

2004 01 T

CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

RANDY B. BELLOWS

PLAINTIFF

AND:

QUIK CASH LTD., RONALD H. LAWRENCE,
GORDON A. LAWRENCE, JANE H.
LAWRENCE, and STEPHEN LAWRENCE

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 Defendant, Quik Cash Ltd., from the Class in relation to loans in the form of cash advances. The effective rate of interest charged by Quik Cash Ltd. in relation to such loans contravenes the criminal interest rate provisions of the *Criminal Code of Canada*.

THE PARTIES

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

3. The Defendant, Quik Cash Ltd., is a corporation incorporated pursuant to the laws of Newfoundland and Labrador, with its registered head office address being P.O. Box 75, 69 Elizabeth Drive, Gander, Newfoundland and Labrador, A1V 1W5 (“Quik Cash”). At all material times, Quik Cash has carried on business in Newfoundland and Labrador through Quik Cash locations and various agents. Quik Cash offers its services at approximately 20 locations throughout Newfoundland and Labrador and one location in Halifax, Nova Scotia.

4. The Defendants, Ronald H. Lawrence, Gordon A. Lawrence, Jane H. Lawrence and Stephen Lawrence, are officers, directors and/or the controlling minds of Quik Cash, and all but Stephen Lawrence reside in Gander, Newfoundland and Labrador. Their respective residential addresses are: Ronald H. Lawrence, 6A Vatcher Place, Gander, NL, A1V 1W5; Gordon A. Lawrence and Jane H. Lawrence both of 6 Vatcher Place, Gander, NL, A1V 2R4; and Stephen Lawrence, 7A Baffin Drive, Mount Pearl, NL, A1N 4Y4.

THE CLASS

5. 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 Cash Advance loans from Quik Cash in Newfoundland and Labrador and have paid or have been charged, or will pay or will be charged interest on a Cash Advance loan, at any time prior to the date of judgment in this action (“the Intra-Provincial Class”); and,

 - (b) All persons who have taken or will take Cash Advance loans from Quik Cash in Nova Scotia and have paid or have been charged, or will pay or will be charged interest on a Cash Advance loan, at any time prior to the date of judgment in this action (“the Extra-Provincial Class”).

QUIK CASH SERVICES

6. Among the services offered by Quik Cash is the provision of short-term loans to consumers. Quik Cash provides such loans in the form of Cheque AdvanceTM and Payroll Cheque AdvanceTM services (hereinafter collectively referred to as “the Cash Advances”)
7. The Plaintiff plead that the Cash Advances are both forms of loans, in fact and law.

THE CHEQUE ADVANCETM SERVICE

8. Upon presentation to Quik Cash of three pieces of identification and proof of an active chequing account and telephone number, first time customers can borrow up to \$100 for a term of up to 28 days. Thereafter, a customer’s “limit” increases in increments of \$50, to a maximum of \$950.
9. In order to borrow money from Quik Cash by using the Cheque AdvanceTM Service, customers write a post-dated cheque to Quik Cash in an amount equal to the principal amount of the loan plus interest.

THE PAYROLL CHEQUE ADVANCETM SERVICE

10. The Payroll Cheque AdvanceTM Service offered by Quik Cash permits gainfully employed consumers to borrow amounts up to 40% of the net amount to be paid to them on their next following payday, up to a limit of \$500. In addition to the information required to obtain a Cheque Advance loan, consumers are required to provide two recent payroll stubs.

THE CASH ADVANCES

11. The Plaintiff pleads that the Cash Advances are both forms of alternative credit in which Quik Cash loans and the customer borrows money. The form of the Cash Advance transactions is as follows:
 - (a) Quik Cash 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 not more than 28 days following the date of the loan (“the due date”);
 - (c) The borrower endorses and provides to Quik Cash a post-dated cheque in an amount equal to twice the amount of the principal for new customers or, for established customers, in an amount equal to the principal and interest (“the post-dated cheque”);
 - (d) In the event that the principal and interest are not repaid in full by the due date the borrower is deemed to have opted to repay the loan by way of the post-dated cheque;
 - (e) In the event that Quik Cash cashes the post-dated cheque, the borrower is barred from obtaining further or other Cash Advance loans until the cheque has been cleared and the principal and interest deposited to the credit of Quik Cash;
 - (f) In either event, the effective rate of borrowing for Cash Advances is no less than \$15.00 per \$100.00 borrowed, per week, or approximately 780% annually.
12. The Plaintiff pleads that the terms of the Cash Advances have been consistent since Quik Cash commenced carrying on business in or about 1995. Particulars of the interest

charged on each of the Cash Advances made to the Class are not known by the Plaintiff but are within the knowledge of Quik Cash.

