

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM) FRIDAY, THE 5TH DAY
)
JUSTICE ALEXANDRA HOY) OF JANUARY, 2007

BETWEEN

MARGARET SMITH and RONALD ADRIEN ORIET

Plaintiffs

and

NATIONAL MONEY MART COMPANY
and DOLLAR FINANCIAL GROUP, INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs for certification of the action as a class proceeding, was heard on October 25, 26 and 27, 2006 at Toronto, Ontario.

ON READING the motion record, filed, including:

- (a) the motion record of the plaintiffs containing, among others, the following:
 - (i) the affidavits of Margaret Smith sworn February 25, 2004 and June 18, 2004 and the transcript of her cross-examination on October 25, 2004;

- (ii) the affidavits of Ronald Adrien Oriet sworn June 4, 2004 and December 15, 2005 and the transcript of his cross-examination on October 25, 2004;
 - (iii) the affidavits of Jasminka Kalajdzic sworn February 25, 2004, June 8, 2004, December 19, 2005 and September 6, 2006 and the transcript of her cross-examination on October 25, 2004;
 - (iv) the affidavits of James Jeffery sworn February 25, 2004, December 14, 2005 and August 10, 2006;
 - (v) the transcripts of the cross-examinations of Donald F. Gayhardt on October 13, 2004 and October 20, 2006;
 - (vi) the transcripts of the cross-examinations of Patti Smith on October 27, 2004 and October 4, 2006 and her answers to written questions;
 - (vii) the affidavit of Dennis Lee sworn August 11, 2006;
 - (viii) the affidavit of Efrim Boritz sworn August 11, 2006;
 - (ix) the transcript of the cross-examination of Peter Gorham on September 27, 2006; and
 - (x) Dollar Financial Group Inc.'s Form 10-K for the periods June 30, 2002 to June 30, 2006;
- (b) the motion record of National Money Mart Company ("Money Mart") containing, among others, the following:
- (i) the affidavits of Patti Smith sworn May 3, 2004, August 4, 2004, August 11, 2004, June 5, 2006, September 20, 2006 and October 17, 2006; and

- (ii) the affidavits of Peter Gorham sworn June 21, 2006 and September 22, 2006;
- (c) the motion record of Dollar Financial Group Inc. ("Dollar Financial") containing, among others, the following:
 - (i) the affidavit of Donald Gayhardt sworn May 3, 2004, August 17, 2004 and October 18, 2006;
 - (ii) the affidavit of Steven Bainbridge sworn August 18, 2004; and
 - (iii) answers to undertakings given by Donald Gayhardt;
- (d) the order dated October 19, 2006 dismissing this action against 722906 Ontario Limited, Jenica Holdings Ltd., 764815 Ontario Inc., 204772 Ontario Inc., Kilduff Investments Ltd., Canadian Capital Corporation, 931669 Ontario Limited and 1556911 Ontario Ltd. (together, the "Franchisees"); and
- (e) the order dated October 19, 2006 which records that the Franchisees have undertaken to be bound by certain declarations made in this action.

ON HEARING the submissions of counsel for the plaintiffs and counsel for Money Mart and Dollar Financial,

1. THIS COURT ORDERS that this action be and is hereby certified as a class proceeding.
2. THIS COURT ORDERS that the Class is defined as:

All persons who, in the period August 19, 1997 to the date of the publication of the certification order, received a Fast Cash Advance in Ontario that was payable either in cash on or before the borrower's next scheduled payday, being the day on which the borrower is scheduled to receive his or her salary, pension benefit, or any other regularly scheduled payment or by cheque on the borrower's next scheduled payday, and was repaid by cheque on the borrower's next scheduled payday, payable to Money Mart or a Franchisee.

3. THIS COURT DECLARES that Margaret Smith and Ronald Adrien Oriet be and are hereby appointed as the representative plaintiffs.

4. THIS COURT DECLARES that the causes of action asserted on behalf of the Class are declarations, the tort of conspiracy and unjust enrichment.

5. THIS COURT DECLARES that the relief sought by the Class is that claimed in subparagraphs 2(b) to (u) of the Further Fresh Amended Statement of Claim.

6. THIS COURT DECLARES that the common issues for the Class are:

1. Have Money Mart and the Franchisees received interest in excess of an effective annual rate of 60%, when calculated in accordance with generally accepted actuarial practices and principles, on each Fast Cash Advance in Ontario in the Class Period which was repaid by a cheque dated on the day after the due date specified in the Fast Cash Advance Agreement?

2. Is each Fast Cash Advance Agreement made in Ontario with a Class member in the Class Period void or invalid? If so, why?

