

Class Action Dismissed for Lack of Standing

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

In the matter of:

BERNESTINE P. JACKSON
(Chapter 13 Case 87-10019)

Debtor

BERNESTINE P. JACKSON
AND ALL OTHERS SIMILARLY
SITUATED,
SYLVIA FORD DRAYTON,
CHAPTER 13 TRUSTEE

Plaintiffs

v.

FIRST NATIONAL BANK OF
LOUISVILLE,
DAVIS FURNITURE COMPANY,
JEFFERSON COUNTY FINANCE,
and
BANK OF WADLEY

Defendants

Adversary Proceeding

Number 89-1076

FILED

at 10 O'clock & 00 min A.M

Date 6/12/90 - Poma

MARY C. BERTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

On January 23, 1990, a hearing was held upon Defendants' Motion to Dismiss and Plaintiff's Motion for Class Certification.

After consideration of the evidence adduced at trial, the briefs and other documentation submitted by the parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Plaintiff,¹ a purported class representative, is a Chapter 13 Debtor with a confirmed plan in this Court. The named Defendants are a group of creditors holding claims against one or more of the purported class of debtors and have asserted a right to attorney's fees in conjunction with proofs of claim submitted to this Court. Neither the named Plaintiff nor Debtors referred to in the complaint as members of the class hold a claim against all of the named Defendants.

The Plaintiff alleges that the Defendants' claims are either unsecured or undersecured and that attorney's fees in connection with those claims are therefore inappropriate. The

¹ The Chapter 13 Trustee was named as a party Plaintiff. However, the Trustee never retained counsel to pursue this matter nor did she seek affirmative relief in this case. In fact, she was not even made aware that her name was used. Apparently, Plaintiff's counsel named her as a co-plaintiff in the belief that she would be a necessary party.

Plaintiff further alleges that the submission of these allegedly improper attorney's fee claims constitutes a conspiracy in violation of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), and involves mail fraud as part of the alleged racketeering activity.

The Plaintiff asserts that she represents a class which is "estimated at this time to be approximately 100 individuals who would have a claim against one or more of the Defendants and that consequently it would be impractical to bring all of them before the Court at one time."

There is no evidence before the Court to show that the allowance of attorney's fees in connection with allegedly unsecured or undersecured claims was timely objected to at or prior to confirmation of the Plaintiff's case or the cases of any member of the purported class.

CONCLUSIONS OF LAW

The Defendants have cited Lynch v. Bagley, 744 F.2d 1452 (11th Cir. 1984), for the proposition that individual standing

requirements must be met by anyone attempting to represent his own interests or those of a class and that the failure to establish a case or controversy by the named Plaintiff in a class action suit precludes relief on his behalf or on behalf of the class. The Defendants argue that since neither the Plaintiff nor any named member of the class holds a claim against each and every Defendant, the case must be dismissed for lack of standing. I agree.

The jurisdiction of federal courts is limited by Article III of the United States Constitution to 'cases or controversies.' Standing is one aspect of the case or controversy requirement. 'The constitutional limits on standing eliminate claims in which the plaintiff has failed to make out a case or controversy between himself and the defendant.' Any plaintiff attempting to invoke the power of a federal court must demonstrate a 'personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues' and thereby enable the court to resolve constitutional questions. A demonstration of this personal stake is made by the plaintiff's showing that he 'has sustained or is immediately in danger of sustaining some direct injury' and that his injury or threat of injury is 'real and immediate,' not 'conjectural' or 'hypothetical.' Individual standing requirements must be met by anyone attempting to represent his own interest or those of a class. If the named plaintiff seeking to represent a class fails to establish the requisite case or controversy, he may not seek relief on his behalf or on that of the class.

Id. at 1455-56 (citations omitted).

Plaintiffs who lack standing to sue cannot acquire that status through class representation. When no controversy exists between the Plaintiffs and any Defendants with whom the Plaintiffs have not dealt, standing to sue those Defendants is lacking, even though the Plaintiffs may purport to bring the action on behalf of a class which might include persons who had dealt with those Defendants. Chevalier v. Baird Sav. Ass'n, 371 F.Supp. 1282, 66 F.R.D. 105 (E.D.Pa. 1975). See also LaMar v. H & B Novelty & Loan Co., 489 F.2d 461 (9th Cir. 1973) (A representative plaintiff who has suffered injury at the hands of only one member of a class of defendants cannot bring an action on behalf of a class of persons who have suffered identical injuries by the conduct of the other defendants).²

As the sole purported class representative, the Plaintiff Bernestine Jackson holds a claim against only one member of the Defendant class, Davis Furniture Company. Mrs. Jackson does

² An exception to this rule has been made in cases in which the defendant class was composed of public officials under the "judicial link" approach, which is based upon the notion that allowing such a class suit against a defendant class is really an alternative means of permitting plaintiffs to sue the state itself. C. Wright, A. Miller & M. Kane, 7B Federal Practice and Procedure §1785.1 at 148-49 (2nd Ed. 1986).

not have standing to sue the other four named Defendants and dismissal of the class action suit as to them is appropriate. Moreover, the complaint contains no allegation that any other purported class member holds a claim against Davis Furniture. Thus, the complaint fails to state a claim for class relief against Davis Furniture and the class action must be dismissed as to Davis Furniture as well.

The Plaintiff has attempted to rely upon her RICO allegations in an attempt to overcome the aforementioned standing problem. However, upon review of the pleadings, I find that the Plaintiff's allegations of fraud are incomplete under Fed.R.Civ.P. 9(b) and the RICO statute. A civil RICO complaint must allege a distinct RICO injury, one caused by a RICO violation, not just one caused by some of the essential elements of a RICO violation. Doxie v. Ford Motor Credit Co., 603 F.Supp. 624 (S.D.Ga. 1984).

This Court holds in accord with a growing weight of authority that requires plaintiffs in civil RICO cases to 'allege injury caused by an activity which RICO was designed to deter, which whatever it may be, is different from that caused simply by such predicate acts as are alleged here' . . . [w]hat this order should make clear . . . is that I have concluded that Congress did not intend to federalize every tort or breach of contract in business transactions involving the use of the mails. Id. at 628.

Similarly, I conclude that Congress did not intend to categorize every fraudulent act committed in connection with a Title 11 case as a RICO violation. Moreover, I have been provided with no evidence whatsoever which would show the existence of a racketeering enterprise or conspiracy on behalf of the named Defendants in connection with any Plaintiff's case. Indeed it would be contrary to each creditors' interest to attempt to conspire with others to increase their claims to a limited fund. In the absence of pleadings sufficient to state a RICO case, I find the Plaintiffs' RICO claims to be without merit.

Inasmuch as I find that the Motion to Dismiss should be granted, it is unnecessary to address the substance of the class certification issue. I do, however, note that were this case recast as a class action in which the Plaintiffs have proper standing, several problems would remain. In particular, although some common issues of law exist, each case is factually different. As to each and every claim at issue there would have to be a valuation hearing to determine the extent and validity of the creditor's security interest, its compliance with the Georgia attorney's fee statute, 11 U.S.C. Section 506 and the claims process in this Court. In short, this would require a mini-hearing as to each claim at issue.

As such, I question whether the relief sought could in any event be addressed as a class action suit.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Defendants' Motion to Dismiss is granted.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 5th day of June, 1990.