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IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,237

BRUCE A. JOHNSON, MARTHA RICH, ALFRED SCHEMPP and JUDITH OSIT,

Petitioners,

vs.

PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP,

Respondent.

RESPONSE TO JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioners were Plaintiffs in the Circuit Court for the Seventeenth Judicial Circuit. Each alleges that he or she received medical treatment at Respondent Plantation General Hospital and was overcharged for drugs, supplies and laboratory tests. Each was treated on a different date, for different complaints and in different circumstances. Thus, the relationship between the Hospital and each Plaintiff, as well as between the Hospital and each member of the class they seek to represent, arose out of different circumstances. Counsel for Plaintiffs has conceded that no named Plaintiff individually meets the jurisdictional threshold of the circuit court. Petitioners' Jurisdictional Brief at 4 ("amounts estimated to be in the $200-300 range").

Respondent moved to dismiss for lack of subject matter jurisdiction noting that no Plaintiff individually asserted a claim in excess of the statutory jurisdictional requirements of the circuit court. Petitioners argued that their class action allegations permitted aggregation of their clients' claims to meet the jurisdictional threshold. The circuit court agreed with Petitioners. The Fourth District Court of Appeal disagreed, granted a writ of prohibition, and ordered the case transferred to county court.

In its opinion, the district court noted that *State ex. rel. City of West Palm Beach v. Chillingworth*, 100 Fla. 489, 129 So. 816 (1930) and *Burkhart v. Gowin*, 86 Fla. 376, 98 So. 140 (1923), did not permit aggregation of claims based on "separate and isolated transactions between one party and several other parties unrelated to one another and not jointly

participating in the transaction with the others." Opinion at 4.[1] Implicitly, the district court found that the claims were separate and distinct rather than joint. Opinion at 2-3. Even the dissenting Judge did not quarrel with the implicit factual reasoning. Instead, he theorized, without statutory citation, that class action jurisdiction lies exclusively in the circuit courts. This theory was rejected in the majority opinion.

Petitioners filed a "Notice to Invoke Discretionary Jurisdiction," stating that the decision "directly conflicts with previous decisions of the Supreme Court. . . ." Petitioners state in their jurisdictional brief that their "application [to the Supreme Court for Discretionary Review] is made pursuant to the 'all writs' provision of Rule 9.030(a)(3), as well as Rule 9.100(c)(1) and Rule 9.120 of the Florida Rules of Appellate Procedure."

[1] The Fourth District Court of Appeal's decision is reported at 621 So.2d 551. For ease of reference, the citations in this brief will be to the Opinion as issued, attached hereto as Exhibit 1.

SUMMARY OF THE ARGUMENT

The issue below was whether the circuit court has jurisdiction over claims of individuals when those claims individually fall within the exclusive jurisdiction of the county court, but when plaintiffs seek to represent a class. That question was decided in the negative by the Fourth District Court of Appeal. Petitioners have sought to invoke this Court's discretionary jurisdiction to review the district court's decision claiming it conflicts with prior decisions of this Court. Pursuant to Fla.R.App.P. 9.120(d), Petitioners were required to brief the question of *this* Court's jurisdiction. Instead, they have tried to brief the merits of the issue they want reviewed: circuit court jurisdiction.

This Court does not have jurisdiction to hear this issue. The district court's decision did not "expressly and directly conflict with a decision of ... the supreme court on the same question of law," as required by the Florida Constitution, Art. V, §3(b)(3) and Rule 9.030(a)(2)(A)(iv), Fla.R.App.P. The district court's decision was based on the correct application of precedents in this Court to the facts as determined below. There is no conflict. Perhaps recognizing that the district court's opinion does not meet the requirements for conflict based jurisdiction, Petitioners also tried to invoke the original jurisdiction of the court through Rules 9.030(a)(3) and 9.100(c)(1). These rules do not provide an independent basis for jurisdiction and do not provide a vehicle for review in this Court.

