

Leach v. FDIC

CV-91-581-B 01/28/93

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

Roy F. Leach, Jr., and
Kimberly A. Leach, as Trustees
820 Lafayette Realty Trust

v.

Civil No. 91-581-B

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver of
Numerica Savings Bank, F.S.B.

O R D E R

Pursuant to an October 7, 1992 Order of the Magistrate Judge, defendant FDIC was directed to file a dispositive motion on or before November 6, 1992. The FDIC responded to this directive by filing a motion to dismiss for failure to comply with administrative claims procedure (document no. 9). Plaintiffs Roy F. Leach, Jr. and Kimberly A. Leach, as Trustees of 820 Lafayette Realty Trust, objected to the motion on the grounds that it was barred by 11 U.S.C. § 362(a)(1).

11 U.S.C. § 362(a)(1) applies only to claims commenced against the debtor. See Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n., 892 F.2d 575, 577 (7th Cir. 1989); In Re Barry Estates, 812 F.2d 67, 71 (2nd Cir. 1987); Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp. 682 F.2d 446, 448 (3rd Cir. 1982). This

action was commenced by the debtor. Accordingly, 11 U.S.C. § 362(a)(1) does not provide a valid basis for objection to the FDIC's motion to dismiss.

Plaintiffs are directed to file an objection containing a statement of any other grounds on which the court should deny the defendant's motion. If an objection is not filed on or before February 15, 1993, the court will grant the motion to dismiss.

SO ORDERED.

Paul Barbadoro
United States District Judge

January 28, 1993

cc: Thomas M. Keane, Esq.
Michael Lenehan, Esq.