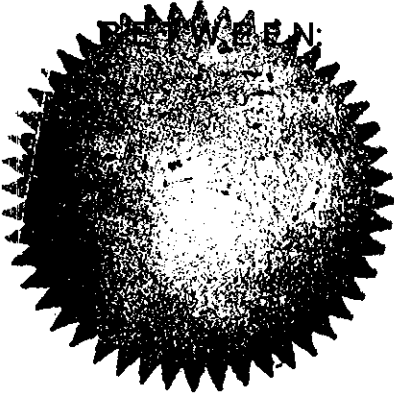


Court File No.

03-CV-257357 CP

ONTARIO
SUPERIOR COURT OF JUSTICE



KENNETH D. MORTILLARO

Plaintiff

- and -

CASH MONEY CHEQUE CASHING INC.

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

Date October 21, 2003

Issued by 
Local Registrar

Address of
court office: 393 University Ave., 10th Floor
Toronto, Ontario M5G 1E6

TO: CASH MONEY CHEQUE CASHING INC.
5155 Spectrum Way, Unit 16
Mississauga, Ontario
L4W 5A1

CLAIM

1. The Plaintiff claims:

- (a) An order pursuant to the *Class Proceedings Act, 1992*, certifying this action as a class proceeding, and appointing the Plaintiff as representative plaintiff for the Class (defined below);
- (b) A declaration that the interest rate charged by the Defendant, Cash Money Cheque Cashing Inc. ("Cash Money"), to the Class (as defined below) on "payday" loans ("Payday Loans" as defined below) made by Cash Money to the Class since Cash Money's incorporation on June 26, 1992 violates section 347 of the *Criminal Code* and is illegal and void, and does not have to be paid by the Class;
- (c) A declaration that the Payday Loan agreements are therefore void and unenforceable, or in the alternative that the interest provisions of the Payday Loan agreements between the Defendant and the Class members are void and unenforceable;
- (d) An accounting of all Interest Charges (defined below) paid by the Class to Cash Money on the Payday Loans, a declaration that all such Interest Charges are not the property of the Defendant, but are held by it for the benefit of the Class pursuant to a resulting trust, and an order that Cash Money pay corresponding restitutionary damages forthwith to the Class;
- (e) Exemplary or punitive damages in the amount of \$10,000,000.00 or such other sum as this Honourable Court deems fit;
- (f) An interim, interlocutory, and permanent injunction restraining Cash Money from charging interest in a manner that violates the *Criminal Code*;
- (g) Prejudgment interest in accordance with the *Courts of Justice Act*;
- (h) Postjudgment interest in accordance with the *Courts of Justice Act*; and,
- (i) Costs of this proceeding on a full indemnity basis.

OVERVIEW

2. This is a proposed class proceeding for damages and other relief arising from interest charges applied to Payday Loans made by Cash Money to the Class. The rate of interest charged by Cash Money, including interest described as a “cheque cashing charge,” and a “late charge”, and the annual rate of interest contravenes the criminal interest rate provisions of the *Criminal Code*. Consequently, members of the proposed Class are entitled to restitution for illegal interest they have paid and will pay, and other relief.

THE PARTIES

3. Cash Money is a corporation incorporated pursuant to the laws of Ontario, and carries on business in Ontario at various retail locations, with its head office in Mississauga, Ontario. Cash Money is a retail financial services company.

4. The Plaintiff resides in Toronto, Ontario. From time to time he has been a customer of Cash Money, entering into “payday” loans with the Defendant.

THE CLASS

5. The Plaintiff brings this action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 on behalf of a class consisting of all persons in Canada who (i) have taken or will take Payday Loans from Cash Money and did not or have not or will not repay the loan prior to the due date, and (ii) have paid or have been charged, or will pay or will be charged interest on a Payday Loan, at any time up to the date of judgment in this matter (the “Class”).

CASH MONEY PAYDAY LOANS

6. One of the services offered by Cash Money is to provide short-term loans to gainfully employed consumers. Cash Money provides loans of a percentage of the net amount to be paid to the consumer (the “borrower”) on his or her next payday (the “Payday Loans”).

7. The Payday Loans are subject to the following written terms and conditions:

- (a) Cash Money will lend to the consumer an agreed upon sum, which is a percentage of the borrower's next net pay cheque (the "principal");
- (b) The principal, together with all accrued interest is due on the borrower's next pay day (the "due date");
- (c) On execution of the loan agreement, the borrower is required to endorse and provide to Cash Money a post-dated personal cheque dated for the due date in the total amount of the loan, inclusive of principal, interest at the alleged effective annual rate of 52% per annum, cheque cashing charge of 2.99% of the amount of the loan plus \$9.90, and a "late charge fee" of \$15.00;
- (d) If the principal and all accrued interest is not repaid by the due date, then the borrower is deemed to have opted to repay the loan and accrued Interest Charges by way of the post-dated cheque; and
- (e) Cash Money then deposits the endorsed personal cheque to its own credit at its bank, as a holder in due course.

8. Cash Money causes each borrower to execute a promissory note and disclosure statement when it enters into the Payday Loan. The promissory note and disclosure statement includes an assignment of specific debt by which the borrower assigns to Cash Money the amount of the Payday Loan from its future wages, and authorizes and directs his or her employer to deduct the amount of the Payday Loan from the borrower's future wages.

9. In fact, contrary to the terms of the written promissory note and disclosure statement, Cash Money charges the borrower a fee of \$20.00 per \$100.00 of principal irrespective of the term of the Payday Loan, and requires the post-dated personal cheque to be made out in an amount equal to the principal amount of the Payday Loan, plus \$20.00 per \$100.00 of principal.

