

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: National Century Financial Enterprises, Inc. Financial Investment Litigation.

**Case No. 2:03-MD-1565-JLG-MRA
Judge Graham
Magistrate Judge Abel**

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Rebecca S. Parrett, Plaintiff, vs. Bank One, N.A., et al., Defendants.

No. CIV-03-541 PHX-MHM

City of Chandler, et al., Plaintiffs, vs. Bank One, N.A., et al., Defendants.

No. 03-CIV-1220-PHX-ROS

State of Arizona ex rel. Peterson, et al, Plaintiffs, vs. Credit Suisse First Boston Corp., et al., Defendants.

No. 03-CIV-1618-PHX-FJM

Crown Cork & Seal Company, Inc. Master Retirement Trust, et al., Plaintiffs, vs. Credit Suisse First Boston Corp., et al., Defendants.

No. 03-CIV-2084-PHX-PGR

**REBECCA PARRETT’S REPLY AND JOINDER IN ARIZONA NOTEHOLDER
PLAINTIFFS’ REPLY TO THE CONSOLIDATED RESPONSE,
MEMORANDUM AND JOINDERS IN OPPOSITION TO HER REMAND MOTIONS**

For the reasons set forth in the following supporting memorandum, Rebecca S. Parrett (“Parrett”), who is the Plaintiff in *Parrett v. Bank One, N.A., et al.*, Arizona case No. CIV-03-541 PHX-MHM, and a Defendant in *City of Chandler v. Bank One, N.A.*, No. CIV 03-1220-PHX-ROS, *State of Arizona, et al. v. Credit Suisse First Boston Corp., et al.*, No. CIV 03-1618-PHX-FJM, and *Crown Cork & Seal Company, Inc. Master Retirement Trust, et al. v. Credit Suisse First Boston Corp., et al.*, No. 03-CIV-2084-PHX-PGR (collectively, “the Arizona

cases”), four of the consolidated actions in this litigation, hereby replies to the “Consolidated Response in Opposition to Certain Noteholder Plaintiffs’ and Rebecca Parrett’s Motions for Remand” filed by Defendants Bank One, N.A., Bank One Corporation, Bank One Capital Markets, Inc. (collectively, “Bank One”), JPMorgan Chase Bank, J.P. Morgan Chase & Co, JPMorgan Partners, LLC,¹ The Beacon Group, LLC (collectively, “JPMorgan”), Deloitte & Touche LLP (“D&T”), PricewaterhouseCoopers LLP (“PwC”), Credit Suisse First Boston LLC (“Credit Suisse”), Harold W. Pote, Eric R. Wilkinson, and Thomas G. Mendell (collectively, “the NCFE outside directors”), the “Memorandum in Opposition to Plaintiffs’ Motions for Remand or Abstention” filed by Defendants Donald Ayers, Elise Ayers, and E&D Investments, Inc. (collectively, “Ayers”), and the Joinders filed by Defendants The Beacon Group III – Focus Value Fund, L.P. (“FV Fund”), Lance Poulsen, Barbara Poulsen and Kuld Corp. (collectively, “Poulsen”), and joins in the “Arizona Noteholder Plaintiff’s [sic] Reply Brief in Support of Motions for Remand or Abstention.”

**MEMORANDUM IN SUPPORT OF PARRETT’S REPLY AND JOINDER
RELATING TO HER MOTIONS FOR REMAND OR ABSTENTION**

Parrett concurs with, incorporates by reference and joins in the excellent and well-reasoned Arizona Noteholder Plaintiffs’ Reply Brief in Support of Motions for Remand or Abstention insofar as it also applies to her own motions in their three cases.² Although that Reply Brief

¹ Bank One Capital Markets, Inc., and JPMorgan Partners, LLC, are defendants in the *City of Chandler, State of Arizona* and *Crown Cork & Seal* cases, but not in the *Parrett* case.

² To comply with the Case Management Order’s request for the parties “to combine their efforts and file consolidated briefs,” Parrett asked the Arizona Noteholder Plaintiffs to join in filing a consolidated reply memorandum in support of their remand/abstention motions. However, they refused to cooperate with her in these efforts and she did not see the Arizona Noteholders’ Reply Brief until late on February 25th, when it was filed and appeared in the Court’s electronic docket. Accordingly, earlier on February 25th Parrett filed a motion for additional time to file her own reply brief until March 10th in order to ascertain to what extent she would be able to join in their reply brief rather than having to research, draft and file a completely separate reply memorandum. No one has filed any opposition to that motion and it has yet to be ruled on. To meet the requested extension, Parrett is now filing her reply memorandum and joinder.

refers to those three cases in the caption and in the introduction on page 1, without exception, the arguments and facts contained therein apply equally to the other Arizona case, *Parrett v. Bank One, et. al.* Accordingly, insofar as it relates to her own case, Parrett incorporates by reference in this reply all the arguments and facts set forth in the Arizona Noteholder Plaintiffs' Reply Brief as though all of the references therein to "Plaintiffs," "Noteholders" or "Arizona cases" also include her and the *Parrett v. Bank One* case.

In addition, Parrett further replies to the aforementioned responses and oppositions with the following that was not discussed in the Arizona Noteholder Plaintiffs' Reply Brief:

A. Bankruptcy Claims

In the Consolidated Response, the responding Defendants argue that the fact that Parrett and the Arizona Noteholder Plaintiffs filed proofs of claim in the Ohio bankruptcy proceedings against debtor National Century Financial Enterprises, Inc. ("NCFE") shows that the Arizona cases are bankruptcy-related. However, the proofs of claim that Parrett filed are *totally unrelated* to the claims set forth in her Complaint in *Parrett v Bank One*, and vice versa. The proofs of claim that she filed in the NCFE bankruptcy proceedings are for (1) NCFE's conversion of funds belonging to two other bankruptcy debtors, (2) NCFE's fraudulent inducement of a loan agreement and an employment agreement, and (3) declaratory relief from the promissory note she signed in favor of NCFE.

