

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

FORENCE A. MARSHALL and : No. 02-00635
DONALD FISCHER, Individually :
and on behalf of others :
similarly situated, :
Plaintiffs :
 :
vs. : Civil Action - Law
 :
PREMIUM FINANCE TRUST and :
MALLALIEU-GOLDER INSURANCE, :
AGENCY, INC. :
Defendant :

ORDER

AND NOW, this 29TH day of April 2003, the Court
DENIES the Petition for Intervention filed in Woodlands Bank
v. Mallalieu-Golder Insurance Agency, Inc., Case Number 02-
00893.

The reality of this situation is that Case Number
002-00893 is complete and is no longer in litigation.
Plaintiff in the above-captioned matter, Woodlands Bank,
obtained judgment against Defendant Mallalieu-Golder
Insurance Agency, Inc. on or about July 3, 2002 in the
amount of \$157,030.69. On or about August 20, 2002
Woodlands Bank obtained judgment against Garnishee,
McCormick Law Firm in the amount of \$150,629.68. The
McCormick Law Firm was holding the sum of \$250,000, pursuant

to Court Order dated May 29, 2002 in the Class Action lawsuit of Florence A. Marshall and Donald Marshall, Individually and on behalf of others similarly situated v. Premium Finance Trust and Mallalieu-Golder Insurance Agency, Inc., Lyc. Cty. Case No. 02-00635.¹

The Class Members in Case No. 02-00635 obtained a stipulated judgment against Mallalieu-Golder on December 12, 2002. This judgment was obtained over five (5) months after Woodlands Bank obtained its judgment against Mallalieu-Golder.

On or about September 4, 2002 Attorney William Knecht, counsel for Mallalieu-Golder, wrote a letter to Attorney Joseph Orso, counsel for the Class Members in Case No. 02-00635, informing him of Woodlands Bank's judgment against Mallalieu-Golder and informing him that Woodlands Bank garnished the escrow account containing the \$250,000. Attorney Knecht reported that Woodlands obtained judgment against Mr. Knecht's law firm as garnishee in August of

¹ The \$250,000 was part of \$1,500,000 that Mallalieu-Golder received in life insurance proceeds as beneficiary of a life insurance policy on the life of Larry Fiorini, a principal in the Mallalieu-Golder Insurance Agency. In the Class Action lawsuit against Mallalieu-Golder, the Court Order of May 29, 20002 placed approximately 1.2 million of these proceeds into an escrow account exclusively for the benefit of the Plaintiff Class Action Members. The account was placed under the control of counsel for the Class.

The May 29, 2002 Order also placed \$250,000 of the insurance proceeds in a separate account for Mallalieu-Golder so that Mallalieu-Golder could continue in business and in order that Mallalieu-Golder could pay its

2002. In his letter, Mr. Knecht sought Mr. Orso's consent to release fund from the \$250,000 account and pay the judgment.

Mr. Orso did not consent to the payment, but he took no further action at that time, nor did he attempt to intervene in the Woodlands Bank case at that time.

On or about October 24, 2002, Woodlands Bank filed a Praecipe for Entry of Judgment against Jersey Shore State Bank for the sum of \$150,629.68 based upon the McCormick Law Firm's answers to Interrogatories in Woodlands Bank v. Mallalieu-Golder, Case No. 02-00893. A Writ of Attachment was also filed. See Answers to Petition to Intervene at averment 8 filed by Attorney William Knecht on April 11, 2003. Jersey Shore State Bank then released funds in the amount of Woodlands Bank judgment against Mallalieu-Golder thereby paying-off Woodlands' judgment from the \$250,000 fund previously discussed in this Order.²

As previously stated, the Class counsel's Petition to Intervene in the Woodlands Bank v. Mallalieu-Golder, case filed on or about April 7, 2003 occurred over five (5) months after the Woodlands Bank case completed with the payment of the judgment. The Petition to Intervene was filed over nine (9) months after Woodlands Bank obtained its

insurance creditors.

² The Court assumes that the \$250,000 escrow money was being held at Jersey

judgment against Mallalieu-Golder. Obviously, there is no case still in existence for Petitioners to intervene. Intervention cannot be permitted after judgment. See Santangelo Hauling, Inc. v. Montgomery County, 84 Pa.Cmwlth. 427, 478 A.2d 88, (1984); Newberg by Newberg v. Board. of Education, 330 Pa.Super. 65, 478 A.2d 1352 (1982). Similarly, intervention cannot be made after **payment** of a judgment. Therefore, the Court denies the Petition to Intervene.

Likewise, the disposition of this petition compels disposition of several of the other motions filed by the parties. The Court does not need to further address Woodland Banks' Preliminary Objections in Case Number 02-00893.

The Court must likewise deny Class counsel's Motion for Sanction for violation of Court Order (which motion revolves around the previously discussed Order of May 29, 2002) and Class counsel's Petition to Set Aside Execution and Order of Return Funds.

The Court Order of May 29, 2002 that was prepared and written by counsel, is not entirely clear on certain points. Paragraph four (4) of the Order that discusses the \$250,00 fund for insurance company creditors of Mallalieu-

Golder indicates that payment from the fund cannot be made without consent of the Class counsel if payment is made prior to any sale of Mallalieu-Golder, Insurance Agency. It is the Court's understanding that Mallalieu-Golder, in fact, has been sold to a third party. Further, paragraph four (4) refers to payments to insurance company creditors.

Paragraph five (5) of the Order also refers to obtaining a court order or consent of Class counsel prior to any sale or transfer of Mallalieu-Golder assets. Again, this provision seems to speak to the sale of Mallalieu-Golder to a third party. However, to the extent this provision would mean that Mallalieu-Golder could not voluntarily pay a creditor holding a judgment against it, without court order or consent of Class counsel, such provision would not have been violated under the facts presented. Mallalieu-Golder did not voluntarily pay money over to Woodlands Bank. See Attorney Knecht's letter to Attorney Orso dated September 4, 2002. Eventually the money owed to Woodlands Bank was obtained through the garnishment process.

Finally, Class counsel argues that the \$250,000 fund was subject to the Court Order dated May 29, 2002, and was "in custodia legis" pending distribution to the Class. The Court believes this position might be appropriate in

regard to the 1.2 million escrow account, which money was designated for the benefit of the Class Members. If Woodlands Bank had obtained the money from the account for the benefit of the Class, the Court believes there would be a problem that the Court would need to address. However, the monies which Woodlands Bank garnished were monies retained by Mallalieu-Golder and earmarked to be paid to insurance creditors. Clearly, the purpose of creating this fund for Mallalieu-Golder was to allow it to continue as a going business concern. The chance that any of the \$250,000 account would not have been utilized and could somehow have gone back to the Class Members was certainly remote. The Court would not consider the \$250,000 fund to be in custodia legis. The Court agrees with Class counsel that the separate \$1.2 million fund would not subject to attachments, execution or other claims of creditors of Mallalieu-Golder without consent of Class counsel or further Order of the Court.³ See also the Order of Court entered on April 25, 2003, denying an intervention petition of creditors of Mallalieu-Golder seeking to intervene in the Class Action lawsuit seeking monies from the 1.2 million dollar fund earmarked for the Class Action Plaintiffs in Case No. 02-

³ The Court believes this Order reaches all the motions pertaining to the issue of Woodlands Bank's Execution of Judgment.

00635.

By The Court,

Kenneth D. Brown, Judge

cc: William P. Carlucci, Esquire
William L. Knecht, Esquire
Joseph F. Orso, III, Esquire
Clifford Rieders, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)