

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 27, 2017

Elisabeth A. Shumaker
Clerk of Court

C.R. ENGLAND, INC., a Utah
corporation; OPPORTUNITY LEASING,
INC., a Utah corporation,

Petitioners,

v.

CHARLES ROBERTS, an individual;
KENNETH MCKAY, an individual, on
behalf of themselves and others similarly
situated,

Respondents.

No. 17-600
(D.C. No. 2:12-CV-00302-RJS-BCW)
(D. Utah)

ORDER

Before **KELLY, BACHARACH** and **MORITZ**, Circuit Judges.

This matter is before us on the *Petition for Permission to Appeal of Defendants C.R. England, Inc. and Opportunity Leasing, Inc.* and Plaintiffs-Respondents' *Answer in Opposition to Defendants' Petition for Permission to Appeal*. We also have Defendants-Petitioners' *Motion for Leave to File Reply in Support of Rule 23(f) Petition of Defendants C.R. England, Inc. and Opportunity Leasing, Inc.*, Plaintiffs-Respondents' *Memorandum in Opposition to Defendants' Motion for Leave to File Reply in Support of Rule 23(f) Petition*, Defendants-Petitioners' *Reply in Support of Motion for Leave to File Reply in Support of Rule 23(f) Petition of Defendants C.R. England, Inc. and Opportunity*

Leasing, Inc., Plaintiffs-Respondents’ *Motion to Seal Exhibits D & R to Answer in Opposition to Defendants’ Petition for Permission to Appeal*, and Defendants-Petitioners’ *Motion for Leave to File Document Under Seal*.

We grant Defendants-Petitioners’ *Motion for Leave to File Reply in Support of Rule 23(f) Petition of Defendants C.R. England, Inc. and Opportunity Leasing, Inc.*, and direct the Clerk of Court to file the proposed reply brief as of the date that the motion was filed. We also grant Plaintiffs-Respondents’ *Motion to Seal Exhibits D & R to Answer in Opposition to Defendants’ Petition for Permission to Appeal* and Defendants-Petitioners’ *Motion for Leave to File Document Under Seal*.

Upon careful consideration of the parties’ filings, the district court’s class certification order, and the applicable law, we deny Defendants-Petitioners’ Rule 23(f) petition. The decision whether to grant a Rule 23(f) petition is purely discretionary. *See* Fed. R. Civ. P. 23(f) (providing that “[a] court of appeals may permit an appeal from an order granting or denying class certification”); *Vallario v. Vandehey*, 554 F.3d 1259, 1262 (10th Cir. 2009) (noting that the discretion in the Rule 23(f) context is “‘unfettered’ and ‘akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari’”) (quoting Fed. R. Civ. P. 23(f) advisory committee’s note). Defendants-Petitioners have not established that the district court’s class certification decision was based upon manifest error, nor have they established that permissive interlocutory review is necessary to address “an unresolved issue of law relating to class actions that is likely to evade end-of-case review” or to avoid a “death knell” situation. *See Vallario*, 554 F.3d at 1263-64 (describing the three situations and providing the following description of a

manifest error situation: “where the deficiencies of a certification order are both significant and readily ascertainable”).

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

by: Chris Wolpert
Chief Deputy Clerk