

**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
DOLLAR FINANCIAL GROUP, INC.**

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 statement of claim.
3. The plaintiffs admit the allegations contained in paragraphs 3 and 27(a), (b), (d).

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 46, 59, 60 and 61 of the statement of defence and counterclaim.

6. In reply to the second sentence of paragraph 10 and paragraph 13, the plaintiffs plead that Dollar Financial, by receiving royalty fees and management fees from Money Mart, directly and indirectly, received money paid by class members to Money Mart and the franchisees as Fast Cash Advances.

7. In reply to paragraph 16, the plaintiffs allege 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 royalty payments for its efforts in so doing.

8. Dollar Financial earned royalty payments in Canada. Dollar Financial represented to Revenue Canada and its auditors Ernst & Young that the facts set out in paragraph 7 were true and justified the payment by Money Mart of royalties to it.

9. Dollar Financial claimed that it earned income and filed income tax returns on the basis that the facts asserted in paragraph 7 are true.

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

11. In reply to paragraphs 17 to 20, the plaintiffs plead, among other things, that:

- (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 contracts and relationships with suppliers of Money Mart, such as Western Union; and
- (d) Dollar Financial participated in the development of the Fast Cash Advance product in Canada.

12. In reply to the first sentence of paragraph 21, the plaintiffs allege that:

- (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 financed the acquisitions of Money Mart franchisees to the tune of at least \$105 million; and
- (d) Dollar Financial serviced interest payments on public bond offerings that were used to advance loans to Money Mart to expand the Canadian operations.

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

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

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

16. Money Mart and Dollar Financial must identify each class member who they assert is indebted to them and particularize the amount of debt they assert each class member owes them.

17. After the trial of the common issues, if Money Mart and Dollar Financial have not been successful in having the total of the indebtedness owed to them by some of the class members factored into the calculation of aggregate damages, then, they must seek the directions of the trial judge to deal with this claim.

18. 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.

19. 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.

20. The plaintiffs therefore ask that Dollar Financial's counterclaim be dismissed with costs on a substantial indemnity basis.

March 5, 2007

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Dollar Financial Group, Inc.

MARGARET SMITH et al.

vs. NATIONAL MONEY MART
COMPANY et al.

Plaintiffs

Defendants

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