

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

_____)	
TRANSAMERICA LIFE INSURANCE)	
COMPANY,)	
Plaintiff,)	
)	
vs.)	
)	C.A. No. 09-471-S
JOSEPH CARAMADRE, RAYMOUR)	
RADHAKRISHNAN, ESTATE PLANNING)	
RESOURCES, INC., ESTELA)	
RODRIGUES, EDWARD MAGGIACOMO,)	
JR., LIFEMARK SECURITIES CORP., and)	
PATRICK GARVEY,)	
Defendants;)	
_____)	

DEFENDANT ESTELLA RODRIGUES’
MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO RULE 54(b)

Defendant Estella Rodrigues moves this Court for entry of final judgment in her favor in the matter of *Transamerica Life Insurance Company v. Caramadre et al.*, C.A. No. 09-471-S. For the reasons set forth in the accompanying memorandum of law, all claims against Ms. Rodrigues have been adjudicated in her 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 Ms. Rodrigues.

Dated: Providence, Rhode Island
March 19, 2012

ESTELLA RODRIGUES,
By her 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

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JR., LIFEMARK SECURITIES CORP., and)	
PATRICK GARVEY,)	
Defendants;)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ESTELLA RODRIGUES’
MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO RULE 54(b)**

Defendant Estella Rodrigues submits this memorandum of law in support of her motion for entry of final judgment in her favor in the matter of *Transamerica Life Insurance Company v. Caramadre et al.*, C.A. No. 09-471-S. All claims against Ms. Rodrigues have been adjudicated in her 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 Ms. Rodrigues.

INTRODUCTION

This case is one of seven related cases brought by Plaintiffs Transamerica Life Insurance Company (“Transamerica”) and Western Reserve Life Assurance Co. of Ohio. 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. Transamerica brought this case against Ms. Rodrigues (the owner of the annuity at issue) as well as against several other defendants allegedly involved in the transaction. This Court dismissed all claims against Ms.

Rodrigues in the original complaint in an Opinion and Order dated June 2, 2010 (ECF No. 13 in Case No. 09-564). Transamerica attempted to revive those claims through an amended complaint, but this Court again dismissed all claims against Ms. Rodrigues in a second Opinion and Order date February 7, 2012 (ECF No. 132 in Case No. 09-470). Accordingly, for the second time in this litigation, there are no existing claims against Ms. Rodrigues.

Final judgment should enter for Ms. Rodrigues. There is no relationship between the claims against the remaining defendants and the dismissed claims against Ms. Rodrigues that would implicate concerns about the effect of a piecemeal appeal. On the other hand, Ms. Rodrigues will be faced with significant, inequitable, and unnecessary hardship if a judgment does not enter in her favor. Thus, the time has come to release Ms. Rodrigues from the burdens of this case and enter a final judgment in her favor 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 are not significantly interrelated, and the equities and efficiencies implicated by piecemeal review favor 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 Court's June 2, 2010 Opinion and Order and February 7, 2012 Opinion and Order dismissed all claims against Ms. Rodrigues and present the paradigmatic circumstances for entry of separate final judgment pursuant to Rule 54(b). First, there is no question that the orders with respect to Ms. Rodrigues are final for Rule 54(b) purposes. The Third Amended Complaint in *Transamerica Life Insurance Company v. Caramadre et al.*, C.A. No. 09-471-S is the operative

pleading. That pleading set forth eleven separate counts, only two of which Transamerica directed at Ms. Rodrigues: Count I (Rescission), and Count II (Declaratory Judgment). In the June 2, 2010 Opinion and Order, this Court concluded: “All Counts for rescission, declaratory judgment that the contracts are void, . . . are dismissed.” *See* ECF No. 19 in C.A. No. 09-564. Transamerica subsequently filed a third amended complaint, and after motions to dismiss were filed, the February 7, 2012 Opinion and Order confirmed dismissal of all pending claims against Ms. Rodrigues: “The Court further reaffirms the dismissal of all claims previously dismissed but not discussed in the instant Opinion and Order.”

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 Ms. Rodrigues 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.

The only claims that remain in this case are: (1) a fraudulent inducement count against Defendants Edward Maggiacomo, Jr. and his broker dealer, Lifemark Securities Corp. (“Lifemark”), (2) a fraud in the factum count against Lifemark, (3) a breach of contract count against Lifemark, (4) a count for Civil Conspiracy against Defendants Joseph Caramadre, Raymour Radhakrishnan, Estate Planning Resources, Inc. (“EPR”), Lifemark, and Maggiacomo, and (5) a count for unjust enrichment against Lifemark, Maggiacomo, and EPR.