Therefore, instead of supporting Defendants' argument about bankruptcy relatedness, Parrett's bankruptcy proofs of claim have just the opposite effect because they clearly show how different her claims in *Parrett v. Bank One* are from her claims in the NCFE bankruptcy proceedings. None of the latter are included or even remotely related to the former, which leads to but one conclusion: *none of Parrett's claims in Parrett v. Bank One are supported by or subject to bankruptcy jurisdiction.*

B. Standing to Oppose Remand and Lack of Unanimity of Removal

The responses and/or memoranda in opposition to all of the remand/abstention motions in the Arizona cases, including Parrett's and the Arizona Noteholder Plaintiffs' motions, were filed by four sets of Defendants as follows:

First, Bank One, JPMorgan, D&T, PwC, Credit Suisse, and the NCFE outside directors filed a Consolidated Response in Opposition to the remand/abstention motions filed by Parrett and the Arizona Noteholders in the *Parrett*, *City of Chandler* and *State of Arizona* cases, but not to the *Crown & Cork Seal* case, in which both Parrett and the Arizona Noteholder Plaintiffs filed post-transfer remand/abstention motions.

Second, Ayers filed a separate response and opposition to the Arizona Noteholder Plaintiffs' remand/abstention motions in all three of their cases, including the *Crown & Cork Seal* case, but curiously that response and opposition does not include the remand/ abstention motion in the *Parrett* case.

Third, Poulsen's response and opposition to the remand/motion in all four of the Arizona cases, including both *Parrett* and *Crown Cork & Seal*, consists merely of a joinder in both the aforementioned consolidated response and the Ayers response.

Fourth, the FV Fund's response and opposition, which again was directed to the remand/abstention motions filed in all four of the Arizona cases, also consisted merely of its joinder in the consolidated response.

The reason that it is important to delineate which Defendants filed these responses is that they are not the same Defendants who removed the Arizona actions to federal court, which relates to the issues of standing and unanimity. Only the JPMorgan Defendants filed a notice of removal in the *Parrett* case, while only the Bank One Defendants filed a notice of removal in the *City of Chandler*, *State of Arizona* and *Crown & Cork Seal* cases. Neither the Ayers Defendants,

the Poulsen Defendants nor the FV Fund Defendant, nor any other Defendant for that matter, have ever signed or formally joined in any of these removal notices, and none have ever filed their own removal notices.

Therefore, Bank One, Ayers, Poulsen and FV Fund lack standing to oppose Parrett's remand/abstention motion in her case. Similarly, JPMorgan, Ayers, Poulsen and FV Fund lack standing to oppose her or the Arizona Noteholder Plaintiffs' remand/ abstention motions in the Arizona Noteholder cases. If these Defendants wanted to be part of the removal of these cases, they were required to have formally joined the removal notices that were filed or file their own notices of removal within the 30 days after service of process as prescribed by the removal statute. The fact that they, as well as the other Defendants, who, for purposes of removal, had been served at that time,³ did not, clearly invalidates the removal notices that were filed, as is ably set forth in the Arizona Noteholder Plaintiffs' Reply Brief, as well as in their and Parrett's previously filed memoranda supporting the remand/abstention motions.

C. Non-Core Proceedings

In addition to repeating most of the arguments raised in the aforementioned consolidated response, incredulously the Ayers Defendants argue in their separate memorandum that there is bankruptcy-related jurisdiction because the claims in the Arizona cases should be considered "core" proceedings. (Ayers Resp. at 7-9). In each of the removal notices filed in each of the Arizona cases the removing Defendants expressly stated that removal was based solely on bankruptcy-related jurisdiction arising out of non-core proceedings. Moreover, in each of the removal notices, the removing Defendants also stated that they were exercising their right to a

³ *E.g.*, Credit Suisse First Boston Corp., PricewaterhouseCoopers LLP, Deloitte & Touche LLP, Richard Heuer, and Slade Hafner.

jury trial on Parrett's claims, and that they did not consent to have such a jury trial in, or any final orders and judgments entered by, the Bankruptcy Court.

The Ayers Defendants are the only Defendants in any of the Arizona actions to make the bizarre assertion that these are core proceedings, which is clearly flies in the face of Sixth Circuit authority. “[C]ore proceedings, either invoke[] a substantive right created by federal bankruptcy law or ... could not exist outside of the bankruptcy.” *Browning v. Levy*, 283 F.3d 761, 773 (6th Cir. 2002) (quoting *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6th Cir. 1992)). Therefore, none of Parrett's claims are core proceedings because they do not invoke any substantive right created by bankruptcy law and their existence is independent of NCFE's bankruptcy. Paraphrasing *Browning*, Parrett's claims clearly “are ‘non-core’ proceedings because, as claims ... against ... [non-debtor] third part[ies], they are not among the core proceedings arising under the Bankruptcy Code or listed in 28 U.S.C. § 157(b)(2)(A-O).” 283 F.3d at 773.

DATED: March 10, 2004

Respectfully submitted,

s/ **William A. Miller**

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2004, I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel who have registered as CM/ECF participants, and I hereby certify that on the same date, I mailed by United States Postal Service this document to the following non-CM/ECF participants:

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