

2007 01T 1386 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

WILLIAM SQUIRES

PLAINTIFF

AND:

DOLLAR FINANCIAL GROUP INC., NATIONAL
MONEY MART COMPANY, SYD FRANCHUK,
JEFFREY WEISS, 10768 NEWFOUNDLAND
LIMITED carrying on business under the name and
style of MONEY MART, GERRY KILDUFF and
RON KUZYK

DEFENDANTS

Brought under the *Class Actions Act*, SNL 2001, c. C-18.1

STATEMENT OF CLAIM

OVERVIEW

1. This is a proposed class proceeding for damages and other relief arising from the interest charges applied and collected by the Defendants, or any one or more of them, from the Class in relation to Fast Cash Advance™ Payday Loans. The rate of interest charged by the Defendants in relation to the loans, including interest described as “standard first party cheque cashing” fees and “per item” fees, together with the stated annual effective rate of interest, contravenes the criminal interest rate provisions of the *Criminal Code of Canada*.

THE PARTIES

2. The Plaintiff, William Squires, is a 71-year-old retiree residing at 134 Circular Road, in the City of St. John's, in the Province of Newfoundland and Labrador. He lives alone and his only sources of income are his Canada Pension and Old Age Security benefits ("the Plaintiff").
3. The Defendant, Dollar Financial Group Inc., is a company incorporated pursuant to the laws of the State of Delaware with its head offices located at 1436 Lancaster Avenue, Suite 210, Berwyn, Pennsylvania 19312 ("Dollar Financial Group" or "DFG"). Dollar Financial Group is the parent company of the Defendant, National Money Mart Company and carries on the business of providing short-term loans to consumers through more than 1,000 stores in the United States, Canada (including Newfoundland and Labrador, Nova Scotia and New Brunswick) and the United Kingdom. DFG owns 100% of the issued and allocated shares of National Money Mart. DFG became a publicly traded company on the NASDAQ exchange in January 2005.
4. The Defendant, National Money Mart Company, is a corporation incorporated under the laws of Nova Scotia and carries on business across Canada through more than 200 retail outlets ("National Money Mart"). National Money Mart's head offices are located at 1640 Oak Bay Ave, 3rd Floor, Victoria, British Columbia, V8R 1B2.
5. The Defendant, Syd Franchuk, resides at 2540 Wilcox Terrace, Victoria, British Columbia, V8Z 7G5 ("Franchuk"). Franchuk is the director, president, secretary and/or the controlling mind and alter ego of National Money Mart.
6. The Defendant, Jeffrey Weiss, resides in Berwyn, Pennsylvania, in the United States of America ("Weiss"). Weiss is currently and at all material times was the chief executive officer and/or the controlling mind and alter ego of the Defendant, Dollar Financial

Group. He is also the CEO of National Money Mart. Particulars of the offices he held, known to the Plaintiff at this time, are set out in the following chart:

Year	DFG	Dollar Financial	NationalMoney Mart
1996	Chair, President, CEO	Chair, President, CEO	Unknown
1997	Chair, President, CEO	Chair, President, CEO	CEO (from May)
1998	Chair, President, CEO	Chair, President, CEO	Unknown
1999	Chair, CEO	Chair, CEO	unknown
2000	Chair, CEO	Chair, CEO	unknown
2001	Chair, CEO	Chair, CEO	unknown
2002	Chair, CEO	Chair, CEO	CEO (from July)
2003	Chair, CEO	Chair, CEO	CEO, Director
2004	Chair, CEO	CEO	unknown
2005	Chair, CEO	CEO	unknown
2006	Chair, CEO	CEO	unknown

7. The Defendant, 10768 Newfoundland Limited, is a corporation incorporated pursuant to the laws of Newfoundland and Labrador, with its registered head office address being c/o Cox, Hanson, O'Reilly, Matheson, Suite 401, Scotia Centre, 235 Water Street, St. John's, NL, A1C 1B6 ("10768 Ltd"). At all material times, 10768 Ltd carried on business in Newfoundland and Labrador as Money Mart.
8. The Defendant, Gerry Kilduff, is an officer, director, controlling shareholder and/or the controlling mind and alter ego of 10768 Ltd and resides at 98 Salisbury Drive, in the City of Saskatoon, in the Province of Saskatchewan. ("Kilduff").
9. The Defendant, Ron Kuzyk, is an officer, director, controlling shareholder and/or the controlling mind and alter ego of 10768 Ltd and resides at 53 Glaewyn Estates, in the City of St. Albert, in the Province of Saskatchewan ("Kuzyk").

