No. 11-0503

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 02, 2011
LEONARD GREEN, Clerk

In re: COMMUNITY TRUST FINANCIAL CORPORATION; COMMUNITY TRUST BANK; COMMUNITY TRUST BANK OF TEXAS,

Petitioners.

O R D E R

Before: DAUGHTREY, CLAY, and STRANCH, Circuit Judges.

Plaintiff Community Trust Bancorp, Inc., a Kentucky corporation, filed a trademark-infringement action against defendants Community Trust Financial Corporation and Community Trust Bank, both Louisiana corporations, and Community Trust Bank of Texas, a Texas corporation. Community Trust Bank and Community Trust Bank of Texas are wholly-owned and operated subsidiaries of Community Trust Financial Corporation (collectively, "CTF"). The defendants moved to dismiss the complaint for lack of personal jurisdiction. The district court denied the motion to dismiss, but subsequently certified its order for immediate appeal under 28 U.S.C. § 1292(b). The defendants now petition to this court for permission to appeal the district court's order. The plaintiff opposes an immediate appeal.

The district court determined that its order met the statutory requirements for pursuing an interlocutory appeal. Nevertheless, CTF must still persuade us "that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978). We may, in our discretion, permit an appeal to be taken from an order certified for interlocutory appeal by the district court if:

(1) the order involves a controlling question of law; (2) a substantial difference of opinion exists regarding the correctness of the decision; and (3) an immediate appeal may materially advance the ultimate conclusion of the litigation. 28 U.S.C. § 1292(b); *see also In re City of Memphis*, 293 F.3d 345, 350 (6th Cir. 2002). In this case, the unsettled law in the area, the fact that the issue arises early in the case, and the likelihood that the issue will recur persuade us to accept this appeal.

Because we conclude that all of these factors are present, we **GRANT** the petition for permission to appeal.

ENTERED BY ORDER OF THE COURT

Clerk