For those reasons, this Court should not accept jurisdiction of this matter.

ARGUMENT

A. The District Court's Opinion Neither Expressly Nor Directly Conflicts With Any Prior Decision of the Supreme Court

Petitioners cite Fla. R. App. P. 9.120 in an effort to invoke the jurisdiction of the Court. Rule 9.120, however, only applies to the discretionary jurisdiction invoked pursuant to Fla. R. App. P. 9.030(a)(2)(A), which limits the jurisdiction of the Court to six narrowly designated categories. Though not stated anywhere in their brief, Petitioners' Notice to Invoke Discretionary Jurisdiction relies on the Court's discretionary jurisdiction to review "decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law." Petitioners' Notice states that "the decision directly conflicts with previous decisions of the Supreme Court on the issue of class action claims being within the jurisdiction of the circuit court when no single class member's claim exceeds $15,000 but when the claim of the class in the aggregate far exceeds such amount." Thus, it appears that Petitioners are invoking conflict based jurisdiction pursuant to Fla. Const. Art. V, § 3(b)(3) and Fla. R. App. P. 9.030(a)(2)(A)(iv).

Petitioners' limited discussion of the conflict jurisdiction of this Court begins in the statement of the case on page 2 of their brief:

> The district court's majority, as pointed out by Judge Stone's dissent, is not consistent with this Court's decision in *State ex rel. City of West Palm Beach v. Chillingworth*, 100 Fla. 489, 129 So.2d 816 (1930) . . . and with this Court's holding in *Frankel v. City of Miami Beach*, 340 So.2d 463 (Fla. 1976). . . . Thus, in addition to the rule-based jurisdictional authority cited above, the precedential conflicts with *Chillingworth* and *Frankel* . . . indicate that the underlying question of the jurisdictional confusion pointed out by Judge Stone in his dissenting opinion requires resolution by the Supreme Court.

Petitioners argue that the "district court decision is not consistent with this Court's governing authority and precedent and constitutes a departure from an essential requirement of law . . . . The Supreme Court has previously considered this jurisdictional issue and has, without equivocation, established governing case law that is contravened by the decision sought to be reviewed." Petitioners' brief at 5.

Petitioners' argument is incorrect. In fact, the Fourth District's ruling is perfectly consistent with prior case law and applies the standard articulated by this Court in *State ex rel. City of West Palm Beach v. Chillingworth*, 100 Fla. 489, 129 So.2d 816 (1930), and *Burkhart v. Gowin*, 86 Fla. 376, 98 So. 140 (1923). As stated by the district court:

> the issue turns on whether their claims are legally considered *joint* as opposed to separate and distinct. It is clear to us from the complaint that the only connection between the plaintiffs and the class members, and indeed the only thing they have in common, is that they were all overcharged. That is not the kind of *joint* claim of right, however, that allows stacking of individual claims for jurisdictional purposes.

Opinion at 2-3 (emphasis in original) (footnote omitted). This statement demonstrated the court's understanding and application of the *Chillingworth* rule.[2] In *Chillingworth*, this Court permitted several plaintiffs suing for the interest on a sequential series of bonds to aggregate claims. These claims were to a sum of money to be divided among themselves arising out of the same interest obligation on the same series of bonds. Thus, a specific and determinate sum of money was due; who got the money was immaterial to the obligee, and the claims were

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[2] Petitioners do not clearly state whether they contend that the Fourth District's opinion conflicts with *Container Corp. of Am. v. Seaboard Air Line R. Co.*, 59 So.2d 737 (Fla. 1952). *Seaboard* deals with aggregation in the context of an ongoing relationship similar to an open account where each party's claims were aggregated with all of their own transactions with the railroad. No two parties' claims were aggregated with each other. Petitioners do not seek to aggregate multiple claims of one party established in an ongoing relationship with multiple transactions.

truly joint and common. In the instant case, the claims arise out of different transactions, with a different sum to be awarded to each plaintiff depending on what amount, if any, he was overcharged. Thus, as the Fourth District ruled, the claims are separate and non-aggregable as set forth in *Burkhart.*