10. Donald Gayhardt resides in the State of Pennsylvania. He is a director and officer of Dollar Financial and DFG and a director of Money Mart. Particulars of the offices he held, known to the plaintiff at this time, are set out in the following chart:

Year	DFG	Dollar Financial	Money Mart
1996	Executive Vice President, CFO, Secretary Treasurer, Director	Executive Vice President, CFO, Secretary Treasurer, Director	Director
1997	Executive Vice President, CFO, Secretary Treasurer, Director (until June)	Executive Vice President, CFO, Director (until June)	President (until May), Executive Vice President, CFO, Secretary Treasurer, Director (until June)
1999	President, Director	President	Unknown
2000	President, Director	President	Unknown
2001	President, CFO, Director	President, CFO	Unknown
2002	President, CFO, Director	President, CFO	Unknown
2003	President, CFO, Director	President, CFO, Director	Unknown
2004	President, CFO, Director	President, CFO	Director
2005	President, Secretary, Director	President, CFO	Unknown
2006	President, Secretary, Director	President, CFO	Unknown

11. 10768 Newfoundland Limited owns all the stores in Newfoundland and Labrador operating under the name Money Mart. The stores use Money Mart's computer system. They offer Fast Cash Advances in the same form and on the same terms as Money Mart. They pay Money Mart a monthly fee or payment which includes a percentage of each Fast Cash Advance made by them.
12. 10768 Newfoundland Limited is named as a defendant solely to bind them to the declaratory relief that the plaintiffs seek. For greater certainty, the Plaintiff and the Class Members do not seek damages from 10768 Newfoundland Limited.
13. Hereinafter, and unless the contrary is specifically indicated or the context precludes it, a reference to "Money Mart" is intended to refer to any one or more of the corporate defendants, including Dollar Financial Group, National Money Mart, and 10768 Ltd.

and/or their respective subsidiaries, parent companies, employees, franchisees, officers, directors, controlling minds and/or alter egos.

THE CLASS

14. The Plaintiff brings this action under the Class Actions Act, SNL 2001 c. C - 18.1, on his own behalf and on behalf of a class consisting of all persons who have taken or will take Fast Cash AdvanceTM Payday Loans from Money Mart in Newfoundland and Labrador and did not or have not or will not repay the loan on or before the due date; and/or have paid or have been charged, or will pay or will be charged interest on a Fast Cash AdvanceTM Payday Loan, at any time prior to the date of judgment in this action.

MONEY MART "FAST CASH ADVANCES"

15. Among the services offered by Money Mart is the provision of short-term loans to gainfully employed consumers. Money Mart provides loans of up to 30% of the net amount to be paid to the consumer on his or her next payday ("Fast Cash Advances").
16. Fast Cash Advances are subject to the following terms and conditions as set out in the standard loan Agreement:
 - (a) Money Mart lends to the consumer an agreed upon sum, not exceeding 30% of the borrower's next pay cheque ("the principal");
 - (b) The principal, together with all accrued interest is due one day before the borrower's next pay day ("the due date");
 - (c) On execution of the loan agreement, the borrower endorses and provides to Money Mart a personal cheque post-dated one day after the due date in the total amount of the loan, including principal, interest at a claimed effective annual rate

of 59% per year, Money Mart's "standard" first party cheque cashing fee of at least 2.99% of the loan (including principal and interest), and a "per item fee" of \$12.99; and

- (d) In the event that the principal and all accrued interest is not repaid by the due date (one day prior to the borrower's next pay cheque) the borrower is deemed to have opted to repay the loan by way of the post-dated cheque, in an amount which comprises the principal, interest at 59% per annum, the "first party cheque cashing" fee of at least 2.99% (on the principal and interest) and the per item fee of at least \$12.99.
17. The Plaintiff pleads that the terms and conditions of the Fast Cash Advance Loan Agreement have been consistent over the years, but for minor adjustments of the "per item fee" and/or the "standard first-party cheque cashing fee". In particular, the Plaintiff is aware that the "per item fee" has been as high as 4.99% and the "standard first-party cheque cashing fee" as high as \$14.99. Particulars of the fees charged on each of the Fast Cash Advance Loans made to the Class are not known by the Plaintiff but are within the knowledge of Money Mart.

THE INTEREST CHARGES

18. Money Mart has charged and continues to charge interest on each Fast Cash Advance comprised of three elements (collectively, "the interest charges"):
- (a) Interest purportedly charged at the effective annual rate of 59%, accruing daily, until the date of payment, or the day after the due date, whichever is earlier;
- (b) Interest described as the "standard first party cheque cashing fee" of at least 2.99% of the principal and the total accrued interest in the event that the Fast Cash Advance is not repaid by the due date;

- (c) Interest described as a “per item fee” of at least \$12.99 if the Fast Cash Advance is not repaid by the due date.

THE CRIMINAL RATE OF INTEREST ON FAST CASH ADVANCES

19. Money Mart effectively charges interest on Fast Cash Advances at a Criminal rate of interest as defined in the Criminal Code of Canada (“the Criminal Code”). Section 347(2) of the Criminal Code defines a “criminal rate” 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.”
20. The elements of the interest charges which are disguised by Money Mart as “fees” are interest, in fact and in law. The Plaintiff specifically pleads and relies on the Criminal Code definition of “interest” as found in s. 347(2):
- The aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced....
21. The effective annual rate of interest charged to the Class in respect of the Fast Cash Advances greatly exceeds the maximum permissible rate of 59% per annum. Accordingly, Money Mart has charged and received and continues to charge and receive an illegal rate of interest in relation to each Fast Cash Advance.
22. Money Mart is controlled by Dollar Financial. They operate in the alternative financial services sector. They offer cheque cashing services, Fast Cash Advances and other ancillary products and services to a segment of the population that has poor credit or is otherwise unable to utilize traditional banking services. Their mission “is to be the premier provider of diversified financial services focused on the asset-limited, income

constrained population.” As such, they open locations in what they describe as “Asset-Limited, Income-Constrained communities.”