13. Quik Cash has charged and continues to charge interest on each Cash Advance at a rate greatly in excess of the maximum legal rate of interest permissible at law (“the interest charges”).
14. Further, and/or in the alternative, Quik Cash engages in the practice of “rolling over” or “extending” Cash Advances, resulting in further and additional interest charges (“the rollover charges”).
15. The rollover charges were and are paid by borrowers as a way of avoiding the deemed repayment by way of the post-dated cheque. The borrower in effect “buys back” his post-dated cheque for an amount equal to the interest charges due, and replaces it with a further post-dated cheque, leaving the principal unpaid.
16. The rollover charges are also interest charges in fact and in law, which sums are charged and received by Quik Cash at rates vastly in excess of the permissible legal maximum rate of interest.

THE CRIMINAL RATE OF INTEREST ON CASH ADVANCES

17. Quik Cash effectively charges interest on Cash Advances (including its rollovers) 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.”

18. The elements of the interest charges, which are disguised by Quik Cash as “fees”, “extension charges”, “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...

19. The effective annual rate of interest charged to the Class in respect of the Cash Advances of \$15.00 or more per \$100.00 borrowed, per week, greatly exceeds the maximum permissible rate of 60% per annum. Accordingly, Quik Cash has charged and received and continues to charge and receive an illegal rate of interest in relation to each Cash Advance.
20. 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.

CASH ADVANCES MADE TO THE PLAINTIFF

21. Between December 2002 and September 2003 the Plaintiff obtained 31 Cash Advances from Quik Cash. The Cash Advances were most often for the maximum term of 28 days and the average amount was approximately \$135.
22. The Plaintiff pleads that the following two transactions are representative of the interest charges and the effective rates of interest received by Quik Cash in relation to the Cash Advances made to the Plaintiff during the period described above:

- a) On December 20, 2002 the Plaintiff borrowed \$200 from Quik Cash. The Cash Advance was repaid on January 17, 2003, in the amount of \$300. The effective interest rate was therefore 50% for 28 days, or 650% annually.
 - b) On February 24, 2003 the Plaintiff borrowed \$100 from Quik Cash. The Cash Advance was repaid on March 22, 2003, in the amount of \$147.60. The effective daily interest rate was therefore 1.83 % , or 667.95% annually.
23. The Plaintiff pleads that the interest received by Quik Cash in relation to the Cash Advances 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.
24. The Plaintiff obtained numerous other Cash Advances from Quik Cash commencing in or about 2001. Each of the Cash Advances was substantially the same as those pleaded in paragraph 22 herein. Quik Cash knows the particulars in relation to each of the Cash Advances made by Quik Cash to the Plaintiff, the amounts of interest received by Quik Cash, and the applicable interest rate.

CASH ADVANCES TO THE CLASS

25. Quik Cash has charged and received interest at rates exceeding 60% per annum in relation to Cash Advances made to the Class since it commenced carrying on business in Newfoundland and Labrador and in Nova Scotia. 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 Cash Advances were and are void and unenforceable at law.
26. As the interest charges received by Quik Cash were illegal, and any agreements 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

27. The individual defendants, Ronald H. Lawrence, Gordon A. Lawrence, Jane H. Lawrence and Stephen Lawrence, are officers, directors and/or the controlling minds and alter egos of Quik Cash. At all material times, these individually named defendants were aware of the conduct of the corporate defendant, Quik Cash, and its practices in connection with the Cash Advances.
28. The Plaintiff pleads that the individually named defendants, or one or more of them formed Quik Cash, for the dominant or sole purpose of committing wrongful and/or illegal acts in connection with money lending in the provinces of Newfoundland and Labrador and Nova Scotia. Alternatively, having formed Quik Cash, they caused it to commit unlawful acts. As the individual defendants are the sole officers, directors and shareholders of Quik Cash, and alone are responsible for its actions, they are at law responsible and personally liable for its wrongful acts.
29. Further, and/or in the alternative, as the individually named defendants purposefully set up the corporate defendant, Quik Cash, 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 defendant.

