

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
WESTERN RESERVE LIFE ASSURANCE)	
CO. OF OHIO,)	
Plaintiff,)	
)	
vs.)	
)	C.A. No. 09-470-S
JOSEPH CARAMADRE, RAYMOUR)	
RADHAKRISHNAN, ESTATE PLANNING)	
RESOURCES, INC., HARRISON CONDIT,)	
and FORTUNE FINANCIAL SERVICES,)	
INC.,)	
Defendants;)	
_____)	

**DEFENDANTS JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN AND
ESTATE PLANNING RESOURCES, INC.’S MOTION FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO RULE 54(b)**

Defendants Joseph Caramadre, Raymour Radhakrishnan and Estate Planning Resources, Inc. (collectively “Moving Defendants”) move this Court for entry of final judgment in their favor in the matter of *Western Reserve Life Assurance Co. of Ohio v. Caramadre et al.*, C.A. No. 09-470-S. For the reasons set forth in the accompanying memorandum of law, all claims against Moving Defendants have been adjudicated in their favor, and there is no just reason for delay in entering final judgment. Accordingly, this Court should grant this motion and enter final judgment for Moving Defendants.

Dated: Providence, Rhode Island
March 19, 2012

JOSEPH CARAMADRE, RAYMOUR
RADHAKRISHNAN and ESTATE PLANNING
RESOURCES, INC.,
By their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Adam M. Ramos

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE)
CO. OF OHIO,)
Plaintiff,)
vs.)
JOSEPH CARAMADRE, RAYMOUR) C.A. No. 09-470-S
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., HARRISON CONDIT,)
and FORTUNE FINANCIAL SERVICES,)
INC.,)
Defendants;)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS JOSEPH CARAMADRE,
RAYMOUR RADHAKRISHNAN AND ESTATE PLANNING RESOURCES, INC.’S
MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO RULE 54(b)**

Defendants Joseph Caramadre, Raymour Radhakrishnan and Estate Planning Resources, Inc. (“EPR”) (collectively, “Moving Defendants”) submit this memorandum of law in support of their motion for entry of final judgment in their favor in the matter of *Western Reserve Life Assurance Co. of Ohio v. Caramadre et al.*, C.A. No. 09-470-S. All claims against Moving Defendants have been adjudicated in their favor, and there is no just reason for delay in entering final judgment. Accordingly, this Court should grant this motion and enter final judgment for Moving Defendants.

INTRODUCTION

This case is one of seven related cases brought by Plaintiffs Western Reserve Life Assurance Co. of Ohio (“Western Reserve”) and Transamerica Life Insurance Company. As this Court is well-aware, each case arises out of the purchase of annuities by an owner who was unrelated to the annuitant other than through the creation of the annuity contract. Western

Reserve brought this case against Moving Defendants (referred to as Sponsors of the annuities by the Court) as well as several other defendants allegedly involved in the transaction.¹ This Court dismissed some claims against EPR in the original complaint in an Opinion and Order dated June 2, 2010 (ECF No. 13 in Case No. 09-564). Western Reserve attempted to revive those claims through an amended complaint and added Caramadre and Radhakrishnan as defendants. Moving Defendants moved to dismiss the amended version of the complaint. This Court dismissed all claims against Moving Defendants in the Opinion and Order date February 7, 2012 (ECF No. 132 in Case No. 09-470) addressed to that motion to dismiss. Accordingly, there are no existing claims against Moving Defendants in this matter.

Final judgment should enter for Moving Defendants. There is no relationship between the claims against the remaining defendants and the dismissed claims against Moving Defendants that implicates concerns about the effect of a piecemeal appeal. On the other hand, Moving Defendants will be faced with significant, inequitable, and unnecessary hardship if judgment does not enter in their favor. Thus, the time has come to release Moving Defendants from the burdens of this case and enter final judgment pursuant to Rule 54(b).

