

**IN THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS
COLES COUNTY, CHARLESTON, ILLINOIS**

JAMES R. INGRAM, as Trustee of the)
Bankruptcy Estate of Brian W. Hinton, Plaintiff,)
And all others similarly situated,)

Plaintiff,)

v.)

FIRST MID BANK & TRUST,)

Defendant)

2021-L-40

FILED

JUN 19 2024

Melissa Hurst
Circuit Clerk COLES COUNTY, ILLINOIS

ORDER

This matter was called to hearing before this Court on May 6, 2024 in regards to the Motion Plaintiff James Inghram ("Plaintiff") pursuant to 735 ILCS 5/2-801 to certify a class of First Mid Bank and Trust members. Upon consideration of the pleadings, memorandum of law, relevant authority and argument of counsel, the Court finds as follows:

The Plaintiff has filed a class action complaint against First Mid Bank and Trust ("First Mid") alleging First Mid engaged in a routine practice of assessing overdraft fees on transactions that do not actually overdraw checking accounts in addition to assess two or more fees on an item. Plaintiff alleges these practices breach First Mid's standardized Terms and Conditions of Your Account, First Mid's Overdraft Disclosure and First Mid's Banking Services and Fee Schedule, First Mid's duty of good faith and fair dealing, to unjustly enrich First Mid to the detriment of its customers in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

The Plaintiff challenges the defendant's practice of charging Overdraft fees, which they refer to as "Authorize Positive, Settle Negative Transactions ("APSN Transactions"). The Plaintiff alleges that First Mid puts aside sufficient available funds for debit card transactions at the time the transaction are authorized, then later assesses Overdraft Fees on those same transactions when they settle days later into a negative balance.

Further the Plaintiff alleges First Mid charges a \$32 non-sufficient funds fee when an account holder attempts a transaction but does not have sufficient funds to cover it and further alleges that First Mid regularly assesses two or more fees on the same "item" in violation of the contract.

The Plaintiff is requesting an APSN Fee class and a Multiple Fee class to be certified.

Certification of a class action in Illinois is governed by section 2–801 of the Code of Civil Procedure (Code), which sets forth four prerequisites for maintaining a class action:

1. the class is so numerous that joinder of all members is impracticable;
2. there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
3. the representative parties will fairly and adequately protect the interest of the class; and
4. the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2–801 (West 2012).

The decision regarding class certification is within the discretion of the circuit court. *Smith v. Illinois Central R.R. Co.*, 223 Ill.2d 441 (2006). In exercising its discretion, the court should err in favor of granting class certification. See *S37 Management, Inc. v. Advance Refrigeration Co.*, 2011 IL App (1st) 102496. However, the court's discretion is not unlimited because the court is bound by, and its discretion must be exercised within, the framework of the civil procedure rule governing class actions. *Smith*, 223 Ill.2d at 447. In making its decision as to whether to certify a class, the court may consider any matters of fact or law properly presented by the record, which includes the pleadings, depositions, affidavits, answers to interrogatories, and any evidence that may have been adduced at the hearings. *Gordon v. Boden*, 224 Ill.App.3d 195, 199.

The party seeking class certification has the burden of establishing the above statutory prerequisites. *Wheatley v. Board of Education of Township High School District 205*, 99 Ill.2d 481, 486 (1984).

First Mid has only raised arguments related to adequacy and the fair and efficient adjudication of the controversy. Consequently, the court shall accept the arguments made by the Plaintiff regarding numerosity and commonality, finding those prerequisites are satisfied.

Fair and accurate representation of the putative class

Section 2–801(3) of the Code requires that the representative parties fairly and adequately protect the interests of the class. 735 ILCS 5/2–801(3) (West 2012). The purpose behind the adequate-representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Hall v. Sprint Spectrum L.P.*, 376 Ill.App.3d at 832. The test applied to determine adequacy of representation is whether the interests of those who are not parties are the same as those who are not joined and whether the litigating parties fairly represent those not joined. *Id.* The proposed class action plaintiff must be a member of the proposed class, *i.e.*, must be able to maintain an individual cause of action against the defendant. *Ramirez v. Smart Corp.*, 371 Ill.App.3d 797, 810 (2007).