23. At least one-half of Money Mart’s income in Canada is derived from Fast Cash Advances.
24. From 1996, Money Mart, Dollar Financial and the Co-conspirators conspired to breach s. 347(1) and s. 462.31 by causing Money Mart and its Franchisees to charge and receive Interest on Fast Cash Advances at a Criminal Rate and by causing Money Mart to transfer a portion of this revenue to Dollar Financial.
25. Alternatively, from at least 1996, by breaching s. 347(1) and s. 462.31 and by charging and receiving Interest on Fast Cash Advances at a Criminal Rate, Money Mart and Dollar Financial have been unjustly enriched and Dollar Financial has received revenue from Money Mart when it knew or should have known that Money Mart had no entitlement to charge and receive Interest at a Criminal Rate.

THE PLAINTIFF’S FAST CASH ADVANCES

26. On or about October 10, 2002, the Plaintiff entered into a Fast Cash Advance Loan Agreement with Money Mart at its location in St. John’s, operated by the Defendant, 10768 Ltd (“the October 2002 Loan”). In accordance with the terms of the Fast Cash Advance Loan Agreement, the Plaintiff delivered a post-dated cheque to Money Mart in the amount of \$384.17 in exchange for a cash loan in the amount of \$350. The term of the loan was 18 days, making the due date October 28, 2002.
27. The post-dated cheque delivered to Money Mart by the Plaintiff was for an amount that comprised the principal and the interest charges, including interest calculated at the rate of 59% accruing daily, the standard first party cheque cashing fee of 2.99% (on the principal and interest) and the per item fee of \$14.99.

28. The October 2002 Loan was not repaid in advance of the due date. On or about October 28, 2002 Money Mart deposited the Plaintiff's cheque and received the amount of \$33.72 in addition to the principal of \$350. The interest received by Money Mart therefore exceeded criminal rates for the 18 day term of the loan, or 0.535% per day, for an annual rate of interest of 195.36%. The interest charges therefore exceeded the maximum permissible rate of interest under the Criminal Code, rendering the transaction void and unenforceable at law.
29. On or about November 26, 2002 the Plaintiff entered into a Fast Cash Advance Loan Agreement with Money Mart at its location in St. John's, operated by the Defendant, 10768 Ltd ("the November 2002 Loan"). In accordance with the terms of the Fast Cash Advance Loan Agreement, the Plaintiff delivered a post-dated cheque to Money Mart in the amount of \$387.38 in exchange for a cash loan in the amount of \$350.
30. The post-dated cheque delivered to Money Mart by the Plaintiff was for an amount that comprised the principal and the interest charges, including interest calculated at the rate of 59% accruing daily, the standard first party cheque cashing fee of 2.99% (on the principal and interest) and the per item fee of \$14.99.
31. The November 2002 Loan was not repaid in advance of the due date. On or about October 28, 2002 Money Mart deposited the Plaintiff's cheque to its own account and received the amount of \$36.93 in addition to the principal of \$350. The interest received by Money Mart therefore amounted to 1.477% for the 25 day term of the loan, or 0.422% per day, for an annual rate of interest of 154.05%. The interest charges therefore exceeded the maximum permissible rate of interest under the Criminal Code, rendering the transaction void and unenforceable at law.
32. The Plaintiff has entered into more than twenty-five other such agreements or arrangements with Money Mart between mid-2002 and the present day. Each of the Fast Cash Advance Loan Agreements was substantially the same in form as the October 2002 and November 2002 Loans and each included the terms and conditions referred to

in paragraph 17 above. The particulars in relation to each of the Fast Cash Advances (and any others) made by Money Mart to the Plaintiff are known by Money Mart.

33. The effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles and s. 347(2) of the Criminal Code for the \$350 Fast Cash Advance and charges of \$33.72 is not stated anywhere in the Fast Cash Advance loan agreement or receipt.
34. The interest charges charged and received by Money Mart in relation to each of the Plaintiff's twenty-five (or more) loans exceeded the maximum permissible rate of interest under the Criminal Code.

FAST CASH ADVANCES TO THE CLASS

35. Money Mart, itself or through its various agents, associates and/or franchisees including but not limited to the Defendants named herein, has charged and received interest at rates exceeding 59% per annum in relation to Fast Cash Advances made to the Class since it commenced carrying on business in Newfoundland and Labrador. The charging and/or receipt of all such interest monies was and continues to be in contravention of section 347(1)(b) of the Criminal Code and all such Fast Cash Advance Loan Agreements were and are void and unenforceable at law.
36. As the interest charges charged and received by Money Mart were illegal, and the Fast Cash Advance Loan Agreements pursuant to which they were charged and received were void and unenforceable, the Class is entitled to repayment of all such amounts.
37. The total amount of the interest charges received by Money Mart from the Class is not known to the Plaintiff but is known to Money Mart. Money Mart and/or the individually named Defendants have been unjustly enriched by the receipt of the interest charges and

the Class has suffered a corresponding deprivation. There is no juristic reason for Money Mart or any of the individually named Defendants to retain any of the interest charges.