Even if the fraudulent inducement count were successful, however, it would not change the result in favor of Ms. Rodrigues.¹ First, Transamerica never asserted claims against Ms. Rodrigues in connection with that count, and thus final judgment in her favor does not result in a judgment on any count that will continue to be litigated in this Court. Second, the Court dismissed the claims against Ms. Rodrigues on the basis of the incontestability clause, which is

¹ Transamerica alleges that it was fraudulently induced to enter into a contract with Ms Rodrigues.

inapplicable to the remaining defendants. Third, the factual issues related to the fraudulent inducement count do not implicate Ms. Rodrigues. The litigation of that counts will wrestle with the relationships between Transamerica and Lifemark and Maggiacomo – not Transamerica’s relationship with Ms. Rodrigues. Moreover, the resolution of those factual issues will have no bearing on the legal conclusion that led to the dismissal of the claims against Ms. Rodrigues – that the incontestability clause bars those claims. Thus, 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, there is no possibility that the First Circuit 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 Ms. Rodrigues.²

The other counts arise from Transamerica’s relationships with Lifemark, Maggiacomo, and EPR. Ms. Rodrigues had no involvement with those relationships – nor is any alleged. The remaining claims are separate and distinct from the claims asserted against Ms. Rodrigues. There is simply no concern that entry of final judgment for Ms. Rodrigues and a subsequent appeal (if Transamerica decides to pursue one) will create any problems with the orderly administration of this case.

First, the separate and distinct nature of these other claims obviates the danger that the outcome of the appeal of a judgment in favor of Ms. Rodrigues will interfere with, or even truly impact, the litigation of the claims remaining in the suit. This Court decided that the incontestability clause of the annuities was a sufficient basis to dismiss the claims against Ms. Rodrigues. The incontestability clause is not at issue in any of the remaining claims. Thus,

² 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.

reversal or affirmance of this Court's decision regarding the incontestability clause will not impact the ongoing litigation.

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 Ms. Rodrigues in this case. *See Darr*, 8 F.3d at 862.

Ms. Rodrigues invested \$290,000 in an annuity contract with Transamerica. When Transamerica filed its claims against Ms. Rodrigues, Transamerica unilaterally withdrew Ms. Rodrigues's funds from her chosen investment vehicles and has held those funds hostage throughout the pendency of this litigation. This Court's orders on the motions to dismiss completely vindicate Ms. Rodrigues and leave no claims for relief against her. Transamerica's unjustified and unilateral actions with respect to Ms. Rodrigues's funds have deprived Ms. Rodrigues of the ability to earn a return on that money or to have any other beneficial use of those funds. Entry of final judgment for Ms. Rodrigues (and appellate court affirmation of that judgment, if necessary) will remove the last vestige of support Transamerica had for taking that unilateral action and will clear the way for Ms. Rodrigues to obtain the value of the annuity to which she always has been entitled.

Further delay will impose a serious hardship on Ms. Rodrigues. First, the remaining aspects of this case are stayed pending the resolution of the criminal matter, *U.S. v. Caramadre et al.*, CR. No. 11-186-S. That stay is likely to last for at least a year.³ Thus, final judgment on

³ The stay also makes it possible that any appeal by Transamerica would be resolved before the remaining claims are reached for trial, thus providing further support for the entry of final judgment for Ms. Rodrigues now.

all claims in this matter will be significantly delayed for Ms. Rodrigues, and she will be left to just sit and wait with no means to accelerate the process until the rest of this case is resolved. In the meantime, Ms. Rodrigues will likely still be deprived of the rightful ownership of her investment. Such a result is wholly unjust and avoidance of that result militates heavily in favor of entering separate and final judgment for Ms. Rodrigues.

Moreover, 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 Transamerica 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 makes it possible, or even likely, that any appeal by Transamerica would be resolved before the remaining claims are reached for trial, thus providing further support for the entry of final judgment for Ms. Rodrigues now.⁴

CONCLUSION

For the reasons stated herein, Ms. Rodrigues respectfully requests that the Court enter separate and final judgment in her favor pursuant to Rule 54(b).

⁴ Transamerica will have an opportunity to litigate its appeal during the stay. If Transamerica prevails on appeal against Ms. Rodrigues, Transamerica 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 Transamerica loses on appeal or decides not to appeal.

Dated: Providence, Rhode Island
March 19, 2012

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By her Attorneys,

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