

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILDRED E. SAMUEL, on behalf of : CIVIL ACTION
herself and all others : NO. 00-6196
similarly situated :
 :
Plaintiff, :
 :
v. :
 :
EQUICREDIT CORPORATION, et al., :
 :
Defendants. :

ORDER

AND NOW, this **6th** day of **May, 2002**, upon consideration of the Motion for Preliminary Approval of Settlement and Notice to Class (doc. no. 50), the court having reviewed such motion and the Agreement of Settlement attached thereto, and the supporting papers submitted therewith, and after a preliminary approval hearing held on April 26, 2002, it is hereby **ORDERED** that the motion is **GRANTED** as follows:¹

¹ A decision granting preliminary approval does not bind the court to granting final approval. As noted by the Third Circuit, "[the] preliminary determination establishes an initial presumption of fairness. . . ." In re General Motors Corp., 55 F.3d 768, 784 (3d Cir. 1995) (emphasis added). "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing" Manual for Complex Litigation, Second § 30.44 (1985). In addition, "[t]he court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid." Newberg on Class Actions § 11.25 (1992). In this case, the court

1) This action² shall be maintained, for settlement purposes, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, with a class defined as all homeowners in the Commonwealth of Pennsylvania who, during the six year period preceding the filing of the Samuel case, entered into loan transactions with EquiCredit which resulted in a mortgage on their homes and some portion of the loan proceeds was used to pay a broker fee ("class members"), and a subclass defined as class members against whom EquiCredit or its agent filed a foreclosure complaint on or before November 30, 2001, and the foreclosure action is still pending ("subclass members").³

finds that the settlement falls within the "range of possible approval" and shall be submitted to the class members for their consideration and for a hearing to determine whether the settlement will be approved by the court.

² Mildred E. Samuel ("Samuel") commenced the present, putative class action lawsuit on December 21, 2000, in the United States District Court for the Eastern District of Pennsylvania, captioned Samuel v. EquiCredit Corporation and U.S. Bank National Association, Trustee, Civil Action No. 00-CV-6196. Bette Orr ("Orr") commenced a related putative class action lawsuit on February 5, 2001, in the United States District Court for the Western District of Pennsylvania, captioned Orr v. EquiCredit Corporation of Pennsylvania, et al., Civil Action No. 01-256. The United States District Court for the Western District of Pennsylvania, at the request of the parties, transferred the Orr case to this court for purposes of settlement only. Thereafter, the court consolidated the Orr case with the Samuel case. The court finds that it has jurisdiction to hear the Orr matter and that venue is proper in this district.

³ Pursuant to Federal Rule of Civil Procedure 23(a), a court may grant conditional approval of a class action if the four prerequisites of numerosity, commonality, typicality, and adequacy of representation are met. See Fed.R.Civ.P. 23(a). For

2) The court certifies the representative plaintiffs as representatives of the class who adequately represent the interests of the class with claims against EquiCredit and satisfy

the following reasons, the court finds that the plaintiff has established all four prerequisites. First, the numerosity requirement is met because the class size is approximately 12,000 and the subclass size is approximately 800, thereby making joinder impracticable. Second, the commonality requirement is met because there are common questions of law and fact affecting the class, i.e. whether excessive, percentage-based mortgage broker fees violated (i) the federal Real Estate Settlement Procedures Act and (ii) the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Third, the typicality requirement is met because each of the representative plaintiffs' claims are typical of the rest of the class and subclass. Finally, the adequacy of representation requirement is met because counsel is well-known and experienced in consumer class actions and there is no conflict among individual claims of the representative plaintiffs and the putative class members. See Fry v. Hayt, Hayt, & Landau, 198 F.R.D. 461, 467-69 (E.D.Pa. 2000).

In order for this court to conditionally approve this lawsuit as a class action, the plaintiffs must also satisfy the requirements of Rule 23(b). Under Rule 23(b)(3), an action may be maintained as a class action if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that the action is superior to other available methods." Fed. R. Civ. P. 23(b)(3). Because the court finds that the plaintiffs have met the requirements for Rule 23(b)(3), the court will conditionally approve class certification in this case. Common questions of law and fact predominate over questions pertaining to individual members because the class has alleged a common course of conduct on the part of the defendant. See In re Prudential Company America Sales Practice Litig., 148 F.3d 283, 314-15 (3d Cir. 1998). That course of conduct is whether the defendant's charge of a mortgage broker fee violated provisions of state and federal consumer protection law. Furthermore, a class action is superior to other available methods for fair and efficient adjudication of the controversy because a class resolution of the issues involved in this case outweighs the difficulties in management of separate and individual claims and allows access to the courts for those who might not gain such access standing alone.

the requirements to be representatives of that class.