38. The Class is therefore entitled to an accounting by Money Mart of all interest charges charged and received since Money Mart commenced carrying on business in Newfoundland and Labrador, and restitution of all such amounts forthwith, together with interest.
39. Further, and/or in the alternative, the Plaintiff pleads that the acts of the Defendants, or any one or more of them, have caused and continue to cause the Class to suffer damages and losses including, but not limited to, all amounts whether principal, interest charges or fees charged or received by the Defendants in connection with Fast Cash Advance Loans in excess of the amounts properly payable at law.

CORPORATE ORGANIZATION OF THE DEFENDANTS

40. Dollar Financial is Money Mart's parent corporation and exercises effective and actual control and management of Money Mart's business.
41. Dollar Financial is organized so that Dollar Financial and Money Mart function as one ongoing, organized, functional, integrated business unit sharing common purposes and objectives. Dollar Financial developed a product in the United States, "Cash 'Til Payday," which was introduced by Money Mart in Canada as "Fast Cash."
42. Dollar Financial and Money Mart assert that Money Mart is the industry leader in Canada with a dominant market share and 85% brand awareness. According to Dollar Financial's 2003 Consolidated Annual Report, a Money Mart store is located in almost every city in Canada with a population of over 50,000, except in the Province of Quebec.

43. In fiscal 2003, Dollar Financial and Money Mart earned net income of about US \$22,500,000 from Fast Cash Advance loans in Canada. In fiscal 2004, this net income increased to about US \$31,500,000. In fiscal 2005, this net income increased to about US \$48,700,000. Net income from Fast Cash Advances have increased every year since 1998. During the Class Period, Dollar Financial earned approximately US \$500,000,000 in revenue from Money Mart's Fast Cash Advance loans.
44. In fiscal 2003, Dollar Financial's Canadian operations generated 30.5% of its total revenue.
45. On or about July 1, 1999, Money Mart entered into a written royalty agreement with Dollar Financial. It was renewed or amended on July 1, 2000.
46. Pursuant to the initial royalty agreement, Money Mart agreed to pay to Dollar Financial 4.5% of its gross annual revenues. Pursuant to the amended royalty agreement, Money Mart agreed to pay Dollar Financial 2.5% of its gross revenues.
47. Both royalty agreements stated that the royalty payments were in consideration of "the value of [Dollar Financial's] expertise in developing, maintaining and managing the 'Cash 'Til Payday' product prior to [it] being introduced as 'Fast Cash' in Canada by the Subsidiary [Money Mart]."
48. As of 2003, for "developing, maintaining and managing the 'Cash Til Payday' product in the United States prior to [it] being introduced as 'Fast Cash' in Canada," Money Mart paid or accrued as owing to Dollar Financial royalty payments to "compensate [Dollar Financial] for the value of said expertise at an agreed upon market rate." The amounts of the royalty payments exceeded US\$11 million to March 2004 as set out in the following chart:

Year	Royalty Fees (US\$)
2000	\$2,649,981
2001	\$1,891,530
2002	\$2,173,000
2003	\$2,526,088
2004 (as of March)	\$2,084,482
Total	\$11,325,081

49. On or about July 1, 1999, Money Mart entered into a written management agreement with Dollar Financial and agreed to pay a monthly fee to Dollar Financial in consideration of Dollar Financial providing “certain general management functions to the Subsidiary” including “top level management and decision making assistance.” Such assistance is described as including:
- (a) providing management and direction of the Subsidiary’s head office;
 - (b) strategic planning and new business development;
 - (c) financing and financing strategies relating to debt, to equity and other issues;
 - (d) active participation in capital expenditure projects;
 - (e) approval of capital spending and budgets;
 - (f) developing and maintaining long term contracts and relationships with customers and suppliers;
 - (g) developing acquisition strategies, reviewing targets and approval acquisitions;
 - (h) negotiation of corporate rebates;
 - (i) developing vendor strategies;
 - (j) monitoring information system developments; and
 - (k) custodial and shareholder activities, including relations with investors and shareholders.
50. Money Mart paid or accrued as owing to Dollar Financial as management fees the amounts set out in the following chart:

Year	Management Fees
June 30, 1998	\$1,896,983
December 18, 1998	\$975,000
1999	\$825,000
2000	\$1,475,398
2001	\$1,372,428
2002	\$890,000