INTEREST CHARGES

10. Cash Money has charged and it continues to charge interest on each Payday Loan allegedly comprised of three elements (hereinafter collectively referred to as the "Interest Charge"):

- (a) interest purportedly charged at the effective annual rate of 52% until the date of payment, or the day after the due date, whichever is later;
- (b) interest described as a "cheque cashing charge" of 2.99% of the principal amount of the loan plus \$9.90; and
- (c) interest described as a "late charge" in the amount of \$15.00 if the Payday Loan is not repaid by the due date.

In fact, the Interest Charge charged by Cash Money is \$20.00 per \$100.00 of principal, irrespective of the length of the Payday Loan.

THE DEFENDANT CHARGES INTEREST AT A CRIMINAL RATE ON PAYDAY LOANS

11. Section 347 of the *Criminal Code* makes it an offence to charge interest at a "criminal rate". "Criminal rate" is defined in section 347(2) as "an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60% on the credit advanced under an agreement or arrangement."

12. The Interest Charge is "interest" within the meaning of section 347 of the *Criminal Code*.

13. The effective annual rate of interest charged to the Class by way of the Interest Charge vastly exceeds the criminal rate of 60%. Therefore, the Defendant has been charging an illegal rate of interest, and has taken illegal profits by way of the Payday Loans.

THE PLAINTIFF'S PAYDAY LOANS

14. In May 2003, the Plaintiff entered into the first of several Payday Loan agreements with Cash Money. Each Payday Loan agreement was in substantially the same form and includes the terms for repayment set forth above in paragraph 7.

15. In accordance with the terms of the Payday Loan agreements, the Plaintiff delivered post-dated personal cheques to Cash Money as follows:

ADVANCE DATE	CHEQUE DATE	AMOUNT	PRINCIPAL	INTEREST
	May 6, 2003	480.00	400.00	80.00
	May 22, 2003	240.00	200.00	40.00
	June 5, 2003	480.00	400.00	80.00
June 5, 2003	June 20, 2003	840.00	700.00	140.00

16. Full particulars of the dates of the advances and the total Interest Charges charged by the Defendant to the Plaintiff are not known to the Plaintiff, but are within the knowledge of the Defendant.

17. Each of the aforesaid cheques included the principal amount of the Payday Loan, and the Interest Charge with respect thereto, calculated in accordance with the terms set forth in paragraph 7, above.

18. None of the Plaintiff's Payday Loans were repaid by the Plaintiff on or before the due date. In each instance, Cash Money deposited the Plaintiff's personal cheque to its own account, and Cash Money has been paid the aforesaid amounts by the Plaintiff.

19. The Interest Charges charged by Cash Money to the Plaintiff on each of the aforesaid Payday Loans exceeds the maximum legal rate of interest permissible under the *Criminal Code*, and the Payday Loans and Payday Loan agreements are, therefore, illegal and void and unenforceable.

THE PAYDAY LOANS CONTRAVENE THE CRIMINAL CODE

20. Cash Money has received by way of Interest Charges payments of interest at rates in excess of 60% per year from members of the Class since it commenced carrying on business in Canada. The receipt of all such payments contravenes section 347(1)(b) of the *Criminal Code*. All such payments are therefore void.

21. As the Interest Charges received by the Defendant are void, the Class is entitled to restitution of all Interest Charges paid by them to the Defendant. The Defendant holds the Interest Charges in favour of the Class pursuant to a resulting trust.

UNJUST ENRICHMENT

22. The total amount collected by Cash Money as Interest Charges from the Class is not known by the Plaintiff, but is known to Cash Money. Cash Money has been unjustly enriched by the receipt of the Interest Charges from the Class.

23. The Class has suffered a corresponding deprivation.

24. There is no juristic reason for the Defendant to retain the Interest Charges, which are illegal interest. The Defendant has, therefore, been unjustly enriched, and holds the Interest Charges pursuant to a resulting trust for the benefit of the Class.

25. The Class is therefore entitled to an accounting and restitution of all of the Interest Charges they have paid to Cash Money.

PUNITIVE OR EXEMPLARY DAMAGES

26. The Payday Loan agreements are intentionally misleading, and worded in such a way as to deceive the Class with respect to the actual cost of borrowing that they incur when entering into a Payday Loan.

27. The conduct of the Defendant in advancing the Payday Loans to the Class on terms which contravene the *Criminal Code*, pursuant to a contract that was materially misleading in nature, and which was intended to and did exploit the economic vulnerability of the Class, including the Plaintiff, is conduct of such wanton and high-handed character that it is deserving of the condemnation of this Honourable Court by way of an award of punitive and/or exemplary damages in the amount of \$10,000,000.00, or such other sum as this Honourable Court deems fit.

GENERAL

28. The Plaintiff, on behalf of the Class, pleads and relies on the *Class Proceedings Act*, 1992, R.S.O. 1992, c. 6, the *Criminal Code of Canada*, R.S.C. 1985, c. 46, c.30, and the *Courts of Justice Act*, R.S.O. 1990, c. 43.

29. The Plaintiff proposes that this action be tried at Toronto, Ontario.

October 20th, 2003

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Solicitors for the Plaintiff

KENNETH D. MORTILLARO
Plaintiff

v.

CASH MONEY CHEQUE CASHING INC.
Defendant

Court File No.:
03-cv-257357CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings Commenced in Toronto

STATEMENT OF CLAIM

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