

**BLOGS**

Class Actions

Court Refuses to Certify Customers as Class Because They Failed to Demonstrate They Suffered the Same Injury

In *Martin v. JTH Tax, Inc. d/b/a Liberty Tax Service*, 2013 U.S. Dist. LEXIS 15512 (D.S.C. Feb. 5, 2013), the United States District Court for the District of South Carolina refused to certify customers of Liberty Tax franchises as a class under Federal Rule of Civil Procedure 23. The plaintiffs alleged that Liberty Tax franchisees pressured them into paying additional fees to file unnecessary forms, and that they incurred additional tax liability as a result of the fraudulently filed forms. The court gave two reasons for refusing to certify the plaintiffs as a class. First, it found that the “commonality” requirement was not met because the plaintiffs failed to demonstrate that potential class members suffered the “same injury.” The court found that each member of the potential class would have paid for different forms, incurred different tax liabilities, and potentially paid different fees depending on the franchised location they patronized. Moreover, the plaintiffs failed to demonstrate that the alleged wrongful acts were carried out at every office and by every tax preparer in the same manner, and that each potential class member was not complicit in the alleged tax fraud. Second, the court found that the “predominance” requirement of the class action rule was not met because the fact-specific inquiry required to establish each class member’s claim and damages incurred would overshadow any class concerns. The court noted that the predominance requirement is far more stringent than the commonality requirement. As a result, the court denied class certification.

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