51. Dollar Financial operates Money Mart as if it were functionally part of Dollar Financial and not as a separate corporation. Dollar Financial directly controls the day-to-day operations of Money Mart and Money Mart reports directly to and takes instructions from Dollar Financial. Examples follow:
- (a) Dollar Financial created an enterprise-wide transaction processing computer network that speeds customer transactions, standardizes product availability, traces customer histories and controls costs and imposed this network upon Money Mart (1998 Annual Report, page 15);
 - (b) Dollar Financial created a point-of-sale transaction processing system comprised of a networked hardware and software package with integrated database and reporting capabilities and imposed this system on Money Mart (1998 Annual Report, page 16);
 - (c) Dollar Financial and Money Mart use an enhanced centralized loan management and collections system (2003 Annual Report, page 13);
 - (d) Dollar Financial and Money Mart use common extensive security systems, dedicated security personnel and management information systems (2003 Annual Report, page 14);
 - (e) Dollar Financial's corporate marketing department develops promotions for all of Money Mart's locations. Dollar Financial's head office provides all Money Mart's store managers with local store marketing training (1998 Annual Report, page 16);
 - (f) Dollar Financial and Money Mart use economies of scale to jointly negotiate favourable contracts with suppliers because of the size of the company (1999 Annual Report, page 16);
 - (g) in 1999, Dollar Financial initiated a rebranding of their North American stores to convert all stores previously known as Almost-a-Banc, Any Kind Check Cashing Centers, Cash-N-Dash Check Cashing, Check Mart, Quikcash, the Money Shop and several other names to "Money Mart" (1999 Annual Report, page 3);

- (h) Dollar Financial manages its North American store operations, including Money Mart's stores, from the Victoria, British Columbia office (2003 Annual Report, page 13);
 - (i) Dollar Financial operates 1084 stores, including the Money Mart stores in Canada (Dollar Financial website);
 - (j) the Dollar Financial website lists a British Columbia number for Canadian inquiries, but makes no mention of Money Mart;
 - (k) Dollar Financial's officers and directors control Money Mart; and
 - (l) Dollar Financial and Money Mart have some common officers and directors.
52. Dollar Financial is liable for the acts and omissions of Money Mart, because:
- (a) it operated and continues to operate itself and Money Mart as a single entity;
 - (b) it operated and continues to operate Money Mart as its alter ego;
 - (c) it prepared and continues to prepare its financial statements on a consolidated basis and reported revenues and profits from charging Interest at a Criminal Rate;
 - (d) it controlled and continues to control, through its management, the day-to-day operations of Money Mart; and
 - (e) it conspired and continues to conspire with Money Mart and the Coconspirators as particularized herein.
53. Money Mart and Dollar Financial have profited illegally at the expense of a vulnerable segment of the population since, at least, August 19, 1997 by receiving from Franchisees Interest at a Criminal Rate from each Fast Cash Advance made by Money Mart and by receiving franchise fees which include a percentage of each Fast Cash Advance or the Interest thereon made by a franchisee to the members of the Class to the Franchisees.

THE CONSPIRACY

54. During the period from in or about November, 1996 to the date of this Amended Statement of Claim, at Berwyn, Pennsylvania, Victoria, British Columbia,

Newfoundland and Labrador and elsewhere, Money Mart, Dollar Financial and the Co-conspirators wrongfully, unlawfully, maliciously and lacking bona fides, conspired and agreed together, the one with the other or others of them:

- (a) to charge Interest at a Criminal Rate contrary to s. 347(1);
 - (b) to transfer, send, deliver and dispose of the Interest charged at a Criminal Rate to Dollar Financial by dividends, management fees, royalty payments and other charges knowing or believing that it was obtained or derived, directly or indirectly, as a result of a breach of s. 347(1);
 - (c) to engage in the lawful and unlawful means particularized in paragraph 69 with the predominant purpose of causing injury and loss to Smith and the other Class Members;
 - (d) to unlawfully cause the Class Members to pay Interest at a Criminal Rate when they knew or should have known in the circumstances that the Class Members would suffer injury and loss;
 - (e) to engage in various means, artifices, acts and devices, lawful and unlawful, with the predominant purpose of securing for themselves significant illegal revenues and profits in Money Mart, causing injury or loss to the Class Members;
 - (f) to transfer or accrue the illegal revenues, profits and monies from the Franchisees to Money Mart and from Money Mart to Dollar Financial; and
 - (g) to achieve an unlawful purpose, namely, to cause Money Mart and its Franchisees to charge Interest at a Criminal Rate and to transfer all or part of the ill-gotten gains to Dollar Financial.
55. Dollar Financial, Money Mart and the Co-conspirators were motivated to conspire and their predominant purposes were:
- (a) to cause injury to the Class Members;
 - (b) to direct their conduct toward the Class Members knowing in the circumstances that injury to the Class Members was likely to and did in fact result;
 - (c) to receive directly or indirectly the Total Interest;
 - (d) to cause Money Mart to receive the Total Interest and to transfer the Total Interest or part thereof to Dollar Financial;
 - (e) to increase the value of Money Mart and Dollar Financial at the expense of the asset-limited, income-constrained population;