UNJUST ENRICHMENT

30. The total amount of the interest charges received by Quik Cash from the Class is not known to the Class but is known to Quik Cash and/or the individually named defendants. The Plaintiff pleads that the receipt of the interest charges has unjustly enriched Quik Cash and/or the individually named defendants and the Class has suffered a corresponding deprivation. There is no juristic reason for Quik Cash or any of the individually named defendants to retain any of the interest charges.

31. The Class is therefore entitled to an accounting by Quik Cash and/or the individually named defendants of all interest charges charged and received since Quik Cash commenced carrying on business in Newfoundland and Labrador and in Nova Scotia, 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 the individually named defendants or to any other persons or entities.

PUNITIVE AND/OR EXEMPLARY DAMAGES

32. The Cash Advances are intentionally misleading and structured so as to deceive the Class as to the actual cost of borrowing involved with a Cash Advance. The Plaintiff's plead that the description of the Cash Advances as anything other than loans is intentionally misleading. Further, the Plaintiff plead that Quik Cash descriptions of the costs associated with borrowing as "fees", "charges" or "expenses" are misleading to the extent that they communicate that such fees, charges or expenses are anything other than interest.
33. By making Cash Advances 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 to achieve goals of punishment and deterrence.

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, and the *Trade Practices Act*, RSNL 1990 c. T-7.

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 Cash Advances 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 Quik Cash on Cash Advances have exceeded and do exceed the maximum permissible rates of interest under the *Criminal Code*;
 - (c) A declaration that any and all Cash Advances made by Quik Cash to the Class are loan agreements or arrangements and are void and unenforceable
 - (d) Alternatively, a declaration that the interest provisions of the Cash Advance agreements or arrangements are unenforceable;
 - (e) An accounting of all interest charges paid by the Class to Quik Cash since Quik Cash commenced carrying on business in Newfoundland and Labrador and/or in Nova Scotia;
 - (f) A declaration that the Cash Advances 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;
 - (g) A declaration that all interest monies received and/or held by Quik Cash 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;

- (h) 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 Quik Cash in restitution, forthwith together with interest at a rate to be determined by the Court;
- (i) Damages, including but not limited to, all amounts paid by the Class to the Defendants, or any of them, in principal, interest, charges and/or fees;
- (j) Alternatively, damages, calculated as (i) all interest and charges paid, (ii) all interest and charges paid in excess of 5% per annum as specified by the *Canada Interest Act*, or (iii) all interest and charges paid in excess of 60% per annum as specified under the *Criminal Code*;
- (k) Punitive and/or exemplary damages in an amount to be decided by the Court;
- (l) An interim, interlocutory and permanent injunction restraining Quik Cash from charging interest at rates in excess of the maximum permissible rate pursuant to the *Criminal Code*;
- (m) An interim, interlocutory and permanent injunction restraining Quik Cash, its officers, directors, agents and/or employees from assigning, transferring or otherwise dealing with any Quik Cash assets other than in the ordinary course of business;
- (n) 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;
- (o) The costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;

- (p) Interest pursuant to the provisions of the *Judgment Interest Act*, R.S.N. 1990, c.J-2, at common law or in equity;
- (q) 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 19th day of March, 2004.

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

TO: Quik Cash Ltd.
69 Elizabeth Drive
Gander, NL A1V 1J1

AND TO: Ronald H. Lawrence
6A Vatcher Place
Gander, NL A1V 1W5

AND TO: Gordon A. Lawrence
6 Vatcher Place
Gander, NL A1V 2R4

AND TO: Jane H. Lawrence
6 Vatcher Place
Gander, NL A1V 2R4

AND TO: Stephen Lawrence
7A Baffin Drive
Mount Pearl, NL A1N 4Y4

DATED at St. John's in the Province of Newfoundland and Labrador, this day of
March, 2004.
