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Payday lending lawsuit can proceed, court says Plaintiff OK'd as class representative

BY LINDA SATTER (CONTACT)

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LITTLE ROCK — A class-action lawsuit awaiting trial in Clark County Circuit Court

and alleging that a payday lending company charged Arkansas customers illegal interest rates can proceed with its current lead plaintiff as the class representative, the state Supreme Court said Thursday.

The court rejected defendant Advance America's appeal of Circuit Judge John Alexander Thomas' April 15, 2008, order.

The order certified as a class a group of people "who have engaged in check cashing or deferred presentment transactions with the Defendants in Arkansas since Feb. 27, 2002, up through and including the date of the entry of judgment in this case."

Thomas allowed Brenda Mc-Ginnis, whose Feb. 27, 2007, lawsuit initiated the case, to be the designated class representative. In doing so, he rejected arguments from Advance that Mc-Ginnis wasn't qualified because she admittedly suffers from mental illness and allegedly has conflicts of interest with other class members.

Advance America, the largest payday lender in the state with 30 locations, agreed in September to stop doing business in Arkansas in exchange for Attorney General Dustin McDaniel's promise to drop his pursuit of the South Carolina company over interest rates the company charged.

A year ago McDaniel demanded that all payday lending companies in Arkansas stop making high-interest loans - those above the state's constitutional 17 percent annual interest limit - or face lawsuits filed by his office.

The lawsuit that can now move forward in Clark County is led by Arkadelphia attorney Todd Turner. It seeks compensatory and punitive damages for alleged violations of the

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state's usury laws, Deceptive Trade Practices Act and a prior courtapproved settlement.

In an opinion written by Chief Justice Jim Hannah, the Supreme Court said that although McGinnis has admitted being diagnosed with schizophrenia and having hallucinations, she has counsel, and that "Courts have recognized that persons with limited intellect or mental handicaps can serve as representative plaintiffs in class actions."

Hannah noted that the circuit court determined McGinnis understood the essential facts of the case, showed a serious interest in the case and shared the same overall complaint - being charged a usurious interest rate - as the other class members.

The Supreme Court also agreed with the trial court that McGinnis' lack of involvement in the prior settlement didn't constitute a conflict of interest.

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