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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 AUG -8 PM 3:31

A. MARPLE
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

TIMOTHY VANDEVEER, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

AMERICAN SAVINGS BANK,
AMERICAN SAVINGS HOLDING, INC.
and DOE DEFENDANTS 1-50

Defendants.

Civil No. 11-1-0458-03 ECN
(Class Action)

**ORDER GRANTING DEFENDANTS
AMERICAN SAVINGS BANK and
AMERICAN SAVINGS HOLDING, INC.'S
MOTION FOR INTERLOCUTORY APPEAL
OF ORDER DENYING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT, AND MOTION TO
STAY ACTION DURING APPEAL FILED
JULY 21, 2011; EXHIBIT "A"**

DATE: August 3, 2011
TIME: 11:00 a.m.
JUDGE: The Honorable Edwin C. Nacino

No Trial Date Set

**ORDER GRANTING DEFENDANTS AMERICAN SAVINGS BANK and
AMERICAN SAVINGS HOLDING, INC.'S MOTION FOR INTERLOCUTORY
APPEAL OF ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT ON
THE PLEADINGS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT, AND
MOTION TO STAY ACTION DURING APPEAL FILED JULY 21, 2011**

Defendants AMERICAN SAVINGS BANK and AMERICAN SAVINGS HOLDING, INC.'s (collectively, "*Defendants*") Motion for Interlocutory Appeal of Order Denying Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment, and Motion to Stay Action During Appeal filed July 21, 2011 ("*Motion*"), came on for hearing before the Honorable Edwin C. Nacino on August 3, 2011 at 11:00 a.m. ("*Hearing*"). At the Hearing, Terence J. O'Toole, Esq., Mark J. Bennett, Esq., and Brandi J. Buehn, Esq. appeared on behalf of Defendants, and John F. Perkin, Esq., Brandee J.K. Faria, Esq., and James J. Bickerton, Esq. appeared on behalf of Plaintiff TIMOTHY VANDEVEER, individually and on behalf of all others similarly situated ("*Plaintiff*").

The Court having reviewed and considered the Motion, all memoranda in support and opposition thereto, the declarations and exhibits attached thereto, the records and files herein, and the argument of counsel, HEREBY FINDS as follows:

(1) that pursuant to Hawai'i Revised Statutes § 641-1(b) it is within the Court's discretion whether or not to allow an immediate interlocutory appeal of its Order Denying Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment ("*Preemption Motion*"), entered July 15, 2011, which is attached hereto as Exhibit "A" ("*Order*");

(2) that the Court has considered whether granting an appeal of its Order would be advisable for the speedy termination of this litigation before the Court;

(3) that in their Preemption Motion, Defendants sought judgment in their favor on the ground that all of Plaintiff's claims, as pled in the Complaint, are preempted by federal law;

(4) that the issue of whether or not Plaintiff's claims are preempted by federal law is a controlling question of law;

(5) that the Court denied the Preemption Motion;

(6) that there is a substantial ground for difference of opinion on the issue of federal preemption on which this Court entered its Order;

(7) that if Defendants prevail on their appeal, the litigation will be terminated;

(8) that given the nature of Defendants' federal preemption defense, granting an appeal of the Order would be advisable for the speedy termination of this litigation in accordance with Hawai'i Revised Statutes § 641-1(b); and

(9) that the Court adopts and incorporates herein by reference all additional findings and reasons stated on the record by the Court at the Hearing.

Based on the above findings, the Court HEREBY GRANTS Defendants' Motion in its entirety, and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants may immediately appeal the Court's Order on the Preemption Motion (attached as Exhibit "A"), and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action shall be stayed in its entirety until conclusion of the appeal.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, _____

AUG 08 2011


EDWIN C. NACINO



THE HONORABLE EDWIN C. NACINO

Timothy Vandever vs. American Savings Bank, et al.; Civil No. 11-1-0458-03 ECN
Defendants American Savings Bank and American Savings Holding, Inc.'s Motion for Interlocutory Appeal of Order Denying Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment, and Motion to Stay Action During Appeal filed July 21, 2011

APPROVED AS TO FORM:



JOHN F. PERKIN
BRANDEE J.K. FARIA
JAMES J. BICKERTON

Attorneys for Plaintiff

TIMOTHY VANEDEER,
individually and on behalf of all others similarly situated

Timothy Vandever vs. American Savings Bank, et al.; Civil No. 11-1-0458-03 ECN
Defendants American Savings Bank and American Savings Holding, Inc.'s Motion for Interlocutory Appeal of
Order Denying Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment,
and Motion to Stay Action During Appeal filed July 21, 2011

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 JUL 15 AM 8:54

H. CHING
CLERK

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Attorneys for Plaintiffs
TIMOTHY VANDEVEER,
individually and on behalf of all others
similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

TIMOTHY VANDEVEER, individually
and on behalf of a Class of Similarly
Situated Persons,

Plaintiff,

v.

AMERICAN SAVINGS BANK,
AMERICAN SAVINGS HOLDING INC.
and DOE DEFENDANTS 1-50,

Defendant.

) Civil No. 11-1-0458-03 ECN
) (Class Action)

) **ORDER DENYING DEFENDANTS'**
) **MOTION FOR JUDGMENT ON THE**
) **PLEADINGS OR IN THE**
) **ALTERNATIVE FOR SUMMARY**
) **JUDGMENT**

) Hearing Date: July 6, 2011
) Hearing Time: 8:30 a.m.

) Honorable Judge: Edwin C. Nacino
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)
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ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Defendants AMERICAN SAVINGS BANK and AMERICAN SAVINGS HOLDING, INC.'s ("Defendants") *Motion For Judgment On The Pleadings Or In The Alternative For Summary Judgment* ("Motion") came on for hearing on July 5, 2011 with James J. Bickerton, Esq. and John F. Perkin, Esq. appearing on behalf of Plaintiff Timothy Vandever and the putative class, ("Plaintiff") and Terrence O'Toole, Esq. and Brandi Buehn, Esq. and appearing on behalf of Defendants.

The Court having reviewed all the memoranda, declarations and exhibits submitted, and the record herein and having heard and considered the arguments of counsel, and, having construed the Motion as one for summary judgment, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion is hereby DENIED without prejudice for the reasons stated on the record by the Court at the hearing on the Motion, which reasons are adopted and incorporated herein by reference.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii

JUL 16 2011

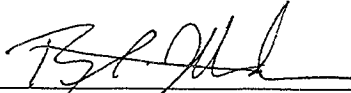
EDWIN C. NACINO



JUDGE OF THE ABOVE ENTITLED COURT

Civ. No. 11-1-0458-03 ECN; Vandever, et. al. v. American Savings Bank, American Savings Holding Inc.; *Order Denying Defendants' Motion For Judgment On The Pleadings Or In The Alternative For Summary Judgment*

APPROVED AS TO FORM:



TERRENCE O'TOOLE
SHARON V. LOVEJOY
BRANDI BUEHN
Attorneys for Defendants
AMERICAN SAVINGS BANK and
AMERICAN SAVINGS HOLDING INC.'s

Civ. No. 11-1-0458-03 ECN; Vandever, et. al. v. American Savings Bank, American Savings Holding Inc.; *Order Denying Defendants' Motion For Judgment On The Pleadings Or In The Alternative For Summary Judgment*

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