

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

FEDERAL DEPOSIT INSURANCE CORPORATION : CIVIL ACTION
Statutory Successor to RESOLUTION TRUST :
CORPORATION In Its Capacity As Receiver :
For Atlantic Financial Savings, F.A. :
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v. :
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PARKWAY EXECUTIVE OFFICE CENTER : NO. 96-121

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Statutory Successor to RESOLUTION TRUST :
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RICHARD L. EVANS and HELENE EVANS : NO. 96-122

M E M O R A N D U M

On September 2, 1997, Defendants filed a Motion for Partial Reconsideration or in the alternative for Certification of Interlocutory Appeal, pursuant to Federal Rule of Civil Procedure 59(e) and 28 U.S.C.A. § 1292(b) (West 1993), respectively. Defendants seek reconsideration of the Court's Opinion and Order entered on August 18, 1997, insofar as it granted Plaintiff FDIC's Motion for Summary Judgment with regard to Defendants' statute of limitations defense. In the alternative, Defendants request that the Court certify the statute of limitations question for interlocutory appeal. For

the following reasons, I will deny the Motion.

I. Motion for Reconsideration

Defendants' Motion contains two arguments.

First, Defendants cite Cadle Co. v. 1007 Joint Venture, 82 F.3d 102 (5th Cir. 1996), in support of their primary argument that the six-year limitations period contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C.A. § 1821(d)(14)(A) (West 1989) ("FIRREA") should not apply in this case. Although Cadle Co. was not referred to in the Court's Opinion partially granting Plaintiff's Summary Judgment Motion, I did consider the arguments therein and concluded the following: Cadle Co. involved a claim made by an assignee of the FDIC. At the time of assignment, the cause of action had not yet accrued. Indeed, the assignee held a performing note. Therefore, the court in Cadle Co. found that the shorter state law statute of limitations applied. However, in the instant case, the claimant is the FDIC. FIRREA clearly and unambiguously provides the FDIC, as a governmental agency, with the longer of a six-year period from the date of accrual of the claim, or the applicable period under state law. 12 U.S.C.A. § 1821(d)(14)(A), (B). Since FIRREA is clear on its face, I need not look beyond the language of the statute to reject the Cadle Co. rationale as such.

Second, Defendants argue that even if the six-year statute of limitations applies, the FDIC's claims were filed one day late

because one of the six years was a leap year. I am precluded from acting on this argument. "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) (citations omitted), cert. denied, 476 U.S. 1171, 106 S. Ct. 2895 (1986). A motion for reconsideration is not an opportunity for a party to present previously available evidence or new arguments. See Corrigan v. Methodist Hospital, 885 F.Supp. 127, 127 (E.D.Pa. 1995). As such, I will not act on Defendants' "leap year" argument, presented here for the first time.

Although I need not reach Defendants' leap-year argument, I do state that Defendants' position is untenable. FIRREA provides for a "six year period" of limitation. 12 U.S.C.A. § 1821(d)(14)(A). Of necessity, any six-year period will include a leap-year. Congress' silence as to the definition of a year in this context only supports the Court's view that by choosing six-years and not 2,190 days as the period of limitation, Congress intended to provide a naturally-occurring six-year period, one that must include a leap year.

Defendants posit that under Pennsylvania law, a "year" means a "calendar year." 1 Pa. C.S.A. § 1991 (Purdon 1995). However, the same statutory section continues, "unless the context clearly indicates otherwise." Id. I believe that "Congress clearly

indicated otherwise" when it decided to provide governmental agencies a "six-year period," rather than a specific number of days, to commence a lawsuit. Similarly, under Pennsylvania law, when the legislature uses the phrase "a period of [] years" they "clearly intended to mean a quantity of time, i.e., 24 calendar months running from anniversary to anniversary." See Fox Chapel Area School District v. Dunlap, 417 A.2d 1329, 1330 (Cmwlth. Ct. Pa. 1980); see also LaRosa v. Cove Haven, Inc., 840 F.Supp. 319, 321 (M.D.Pa. 1993) (finding that "[a] year is a period consisting of either three hundred sixty-five (365) days, in the common sense, but also three hundred sixty-six (366) days when that same statutory period includes a leap year").