Furthermore, the district court acknowledged Petitioners' misconstruction of the prior case law. "Plaintiffs seek to torture *State ex rel. City of West Palm Beach v. Chillingworth* . . . and *Burkhart v. Gowin* . . . into a meaning that would allow these claims to be aggregated because they 'are in some way related to each other.'" Opinion at 3. Utilizing the examples provided by this Court in *Burkhart*, the Fourth District noted that while the "illustrations may apply to dealings between the same parties, they plainly do not apply to separate and isolated transactions between one party and several other parties unrelated to one another and not jointly participating in the transaction with the others." *Id.* at 4. Although the Petitioners may not agree with the Fourth District's result, the court was simply applying the rule articulated by this Court in its prior decisions.

Based on the factual distinctions noted by the Fourth District, there is no conflict with *Chillingworth.* If the facts are analytically distinguishable, a conflict does not exist and this Court's jurisdiction may not be invoked. *See Department of Revenue v. Johnston*, 442 So.2d 950 (Fla. 1983).

The majority decision does not cite *Frankel v. City of Miami Beach*, 340 So.2d 463 (Fla. 1976). Nonetheless, this does not create the conflict necessary to support jurisdiction. *Frankel* does not deal with jurisdiction or aggregation of claims to meet jurisdictional thresholds. It deals with the standards for class actions. That issue was not the question for either the circuit court or the Fourth District. The majority decision does not address the propriety of class certification, and therefore is not in conflict with *Frankel.* The Fourth

District's decision is so unrelated to the issue in *Frankel* that not even an inherent conflict can be said to exist. Because these cases are not decided on the same legal issue, *Frankel* does not support conflict based jurisdiction. *See Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc.*, 498 So.2d 888 (Fla. 1986).

In order to create a conflict, Petitioners rely on Judge Stone's dissenting opinion.[3] However, this Court has held that the "direct and express conflict" must be evident from an examination of the majority decision. *Reaves v. State*, 485 So.2d 829, 830 (Fla. 1986). The Court may only consider what is "contained within the four corners of the decision allegedly in conflict." *Id.* at 830 n.3. "Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." *Id.* at 830. Therefore, Petitioners cannot rely on Judge Stone's opinion to establish conflict jurisdiction. On its face, the majority decision presents neither the express nor the direct conflict necessary to create jurisdiction.

Petitioners' arguments essentially seek a declaration that county courts may not hear consumer class actions, even if the amount in controversy is within the exclusive jurisdiction of the county court. There is no authority for that proposition. This Court has never decided the issue. Therefore, there can be no conflict between the district court's opinion and prior decisions of this Court. As set forth above, this Court should not accept jurisdiction on the basis of the alleged conflicts between the Fourth District Opinion and prior decisions of this Court, because no such conflicts exist.

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[3] At page 2, Petitioners' brief argues that the dissent points out inconsistencies between the majority opinion and *Chillingworth* and *Frankel*. With respect to *Chillingworth*, Judge Stone stated: "I cannot conclude that a class action of this nature does not meet the Chillingworth criteria." Opinion at 7. With respect to *Frankel*, he noted that *Frankel* does not address the aggregation issue. *Id.*

B. The "All Writs" Provisions of Rules 9.030 and 9.100(c)(1) Do Not Provide an Independent Basis to Invoke the Court's Jurisdiction

Because conflict jurisdiction does not exist, this Court does not have certiorari or other common law writ jurisdiction. Petitioners have misunderstood the effect of the Rules of Appellate Procedure. Consistent with Article V of the Florida Constitution, the Rules provide that the "supreme court may issue . . . all writs necessary to the complete exercise of its jurisdiction . . . ." Fla. R. App. P. 9.030(a)(3). This rule, however, does not constitute an independent basis for the jurisdiction of the Court. The "all writs" provision may not be invoked unless the Court has "already acquired jurisdiction of a cause on some independent basis, and the complete exercise of that jurisdiction might be defeated if the Court did not issue an appropriate writ or other process . . . ." *Shevin v. Public Service Commission*, 333 So.2d 9, 12 (Fla. 1976); *see also Florida Senate v. Graham*, 412 So.2d 360 (Fla. 1982); *St. Paul Title Insurance Corp. v. Davis*, 392 So.2d 1304, 1305 (Fla. 1980).[4] As this Court has not already acquired jurisdiction, this provision provides no rights to Petitioners.

