

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

ROBERT C. MULCAHY : BK No. 99-14121
Debtor : Chapter 7
:

ROBERT C. MULCAHY and ANTHONY :
DiSTEFANO, Individually and on :
behalf of all others similarly :
situated :
Plaintiffs

v. : A.P. No. 02-1009

WASHINGTON MUTUAL, INC. and :
WASHINGTON MUTUAL HOME LOANS, INC. :
Defendants

- - - - -x

TITLE: *Mulcahy v. Washington Mutual, Inc., et al (In re
Mulcahy)*

CITATION: 2002 WL 31478177 (Bankr. D.R.I. Oct. 15, 2002)

ORDER DENYING MOTION TO DISMISS

APPEARANCES:

Christopher M. Lefebvre, Esq.
Attorney for Debtor/Plaintiff, Robert C. Mulcahy and
Plaintiff Anthony DiStefano
P.O. Box 479
Pawtucket, Rhode Island 02862

Joseph Avanzato, Esq.
Attorney for Defendants
ADLER POLLOCK & SHEEHAN, P.C.
2300 Financial Plaza
Providence, Rhode Island 02903

BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Defendants' Motion to Dismiss this adversary proceeding, wherein the Plaintiffs seek, *inter alia*, class certification. The Defendants request dismissal under the so-called "first-to-file rule." See *Small v. Wageman*, 291 F.2d, 734, 735-36 (1st Cir. 1961). Two other putative class actions were filed in a District Court for the District of Pennsylvania, five months prior to the commencement of the instant adversary proceeding, and because, according to the Defendants, all three lawsuits present the same issues for adjudication against the same Defendants, the Pennsylvania actions should continue and this adversary proceeding should be dismissed. The Plaintiffs counter: (1) that the motion is premature, as there has been no class certification in the Pennsylvania actions; and (2) the allegations in the various complaints clearly show that the causes of action are not the same.

The Plaintiffs in this action seek damages for multiple willful violations of the automatic stay, and for declaratory and injunctive relief under 11 U.S.C. § 105 for alleged violations of 11 U.S.C. § 506(b) and Fed. R. Bankr. P. 2016. Other than the request for injunctive relief under 11 U.S.C. § 506(b), the Pennsylvania lawsuits do not even resemble the

instant litigation. The Pennsylvania lawsuits involve causes of action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et. seq., breach of contract, and unfair trade practices under Pennsylvania law. It is obvious that the Pennsylvania lawsuits and this adversary proceeding do not present the same issues, and the assertion that the respective allegations do so is patently inaccurate. Additionally, as class has not been certified in the Pennsylvania cases, and given the state of the law on class certification in the District Court in Rhode Island, it is doubtful that a nationwide class action would ultimately be certified in this case.¹ See *Besette v. Avco Fin. Servs., Inc.*, 279 B.R. 442 (D.R.I. 2002); *Singleton v. Wells Fargo Bank, N.A. (In re Singleton)*, _ B.R. _, 2002 WL 1592756 (D.R.I. 2002). Accordingly, the Motion to Dismiss is DENIED.

Dated at Providence, Rhode Island, this 15th day of October, 2002.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge

¹ As it has not been raised, the question whether nationwide class certification in Pennsylvania would mandate Rhode Island's participation therein is not an issue here.