UNITED STATE BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In re:	Chapter 11
MANHATTAN INVESTMENT FUND LTD., ET AL.,	00-10922 (BRL) 00-10921 (BRL) Jointly Administered
Debtors,	
HELEN GREDD, Chapter 11 Trustee for MANHATTAN INVESTMENT FUND LTD., ET AL.,	
Plaintiffs,	Adv. Pro. No. 01-2606
v.	
BEAR, STEARNS SECURITIES CORP.,	
Defendant.	

----------x

MEMORANDUM DECISION GRANTING
FINAL JUDGMENT PURSUANT TO FRCP 54

Pursuant to Federal Rule of Civil Procedure 54(b), the Chapter 11 Trustee for Manhattan Investment Fund Ltd. moves for the entry of a final judgment on count I of the complaint following this Court's Memorandum Decision dated January 9, 2007, granting the Trustee's motion for summary judgment.

Federal Rule of Civil Procedure 54(b)[1] permits a court to certify a partial judgment as final

[1]Fed.R.Civ.Proc. 54(b) made applicable here by Fed.R.Bankr.Proc. 7054(a), provides as follows:
(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or

"only upon an express determination that there is no just reason for delay." The court's power to certify a judgment as final should be "exercised sparingly," and "only if there are interests of sound judicial administration and efficiency to be served, or in the infrequent harsh case where there exists some danger of hardship or injustice through delay which would be alleviated by immediate appeal." *Adrian v. Town of Yorktown*, 2006 WL 3826663, *1 (2d Cir. December 28, 2006) *quoting Harriscom Svenska AB v. Harris Corp.*, 947 F.2d 627, 629 (2d Cir.1991). In making such a certification, a court "should not merely repeat the formulaic language of the rule, but rather should offer a brief, reasoned explanation." *Id.*

To have a "final judgment" under Rule 54(b), (1) multiple claims or multiple parties must be present, (2) at least one claim, or the rights and liabilities of at least one party, must be finally decided, and (3) the court must make an express determination that there is no reason for delay and expressly direct the clerk to enter judgment. *See* Fed. R. Civ. P. 54(b); *see also Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 164 -165 (2d Cir. 2005). Bear Stearns opposes the Trustee's motion for entry of a final judgment on Count I under Bankruptcy Rule 7054(b) for two reasons.

First, Bear Stearns contends that this Court lacks jurisdiction to enter a final judgment here because Bear Stearns argues that it is entitled to a jury trial with respect to an issue that this court decided as a matter of law. While Bear Stearns disagrees with this Court's determination regarding Count I of the complaint, Bear Stearns can appeal that determination. The issues before the Court on summary judgment have been finally determined -rightly or wrongly- and accordingly it is appropriate to enter a final judgment and allow the appeals to go forward if such

---

other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

is contemplated.

The only remaining claim in the adversary proceeding, Count IV, is a claim for equitable subordination of a proof of claim that Bear Stearns may - or may not - some time in the future - file. It is not clear to this Court whether Count IV will ever go forward. Bear Stearns may never file a proof of claim or, at a minimum, may await the outcome of an appeal. Accordingly, Count IV is not "inherently inseparable" from Count I. *See Ginett v. Computer Task Group, Inc.,* 962 F.2d 1085, 1091 (2d Cir. 1991) ("Only those claims 'inherently inseparable' from or 'inextricably interrelated' to each other are inappropriate for rule 54(b) certification.").

Moreover, this bankruptcy case has been pending for seven years. Judicial economy and the preservation of the assets of this estate are best served by permitting any appeal of this Court's decision to be taken immediately. Accordingly, the Court expressly finds and determines pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay for the consideration by the District Court on appeal of this court's decision granting summary judgment.

Bear Stearns also objects to the amount of the proposed final judgment on Count I arguing that it permits "double recovery" against it because it does not take into account the undisputed fact that Bear Stearns returned more than $16 million of the Fund's account deposits to the Trustee before this litigation even began. I agree with Bear Stearns on this point and direct the Trustee to submit and order and judgment that gives effect to the amount that Bear Stearns returned to the Trustee.

SUBMIT AN ORDER CONSISTENT WITH THE FOREGOING.

Dated: New York, New York
February 15, 2007

/s/ Burton R. Lifland
United States Bankruptcy Judge