Petitioners also attempt to invoke the jurisdiction of this Court by citing Fla. R. App. P. 9.100(c)(1). However, the Petitioners' request for "common law certiorari" pursuant to Fla. R. App. P. 9.100(c)(1) is contrary to Florida law. The Supreme Court has not had the authority to issue common law writs of certiorari for many years, but rather this power is reserved for the district and circuit court. *Dresner v. City of Tallahassee*, 164 So.2d 208, 210 (Fla. 1964); *see also Allen v. McClamma*, 500 So.2d 146, 147 (Fla. 1987); *Vetrick v. Hollander*, 464 So.2d 552 (Fla. 1985); *Ramagli Realty Co. v. Craver*, 121 So.2d 648, 651 n.9 (Fla. 1960).

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[4] Petitioners rely on *Jones v. State*, 477 So.2d 566 (Fla. 1985), for the proposition that a departure from the essential requirements of law authorizes this Court's review. *Jones'* reference to that principle applied to the jurisdiction of the district court, not to its own.

In order to avoid these fatal blows to their jurisdictional theories, Petitioners rely on *Stel-Den of Am., Inc. v. Roof Structures, Inc.*, 438 So.2d 882 (Fla. 4th DCA 1983), *rev. denied*, 450 So.2d 488 (Fla. 1984), for the proposition that "an erroneous ruling on the issue of subject matter jurisdiction is reviewable by a [discretionary writ]" by the Florida Supreme Court.[5] *Stel-Den*, decided by a district court, decided only the question of the district court's jurisdiction. Certiorari jurisdiction is available in district courts. Fla. Const. Art. 5, §4(b)(3). As demonstrated above, it is not available in this Court.[6] *Hartford Accident & Indemnity Co. v. City of Thomasville*, 100 Fla. 748, 130 So. 7 (Fla. 1930), which was decided prior to the eradication of the Supreme Court's authority to issue writs of common law certiorari, no longer provides a basis for invoking this Court's jurisdiction.

CONCLUSION

Petitioners have failed to support their claim that the Fourth District's opinion expressly and directly conflicts with prior decisions of this Court. Neither tortured interpretations of prior authority nor references to the dissenting opinion support the exercise of jurisdiction in this Court. No basis for discretionary review or issuance of a writ of certiorari exists. Therefore, this Court should deny further review.

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[5] Petitioners' brief notes that *Stel-Den* was decided by this Court. Brief at 2. This is obviously incorrect.

[6] The Fourth District's jurisdiction was properly invoked. No argument is made that the district court exceeded its jurisdiction. Petitioners' quarrel is, instead, with the decision reached. Thus, *Hartford Accident & Indemnity Co. v. City of Thomasville*, 100 Fla. 748, 130 So. 7 (1930), has no bearing on this Court's jurisdiction. *Hartford*'s dicta that "any order ... of an inferior court which has the effect of unduly extending the jurisdiction of that court may be reviewed in certiorari," is therefore not applicable. As *Hartford* was decided long before the abolition of certiorari jurisdiction in this Court, even that dicta is questionable.

Respectfully submitted,

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Dated: September 20, 1993
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By: /s/ Deborah A. Sampieri
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by United States mail on September 20, 1993, upon the following:

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1993

PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP,

Petitioner,

v.

