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IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

**BETWEEN:**

RANDY B. BELLOWS

PLAINTIFF

**AND:**

PAYDAY PLUS ENTERPRISES LIMITED,  
MATTHEW BRUMSEY and CYNTHIA  
ROWE, carrying on business under the name  
and style of C&C PAYDAY or PAYDAY PLUS

DEFENDANTS

BROUGHT UNDER THE *CLASS ACTIONS ACT*

**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 from the Class in relation to short term, retail loans. The effective rate of interest charged by the Defendants in relation to such loans contravenes the criminal interest rate provisions of the *Criminal Code of Canada*. The members of the proposed Class are therefore entitled to a declaration of invalidity ab initio, damages and restitution of the interest they have paid and will pay, as well as the other relief claimed herein.

**THE PARTIES**

2. The Plaintiff, Randy B. Bellows, resides at 53A Wyatt Boulevard, in the City of Mount Pearl, Newfoundland and Labrador, A1N 3H6 (“the Plaintiff”).

3. The Defendant, Payday Plus Enterprises Limited, is a corporation incorporated pursuant to the laws of the province of Ontario, with its head offices located at 45 Front Street, Trenton, Ontario, K8B 4N3 (“Payday Enterprises”). Payday Enterprises carries on business in Ontario and in Newfoundland and Labrador as a retail lender, using the business name and style of “Payday Plus”. Hereinafter, all references to Payday Plus are intended to refer to Payday Enterprises and any of its officers, directors, agents or franchisees, collectively, including any partnerships, sole proprietorships or franchisees carrying on business as “Payday Plus”, unless otherwise indicated.
4. The Defendant, Mathew Brumsey, is the president, controlling shareholder and/or controlling mind and alter ego of Payday Enterprises (“Mr. Brumsey”). Mr. Brumsey resides at 529 Old Highway 2, Trenton, Ontario, K8V 1A1.
5. The Defendant, Cynthia Rowe, is the president, controlling shareholder and/or controlling mind and alter ego of Payday Enterprise’s St. John’s franchise or outlet, located at 220 LeMarchant Road (“Ms. Rowe”). Ms. Rowe resides in St. John’s, Newfoundland and Labrador, and at all material times carried on business using the business style C&C Payday or Payday Plus.

## **THE CLASS**

6. 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:
  - (a) All persons who have taken or will take loans from Payday Plus in Newfoundland and Labrador and have paid or have been charged, or will pay or will be charged interest on such loans, at any time prior to the date of judgment in this action; and

- (b) All persons who have taken or will take loans from Payday Plus in Ontario and have paid or have been charged, or will pay or will be charged interest on such loans, at any time prior to the date of judgment in this action.

## **PAYDAY PLUS SERVICES**

- 7. Among the services offered by Payday Plus is the provision of short-term loans to consumers (“the Loans”).

## **THE LOANS**

- 8. The Plaintiff pleads that the Loans are a form of alternative credit in which Payday Plus loans and the customer borrows money. The form of the Loan transactions is as follows:
  - (a) Payday Plus lends to the consumer an agreed upon sum (“the principal”);
  - (b) The principal, together with interest, is due on a date agreed upon by the parties (“the due date”);
  - (c) The borrower endorses and provides to Payday Plus a post-dated cheque in an amount equal to the principal and interest (“the post-dated cheque”); and
  - (d) The effective rate of borrowing is no less than \$15.00 per \$100.00 borrowed, per week, or approximately 780% annually.
- 9. The Plaintiff pleads that the terms of the Loans have been consistent since Payday Plus commenced carrying on business. Particulars of the interest charged on each of the Loans made to the Class are not known by the Plaintiff but are within the knowledge of Payday Plus.

10. Payday Plus has charged and continues to charge interest on each Loan at a rate greatly in excess of the maximum legal rate of interest permissible at law (“the interest charges”).
11. Further, and/or in the alternative, Payday Plus charges additional fees for late payment of the Loans, which fees are interest in fact and in law.