- (f) to achieve personal and corporate gains when they knew their conduct would cause damage and expense to the Class Members; and
 - (g) to avoid detection and to conceal the conspiracy from the Class Members and from the authorities in Canada.
56. In furtherance of the conspiracy, the following acts were done by Dollar Financial, Money Mart and the Co-conspirators:
- (a) in November, 1996 Dollar Financial purchased the issued shares of Money Mart;
 - (b) in and after November 1996, they conceived the business plan of making Fast Cash Advances and implemented a business strategy to carry out that plan;
 - (c) they undertook market surveys of the viability of the Fast Cash Advance business;
 - (d) they assessed potential markets by analyzing demographic, competitive and regulatory factors, site selection and availability and growth potential;
 - (e) in 1996 and 1997, they established prototype Fast Cash Advance business operations in Seattle, Washington and Tucson, Arizona;
 - (f) Dollar Financial and Money Mart held board of directors' meetings at which they decided to undertake the Fast Cash Advance business and expand it to Canada, and in 1997, 1998, 1999 and 2000 required Dollar Financial's board of directors to approved Money Mart's purchase of franchises locations;
 - (g) they rented locations for Money Mart stores in Canada;
 - (h) they developed an enterprise-wide transaction processing computer system;
 - (i) they developed the standardized Fast Cash Advance from the U.S. experience in delivery of the "Cash Til Payday" product;
 - (j) they developed standard form franchise agreements and advertised franchises for sale and they and licensed franchises;
 - (k) they used the competitive U.S. market as a testing ground for the development of market products and processes;
 - (l) they caused Dollar Financial to advance about \$109 million to expand Money Mart's business;
 - (m) they received a percentage of the Interest from Fast Cash Advances entered into by their franchisees;

- (n) they hired personnel to operate Money Mart stores;
- (o) they developed and revised standard form contracts;
- (p) they entered into contracts to have Dollar Financial provide executive, head office, general management, treasury, accounting, financial planning, and human resources services;
- (q) they obtained legal advice;
- (r) they established standardized computer systems to speed customer transactions and to track customer histories;
- (s) they implemented standard form Fast Cash Advance processes and procedures in all their Canadian locations;
- (t) they obtained loans to finance and expand their Money Mart operations in Canada;
- (u) they promoted Money Mart as a legitimate business providing a bona fide alternative financial service while knowingly charging Interest at a Criminal Rate;
- (v) they established web sites;
- (w) they publicly advertised Money Mart's services as lawful;
- (x) they opened locations in "Asset-Limited, Income-Constrained communities";
- (y) they rebranded stores with the name Money Mart;
- (z) they created a business model intentionally designed to collect Interest at a Criminal Rate by attempting to mask interest as fees and other charges in an attempt to avoid s. 347(1);
- (aa) they engaged in and facilitated the unlawful practice of charging Interest at a Criminal Rate;
- (bb) they established standardized collection procedures;
- (cc) they established standard manuals for use throughout Canada;
- (dd) on April 18, 1997, they purchased the common shares of Canadian Capital Corporation which operated 43 locations and rebranded these stores as Money Mart;
- (ee) on February 17, 1999, they purchased an 86.5% partnership interest in the Calgary Money Mart Partnership which operated six stores in Alberta, Canada and rebranded these stores as Money Mart;

- (ff) on November 18, 1999, they purchased all the outstanding shares of Cheques R Us, Inc. and Courtenay Money Mart Ltd. which operated six stores in British Columbia and rebranded these stores as Money Mart;
- (gg) on August 1, 2000, they purchased all of the outstanding shares of West Coast Chequing Centres, Ltd. which operated six stores in British Columbia and rebranded these stores as Money Mart;
- (hh) they collected and received the Total Interest;
- (ii) they paid the proceeds of the conspiracy or part thereof to Dollar Financial as management fees, royalty payments, dividends and other charges;
- (jj) they paid expenses, taxes, charges and other costs of operations from the Interest from Fast Cash Advances charged at a Criminal Rate;
- (kk) they developed a strict set of market survey and location guidelines they adhered to when selecting new store sites;
- (ll) they developed proprietary systems to improve loan servicing activities and internal and regulatory compliance efforts;
- (mm) they organized the corporate structure of Dollar Financial and Money Mart to capitalize on economies of scale and efficiencies;
- (nn) they appointed common officers and directors for Money Mart and Dollar Financial;
- (oo) they granted stock options to the individual Co-conspirators;
- (pp) they held directors' meetings of Dollar Financial and Money Mart at which they discussed s.347 and established a lobbying campaign to coerce the federal government to amend s.347 to permit the charging of further fees;
- (qq) they unlawfully garnered revenues and profits from charging Interest at a Criminal Rate;
- (rr) they caused Money Mart to pledge its assets to Dollar Financial's banker;
- (ss) they entered into royalty agreements and management agreements; and
- (tt) they caused Dollar Financial to advance over \$100,000,000 to Money Mart to "bankroll" Money Mart's operations.

57. Dollar Financial, Money Mart and the Co-conspirators knew that Money Mart charged interest at a Criminal Rate or they were wilfully blind and they should have known. They knew or ought to have known that as a result of the conspiracy the Class Members

would suffer injury, damage and loss and the Class Members did in fact, suffer injury and loss as hereinafter particularized.

