

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

SUSAN J. NEAL

Case No. 99-10444-MAM-13

Debtor

SUSAN J. NEAL, on behalf of herself
and others similarly situated

Plaintiff

v.

Adv. No. 03-01190

CHASE MANHATTAN BANK U.S.A., N.A.

Defendant

ORDER DENYING MOTION FOR STAY PENDING APPEAL

Steve Olen and Royce Ray, Mobile, AL, Attorneys for the Plaintiff
Sara Anne Ford, Birmingham, AL, Attorney for the Defendant
Eric Breithaupt, Birmingham, AL, Attorney for the Defendant

This case is before the Court on the motion of the defendant, Chase Manhattan Bank U.S.A., N.A., for a stay pending appeal of this Court's order of September 25, 2003. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding and the Court has the authority to enter a final order pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is denying the motion for a stay.

FACTS

This Court entered an order on September 25, 2003 denying Chase's motion to dismiss the plaintiff's complaint for failure to state a claim upon which relief can be granted and for

failure to join an indispensable party. Chase had alleged that the complaint should be dismissed on five different grounds: (1) res judicata; (2) laches; (3) no private right of action under 11 U.S.C. § 105; (4) failure to join an indispensable party; and (5) all other arguments raised in motions to dismiss in similar class action cases brought in this Court. Chase asserts that the issues raised are controlling issues of law about which there is a substantial ground for disagreement and, therefore, a ruling on these issue might materially advance the litigation or its termination.

LAW


This Court has had five prior class action cases that have raised some of the issues asserted by Chase. Many of the defendants in those cases initially sought to appeal dismissal orders. This Court and the District Court denied all of the motions for leave to appeal. Three of the five cases settled. One additional case is in settlement discussions. The last one is set for trial of some remaining limited issues shortly. None of these cases needed an interlocutory appeal to reach a relatively swift resolution. The Court concludes that the motion should be denied because (1) prior precedent shows similar cases have been resolved by settlement without the resolution of similar issues; (2) the cases will proceed swiftly to trial making one appeal at the end of the case more efficient; and (3) the issues should be appealed as a unit because the case will raise issues at several stages that are not covered by settled law and it would be best to deal with all of the issues as a whole.

Chase terms the issues it raised in its motion to dismiss as especially appropriate for appeal. This Court does not agree that the issues are ones that require an early appeal. This case will be set for class certification and trial as soon as the parties can be ready. There will be no long delay that makes an appeal an attractive option.

The issues involved in this case are very similar to the issues raised in the five cases already filed in this Court in 1999. Courts have reached different conclusions on similar issues around the country. The plaintiffs would argue that the differing results are the product, at least in part, of different facts, or, different circuit court of appeals precedent. Judicial economy would suggest that an appellate court should look at all of the issues this case might raise at one time. This Court believes that allowing the case to be tried in this Court first and then having an appeal of all of the issues in the case based on developed facts (instead of at the Rule 12(b)(6) motion stage) would be better.

IT IS ORDERED that the motion for leave to appeal the Court's order of September 25, 2003 is DENIED.

Dated: October 8, 2003


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE