

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)

CASE NO. 9:10-CV-81612
(Ancillary Pro. No. 08-81565-CIV-Hurley/Hopkins)

JONATHAN E. PERLMAN, ESQ., as court
appointed Receiver of Creative Capital
Consortium, LLC, et al.

Plaintiff,

vs.

WELLS FARGO BANK, N.A., as
successor-in-interest to Wachovia Bank, N.A.,

Defendant.

**MOTION FOR EXTENSION OF TRIAL DATE AND CASE MANAGEMENT DEADLINES
AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Wells Fargo Bank, N.A. as successor-in-interest to Wachovia Bank (“Wells Fargo”), hereby files this Motion For Extension Of Trial Date And Case Management Deadlines, and states as follows:

1. Plaintiff initiated this action on December 21, 2010.
2. On March 10, 2011, this Court entered its Order Setting Trial Date & Discovery Deadlines, Referring Case to Mediation & Referring Discovery to United States Magistrate Judge setting this case for trial on the trial calendar commencing January 3, 2012 (ECF No. 14).
3. On April 5, 2011, Plaintiff filed his Amended Complaint (ECF No. 19).
4. On September 21, 2011, the Court entered its Order Granting Joint Motion For Extension of Trial Date and Case Management Deadlines (the “Trial Order”), and placing this matter on the trial calendar commencing April 2, 2012 (ECF No. 50).

5. However, pursuant to this Court's Order Granting Defendant's Motion to Stay (ECF No. 45) discovery in this case was stayed until November 10, 2011, when this Court issued its Order Vacating Stay (ECF No. 51), lifting the stay of discovery the Court previously issued pending a ruling on Wells Fargo's Motion to Dismiss the Amended Complaint.

6. Thereafter, on November 22, 2011, this Court issued its Order Granting In Part Defendant's Motion to Dismiss and Denying Motion to Strike (the "Order on Motion to Dismiss")(ECF No. 52).

7. Under the current Trial Order, there are a number of pretrial deadlines set for the very near future, including, deadlines for expert disclosures and summary judgment motions of December 23, 2011.

8. Given that the discovery stay was lifted only one month ago and the motion to dismiss was ruled upon thereafter, the parties require additional time to conduct discovery, fulfill pretrial requirements, including the identification and disclosure of experts, prepare the case for trial, and otherwise comply with the Court's Trial Order.

9. Moreover, the Court's Order on Motion to Dismiss states that "the Court will withhold a determination of how best to handle these concerns [regarding the claims brought by individual investors] until after the pleading stage, to the extent that any of the related actions proceed that far." *See* Order on Motion to Dismiss (ECF No. 52, p. 9).

10. On December 13, 2011, the Court entered its Order Granting Wells Fargo's Motion to Dismiss (ECF No. 30) in the action styled *Nerline Horace-Manasse, and all others similarly situated v. Wells Fargo Bank, N.A.*, Case No. 10-81623-Hurley/Hopkins (the "Horace-Manasse Action"), but granted Nerline Horace-Manasse leave to file an amended complaint within twenty (20) days. Presently there is no case pending and it is unknown whether Nerline Horace-Manasse

will file an amended complaint, but the deadline for Nerline Horace-Manasse to file an amended complaint is currently January 3, 2012, at which point further briefing on a motion to dismiss any amended complaint may be necessary.

11. Based upon the foregoing, Wells Fargo believes that an extension of the trial date and case management deadlines of one-hundred eighty (180) days¹ from the current deadlines is appropriate so that the parties have sufficient time to conduct discovery and prepare this case for trial and so that the Court has sufficient time to make a determination as to how any claims which may be raised in the Horace-Manasse Action (or any action which may be brought by any other investor) will impact this case.

12. Plaintiff does not oppose an extension of the trial setting and pretrial deadlines, but only agrees to a sixty (60) day extension of the trial date and case management deadlines.

13. Wells Fargo does not believe that the time period proposed by Plaintiff allows sufficient time for the resolution of the issues described herein and the completion of discovery so that this case is ready for trial.

14. This motion has not been interposed for delay and will not prejudice any party, but rather to allow the parties and the Court sufficient time so that this action may be heard on the merits.

WHEREFORE, Wells Fargo Bank, N.A. respectfully requests entry of an order extending the trial date and case management deadlines 180 days from the current deadlines, and granting such other and further relief as is just and proper.

¹ Amy S. Rubin, Esq., lead counsel for Wells Fargo, has previously scheduled an out-of-country, prepaid family vacation for the dates of October 18, 2012 through November 2, 2012. Accordingly, Wells Fargo respectfully requests that the trial of this matter not be set during those dates.

CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L.R. 7.1.A.3

I HEREBY CERTIFY that, in accordance with S.D. Fla. L.R. 7.1.A.3, the parties have conferred and agree, in part, to the entry of the relief requested herein. Specifically, Plaintiff does not oppose an extension of the trial setting and pre-trial deadlines, but only agrees to extend those dates for a period of sixty (60) days.

Dated: December 15, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

*United States District Court
Southern District of Florida*

CASE NO: 10-CV-81612

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