### **THE CRIMINAL RATE OF INTEREST ON LOANS**

12. Payday Plus effectively charges interest on Loans 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.”
13. The interest charges, or “costs of borrowing” described by Payday Plus as “fees”, “service charges” and/or “penalties”, are interest in fact and in law. The Plaintiff specifically pleads and relies on the Criminal Code definition of “interest” as:

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...
14. The effective annual rate of interest charged to the Class in respect of the Loans of \$15.00 or more per \$100.00 borrowed, per week, greatly exceeds the maximum permissible rate of 60% per annum. Accordingly, Payday Plus has charged and received and continues to charge and receive an illegal rate of interest in relation to each Loan.
15. Additionally, the Defendants are in violation of the *Trade Practices Act*, RSNL, 1990, c. T-7, with reference to sections 2(b)(ii), (f) and (g), 5(1)(p), 6(1)(b) and (d), and s. 14.

**LOANS MADE TO THE PLAINTIFF**

16. Between December 31, 2002 and December 31, 2003 the Plaintiff obtained 22 Loans from Payday Plus.
  
17. The Plaintiff pleads that the following two transactions are representative of the interest charges and the effective rates of interest received by Payday Plus in relation to the Loans made to the Plaintiff during the period described above:
  - (a) On January 3, 2002 the Plaintiff borrowed \$100 from Payday Plus. The Loan was repaid on January 17, 2003, in the amount of \$130. The effective interest rate was therefore 15% per week, or 780% annually;
  
  - (b) On September 19, 2003 the Plaintiff borrowed \$100 from Quick Cash. The Loan was repaid on September 26, 2003, in the amount of \$115. The effective interest rate was therefore 15% per week, or 780% annually.
  
18. The Plaintiff pleads that the interest received by Payday Plus in relation to the Loans made to him exceeded the maximum permissible rate of interest under the Criminal Code, rendering those transactions, and all such similar transactions, void and unenforceable at law. Alternatively, the Plaintiff pleads that the interest provisions of the Loans, and/or any agreements or arrangements pursuant to which they were made, are void and unenforceable.
  
19. The Plaintiff obtained numerous other Loans from Payday Plus commencing in or about December 2002. Each of the Loans was substantially the same as those pleaded in paragraph 22 herein. Payday Plus knows the particulars in relation to each of the Loans made by Payday Plus to the Plaintiff, the amounts of interest received by Payday Plus, and the applicable interest rate or rates.

## **LOANS TO THE CLASS**

20. Payday Plus has charged and received interest at rates exceeding 60% per annum in relation to Loans made to the Class since it commenced carrying on business in Newfoundland and Labrador. The 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 Loans were and are void and unenforceable at law.
21. As the interest charges received by Payday Plus were illegal, and any agreements or arrangements pursuant to which they were charged and received were and are void and unenforceable, the Class is entitled to an equitable and/or legal accounting and repayment of all such amounts.

## **THE INDIVIDUAL DEFENDANTS**

22. The individual defendant, Mr. Brumsey, was at all material times the controlling mind and/or alter ego of Payday Enterprises. At all material times, Mr. Brumsey was aware of and directed the conduct of the corporate defendant, Payday Enterprises, and its practices in connection with the Loans.
23. As the business activities of Payday Enterprises and/or Payday Plus are principally aimed and directed at circumventing the Criminal Code provisions relating to maximum legal interest rates, Mr. Brumsey intended to commit wrongful and/or illegal acts and is in law personally and/or jointly and severally liable together with the Defendants, including Payday Enterprises, for any and all losses and damages claimed herein.
24. The individual defendant, Ms. Rowe, was at all material times the controlling mind and/or alter ego of the Payday Plus outlet, franchise or operation in St. John's. Alternatively, Ms. Rowe carried on business using the name and style "Payday Plus" as an independent sole proprietorship or as a franchise of Payday Enterprises. At all

material times, Ms. Rowe was aware of and directed the conduct of Payday Plus in St. John's and its practices in connection with the Loans.

25. As the business activities of Payday Enterprises and/or Payday Plus are principally aimed and directed at circumventing the Criminal Code provisions relating to maximum legal interest rates, Ms. Rowe intended to commit wrongful and/or illegal acts and is in law personally and/or jointly and severally liable together with the Defendants, including Payday Enterprises, for any and all losses and damages claimed herein.
26. Further, and in respect of the relationship that exists between the parent corporation, Payday Enterprises, and its agents or franchisees, the latter are under the complete control of Payday Enterprises and are mere conduits used by Payday Enterprises and/or Mr. Brumsey to avoid liability.

