

SIGNED.



Dated: February 06, 2008

James M. Marlar
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
FIRST MAGNUS FINANCIAL)
CORPORATION,) No. 4:07-bk-01578-JMM
Debtor.) Adversary No. 4:07-ap-00060-JMM

JENNIFER BINFORD, SHEILA HART,)
SUSAN HOWARD, JENNIFER) **MEMORANDUM DECISION RE:**
HURTADO, SHEILA LOEBS, KELLY) **MOTION TO DISMISS FILED BY**
PLUMMER, TIRZAH ROLLE and) **FIRST MAGNUS FINANCIAL**
TAWANA WRIGHT, on behalf of) **CORPORATION**
themselves and all others similarly situated,)
Plaintiffs,

vs.)
FIRST MAGNUS FINANCIAL)
CORPORATION and FIRST MAGNUS)
CAPITAL, INC.,)
Defendants.

First Magnus Financial Corporation ("FMFC") has filed a motion to dismiss this case (Dkt. #23). The motion was argued on February 4, 2008. Although there were numerous interesting legal concepts discussed between the parties and the court, those issues need only be addressed if the court can get past the threshold issue.

Here, the threshold question is: Is it necessary to determine the claims of these eight Plaintiffs in the context of a separate adversary proceeding?

1 Initially, these eight Plaintiffs filed what they hoped would be a class action. However,
2 this court elected not to certify the class. (See Order of January 10, 2008, Dkt. #36.)

3 It turns out that each of the eight Plaintiffs have also filed proofs of claim, pursuant
4 to FED. R. BANKR. P. 3001, 3002, and 3003. Those claims may be entitled to *prima facie* validity.
5 FED. R. BANKR. P. 3001(f). If allowed, they will be paid in the order of priority established by the
6 bankruptcy code.

7 On the other hand, if all or any portion of a filed claim is objected to, then the
8 claimants are entitled to hearings on the grounds for challenge. FED. R. BANKR. P. 3007. 11 U.S.C.
9 § 502. If the challenge becomes factually or legally intensive, it is treated as a "contested matter"
10 under FED. R. BANKR. P. 9014, and if helpful, the court can order that many or most of the other
11 litigation rules also apply. See FED. R. BANKR. P. 9014.

12 Therefore, it seems to be a waste of judicial resources to move forward on this
13 adversary complaint, when the claims process is moving the same issues down a parallel track. It
14 might also be the case that all or some part of the eight parties' proofs of claim may even be allowed.
15 If so, then it is unnecessary to generate additional work and effort in a separate affirmative legal
16 action designed to obtain the same ruling.

17 Besides the question of judicial efficiency, and not having to tread the same ground
18 twice, there is also an element of estoppel involved. These eight parties elected to voluntarily file
19 proofs of claim, and have thereby elected to let their claims be resolved through that process. At
20 the same time, they filed the instant adversary complaint, which seeks the same outcome as does the
21 claims process.

22 It is the court's responsibility to control how the same issues are decided. In so doing,
23 it is charged with the responsibility to control the mode of presenting evidence in order to, among
24 other things, avoid needless consumption of time. See FED. R. EVID. 611(a). Being asked to do the
25 same thing, in two different ways, adds burden to the parties and the court, and unnecessarily
26 increases the expense. The court has the discretion to manage its docket, so long as no prejudice
27 inures to any party. See *Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537, 1557 (9th Cir. 1996).

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1 An involuntary dismissal may be authorized under FED. R. CIV. P. 41(b), made
2 applicable by FED. R. BANKR. P. 7041. In deciding whether to dismiss an action under Rule 41(b),
3 the court weighs five factors: (1) the public's interest in expeditious resolution of litigation; (2) the
4 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
5 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *In re*
6 *George*, 322 F.3d 586, 591 (9th Cir. 2003).

7 Based on the foregoing analysis, the court has determined that because the complaint's
8 same issues will be resolved through the claims process, there is no reason to prosecute two separate
9 proceedings to the same end. Therefore, a FED. R. CIV. P. 41(b) involuntary dismissal, without
10 prejudice, will be entered.

11 This decision is, in part, also governed by 11 U.S.C. § 105(a); (d)(2) (prescribing
12 limitations and procedures to ensure that cases are handled expeditiously and economically).

13 Because judicial efficiency mandates dismissal, it is unnecessary to discuss, at this
14 time, the many other interesting legal issues raised by the parties. Those issues will no doubt
15 resurface in the claims adjudication process.

16 A separate order will be entered which grants FMFC's motion to dismiss this case.

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18 DATED AND SIGNED ABOVE.
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