

52,500

IN THE CIRCUIT COURT OF CLARK COUNTY, ARKANSAS

(7) (10)
ARB.

WANDA WILLIAMS and
SHARON McGHEE

PLAINTIFFS

VS.

CASE NO. CIV-99-17

755

SHOWMETHEMONEY, INC.

DEFENDANT

ORDER

Came before the Court on August 6, 1999, a hearing on the Motion To Dismiss and To Compel Arbitration, the Motion For Protective Order, and the Motion To Dismiss Amended Class Action Complaint and To Compel Arbitration all filed herein by the defendant, Showmethemoney, Inc. (hereinafter, "Showmenthemoney"). Plaintiffs appeared by and through their Attorneys, Todd Turner, R. Christopher Lawson, and Chris A. Averitt. Showmethemoney appeared by and through its attorney, Allen W. Bird. From a review of the pleadings, the testimony, the exhibits, and the testimony and other evidence presented, and having heard arguments of counsel, the Court hereby finds, orders and decrees the following:

1. Plaintiffs have asserted this class action individually and on behalf of a class of similarly situated persons who have allegedly borrowed money from Showmethemoney at usurious rates of interest.

2. Plaintiffs have alleged that Showmethemoney offers cash loans to customers in the ordinary course of business. Customers receive cash in exchange for personal checks



drawn on the customer's bank account which are presented to and held by Showmethemoney.

3. Showmethemoney's customers are required to fill out and sign an application called a "Check Cashing Agreement" (the "Agreement").

4. The Agreements are drafted by Showmethemoney. The Agreements are signed by customers but are not signed by a representative of Showmethemoney.

5. Showmethemoney has moved to dismiss this action under Ark. R. Civ. Pro. 12(b)(6), arguing that Plaintiffs have failed to state facts upon which relief can be granted. Specifically, Showmethemoney contends that the transactions alleged in the Plaintiffs' Class Action Complaint do not, on their face, constitute loans for purposes of Article 19, § 13.

6. In ruling on this Motion To Dismiss, the Court treats all allegations contained in Plaintiffs' Class Action Complaint as true and makes all reasonable inferences in Plaintiffs' favor.

7. Plaintiffs' Class Action Complaint alleges facts sufficient to state a cause of action for usury under the Arkansas Constitution, Article 19, § 13. The Complaint describes transactions which, on their face, constitute loans for purposes of Article 19, § 13.

8. Showmethemoney has also moved to dismiss this class action on the basis that Plaintiffs' claims should be arbitrated under the Agreements.

9. The arbitration clauses contained in Showmethemoney's Agreements are unconscionable and unenforceable under Arkansas law. Under the Agreements, customers are required to submit certain claims to arbitration. However, the Agreements purport to

absolve Showmethemoney from an obligation to submit any collection claims against the customers to arbitration.

10. Furthermore, the terms of the Agreements are conflicting. In a section of the Agreements separate from the arbitration clauses, the customers are required to pay Showmethemoney attorneys' fees and court costs in the event that the customers' checks are not honored. Such a requirement is completely conflicting with Showmethemoney's argument that all claims must be arbitrated.

11. If Plaintiffs' ultimate allegations are found to be true, the arbitration clauses are also unenforceable on the grounds of illegality because the Check Cashing Agreements purport to authorize transactions which violate the usury limit set forth in Article 19, § 13 of the Arkansas Constitution.

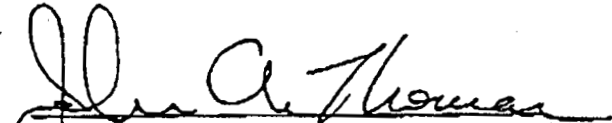
12. Because the arbitration clauses are unconscionable and unenforceable, Plaintiffs' Class Action Complaint is not arbitrable under the Uniform Arbitration Act or the Federal Arbitration Act.

13. For the above reasons stated herein, the Court finds that Showmethemoney's Motion To Compel Arbitration should be and is hereby denied.

14. Showmethemoney has moved for a protective order arguing that if the Court grants its Motion to Dismiss, the discovery sought by Plaintiffs will become moot. Per the Court's denial of Showmethemoney's Motions to Dismiss, the Court finds that its Motion For Protective Order should be and is hereby denied.

15. Showmethemoney is hereby ordered to respond the Plaintiffs' First Set of Interrogatories and Requests for Production no later than September 6, 1999.

IT IS SO ORDERED this 26 day of August, 1999.


Honorable John A. Thomas 8/26/99
Clark County Circuit-Chancery Judge

SUBMITTED BY:

FRIDAY, ELDREDGE AND CLARK
2000 First Commercial Building
400 West Capitol, Suite 2000
Little Rock, Arkansas 72201

And

MORGAN & TURNER
201 N. 10th Street
P.O. Box 579
Arkadelphia, AR 71923

Filed for Record 26 day of Aug, 1999 at 4:05 pm
PAMELA D. KING, Circuit Clerk
by Penny Ross Deputy Clerk

By: 

Todd Turner