A representative will not be disqualified merely because his or her claim is not exactly the same as those of other class members. It is only necessary that the representative not seek relief antagonistic to the interests of other potential class members. *See Carrao v. Health Care Service Corp.* 118 Ill.App.3d 417, 428. Additionally numerous Illinois courts have held that individual defenses are not sufficient to defeat class certification. *See Wenthold*, 142 Ill.App.3d at 619 (Generally, individual counterclaims or defenses do not render a case unsuitable for class action.); *Walczak v. Onyx Acceptance Corp.*, 365 Ill.App.3d 664 (Generally, individual counterclaims or defenses do not render a case unsuitable for class action.); *Hall*, 376 Ill.App.3d 822; (Class action, in which a defendant is alleged to have acted wrongfully in same basic manner as to entire class, is not defeated merely because certain defenses may be urged against individual class members.)

The purpose of the requirement of adequate representation is merely to insure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *See Steinberg v. Chicago Medical School*, 69 Ill.2d 320 (1977).

Further, the Court in *Bueker v. Madison County* instructed that if a class becomes unmanageable at some later time in the litigation, the court always has the option to set aside the class certification or a portion of it. *Bueker* 2016 IL App (5th) 150282, citing *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill.App.3d 1069, 1075.

In this matter, the Plaintiff has alleged that First Mid acted wrongfully in the same basic manner as to the entire class. The Plaintiff can maintain an individual cause of action against First Mid. The Plaintiff's claim of relief is not antagonistic to the interest of other potential class members, as they are identical. Further, while the defendant has argued that many members of the proposed class would be subject to individual determinations regarding defenses raised in an arbitration agreement, the Court would be able to rule on the arbitration agreement, in "one stroke" as argued by the Plaintiff. In essence, there is one potential defense that may affect a large portion of the potential class members. Furthermore, the Illinois decisions recognizing that individual defenses don't bar class certification serve as a tacit acknowledgement that no additional standing would be required to defend them at this stage of the proceedings. Should an arbitration defense be successfully raised that renders the class unmanageable, the Court can set aside the class certification. For these reasons, the Court believes the Plaintiff can fairly and adequately represent the putative class.

Appropriate method for fairly and efficiently adjudication the controversy

The fourth requirement for the maintenance of a class action concerns whether the class action is an appropriate method for fairly and efficiently adjudicating the controversy. *See* 735 ILCS 5/2-801(4) (West 2012). In determining whether this requirement has been met, the circuit court considers whether a class action can best secure the economies of time, effort, and expense and promote uniformity or whether a class action can accomplish the other ends of equity and justice that class actions seek to obtain. *Gordon*, 224 Ill.App.3d at 203.

First Mid argues that class certification is unlikely to lead to a fair, efficient and superior adjudication of the controversy, as in the event the class is certified, most members would be subject to a motion to compel individual arbitration of their claims

The court initially finds this argument to be flawed, as the arbitration provision is elective for either party. The fact that the defendant or any number of class members would attempt to compel arbitration is speculative.

Next, this argument is premature as no motion related to compelling arbitration is before this Court. Additionally, the Plaintiff has set forth arguments related to the enforceability of the arbitration agreement and has demonstrated a willingness to defend against such provision being enforced. Should that defense be litigated and create a situation where the class becomes unmanageable or inappropriate, the court can decertify the class at that time.

Finally, as the Court in *Darty v. Scott Credit Union* explained, actions such as the instant case, which could involve thousands of individuals, the litigation of low dollar claims would be a waste of judicial resources, while class litigation would assist in efficient judicial administration. *Darty, No. 19L0793 (Ill. Cir. Ct. July 19, 2021)*. For these reasons the Court believes class certification is the appropriate method for fairly and efficiently adjudicating this controversy.

Consequently, the Plaintiff's motion for class certification is GRANTED. The court shall certify an ASPN Fee Class and a Multiple Fee Class.

ENTER: 4/19/21

Jate T. [Signature]
Judge