II. Certification of Interlocutory Appeal

In the alternative, Defendants request that I certify the statute of limitations question for interlocutory appeal pursuant to 28 U.S.C.A. § 1292(b). I shall deny the Defendants' alternative request.

28 U.S.C.A. § 1292(b) provides that in order for a district court to permit a party to seek an immediate appeal of an interlocutory order, the order must "involve[] a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation..." 28 U.S.C.A. § 1292(b). The trial court has discretion in the certification decision; however, certification

is appropriate only in "exceptional" circumstances. See Piazza v. Major League Baseball, 836 F.Supp. 269, 270 (E.D.Pa. 1992). The party seeking certification has the burden of showing that "exceptional circumstances justify a departure from the basic policy against piecemeal litigation and of postponing appellate review until after the entry of a final judgment." See Rottmund v. Continental Assurance Co., 813 F.Supp. 1104, 1112 (E.D.Pa. 1992); see also Link v. Mercedes-Benz of N. Am., 550 F.2d 860, 863 (3d Cir. 1977) ("We cannot sanction an erosion of the prohibition against piecemeal appellate review.")

The United States Court of Appeals for the Third Circuit instructs that before an order can be certified for interlocutory appeal, all three factors identified in 28 U.S.C.A. § 1292(b) must be satisfied. See Katz v. Carte Blanche Corp., 496 F.2d 747, 754 (3d Cir. 1974) (finding that "the district judge must certify that the order satisfies the three criteria"). The statute's three requirements are as follows: (1) the order from which the appeal is taken must involve a controlling question of law; (2) there must be substantial grounds for a difference of opinion concerning the issue; and (3) an immediate appeal may materially advance the ultimate termination of the litigation. See Orson Inc. v. Miramax Film Corporation, 867 F.Supp. 319 (E.D.Pa. 1994) (citation omitted).

A. Controlling Question of Law

In the Third Circuit, a controlling issue of law is one that "would result in a reversal of a judgment after final hearing."

Piazza, 836 F.Supp. at 270 (citing Katz, 496 F.2d at 755). To determine if an issue presents a "controlling question of law," the critical focus is on whether a different resolution of the issue would eliminate the need for trial. See Giansante v. Allan Kanner & Associates, P.C., No. 94-1770, 1994 WL 630209, at *2 (E.D.Pa. Nov.3, 1994) (citing Katz, 496 F.2d at 755). In this case, the granting of the Motion for Summary Judgment as to the statute of limitations defense is not dispositive. The availability of the defense does not affect the triability of the case and contrary resolution of the issue would not result in a "reversal of judgment after final hearing."

B. Substantial Grounds for Difference of Opinion

There has been no showing of conflicting precedent on the applicability of FIRREA's six year limitations period. As discussed above, FIRREA clearly and unambiguously provides the FDIC, as a governmental agency, with the longer of a six-year period from the date of accrual of the claim, or the applicable period under state law. 12 U.S.C.A. § 1821(d)(14)(A), (B). Defendants have not put forth any precedent to the contrary. Therefore, I find that there is no substantial ground for a difference of opinion.

C. Materially Advance the Ultimate Termination of the Litigation

After reviewing the issues involved in the litigation, I find that an immediate appeal will only delay the ultimate termination of this litigation. Discovery in this case is

complete. The trial is scheduled for November 25, 1997. "Where discovery is complete and the case is ready for trial an interlocutory appeal can hardly advance the ultimate termination of the litigation." See Rottmund, 813 F.Supp at 1112 (citing Caldwell v. Seaboard Coastline Railroad, 435 F.Supp 310, 312 (W.D.N.C. 1977)).

For the foregoing reasons, I will deny the Motion for Partial Reconsideration or in the alternative for Certification of Interlocutory Appeal.

An appropriate Order follows.

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O R D E R

AND NOW, this day of September, 1997, upon
consideration of Defendants' Motion for Partial Reconsideration
or in the alternative for Certification of Interlocutory Appeal,
pursuant to Federal Rule of Civil Procedure 59(e) and 28 U.S.C.A.
§ 1292(b) respectively, (Doc. No. 38) and Plaintiff's Response
thereto, (Doc. No 40) it is **HEREBY ORDERED** that the Motion is
DENIED.

BY THE COURT

John R. Padova, J.

