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Florida Appeals Court Rules that Payday Lender Can't Ban Class Actions and Deny Customers Their Day in Court

A Florida Appeals Court on Tuesday shut off the escape hatch for a payday lending company that charged its customers excessive interest rates then tried to avoid liability by banning a class action lawsuit.

Public Justice represented a number of Florida consumers who filed a class action against McKenzie Check Advance, arguing that the company's attempt to ban class actions violated Florida public policy. The court agreed, rejecting McKenzie's claim that customers had to bring their claims in arbitration, not in court, because the company's loan contract forbids class actions.

"We're extremely pleased that the Court of Appeal saw through McKenzie's attempt to use its fine print contract to give it immunity from the state's consumer protection laws," said Public Justice Senior Attorney Paul Bland, who argued the appeal. "The court sent a clear message today that consumers can't be robbed of their day in court by a sentence buried within an arbitration clause that prohibits class actions in cases where that's the only way for consumers to obtain any remedy."

The Court of Appeal's ruling affirms the findings of the court below, which held after an evidentiary hearing that the plaintiffs—who sought to assert claims against McKenzie that, for most consumers, would only amount to a few hundreds of dollars—could not effectively pursue their claims on an individual basis because the amount at issue was too small, and the claims against the lender too complex.

At the hearing, Public Justice presented the testimony of several prominent Florida consumer attorneys who testified that it would be "virtually impossible" for an individual consumer to find representation in a payday loan case absent a class action.

The court stated that the "inability to bring a class action suit against McKenzie would eviscerate the remedial purposes" of Florida's consumer protection statutes, and concluded that "only with the availability of class representation would consumers' rights in these payday loan transactions be vindicated."

In addition to Bland, Public Justice's legal team consists of lead counsel E. Clayton Yates of Yates & Mancini, LLC of Fort Pierce, Fla.; Theodore J. Leopold and Diana L. Martin of Leopold-Kuvin in Palm Beach Gardens, Fla.; Christopher Casper of James, Hoyer, Newcomer & Smiljanich of Tampa, Fla.; Richard Fisher of Cleveland, Tenn.; and Public Justice's Goldberg Attorney Amy Radon. Radon was the principal author of the plaintiffs' briefs on the appeal.

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