BRUCE A. JOHNSON, MARTHA RICH, ALFRED SCHEMPP and JUDITH OSIT, for themselves and all others similarly situated,

Respondents.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

CASE NO. 93-0059
L.T. Case No. 92-6823-02

Opinion filed July 14, 1993

Petition for Writ of Prohibition to the Circuit Court for Broward County, Leonard L. Stafford, Judge.

Kevin J. Murray and Deborah A. Sampieri, of Kenny, Nachwalter, Seymour, Arnold & Critchlow, P.A., Miami, for petitioner.

Herbert T. Schwartz, of Reinman, Harrell, Graham, Mitchell & Wattwood, P.A., Melbourne, and Richard G. Collins, of Richard G. Collins, P.A., Delray Beach, and Stephen A. Scott, of Stephen A. Scott, P.A., Gainesville, for respondents.

FARMER, J.

Four former patients of Plantation General Hospital have sued the hospital in a class action, claiming that the hospital routinely and as a matter of practice overcharged each of them for pharmaceuticals, medical supplies and laboratory services. The hospital bills for each of these patients were attached to the complaint, and the total amounts of each plaintiff's bill

ranged from $1,500 to $13,000. They did not state the amount of the overcharge any one of them had suffered, but they did make a general allegation that some of the members of the putative class have claims greater than the jurisdictional minimum.[1] Absent was any allegation that any of the class representatives had such a claim. In sum, they alleged that the aggregate of all claims of all class members exceeds the jurisdictional minimum.

The hospital moved to dismiss the action on the basis that the circuit court lacks jurisdiction over the action. The trial court denied the motion but granted a stay to allow the hospital to seek certiorari review of the order of denial. The hospital filed a petition for common law certiorari, which we elected to treat as seeking a writ of prohibition. We grant the writ.

To begin, we view the absence of the critical allegation -- that any of the named class representatives who filed the suit has an overcharge claim greater than $10,000 -- as a tacit admission that none of them can claim that much. Hence, we construe the pleadings to mean that none of the class representatives has a claim within the jurisdictional minimum of the circuit court. The issue then becomes whether the plaintiffs can stack claims to meet the minimum. We do not believe they can.

The issue turns on whether their claims are legally considered joint, as opposed to separate and distinct. It is clear to us from the complaint that the only connection between the plain-

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[1] The suit was commenced after July 1, 1990 but before July 1, 1992. Under section 34.01(1)(c)3, Florida Statutes (1991), the county court has exclusive jurisdiction of causes of action accruing during that period in which the amount in controversy does not exceed the sum of $10,000.

tiffs and the class members, and indeed the only thing they have in common, is that they were all overcharged.[2] That is not the kind of joint claim of right, however, that allows stacking of individual claims for jurisdictional purposes.

Plaintiffs seek to torture State ex rel. City of West Palm Beach v. Chillingworth, 100 Fla. 489, 129 So. 816 (1930), and Burkhart v. Gowin, 86 Fla. 376, 98 So. 140 (1923), into a meaning that would allow these claims to be aggregated because they "are in some way related to each other."[3] In Burkhart, the defendant had given three separate promissory notes to the plaintiff, each of them for face amounts less than $500, then the jurisdictional limits of the circuit court. The trial judge dismissed plaintiff's suit in which he stacked the three claims to meet the limit. In affirming the dismissal, the Supreme Court said:

> The organic limitations as to jurisdiction cannot be violated by splitting demands, or by aggregating demands that are in fact not joint or composite, and that

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[2] For purposes of the motion to dismiss on jurisdictional grounds, we accept plaintiffs' well-pled allegation that the defendant did overcharge them.

[3] Plaintiffs argue that the circumstances satisfy all of the prerequisites for class action treatment and thus, ipso facto, also satisfy any legal requirements for stacking their claims to meet the jurisdictional minimum. But subject matter jurisdiction and the requirements for class action treatment are entirely separate concepts. The mere fact that the latter is satisfied does not assure the former. Moreover, there is nothing in section 34.01(4), Florida Statutes (1991), that purports to obliterate the distinction between subject matter jurisdiction and class action treatment on equitable grounds. The mere fact that the class action device originated in equity hardly yields the conclusion that all class actions are inherently within a court's equitable jurisdiction. Even if it did, the real meaning of section 34.01(4) is that the county court has exclusive jurisdiction over the equitable aspects of any claim not exceeding $10,000 accruing during the applicable time period.

