

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N

MARGARET SMITH AND RONALD ORIET

Plaintiffs

and

NATIONAL MONEY MART COMPANY and
DOLLAR FINANCIAL GROUP, INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**REPLY AND DEFENCE TO COUNTERCLAIM OF
NATIONAL MONEY MART COMPANY**

1. The definitions in the further fresh statement of claim apply for the purposes of this reply and defence to counterclaim.
2. The plaintiffs repeat and rely upon the allegations in the further fresh statement of claim.
3. The plaintiffs admit the allegations contained in the third sentence of paragraph 3, the first two sentences of paragraph 4, paragraph 5 except the first two sentences, paragraph 6, the first two sentences of paragraph 10, the first sentence of

paragraph 17, paragraph 19, paragraph 29(a), (b), (c) and the first sentence of paragraph 37.

4. Except as admitted herein, the plaintiffs deny each and every allegation contained in the statement of defence and counterclaim.

5. The plaintiffs have no knowledge, or insufficient knowledge, of the allegations contained in paragraphs 13, 14, 32, 41, 58, the first sentence of paragraph 59, 87, 88 and 89 of the statement of defence and counterclaim.

6. In reply to paragraphs 8(c)(iii), 11 and 39, the plaintiffs deny that Money Mart charges its “standard first party cheque cashing fee” in the context of a Fast Cash Advance because the percentage component of the cheque cashing fee is not applied to the face value of the cheque and because, as a matter of law, it is interest.

7. In reply to paragraph 22, the plaintiffs plead that Money Mart’s payday loan program was developed in the United States by Dollar Financial as Cash 'Til Payday. Then, with Dollar Financial’s assistance, Money Mart introduced the concept into Canada as Fast Cash Advance. Dollar Financial was directly involved in the planning, development and implementation of the Fast Cash Advance concept and was paid for this work by royalty payments.

8. Money Mart represented to its auditors Ernst & Young and to Revenue Canada that the facts set out in paragraph 7 were true and justified the payment of

royalties to Dollar Financial. Money Mart claimed business expenses and filed income tax returns on the basis that the facts set out in paragraph 7 were true.

9. Money Mart is now estopped from asserting that Money Mart's payday loan program was not developed in the United States by Dollar Financial as Cash 'Til Payday, that Dollar Financial did not assist Money Mart in developing and introducing into Canada the Fast Cash Advance concept and that the facts set out in paragraph 7 are not true.

10. In reply to paragraphs 23 to 26, the plaintiffs plead that, among other things:

- (a) Money Mart required the approval of the board of directors of Dollar Financial for the acquisition of Canadian franchisees;
- (b) executives at Dollar Financial have also been officers and directors of Money Mart, as described in paragraphs 14 and 15 of the further fresh statement of claim;
- (c) Dollar Financial assisted Money Mart in the development and maintenance of long-term contacts and relationships with suppliers of Money Mart, such as Western Union;
- (d) Dollar Financial participated in the development of the Fast Cash Advance product in Canada;
- (e) Money Mart and Dollar Financial share the same internal audit department;

- (f) the operations group of Dollar Financial is responsible for providing expertise regarding store operations, human resources, collections, loan products, strategic planning, new business development, financing strategies and acquisition strategies; and
- (g) the Dollar Financial accounting department is ultimately responsible for the accounting at and for Money Mart.

11. In reply to the first sentence of paragraph 27, the plaintiffs plead that, among other things:

- (a) Money Mart guaranteed Dollar Financial's indebtedness in respect of its credit facility with its bank, Wells Fargo, by giving Wells Fargo security over Money Mart's assets in Ontario and elsewhere;
- (b) Money Mart used Dollar Financial's line of credit with Wells Fargo to guarantee Money Mart's indebtedness to the Bank of Montreal;
- (c) Dollar Financial provided Money Mart with at least \$105 million in financing which allowed Money Mart to purchase the operations of some of its franchisees;
- (d) Dollar Financial paid the interest payments on public bond offerings that were used to advance loans to Money Mart to expand the Canadian operations; and
- (e) Dollar Financial provided cash to Money Mart on an as-needed basis, for example, when Money Mart requested and required special working capital.

12. In reply to paragraphs 53 and 54, the plaintiffs plead that Dollar Financial knew that part of the revenue that Money Mart generated to pay management fees and royalty fees came from Fast Cash Advance loans and Money Mart knew that part of the franchise fee revenue it received from its franchisees came from Fast Cash Advance loans.

13. This action was certified as a class action by order of this court dated January 5, 2007.

14. The trial of this class action will be a trial of common issues and the counterclaim cannot be tried with it.

15. Money Mart must identify each class member who it asserts is indebted to it and particularize the amount of debt it asserts each class member owes it.

16. After the trial of the common issues, if Money Mart has not been successful in having the total of the indebtedness owed to it by some of the class members factored into the calculation of aggregate damages, then, it must seek the directions of the trial judge to deal with this claim.

17. The plaintiffs plead that the claims asserted by this counterclaim are not a proper counterclaim in this action which has been certified as a class proceeding.

18. The plaintiffs plead that whether the principal and interest of the debt alleged in the counterclaim is enforceable in law will be determined by the court's decision at the trial of the common issues.

19. The plaintiffs therefore ask that Money Mart's counterclaim be dismissed with costs on a substantial indemnity basis.

March 5, 2007

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MARGARET SMITH et al.

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COMPANY et al.

Plaintiffs

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Court File No. 03-CV-1275

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PROCEEDINGS COMMENCED AT WINDSOR

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FILE: 73-107-000

REF: HTS/ba