

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

AND PLAINTIFFS

VS. NO.

DEFENDANT

's MOTION TO DISMISS CLASS ACTION CLAIMS

(" ") files this motion to dismiss plaintiffs claims for class certification and any prayer for relief for a class of plaintiffs and in support would show the following:

1. On or about , 20 plaintiffs filed a complaint against alleging various causes of action. (A copy of the Complaint is attached as Exhibit " "). The complaint was filed on behalf of the named plaintiffs as representatives and a class of plaintiffs consisting of "all others similarly situated and having a like common interest and on behalf of themselves and on behalf of the members of the class of persons which they represent (hereinafter collectively referred to as "Plaintiffs")." (Complaint at 1.) Accordingly, the complaint seeks relief in the form of a class action.

2. As a matter of law, Mississippi does not now allow, nor has it ever allowed, the practice of class actions. The Mississippi Supreme Court intentionally omitted Rule 23 from the Miss. R. Civ. P. thus eliminating the use of class actions except "as a matter of general equity jurisdiction in chancery court under limited circumstances." Marx v. Broom, 632 So.2d 1315, (Miss. 1994). Those limited circumstances are not present in this case.

3. In the recent Mississippi Supreme Court decision of Marx v. Broom, plaintiffs attempted to invoke equitable class action jurisdiction in chancery court, as do named plaintiffs in this case. The court summarily denied the use of a class action stating "The comments to the Rules clearly state: 'Class Action practice is not now being introduced into Mississippi trial courts at this time.' This has not changed." Marx, 632 So.2d at 1322 (emphasis added). (A copy of Marx v. Broom is attached as Exhibit "2").

4. Because a class action is not available to plaintiffs, all claims made regarding class certification or relief related to a class of plaintiffs should be dismissed.

WHEREFORE, requests that this dismiss plaintiffs request for class certification and any prayer for relief for a class of plaintiffs.

Dated this the day of , 20 .

Respectfully submitted,

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Attorney for

Of Counsel:

Telephone:  
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Attorney for