plaintiffs' request to submit the videotape depositions of witnesses in the above class certification hearings. The plaintiffs and defendants have already agreed that each side can designate excerpts from the deposition transcripts for the Court's review. The Court has jurisdiction to hear these cases pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. These motions are core proceedings pursuant to 28 U.S.C. § 157(b)(2) and the Court can enter a final order.

Plaintiffs wish to submit the videotapes as well as the written transcripts of depositions so that the Court can weigh the credibility of any witnesses it may deem appropriate. The plaintiffs assert that the witnesses were all outside the subpoena power of the Court and, but for that fact, the plaintiffs would have had the videotaped witnesses appear "live" at the hearing. Not admitting the videotapes will prejudice the plaintiffs' case. The admission of the videotapes is discretionary with the Court. The plaintiffs went to great time and expense to produce the tapes and it would be fundamentally unfair to exclude them at this late date.

The defendants argue that the written deposition transcripts are sufficient. The Court has the power to limit use of videotapes under Fed. R. Bankr. P. 7032(c). The defendants assert that if the videotapes are to be admitted, they need to be edited to excise any questions and answers which the Court rules are inadmissible. Otherwise, since the spoken word is more powerful than the written word, the defendants may be prejudiced by the Court's viewing of the tapes. The defendants also argue that the videotapes are cumulative.

LAW

Fed. R. Bankr. P. 7032(c) which incorporates Fed. R. Civ. P. 32(c) states:

Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form.

Therefore, the default rule is that videotaped depositions may be offered unless the Court rules

otherwise. Both plaintiffs and defendants agree that the Court has broad discretion in making such a decision. *Coletti v. Cudd Pressure Control*, 165 F.3d 767 (10th Cir. 1999); *Rascon v. Hardiman*, 803 F.2d 269 (7th Cir. 1986).

The Court, after reviewing all of the arguments and the facts, concludes that the videotapes will be excluded from the record for purposes of the class certification hearings. If the cases proceed to final trial on the class issues, the plaintiffs may offer the videotape depositions at those trials if the court and counsel for the defendants are so advised with sufficient time to address evidentiary objections and any other issues before trial.

The Court has four reasons for excluding the videotapes. First, the Court has already agreed to allow part or all of any of the written transcripts of the depositions into the record. The videotapes would be cumulative. Second, the editing of the tapes would take an inordinate amount of time at this juncture. The cases, but for resolution of this issue, are already submitted to the Court. Third, the Court intended to read the deposition transcripts in its review because reading the transcripts is faster than viewing the testimony. There are numerous videotapes and (it would appear by the Court's estimate) over 100 hours of viewing would be necessary to complete all of the tapes. Fourth, this is not a jury trial. A judge's failure to view videotapes is not prejudicial in the way exclusion of tapes might be in a jury setting.

THEREFORE, IT IS ORDERED that the motion of the plaintiffs to have the videotaped depositions of the witnesses designated by plaintiffs is DENIED.

Dated: November 15, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE