UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

MICHAEL F. POWE — Case No. 98-10935-mam-13

Debtor

MICHAEL F. POWE
Plaintiff

v. — Adv. No. 99-01121

CHRYSLER FINANCIAL CORPORATION
Defendant

ORDER GRANTING MOTION OF ABIE POPLIN AND PATRICIA POPLIN TO INTERVENE AS NAMED PLAINTIFFS

Steve Olen, Steven L. Nicholas, and Donald J. Stewart, Mobile, AL, Attorneys for the Plaintiffs
C. Lee Reeves, Birmingham, AL, Attorney for the Defendant
Rhonda L. Nelson, San Francisco, CA, Attorney for the Defendant

This case is before the Court on the motion of Abie Poplin and Patricia Poplin to intervene as named plaintiffs pursuant to Fed. R. Bankr. P. 7024(b)(2) and 7023(d). This Court has jurisdiction to hear this case 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 granting the motion.

FACTS

This is a class action case in which a class has been certified for trial of certain issues remaining after an earlier trial in the case did not resolve all matters. Specifically, the Court has determined that the remaining issue to be decided is whether Chrysler has a pervasive practice of nondisclosure by one or more attorneys. *Powe v. Chrysler Financial Corp. (In re Powe)*, Order granting in part plaintiffs' motions to compel and defendant's motion to clarify, Case No. 98-10935-MAM-13, Adv. No. 99-01121(Bankr. S.D. Ala. Nov.14, 2002).[1] If so, then there may be grounds for sanctions or injunctive relief or damages.

Abie and Patricia Poplin, the intervenors, are a married couple who filed a chapter 13 bankruptcy case in the District of South Carolina on December 8, 1999. The court confirmed their chapter 13 plan on February 22, 2000. Chrysler filed a proof of claim that did not disclose any postpetition fees were included in 1999. On September 27, 2002, Chrysler filed an amended proof of claim disclosing that "Bankruptcy Attorney's Fees" of $290 were included in the claim. By August 18, 2003, the Poplins had paid the full amount required by their plan including the full amount of Chrysler's claim. The debtors received a discharge on July 2, 2003. The Poplins never objected to the original claim or amended claim of Chrysler in the South Carolina court during the pendency of their case.

LAW

The Poplins seek to intervene as named plaintiffs in this case pursuant to Fed. R. Bankr. P. 7024(b)(2) and 7024(d). The plaintiffs candidly state that the intervention is sought to insure

[1]The Court decided that many of Chrysler's attorneys did disclose postpetition attorneys fees charged in the proofs of claim. The Alabama attorneys for Chrysler did disclose the fees. Thus, there is no Alabama debtor with a proof of claim with undisclosed attorneys fees.

that the case has a class representative who is actually involved in the remaining controversy in the case.[2] Chrysler filed a proof of claim in the Poplin's case that did not disclose a postpetition attorneys fee but contained one. The plaintiffs assert that the intervention is not necessary to the viability of the action[3], but the plaintiffs believe that the defendant will raise an issue about the lack of such a plaintiff. Therefore, the plaintiffs want to preempt this argument.

Chrysler argues that the intervention is inappropriate on the following grounds: (1) the Court lacks jurisdiction to adjudicate the Poplins' claims; (2) the Court lacks jurisdiction over the entire class of debtors who now all reside out of the state of Alabama; (3) the Court is not the proper venue to adjudicate the Poplins' claims; (4) this Court and the home circuit of the Poplins may disagree about the law regarding these issues; (5) the Poplins' claims are not similar to the claims of other members of the class: (6) the intervention is not timely; and (7) the intervenors lack standing. The Court will discuss each of the issues in turn.

I.

The first issue raised by Chrysler is that the court lacks authority to adjudicate the claims of the Poplins because that right is specifically reserved to the South Carolina Bankruptcy Court where the Poplins' case was filed. In that case, the Bankruptcy Court confirmed the Poplins' plan and discharged them. Therefore, this Court has no jurisdictional right to try the issues set

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[2]See footnote 1.

[3]See *Apolinar Martinez-Mendoza, et al. v Champion International Corp.*, 2003 WL 21790437 (11th Cir. 2003)(stating "a plaintiff's capacity to act as representative of the class is not ipso facto terminated when he loses his case on the merits."); see also *Robinson v. Sheriff of Cook County*, 167 F.3d 1155, 1157 (7th Cir. 1999)(stating that "the fact that the named plaintiff in a class action turns out not to have a meritorious claim does not doom the class action . . . certification would have made the members of the class parties, and one of them could be selected as class representative in place of [the prior named representative").

forth in the plaintiffs' complaint. This is the jurisdictional issue writ small already raised repeatedly on a class wide basis by Chrysler in this case. The Court has already ruled on the argument, following its decision in *Noletto v. Nationsbanc Mtge. Corp.(In re Noletto),* 244 B.R. 845 (Bankr. S.D. Ala. 2002). The Court also relies on *Bank United v. Manley*, 273 B.R. 229 (N.D. Ala. 2001). Based upon these cases and the reasoning contained in them, the Court has concluded it does have jurisdiction over the issues raised in the complaint for all debtors who are members of the class certified by the Court. Since the Poplins are members of the certified class, their claim can be adjudicated in this Court.

II.

Chrysler's second argument is that this Court lacks jurisdiction over the class of debtors certified by the Court. As stated above, the Court has repeatedly held that it does have jurisdiction for the reasons cited in *Noletto*, supra., and *Manley*, supra., above. The Court will not revisit the issue.

Chrysler, in part, argues that, because the initial trial showed that only a few attorneys or law firms in a few districts filed proofs of claim with undisclosed postpetition fees and none of the districts are in Alabama, the Court has lost jurisdiction over the case. Once the class has been certified, as it has in this case, even if the original named plaintiff's claim is lost, the case is not extinguished. As stated in the case of *Robinson v. Sheriff of Cook County*, 167 F.3d 1155, 1157 (7th Cir. 1999):

> The fact that the named plaintiff in a a class action turns out not to have a meritorious claim does not doom the class action. If Robinson [the class representative] should have been approved as class representative before his bench trial, the fact that he lost at that trial would not be fatal to the class . . . Certification would make the members of the class parties, and one of them could be selected as class representative in place of Robinson.

The Court concludes that, once jurisdiction was established and the class certified, the Court's rulings during trial do not require a dismissal of the class action just because the named plaintiff is no longer able to get relief. The case is still jurisdictionally viable in this district and should remain here. If the case were dismissed and the plaintiffs required to file in South Carolina, many debtors would be disenfranchised due to the passage of time and a new statute of limitations.

III.

Chrysler asserts that this court is not the proper venue for an adjudication of the Poplins' claims. Chrysler contends that the case should be sent to South Carolina. Looking just at the Poplins' claims, this argument might have merit. The problem is that Chrysler's argument ignores the fact that this case is a class action and each named plaintiff does not have to be from the district in which the action is brought. The court has so ruled in *Noletto v. Nationsbanc Mtge. Corp. (In re Noletto)*, 281 B.R. 373, 377-78 (Bankr. S.D. Ala. 2001) and adopts that ruling by reference.

IV.

Chrysler asserts that this court may rule in a manner different than the "home court"-- the South Carolina Bankruptcy Court or the Fourth Circuit Court of Appeals -- on the issues in this class action case. That may be true. Courts differ in their views on these claims issues in particular and on other bankruptcy issues as well. However, this Court cannot deny the Poplins the right to intervene as class representatives in this case, a case in which they are already class members, simply because another court might rule differently. The case was filed in this Court and this Court must see it to an end, applying the law to the entire class as this Court interprets it.

If the class is viable, the entire class is subject to the ruling of the court in which the case is filed.

V.

Chrysler asserts that the Poplins' claims are not similar to other claims in the class because the Poplins' case has been discharged, because the Poplins have paid the Chrysler postpetition fees during the case, and because the Poplins did not object to the amended claim of Chrysler filed in September 2002. The Court has ruled on at least parts of this issue in other rulings in this and other class action cases. Events subsequent to the certification of the class cannot be used by Chrysler to moot the class. *Noletto v. Nationsbanc Mtge. Corp. (In re Noletto)*, 281 B.R. 373 (Bankr. S.D. Ala. 2001); *Slaughter v. MBNA America Bank, N.A. (In re Slaughter)*, Order granting motion of James and Christel Hayes to intervene, Case No. 02-14399-MAM-13, Adv. No. 03-01035 (Bankr. S.D. Ala. August 13, 2003); *Powe v. Chrysler Financial Corporation (In re Powe)*, Order denying Chrysler's motion to determine that named plaintiffs have no standing to be class representatives and to dismiss all further class proceedings, Case No. 98-10935-MAM-13, Adv. No. 99-1121 (Bankr. S.D. Ala. August 23, 2002).

VI..

Chrysler argues that the intervention by the Poplins is not timely. The Poplins have been members of the class since they filed their case in 1999 and Chrysler filed a proof of claim that did not disclose that it contained postpetition attorneys fees. The Poplins are intervening as class representatives now because of the recent rulings of the Court and discovery that have made clear that the class that may have a viable claim is actually a smaller group than originally

constituted. Looking at their intervention from that standpoint, the intervention is timely. *Noletto v. Nationsbanc Mtge. Corp*., 281 B.R. 373 (Bankr. S.D. Ala. 2001).

VII.

Chrysler's last argument is that the Poplins lack standing due to the discharge of their case and what happened during it. The Court concludes that this argument is without merit for the same reason as stated in paragraph V above. The Poplins' standing does not change because of Chrysler's actions, or the Poplins' actions subsequent to the filing of this case. *Powe v. Chrysler Financial Corp. (In re Powe),* Order denying Chrysler's motion to determine that named plaintiffs have no standing to be class representatives and to dismiss all further class proceedings (Bankr. S.D. Ala. August 23, 2002). The Poplins had a viable claim at the time of class certification. They still have a viable claim if they have paid all of the fees. The fact that it has taken so long to resolve all of the issues in this case cannot, standing alone, moot all of the issues.

As to Chrysler amending its claim and asserting its postfiling activity can moot the suit (or at least the Poplins' claim), this issue was discussed in *Slaughter v. MBNA America Bank*, Order partially granting and partially denying defendant's motion to dismiss, Case No. 02-14399-MAM-13, Adv. No. 03-01035 (Bankr. S.D. Ala. July 3, 2003). It would be patently inappropriate for Chrysler to moot each possible named plaintiff's claim by simply amending the claim before a ruling on intervention. In this case, the amendment was made, not at intervention, but at the point in time that it became obvious which debtors were left as possible class members. Also, the amendment might alleviate the need for any claim objection process, but the

abuse of process claim still exists. Amending the claims does not extinguish the debtors' claims that Chrysler should be sanctioned under section 105 of the Bankruptcy Code.

IT IS ORDERED that the motion to allow Abie and Patricia Poplin to intervene is GRANTED.

Dated: September 29, 2003

Margaret A. Mahoney
MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE