

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: DAVID A. HUNT, JR.; and BOBBY J.)
HUNT, f/k/a Bobbie J. Rupp,)
)
 Debtors.)
_____)
)
WELLS FARGO BANK, N.A.,)
)
 Plaintiff/Appellant,)
)
 vs.) Appeal No. 07-3297
)
 DAVID A. HUNT, JR.; BOBBY J. HUNT;)
and WILLIAM H. GRIFFIN,)
)
 Defendants/Appellees.)
_____)

**JOINT MOTION FOR CONSIDERATION OF
PREVIOUSLY-FILED AMICUS BRIEFS**

COME NOW American Financial Services Association, National Automobile Dealers Association and Kansas Bankers Association and jointly move the Court for an Order allowing their previously-filed amicus briefs in the case of *Hernandez-Simpson v. Ford Motor Company*, Appeal Nos. 07-3173 & 07-3187, to be considered by the panel in connection with its determination of the above captioned appeal. In support of their motion, movants state as follows:

1. On June 20, 2007, an appeal was docketed in this Court styled *Hernandez-Simpson v. Ford Motor Company (In re Hernandez-Simpson)*, Appeal No. 07-3173. The

appeal actually consisted of five cases that had been consolidated in the United States District Court of the District of Kansas, after being appealed from the Bankruptcy Court for that district. (*Citifinancial Auto v. Hernandez-Simpson (In re Hernandez-Simpson)*, Case No. 06-2527-JAR; *Ford Motor Credit Company v. Burgess (In re Burgess)*, Case No. 06-2528-JAR; *Citifinancial Auto v. Wallace (In re Wallace)*, Case No. 06-2630-JAR; *Ford Motor Credit Company v. Parker (In re Parker)*, Case No. 06-2531-JAR; *Ford Motor Credit Company v. Scheerer (In re Scheerer)*, Case No. 07-2084-JAR). The appeals in these cases were taken by the debtors from the district court's determination that the respective creditors were entitled to "Till interest" on their secured claims under what is known as the hanging paragraph of 11 U.S.C. §1325

2. In the *Burgess* case only, Ford Motor Credit Company filed a cross-appeal from the district court's determination that the amount advanced to pay-off "negative equity" in a trade-in vehicle is not included in a lender's purchase money security interest under the same hanging paragraph. The cross-appeal was assigned appeal number 07-3187.

3. Thereafter, the following parties filed amicus briefs, either by consent of the parties of leave of Court, on the negative equity issue:

- American Financial Services Association and National Automobile Dealers Association (in support of creditor's position);
- Kansas Bankers Association (in support of creditor's position);
- Law professors Jean Braucher, Michaela M. White, Adam J. Levitin, Michael Hillinger and Ingrid M. Hillinger (in support of debtors' position).

- National Association of Consumer Bankruptcy Attorneys (in support of debtors' position);

4. On March 20, 2008, Ford Motor Credit Company Wells Fargo Bank filed a joint motion seeking to have Ford Motor Credit Company's cross-appeal in the *Burgess* portion of *Hernandez-Simpson* consolidated with Wells Fargo's above-captioned appeal. Both the *Burgess* cross-appeal and the present case involve the negative equity issue identified above.

5. On March 25, 2008, the panel granted the motion to consolidate for purposes of argument and submission and the consolidated appeals were set for oral argument on May 14, 2008.

6. Previously, on July 24, 2007, the Court had issued a order directing the parties in *Hernandez-Simpson* to show cause why the appeal should not be dismissed for lack of jurisdiction. After the parties responded to the show-cause order, the jurisdictional issue was referred to the panel.

7. On April 22, 2008, the panel entered an order concluding that all portions of the *Hernandez-Simpson* appeal must be dismissed for lack of jurisdiction. The Court therefore dismissed appeal number 07-3173 as well as the cross-appeal in number 07-3187. The above-captioned appeal was ordered to proceed to oral argument on May 14, 2008.

8. Movants understand that the dismissal of Ford Motor Credit Company's cross-appeal in the *Burgess* portion of *Hernandez-Simpson* means that their amicus briefs will not be considered by the panel in the present case.

9. For the reasons stated in their amicus briefs, movants believe that those briefs would be of assistance to the Court in addressing the negative equity issue involved herein. The issue is one of nationwide significance that has yet to be addressed by any Circuit Court.

10. Counsel for movants has attempted to contact counsel for the parties in this case to determine their positions on this motion. Counsel for appellant Wells Fargo is not opposed to the motion. Counsel for appellees has, at this point, not responded to the inquiry.

11. Although this motion is filed only behalf of amici who support the creditor's position, movants have no opposition to the entry of an order allowing all previously-filed amicus briefs, including those supporting debtors, to be considered by the panel.

WHEREFORE, American Financial Services Association, National Automobile Dealers Association and Kansas Bankers Association respectfully request that their previously-filed amicus briefs in *Hernandez-Simpson v. Ford Motor Company*, Appeal Nos. 07-3173 & 07-3187, be considered by the panel in connection with its determination of the above-captioned appeal.

Respectfully submitted,

/s/ Lyndon W. Vix

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DIGITAL SUBMISSION CERTIFICATE

I hereby certify that the document submitted herewith in digital form to the clerk and counsel is, with the exception of signatures, an exact copy of the written document filed with the Clerk. I further certify that the digital submission has been scanned for viruses using the following programs:

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all updated not earlier than April 24, 2008, and that, according to said programs, the submission is free of viruses.

/s/ Lyndon W. Vix

Lyndon W. Vix

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2008, a true and correct copy of the above and foregoing Motion was mailed and/or e-mailed to:

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