LEGAL STANDARD

Rule 54(b) of the Federal Rules of Civil Procedure permits the Court to “direct entry of a final judgment as to one or more, but fewer than all, claims or parties . . . if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). A separate final judgment pursuant to Rule 54(b) is appropriate when the court action from which judgment is sought has “the requisite aspects of finality,” the issues remaining in the case do not are not significantly interrelated, and the equities and efficiencies implicated by piecemeal review favor

¹ Caramadre and Radhakrishnan were not named defendants in the original complaint, but were added as defendants when Western Reserve filed the second amended complaint on September 7, 2010 – after the June 2, 2010 Opinion and Order on the original motions to dismiss in this matter.

the entry of the proposed judgment. *State St. Bank & Trust v. Brockrim, Inc.*, 87 F.3d 1487, 1489 (1st Cir. 1996). A judgment is final if it “dispose[s] of all the rights and liabilities of at least one *party* on at least one *claim*” and “ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.” *Lee-Barnes v. Puerto Ven Quarry Corp.*, 513 F.3d 20, 24 (1st Cir. 2008) (quoting *State St. Bank & Trust*, 87 F.3d at 1489-90) (internal quotation marks omitted).

A district court’s determination of whether to enter a 54(b) judgment is “necessarily case-specific and requires an assessment of the entire litigation[.]” *Darr v. Muratore*, 8 F.3d 854, 862 (1st Cir. 1993). A district court has broad discretion to enter a separate judgment pursuant to Rule 54(b) so long as it considers the appropriate factors and explains its reasons for doing so. *Id.* “[A] demonstration of clear injustice or hardship resulting from delaying a final judgment on a particular question may justify certification.” *Id.* at 863. The First Circuit views the considerations set forth in *Allis-Chalmers Corp. v. Philadelphia Electric Co.*, 521 F.2d 360, 364 (3d Cir. 1975) as “a helpful guide” for determining whether a separate Rule 54(b) judgment should enter. *Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 43 n.3 (1st Cir. 1988). Those considerations are:

(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Allis-Chalmers Corp., 521 F.2d at 364 (internal footnotes omitted).

ARGUMENT

This dismissal of all claims against Moving Defendants in this case presents the prototypical circumstance for entry of separate final judgment pursuant to Rule 54(b). First, there is no question that the dismissal of the claims against Moving Defendants is final for Rule 54(b) purposes. The Third Amended Complaint in *Western Reserve Life Assurance Co. of Ohio v. Caramadre et al.*, C.A. No. 09-470-S is the operative pleading. That pleading set forth ten separate counts, only two of which Western Reserve directed at Moving Defendants: Count I (Fraud in the Factum), and Count II (Fraudulent Inducement). In the February 7, 2012 Opinion and Order this Court decided: “The fraudulent inducement counts against Defendants Caramadre, Radhakrishnan, and EPR in all above-captioned cases are hereby DISMISSED. . . . The fraud in the factum counts (pleaded in cases 09-470, 09-471, 09-473, 09-549, and 09-564) against Defendants Caramadre, Radhakrishnan, EPR, Condit, Hanrahan, Maggiacomo, DK, and Fortune are hereby DISMISSED.” *See* ECF No. 132 in Case No. 09-470 (emphasis added). Accordingly, it is clear that the February 7, 2012 Order completely disposes of all claims against Moving Defendants and all that this Court has left to do with respect to those claims is to enter judgment. *See Lee-Barnes v. Puerto Ven Quarry Corp.*, 513 F.3d at 24.

All that remains in this case are: (1) a fraudulent inducement count against Defendants Harrison Condit and Fortune Financial Services, Inc. (“Fortune Financial”), (2) a fraud in the factum count against Lifemark, (3) a breach of contract count against Condit and Fortune Financial, (4) a count for breach of the covenant of good faith and fair dealing against Condit and Fortune Financial, (5) a count for civil liability for crimes and offenses based on alleged forgery against Condit and Fortune Financial, and (6) unjust enrichment against Condit and Fortune Financial.

The remaining counts are unconnected to Moving Defendants. They arise from Western Reserve's relationships with Condit and Fortune Financial. This Court specifically dismissed the fraudulent inducement count against Moving Defendants because Moving Defendants had no dealings with Western Reserve and therefore could not have a duty to disclose that could give rise to the fraudulent inducement claim. The Court dismissed the fraud in the factum claim because it concluded that it was simply a copy of the fraudulent inducement claim in a different costume. The fraudulent inducement claim survived as to Condit and Fortune Financial because they had direct dealings and a business and contractual relationship with Western Reserve. Moving Defendants had no involvement with those dealings or relationships. The only surviving claims are against distinct parties that are clearly separate from and unrelated to the dismissed claims previously asserted against Moving Defendants. There is simply no concern that entry of final judgment for Moving Defendants and a subsequent appeal (if Transamerica decides to pursue one) will create any problems with the orderly administration of this case.²

First, the separate and distinct nature of the claims obviates the danger that the outcome of the appeal of a judgment in favor of Moving Defendants will interfere, or even truly impact, the litigation of the claims remaining in the suit. The basis for the Court's decision to dismiss the fraudulent inducement claim against Moving Defendants and the fraud in the factum claim is unrelated and inapplicable to the counts remaining in the case. Accordingly, the Court will not need to revisit or reassess those legal conclusions in this litigation. Thus, reversal or affirmance of this Court's decision to dismiss the claims against Moving Defendants will not impact the ongoing litigation. There is no danger that the case will be proceeding on parallel tracks in the trial court and appellate court because there is no overlap of issues. For these same reasons,

² The Court noted that the allegations made against Moving Defendants in connection with fraudulent inducement claims might give rise to civil conspiracy liability. However, there is no claim of civil conspiracy in this case.

there is no possibility that the appellate court would face the same issues a second time in the context of a later appeal of the remaining counts of this case. For all these reasons, the first three factors set forth in *Allis-Chalmers* weigh in favor of entering final judgment for Caramadre, Radhakrishnan and EPR.³

The fifth factor set forth in *Allis-Chalmers* instructs the Court to take into account any other factors that should have an effect on the decision to enter a separate, partial final judgment. In the context of this factor, the First Circuit's acknowledgment that "a demonstration of clear injustice or hardship resulting from delaying a final judgment on a particular question may justify certification[]" lays to rest any doubt that final judgment should enter for Moving Defendants in this case. *See Darr*, 8 F.3d at 862.

Caramadre and Radharkishnan are defendants in the criminal matter, *U.S. v. Caramadre et al.*, CR. No. 11-186-S as well as all seven of the related pending civil suits. EPR is now a shell corporation that continues to exist only because it is a defendant in the seven civil suits. The dismissal of the fraudulent inducement and fraud in the factum counts against them provides Moving Defendants with a modicum of finality as to their lack of culpability with respect to the allegations in Case No. 09-470. Entering final judgment in their favor will provide Moving Defendants the opportunity to reach a final resolution of this case as it relates to them. This Court's dismissal of the counts in this case completely vindicates Moving Defendants as to the claims in this case. Moving Defendants should be allowed that finality when, as here, there is no interrelationship with the remaining claims and no harm in allowing the judgment.

The Moving Defendants prevailed on all of the claims asserted against them in this lawsuit should not be required to idly stand-by in an indefinite holding pattern until the other

³ The fourth factor set forth in *Allis-Chalmers* is not implicated because there is no money judgment and there were no counterclaims or cross claims asserted in this case, as this Court dismissed all counts against ADM before any answers were filed.

unrelated parties have an opportunity to fully adjudicate their claims. The interests of judicial economy militate in favor of the Court granting 54(b) judgment in favor of all parties. Entry of final judgment will in fact streamline this litigation to the benefit of all parties as well as the Court. If final judgment enters now and Western Reserve exercises its right of appeal, that appeal will proceed while the remaining aspects of this case are stayed pending the resolution of the criminal matter. The stay is likely to last for at least a year. Thus, it is possible, or perhaps likely, that any appeal by Western Reserve would be resolved well before the remaining civil claims are reached for trial, thus providing further support for the entry of final judgment for Moving Defendants now.⁴

CONCLUSION

For the reasons stated herein, Moving Defendants respectfully request that the Court enter separate and final judgment in their favor pursuant to Rule 54(b).

Dated: Providence, Rhode Island
March 19, 2012

JOSEPH CARAMDRE, RAYMOUR
RADHAKRISHNAN AND ESTATE PLANNING
RESOURCES, INC.,
By their Attorneys,

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⁴ Western Reserve will have an opportunity to litigate its appeal during the stay. If Western Reserve prevails on appeal against the Moving Defendants, Western Reserve will have the opportunity to try this case against all defendants in one proceeding as opposed to this Court trying this case twice in bifurcated trials. There is obviously no impact on the remaining litigation if Western Reserve loses on appeal or decides not to appeal.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Adam M. Ramos