CONSTRUCTIVE TRUST AND TRACING ORDER

58. As a result of the conspiracy particularized above, the Class Members paid to Money Mart and its franchisees at least \$500,000,000 in Interest at a Criminal Rate. As such, Money Mart is a trustee holding the \$500,000,000, or such other amount as the court determines was paid directly to it, for the benefit of the Class.
59. Money Mart paid to Dollar Financial at least \$20,000,000 of the Total Interest it received as royalty payments for the value of Dollar Financial's expertise in developing, maintaining and managing a product known as "Cash 'Til Payday" in the United States prior to it being introduced by Money Mart as the Fast Cash Advance concept in Canada. This royalty payment was calculated as a percentage of Money Mart's revenue which included part of the Total Interest. Dollar Financial knew that the monies it received from Money Mart were, in part, a percentage of illegal Fast Cash Advance loan agreements charging Interest at a Criminal Rate. Alternatively, Dollar Financial was wilfully blind. As such, Dollar Financial is a constructive trustee holding, for the benefit of the Class that part of the \$20,000,000 which was a percentage of the Interest from Fast Cash Advances.
60. The Class Members are entitled to an equitable tracing order. Money Mart must account for that part of the Total Interest which was paid directly to it by the Class Members. Dollar Financial must account for that part of the royalty payments it received which was a percentage of Interest from Fast Cash Advances.

UNJUST ENRICHMENT

61. Money Mart has been unjustly enriched by the receipt of the Total Interest or part thereof.
62. The Class Members have suffered a deprivation in the amount of the Total Interest.
63. Since the charges and expenses received by Money Mart on each Fast Cash Advance constitutes Interest at a Criminal Rate, since each Fast Cash Advance agreement between Money Mart and the Class Members is void and unenforceable in whole or in part by reasons of illegality, and since s. 347(1) and s. 462.31 exist to protect the Class Members in the circumstances pleaded above, there is and can be no juridical reason justifying Money Mart retaining that part of the Total Interest it received from Fast Cash Advances. Therefore, Money Mart is liable to the Class in restitution for the portion of the Total Interest or part thereof. For the same reasons, Dollar Financial is liable to the Class in restitution for the \$20,000,000 it received from Money Mart as royalty payments or that portion of the \$20,000,000 which was a percentage of the Interest on Fast Cash Advances.
64. In all the circumstances pleaded above, it is just and equitable that Money Mart and Dollar Financial be declared to be constructive trustees in favour of the Class Members. Money Mart is a constructive trustee holding the Total Interest or the part of the Total Interest it received for the benefit of the Class Members. Dollar Financial is a constructive trustee holding the royalty payments of \$20,000,000 or a part thereof for the benefit of the Class. Further, as constructive trustees, Money Mart should be ordered to disgorge the Total Interest or the part of the Total Interest it received and Dollar Financial should be required to disgorge the royalty payments of \$20,000,000 or the part thereof which is a percentage of the Interest on Fast Cash Advances paid by the Class.

JOINT AND SEVERAL LIABILITY OF THE INDIVIDUAL DEFENDANTS

65. The individually named Defendants authorized or assented or acquiesced or participated in the acts or omissions set forth above and are jointly and severally liable with the corporate Defendants to the representative Plaintiff and other Class members.
66. The Plaintiff pleads that the individually named defendants, or one or more of them, formed or utilized Dollar Financial Group, National Money Mart, DFG, 10768 Ltd. and/or other corporate entities (the particulars and identities of which are not known to the Plaintiff but are known by Money Mart) for the dominant or sole purpose of committing wrongful and/or illegal acts in connection with money lending in the province of Newfoundland & Labrador. As the individual defendants are the sole officers, directors and/or shareholders of the corporate Defendants, and alone are responsible for their actions, they are at law responsible and personally liable for its wrongful acts.
67. Further, and/or in the alternative, as the individually named defendants purposefully set up or utilized the corporate Defendants with a view to circumventing the Criminal Code provisions relating to maximum legal interest rates, the individually named defendants intended to commit wrongful and/or illegal acts and are in law personally and/or jointly and severally liable together with the corporate defendants named herein.
68. Further, and in respect of the relationship that exists between the parent corporation, Dollar Financial Group, and its subsidiaries including National Money Mart, the latter are under the complete control of the Dollar Financial Group and are mere conduits used by Dollar Financial Group to avoid liability.

PUNITIVE OR EXEMPLARY DAMAGES

69. The Fast Cash Advance Loan Agreements are intentionally misleading and worded so as to deceive the Class as to the actual cost of borrowing involved with a Fast Cash Advance. In particular, the exclusion of the “first party cheque cashing fee” and the “per item” fee from the cost of borrowing disclosure is intended to mislead and does mislead consumers as to the actual cost of borrowing. Further, the description of these amounts as anything other than interest is intended to mislead and does mislead consumers as to the propriety and/or the legality of the amounts charged and received by Money Mart in exchange for Fast Cash Advances.

70. By advancing Fast Cash Advances to the Class on terms which contravene the Criminal Code under a form of agreement which is intentionally misleading and deceptive, the Defendants have acted in a high-handed fashion and with callous and wanton disregard for the rights of the Class members. Such conduct warrants an award of punitive and/or exemplary damages.

