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United States District Court, S.D. New York.

MARISOL A., et al., Plaintiffs,
v.
Rudolph W. GIULIANI, Mayor of the City of New York, et al., Defendants.

No. 95 CIV. 10533 (RJW). | Aug. 12, 1996.

Opinion

MEMORANDUM AND ORDER

ROBERT J. WARD, District Judge.

*1 On June 18, 1996, this Court granted plaintiffs' motion pursuant to Rule 23, Fed.R.Civ.P., for class certification and, on July 3, 1996, signed an order to that effect. The City defendants then asked this Court to certify that decision for immediate appeal pursuant to 28 U.S.C. § 1292(b). The State defendants did not indicate at that time that they joined in the application.

On July 26, 1996, this Court signed an order certifying the matter for interlocutory review. After being advised that the State defendants intended to join in the application, this Court, on August 7, 1996, approved a stipulation so doing. Because defendants failed to file a petition for permission to appeal with the clerk of the court of appeals within the ten day period required by Rule 5(a), Fed.R.App.P., they now ask this Court again to exercise its discretion to certify this matter for appellate consideration.

Despite a strong belief that certification of the instant class pursuant to Rule 23, Fed.R.Civ.P., was proper, this Court nevertheless feels constrained to grant defendants' application to certify this matter since it involves a controlling question of law as to which there is substantial ground for difference of opinion and because an immediate appeal may materially advance the ultimate termination of the litigation.

For the foregoing reasons, defendants' application pursuant to 28 U.S.C. § 1292(b) for certification for interlocutory appeal of this Court's order certifying this case as a class action is granted. Upon their consent, defendants are directed to file their petition for permission to appeal with the clerk of the court of appeals within three business days from the date of this order.

It is so ordered.