3. Alternatively, are the provisions relating to interest, cheque cashing fees and item fees in each Fast Cash Advance Agreement made in Ontario with a Class member in the Class Period invalid or void by reason of illegality? If not, what effective annual interest rate, if any, were Money Mart and the Franchisees entitled to charge on each such Fast Cash Advance?

4(a). If the answers to common issues 1 and 2 or 3 are yes, was Money Mart unjustly enriched when it directly received a percentage of the franchise fees from the Franchisees and/or the illegal interest from the Class Members?

4(b). If the answer to 4(a) is yes, is Money Mart a constructive trustee holding a percentage of the franchise fees it received from the Franchisees and/or the illegal interest it received for the benefit of the Class members? What amount is held by Money Mart in the constructive trust?

5(a). If the answers to common issues 1 and 2 or 3 are yes, was Dollar Financial unjustly enriched when it received a percentage of the royalty payments from Money Mart?

5(b). If the answer to 5(a) is yes, is Dollar Financial a constructive trustee holding a percentage of the royalty payments for the benefit of the Class members? What amount is held by Dollar Financial in the constructive trust?

6. Is Money Mart and/or Dollar Financial required to account to the Class? If so, why and how?

7. Have Money Mart, Dollar Financial and the Franchisees conspired one with the other? If so, who conspired with whom, when, where, why and for what purpose?

8. Is Dollar Financial vicariously liable or otherwise responsible for the acts of its subsidiary Money Mart? If so, why?

9. Is Money Mart and/or Dollar Financial liable to pay damages to the Class? If so, why and in what amount?

10. What is the amount of the Total Interest?

11. Should the court assess damages in the aggregate, in whole or in part, for the Class? If so, what is the amount of the aggregate damage assessment and who should pay it to the Class?

12. Should Money Mart and/or Dollar Financial pay punitive damages to the Class? If so, who, why, in what amount and to whom?

13. Should Money Mart, the Franchisees, Dollar Financial, their servants and agents and any other person having notice of the injunction be enjoined from charging or collecting interest, an item fee and a cheque cashing fee on any Fast Cash Advance in Ontario which, in total, results in an effective annual interest rate of more than 60% at the time the Fast Cash Advance Agreement was entered into?

14. Should Money Mart and/or Dollar Financial pay prejudgment and postjudgment interest, at what annual interest rate, and should the interest be simple or compound interest?

7. THIS COURT ORDERS that the plaintiffs' litigation plan be and is hereby approved in the form attached as Schedule 1 to this order.

8. THIS COURT ORDERS that a Class member may only opt out of this class action by, on or before 5:00 p.m. ET, on a date to be fixed by further order of this court, sending a written election to opt out, signed by the Class member, addressed to Howie & Partners, Chartered Accountants, by pre-paid mail or courier, at 3036 Walker Road, Windsor, Ontario, Canada N8W 3R4, Attention: Money Mart Class Action; or by fax to 519.250.1929; or by email to sarkis.isaac@howieca.com.

9. THIS COURT ORDERS that no Class member may opt out of this class action unless the written election to opt out is received by Howie & Partners on or before 5:00 p.m. ET, on the date fixed by further order of this court.

10. THIS COURT ORDERS that, after the expiration of the opt out period, Sarkis Isaac of Howie & Partners shall report to Madam Justice Hoy, or such other judge of the Superior Court assigned by the Regional Senior Justice for such purposes, by affidavit and advise as to the names and addresses of those persons, if any, who have opted out of this class action.

11. THIS COURT ORDERS that the form of the notice and the manner of giving notice of this certification order will be dealt with by further order of this court.

12. THIS COURT ORDERS that, if the plaintiffs are successful at the trial of the common issues or on a motion for summary judgment, the presiding judge may consider whether:

- (a) Money Mart and/or Dollar Financial shall pay the costs of administering and distributing any recovery and, if so, who should pay what amount and why; and
- (b) the participation of individual Class members is required to determine individual issues and whether:
 - (i) any directions are necessary;
 - (ii) any special procedural steps need be authorized; and
 - (iii) any special rules relating to admission of evidence and means of proof need be ordered.

13. THIS COURT ORDERS that the parties shall make costs submissions in writing in accordance with a timetable to be agreed by them or they may request a case conference to address the process to decide the issue of costs of this motion.

*Let this order stand on
the above terms.*

Alexandra He

JUSTICE

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In Book No.	<i>18</i>
re Document No.	<i>268</i>
on	FEB 09 2007
by	<i>R</i>

MARGARET SMITH et al.

vs. NATIONAL MONEY MART
COMPANY et al.

IN THE SUPREMACY COURT OF
ONTARIO

Plaintiffs

Defendants

Court File No. 03-CV-1275

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

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FILE: 73-107-000
REF: HTS/ba