> are in no way related, but are wholly distinct and several in their character. * * * [S]everal claims, no one of which is in amount within the jurisdiction of the court, may be aggregated to confer jurisdiction, if the claims from their nature or character are joint or composite or are in some way related to each other, or arise out of the same transaction or circumstances or occurrence, and the sum of the claims makes the requisite jurisdictional amount. But where substantive claims are not in their nature or character joint or composite, and do not arise out of the same transaction, circumstances, or occurrence, and are not consequent upon a continuous course of dealing as evidenced by an open account, or a continuing contract, or other appropriate means, and the claims are in no way related, but are several, distinct, and wholly independent demands, whether ex contractu or ex delicto, they may not be aggregated to give jurisdiction, as this would violate the organic limitations as to jurisdictional amounts. [e.o.]

98 So. at 142. The same idea was repeated in Chillingworth.

The meaning of the words "in some way related to each other" is found in the examples used by the court to illustrate its point. The court stressed "a continuous course of dealing as evidenced by an open account, or a continuing contract * * * ." While these illustrations may apply to dealings between the same parties, they plainly do not apply to separate and isolated transactions between one party and several other parties unrelated to one another and not jointly participating in the transactions with the others. We do not think that the exception in Burkhart and Chillingworth would apply to this class even if every one of its members had presented at the hospital at precisely the same moment, complaining of precisely the same ailment and demanding admission.

We therefore conclude that the circuit court lacks subject matter jurisdiction to consider the class's claims.[4] That does not leave them without a remedy, of course. It simply means that they must bring their suit in the County Court.[5]

PROHIBITION GRANTED; CAUSE TRANSFERRED TO COUNTY COURT.

HERSEY, J., concurs.
STONE, J., dissents with opinion.

STONE, J., dissenting.

In my judgment the circuit court has jurisdiction to consider a class action in which the monetary claims of the individual Plaintiffs do not separately reach the minimum amount necessary for circuit court jurisdiction. I would affirm the trial court order that denied Petitioner's motion to dismiss for lack of jurisdiction.

Petitioner contends that the county court has exclusive jurisdiction of this class action because claims cannot be

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[4] Plaintiffs also argue that their declaratory judgment claim gives the circuit court subject matter jurisdiction over the entire action. We reject out of hand the argument that all declaratory judgment claims are, in and of themselves, within the equitable jurisdiction of the circuit court. Section 86.011, Florida Statutes (1991), expressly provides that the "circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights * * * ." This provision simply means that, where the subject of the declaratory judgment action involves an amount in controversy that does not exceed the sum of $15,000, the action must be brought in the county court.

[5] We stress that this is not a matter of personal preference or judicial philosophy, but only a construction of the jurisdictional provisions set down in the constitution and statutes. If the legislature wants the circuit courts to take on class actions of the kind involved here, it can always change the law to allow them to do so.

"aggregated" in order to meet the circuit court jurisdictional minimum. Respondents' right to bring a class action is not the issue in this petition. In considering the petition then, we must deem a class action to be appropriate here and focus solely on the issue of whether this class action must be brought in county rather than circuit court.

The Respondents assert that jurisdiction properly lies in the circuit court because class actions are traditionally cognizable in courts with equity jurisdiction and because they seek a unified judgment on behalf of the class which will total well in excess of the circuit court threshold, probably involving millions of dollars.

