

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

BARRY E. GARNER, JR., on His Own Behalf and on	:	July Term, 2000
Behalf of All Others Similarly Situated,	:	
Plaintiff	:	No. 1585
	:	
v.	:	Commerce Case Program
	:	
CHRYSLER FINANCIAL CORPORATION,	:	Control No. 102396
Defendant	:	

MEMORANDUM OPINION

Plaintiff Barry E. Garner, Jr., has filed a motion to approve dismissal (“Motion”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order for a hearing on the Motion.

BACKGROUND

The Plaintiff initiated this action on July 14, 2000 on behalf of himself and a class of persons who were allegedly victims of a scheme in which purchasers of motor vehicles unwittingly accepted a higher financing rate than they actually qualified for. In the course of discovery, however, the Plaintiff received documents that he claims “conclusively demonstrate” that his claims have no foundation. No class has been certified in this action, nor has a class certification motion been filed. In addition, the Motion asserts that the Parties are unaware of any publicity generated by this matter or of any potential class members who could have relied on the pendency of this action and thereby failed to assert claims. Consequently, the Plaintiff contends that granting the Motion will not prejudice any class members’ claims.

DISCUSSION

Under Pennsylvania Rule of Civil Procedure 1714 (“Rule 1714”), a class action suit may not be discontinued without the approval of the court. Rule 1714(a). If dismissal is made prior to certification, the action may be discontinued without notice to potential class members “if the court finds that the discontinuance will not prejudice the other members of the class.” Rule 1714(b). The purpose of this procedure is “to protect putative members of the class from prejudicial and binding action by the representative party(s).” Silver Spring Twp. v. Pennsy Supply, Inc., 149 Pa. Commw. 314, 321, 613 A.2d 108, 111 (1992).

To grant a request for discontinuance, a court must “conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights [J]udges should analyze a settlement in terms of a ‘range of reasonableness’ and should generally refuse to substitute their business judgment for that of the proponents.” Dauphin Deposit Bank & Trust Co. v. Hess, 698 A.2d 1305, 1308 (Pa. Super. Ct. 1997) (citing Buchanan v. Century Fed. Sav. & Loan Ass’n, 259 Pa. Super. 37, 46-47, 393 A.2d 704, 709 (1978)). Specifically, a court should examine the following:

(1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation, (4) the complexity, expense and likely duration of the litigation, (5) the stage of the proceedings and the amount of discovery completed, (6) the recommendation of competent counsel, and (7) the reaction of the class to the settlement.

Id. (citing Girsh v. Jepson, 521 F.2d 153 (3d Cir.1975)). In addition, a court must ensure that “there has been no private compensation to the representative party as a consideration for his discontinuance of the action.” Rule 1714, Explanatory Note --1987.

Rule 1714(b) gives significant responsibility to a court: “[t]he court should conduct a careful inquiry before approving a request for discontinuance before certification. It should not be treated as a perfunctory matter. This is essential because the court has the responsibility to enter a finding that there will be no prejudice to other members of the class.” Rule 1714, Explanatory Note --1987.

Furthermore, “the trial court has an affirmative duty to conduct a hearing and make a finding that a discontinuance will not prejudice members of the class, which finding must be factually based. Such a determination cannot be made pro forma.” Silver Spring Twp., 149 Pa. Commw. at 321, 613 A.2d at 112. Consequently, it is incumbent on the Court to schedule a hearing prior to granting the Motion.

To comply with its Rule 1714 obligations, the Court is scheduling a hearing on the Motion for Monday, January 29, 2001 at 1:00 p.m. in Courtroom 275. At that time, the Plaintiff may present evidence to show that this matter should be discontinued.

BY THE COURT:

JOHN W. HERRON, J.

Dated: December 20, 2000

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ORDER

AND NOW, this 20th day of December, 2000, upon consideration of Plaintiff Barry E. Garner, Jr.'s Motion to Approve Dismissal, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that a hearing and oral arguments regarding the Plaintiff's Motion shall be held on Monday, January 29, 2001 at 1:00 p.m. in Courtroom 275 of City Hall, Philadelphia, Pennsylvania.

BY THE COURT:

JOHN W. HERRON, J.