3) The court certifies Alan M. White, Kirsten E. Keefe and Irv Ackelsberg of Community Legal Services, Inc. ("CLS"), David A. Searles and Michael D. Donovan of Donovan Searles, LLC, and Stuart T. Rossman of the National Consumer Law Center as counsel to plaintiff Samuel and the class; and Michael P. Malakoff and Erin Brady of the firm Malakoff Doyle & Finberg, P.C. as counsel to plaintiff Orr and the class; and CLS as Lead/Liaison Class Counsel ("Class Counsel").

4) The proposed settlement as set forth in the Agreement of Settlement executed by the parties is preliminarily approved as fair, reasonable and adequate to the class and subclass, and shall be submitted to the class members for their consideration and for a hearing to determine whether the settlement will be approved by the court;

5) A Final Approval Hearing is hereby set for **September 11, 2002 at 10 a.m.**, in Courtroom 12A, United States Courthouse, 601 Market Street, Philadelphia, PA 19106 to determine whether the settlement is fair, reasonable and adequate and should be finally approved, and to consider an award of reasonable attorneys' fees and expenses⁴ and awards to the class

⁴ Under the terms of the Agreement of Settlement, defendants are to pay Class Counsel's fees and costs, in an amount not to exceed \$625,000, from a source independent of the settlement fund created for the benefit of the class. Based on Class Counsel's representation that this amount is equal or less than lodestar

representatives.

6) Within 30 days of the entry of this preliminary approval order, notice of the settlement and of the Final Approval Hearing shall be given by EquiCredit by mailing (via first-class mail) a Notice of EquiCredit Class Action Settlement, in the form attached as Exhibit D to the Agreement of Settlement and approved by the court, individually addressed to each person meeting the above class definition at his or her last known mailing address as reflected in, and reasonably available from, EquiCredit's records as of the date of mailing.

7) Within 20 days of the entry of this preliminary approval order, notice of the availability of counseling and other relief shall be given by EquiCredit by mailing (via first-class mail) a Foreclosure Counseling Notice, in the form attached as Exhibit E to the Agreement of Settlement and approved by the court, individually addressed to each person meeting the above subclass definition at his or her last known address, as reflected in, and reasonably available from, EquiCredit's records as of the date of mailing.⁵

and is less than twenty percent of the value of the settlement afforded to the class, the court preliminarily finds that an amount of fees capped at equal to or less than \$625,000 is reasonable.

⁵ EquiCredit will provide Class Counsel with a list of the subclass members' names and address at the time the subclass notices are mailed. Class Counsel may undertake, at its own cost, additional efforts to notify the subclass members of this

8) Subclass members who are debtors in a Chapter 13 bankruptcy do not need to obtain approval from the trustee or bankruptcy court to participate in the settlement and effect a release of their claims under the settlement. Subclass members who are debtors in a Chapter 7 bankruptcy must obtain, no later than 20 days prior to the Final Approval Hearing, either an Order from the bankruptcy court or a letter from the Chapter 7 trustee approving their release of claims against EquiCredit in return for the relief elected under the settlement.

9) A class member may opt out of the class, provided the class member submits a timely written request for exclusion, as described in the class notice, postmarked within 45 days of mailing of the class notice and/or, if a subclass member, within 45 days of mailing of the subclass notice. Any class or subclass member who opts out shall not be subject to the Agreement of Settlement or any final judgment in this case.

10) No class member, subclass member, or any other person (collectively referred to as "objectors"), shall have the right to be heard at the Final Approval Hearing in opposition to class certification, the Agreement of Settlement, Class Counsel's proposed attorneys' fees and expenses, or the proposed payments to class representatives. Any objectors wishing to be heard

settlement so as to insure maximum participation in this settlement, but the form of any such additional efforts must be reasonably acceptable to EquiCredit.

shall serve, not later than 30 days prior to the Final Approval Hearing, with the Clerk of Court, and upon Class Counsel and EquiCredit counsel, notice of such objection setting forth in detail the nature of the objection.

11) Any objectors may appear personally at the Final Approval Hearing, provided that such persons serve Class Counsel and EquiCredit counsel (by hand delivery or certified mail), with notice of their intent to do so not later than 20 days prior to the Final Approval Hearing. Class Counsel and EquiCredit counsel may file with the court copies of all such objections on or before 10 days prior to the Final Approval Hearing, together with a statement of reasons, if any, why the objection should be overruled.

12) This order shall not be construed or deemed to be a finding of this court or evidence of a presumption, implication, concession or admission by EquiCredit concerning (1) any liability, fault, or wrongdoing by EquiCredit; (2) the appropriateness of any measure of alleged loss or damages; or (3) the appropriateness of class certification for any purposes other than settlement. If the Agreement of Settlement is terminated pursuant to its terms, or if the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection therewith shall be without prejudice to the status quo ante rights of the parties to this action. In

that event, the certification shall be dissolved ab initio, and all of the status quo ante rights of the parties shall be restored.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.