

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

JOHN PHAM, INAIH TANNOUS,	:	CIVIL ACTION
and SCOTT McCLEA individually	:	
and on behalf of other similarly	:	
situated employees,	:	
Plaintiffs	:	
	:	
v.	:	NO. 06-3044
	:	
OAK STREET MORTGAGE, LLC,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

January 29, 2007

The plaintiffs in this case claim that they and other similarly situated employees routinely worked as loan officers for the defendant mortgage company in excess of forty hours per week without overtime compensation in violation of the Federal Fair Labor Standards Act, 29 U.S.C. § 207(a)(1). The defendant has moved pursuant to Rule 12(f) of the Federal Rules of Civil Procedure to strike the “collective action” designation from the Complaint and all references to its employees being “similarly situated” to the plaintiffs. For the following reasons, I will deny the motions in their entirety.¹

I. BACKGROUND

Oak Street Mortgage is a mortgage lender, offering its potential customers a variety of financing, including home improvement loans, home equity loans, and debt

¹ The defendant filed two identical motions, the second of which was filed upon the filing of the Amended Complaint. (Documents #9 and #37).

consolidation loans. It has more than thirty branches nationwide, with branches in Philadelphia, Bethlehem, and Allentown, Pennsylvania. It employs approximately 340 non-exempt loan officers nationwide.

In the United States District Court for the Middle District of Florida, several loan officers unsuccessfully attempted to have a class certified which included loan officers nationwide. The court, however, allowed conditional certification of loan officers of four branches, and dismissed without prejudice the claims of the other loan officers. Epps, et al. v. Oak Street Mortgage, LLC (Case No. 5:04-cv-46).

Three of the original plaintiffs filed another action in the Middle District of Florida. Vaughn, et al. v. Oak Street Mortgage, LLC (Case No. 5:05-cv-311). These officers worked in the Jacksonville branch, a branch not included in the four Epps branches. Likewise, the plaintiffs in the instant case filed an action in the Eastern District of Pennsylvania,² alleging that they were loan officers working in the defendant's Philadelphia, Bethlehem, and Allentown branch offices; and that they bring the action on behalf of themselves and other similarly situated employees pursuant to 29 U.S.C. § 216(b). They reiterate that they and “the similarly situated employees are individuals who were, or are, employed by Oak Street as loan officers, selling loans at its Philadelphia, Bethlehem, and/or Allentown, Pennsylvania branch locations.” These are the allegations that Oak Street requests that I strike.

² Twenty-one federal actions in fourteen states have since been filed by current and former Oak Street loan officers, sixteen of which claim, like this one, to be a collective action.

II. LEGAL STANDARD

Under Rule 12(f), a court may strike “from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P. 12(f). Generally, motions to strike will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties. Environ Products, Inc. v. Total Containment, Inc., 951 F. Supp. 57, 59 (E.D. Pa. 1996). In determining whether to grant a motion to strike, district courts possess “considerable discretion” under Rule 12(f). River Road Development Corp. v. Carlson Corporation-Northeast, 1990 U.S. Dist. LEXIS 6201, *2 (E.D. Pa. 1990).

III. DISCUSSION

Here, the defendant argues that the collective action designation and references to similarly situated employees should be stricken because they are redundant, impertinent, and immaterial. The argument is based on its position that the plaintiffs have already litigated this issue in the two Middle District of Florida cases. The plaintiffs insist that they are not seeking nationwide collective treatment, but collective treatment limited to the loan officers in the Philadelphia, Bethlehem, and/or Allentown branches of the company.

Title 29 U.S.C. § 216(b) provides:

An action to recover the liability prescribed . . . may be maintained against any employer in any Federal or State court of competent jurisdiction by any one or more employees *for and on behalf of himself or themselves and other employees*

similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such party and a consent is filed in the court in which such action is brought.”

29 U.S.C. § 216(b) (emphasis added). Unlike a Rule 23 class action, a 29 U.S.C. § 216(b) class action does not bind those who fit within the class description unless they opt in. Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 693 (3d Cir. 1996). Nevertheless, the defendant seeks to strike the very language contemplated by 29 U.S.C. § 216(b), claiming that the issue was already litigated in Florida.

Contrary to the defendant’s assertion, the Florida court’s ruling did not address the issue here. The loan officers in this case allege that there are other loan officers who worked in the Philadelphia, Bethlehem, and/or Allentown branch offices who are similarly situated to them. This claim was not included in the cases brought in Florida. Those cases involved the determination of a nationwide class, and whether there were similarly situated loan officers in the four Epps branches. Whether there are similarly situated officers in Pennsylvania has not yet been litigated. The officers in these locations could have all received the same instructions concerning Oak Street’s overtime policies. The number of loan officers working for and/or having worked for the defendant in the Pennsylvania locations should be easily ascertainable, and exploring this fact will likely not result in excessive delay, expense, or encroachment.

I am not persuaded that the plaintiffs’ collective action allegation is “clearly unrelated” to their claims, or that the defendant will be prejudiced if the allegation

remains in the pleading. Thus, because the plaintiffs' allegations are not immaterial, impertinent, or redundant, I will deny the defendant's motion to strike.

An appropriate Order follows.

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NO. 06-3044

OAK STREET MORTGAGE, LLC, :

Defendant :

ORDER

STENGEL, J.

AND NOW, this 29th day of January, 2007, upon consideration of the defendant's two motions to strike (Documents #9 and 37), the plaintiffs' responses thereto (Documents #15 and 47), and the defendant's reply (Document #18), **IT IS HEREBY ORDERED** that the motions to strike are **DENIED** in their entirety.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.