#### **UNJUST ENRICHMENT**

27. The total amount of the interest charges received by Payday Plus from the Class is not known to the Class but is known to Payday Plus. The Plaintiff pleads that the receipt of the interest charges has unjustly enriched Payday Plus and/or the individually named defendants, Mr. Brumsey and Ms. Rowe, and the Class has suffered a corresponding deprivation. There is no juristic reason for Payday Plus or any of the Defendants to retain any of the interest charges.
28. The Class is therefore entitled to an accounting by Payday Plus and/or the individually named defendants of all interest charges charged and received since Payday Plus commenced carrying on business in Newfoundland and Labrador, and restitution of all such amounts forthwith, together with interest. Further, and/or in the alternative, the Class is entitled to an order providing for the tracing of all sums received as interest in the event that such sums have been paid, transferred or assigned to any of the defendants or to any other persons or entities.

## **DAMAGES**

29. The Plaintiff pleads that the Class has suffered damages and losses as a direct result of the Defendants' breach of the Criminal Code of Canada including, but not limited to, all sums paid as interest, fees, penalties or otherwise part of the "cost of borrowing" in relation to the Loans.

## **PUNITIVE AND/OR EXEMPLARY DAMAGES**

30. By making Loans to the Class on terms which contravene the *Criminal Code* and/or the *Trade Practices Act*, 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.

## **CANADA INTEREST ACT**

31. The Plaintiff pleads that because the Loans, or the interest provisions of the Loans, are void and unenforceable, the Loans were effectively made without a fixed rate of interest and that the provisions of section 3 of the *Canada Interest Act*, R.S.C. I-18 therefore apply.
32. The Plaintiff therefore pleads in the alternative that the effective annual interest rate on all the Loans was 5%, in accordance with section 3 of the *Canada Interest Act*

## **SERVICE OUTSIDE OF THE JURISDICTION**

33. 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

## GENERAL

34. 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 *Trade Practices Act*, RSNL 1990 c. T-7, and the *Canada Interest Act*, R.S.C. I-18.

## RELIEF SOUGHT

35. 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;
  - (b) A declaration that the Loans are loan agreements; that the fees and charges paid by borrowers are interest in fact and in law, and that the interest rates charged by Payday Plus on the Loans have exceeded and do exceed the maximum permissible rates of interest under the *Criminal Code*;
  - (c) A declaration that any and all Loans made by Payday Plus to the Class are loan agreements or arrangements and are void and unenforceable;
  - (d) Alternatively, a declaration that the interest provisions of the Loan agreements or arrangements are unenforceable;
  - (e) An accounting of all interest charges paid by the Class to Payday Plus since Payday Plus commenced carrying on business in Newfoundland and Labrador;
  - (f) 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 one or more of them;

- (g) 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;
- (h) Alternatively, repayment of, or damages for, the amount by which the interest and Payday Loan Fees exceeded a rate of interest of 5% per annum, pursuant to the provisions of the *Canada Interest Act* or, alternatively, 60%, being the maximum rate of return to the Defendants, or any of them, permitted by s.347 (1) of the *Criminal Code*;
- (i) A declaration that the Loans generally, and the provisions relating to the interest charges in particular, constitute unfair trade practices pursuant to the *Trade Practices Act*, and an interim or permanent injunction pursuant to s. 14 thereof;
- (j) A declaration that all interest monies received and/or held by Payday Plus or any of the Defendants are impressed with a legal and/or equitable trust and are held by the defendants, or one or more of them, for the benefit of the Class;
- (k) An order that the defendants, or any one or more of them, pay to the Class the full amount of the interest charges received by Payday Plus in restitution, forthwith together with interest at a rate to be determined by the Court;
- (l) Punitive and/or exemplary damages in an amount to be decided by the Court;
- (m) An interim, interlocutory and permanent injunction restraining Payday Plus from charging interest at rates in excess of the maximum permissible rate pursuant to the *Criminal Code*;
- (n) An interim, interlocutory and permanent injunction restraining Payday Plus, its officers, directors, agents and/or employees from assigning, transferring or

otherwise dealing with any Payday Plus assets other than in the ordinary course of business;

- (o) An order appointing an equitable or legal receiver to receive any income of Quik Cash and to hold such sums pending resolution of this action;
- (p) The costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;
- (q) Interest pursuant to the provisions of the *Judgment Interest Act*, R.S.N. 1990, c.J-2, at common law or in equity;
- (r) Such further and other relief as this Honourable Court deems just.

36. 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 \_\_\_\_\_ day of April, 2004.

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**CHES CROSBIE BARRISTERS**

Solicitors for the Plaintiff  
Whose address for service is:  
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