In State ex rel. City of West Palm Beach v. Chillingworth, 100 Fla. 489, 129 So. 816 (1930), the supreme court discussed the general circumstances under which claims may be aggregated to satisfy a trial court's jurisdictional minimum. There, the court permitted combining the claims of individual bondholders seeking payment of interest due on their bonds, recognizing that jurisdiction need not be limited by the amount of each separate demand. The court said:

> This court is, however, committed to the rule that, if the demands from their nature or character are joint or composite, or are in some way related to each other or arise out of the same transaction, circumstances, or occurrence, they may be aggregated to confer jurisdiction . . . . but, where the claims are substantive and are not in their nature joint or composite and do not arise out of the same transaction, circumstances, or occurrences, and are not consequent upon a continuous course of dealing as

> evidenced by an open account or a continuing contract, and are in no way related, but represent distinct and wholly independent demands, they cannot be aggregated to confer jurisdiction.
>
> The rule is also well settled that, when several parties sue jointly for the recovery of money or property claiming under a common right, and the adverse party is wholly unaffected by the manner in which it may be apportioned in case of recovery, it is the aggregate sum of their several claims which determined the amount in controversy, but persons having distinct and separate interests cannot join their actions for the purpose of making the jurisdictional amount to appear. [citations omitted]

Id. at 491-92, 129 So. at 817-18. I cannot conclude that a class action of this nature does not meet the Chillingworth criteria.

I acknowledge that there is no Florida case, statute, or rule specifically placing general jurisdiction over class actions in the circuit court. I also recognize that the Third District, in Curtis Publishing Co. v. Bader, 266 So. 2d 78 (Fla. 3d DCA), cert. denied, 271 So. 2d 142 (Fla. 1972), held that a class action could not be brought in the circuit court by aggregating the damages of the class members, which were prepaid subscription damages of $3.95 each, citing Chillingworth. However, Bader was overruled by the supreme court in Frankel v. City of Miami Beach, 340 So. 2d 463 (Fla. 1976). Unfortunately, the court in Frankel did not specifically address the "aggregation" issue as such.

In City of Miami v. Keton, 115 So. 2d 547 (Fla. 1959), the supreme court, also without specifically addressing the concept of "aggregation," approved a class action challenging the

imposition of hundreds of thousands of traffic fines. Obviously no individual fine alone would be large enough to confer monetary jurisdiction. As here, the plaintiffs in that case sought damages and declaratory relief; in Keton, however, there was also a prayer for an injunction. As in Frankel and Keton, the individual claims in the instant case are founded on essentially common facts and issues of law.

Class actions are generally considered cognizable in courts having equity jurisdiction. Cf. Tenney v. City of Miami Beach, 152 Fla. 126, 11 So. 2d 188 (1942). Circuit courts have jurisdiction in all cases in equity. See State ex rel. Landis v. Circuit Court for Eleventh Judicial Circuit of Florida, 102 Fla. 112, 135 So. 866 (1931); § 26.012(2)(c), Fla. Stat. (1991). Certainly county courts, since the 1990 amendment to section 34.01, Florida Statutes, have jurisdiction to consider matters cognizable in equity in cases over which the county court otherwise has jurisdiction. That statute provides:

> (4) Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

I note an obvious tension between section 34.01 and section 26.012(2)(c), Florida Statutes, which provides that circuit courts have exclusive jurisdiction in all cases in equity. See Spradley v. Doe, 612 So. 2d 722 (Fla. 1st DCA 1993). However, there is no reason to interpret section 34.01(4) so broadly as to deprive circuit courts of jurisdiction to hear a class action lawsuit simply because none of the individual claims

would be large enough to sustain circuit court jurisdiction if there were no class. Additionally, the use of "may" in section 34.01(4) supports the view that the legislature did not intend to deprive circuit courts of existing jurisdiction by recognizing that there are appropriate instances where county courts may exercise incidental equity jurisdiction. Although circuit court jurisdiction obviously is no longer "exclusive," for the legislature to deprive circuit courts of otherwise recognized jurisdiction would require a clear statement to that effect. Cf. English v. McCrary, 348 So. 2d 293 (Fla. 1977). But see Spradley.