GENERAL

71. The Plaintiff, on behalf of the Class, pleads and relies on the Class Actions Act, SNL 2001 c. 18.1; the Judgment Interest Act RSNL 1990 c. J-2; the Criminal Code of Canada, R.S.C. 1985, c. 46.; the Canada Interest Act, R.S.C. I-18..

72. The Plaintiff pleads that the Statement of Claim in this action may be served outside of Newfoundland and Labrador and relies on sections 6.07 (1) (f), (g), (i) and (j) and 6.07 (2) of the Rules of the Supreme Court, 1986.

RELIEF SOUGHT

73. The Plaintiff claims, on his own behalf and on behalf of the Class:
- (a) An order pursuant to the Class Actions Act certifying this action as a class action and naming the Plaintiff as representative plaintiff for the Class as described in paragraph 15 above;
 - (b) A declaration that the interest rate charged by Money Mart on Fast Cash Advances since it commenced carrying on business in Newfoundland and Labrador exceeds the maximum permissible rate of interest under the Criminal Code and/or that the Fast Cash Advance Loan Agreements are void and unenforceable;
 - (c) Alternatively, a declaration that the interest provisions of the Fast Cash Advance Loan Agreements are void and unenforceable;
 - (d) An accounting of all interest charges paid by the Class to Money Mart since Money Mart commenced carrying on business in Newfoundland and Labrador;
 - (e) A declaration that Money Mart's use of the Fast Cash Advance Loan Agreements, generally, and the provisions relating to the interest charges in particular, is contrary to the applicable statutes in Newfoundland and Labrador;
 - (f) A declaration that all interest charges received and/or held by the Defendants, or any one or more of them, are impressed with a legal and/or equitable trust and are held by Money Mart for the benefit of the Class;

- (g) An order that Money Mart pay to the Class the full amount of the interest charges received by Money Mart in restitution, forthwith together with interest at a rate to be determined by the Court;
- (h) Damages, in the amount of all interest charges, fees and/or penalties paid by the Class and charged or received by the Defendants, or any of them;
- (i) Alternatively, an order directing the repayment of, or damages for, any and all amounts paid by the Class in excess of a sum fairly due to the Defendants, or any of them, as determined by the Court;
- (j) Punitive and/or exemplary damages in an amount of to be determined by the Court;
- (k) An interim, interlocutory and permanent injunction restraining Money Mart or any of its agents, subsidiaries and/or franchisees from charging interest at rates in excess of the maximum permissible rate pursuant to the Criminal Code;
- (l) The costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;
- (m) Interest pursuant to the provisions of the Judgment Interest Act, R.S.N. 1990, c.J-2;
- (n) Such further and other relief as this Honourable Court deems just including leave, if necessary, for the service of the Statement of Claim outside the jurisdiction pursuant to Rule 6.07 of the Rules of the Supreme Court, 1986.

74. The Plaintiff proposes that this action be tried at St. John's, Newfoundland and Labrador.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 30th day of March, 2007.



CHES CROSBIE BARRISTERS

Solicitors for the Plaintiff

Whose address for service is:

169 Water Street, 4th Floor

St. John's, NL A1C 1B1

Attention: Chesley F. Crosbie, QC

TO: Dollar Financial Group Inc.
1436 Lancaster Avenue, Suite 210
Berwyn, Pennsylvania 19312

AND TO: National Money Mart Company
1640 Oak Bay Avenue, 3rd Floor
Victoria, BC V8R 1B2

AND TO: Syd Franchuk
2540 Wilcox Terrace
Vancouver, BC V8Z 7G5

AND TO: Jeffrey Weiss
Berwyn, Pennsylvania

AND TO: 10768 Newfoundland Limited
c/o Cox Hanson O'Reilly Matheson
Suite 401, Scotia Centre, 235 Water Street
St. John's, NL A1C 1B6

AND TO: Gerry Kilduff
98 Salisbury Drive
Saskatoon, SK S7H 3J5

AND TO: Ron Kuzyk
53 Glaewyn Estates
St. Albert, SK

Issued at St. Johns this 30th day of March, 2007

*(Signed) Ron Wheeler Jr.
Supreme Court Officer*

2007 01T 1386 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

WILLIAM SQUIRES

PLAINTIFF

AND:

DOLLAR FINANCIAL GROUP INC., NATIONAL
MONEY MART COMPANY, SYD FRANCHUK,
JEFFREY WEISS, 10768 NEWFO LIMITED
carrying on business under the name and style of
MONEY MART, GERRY KILDUFF and RON
KUZYK

DEFENDANTS

Brought under the *Class Actions Act*, SNL 2001, c. C-18.1

NOTICE TO DEFENDANTS

You are hereby notified that the Plaintiff may enter judgement in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ^{30 ~~10~~ ~~th~~} days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's a defence and unless within the same time a copy of your defence is served upon the Plaintiff or the Plaintiff's Solicitor at the Plaintiff's Solicitors stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ _____ (or such sum as may be allowed on taxation) for costs to the Plaintiff or the Plaintiff's Solicitor within 10 days from the service of this notice upon you, then proceeding will be stayed.

TO: THE DEFENDANTS