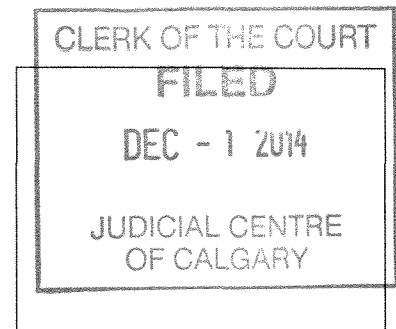


COURT FILE NO. 0301-16311
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Calgary



PLAINTIFF GARETH YOUNG, as representative plaintiff
DEFENDANT DOLLAR FINANCIAL GROUP INC., NATIONAL MONEY MART COMPANY carrying on business under the name and style of "MONEY MART", SYD FRANCHUK and JEFFREY WEISS

DOCUMENT

**STATEMENT OF DEFENCE of
NATIONAL MONEY MART COMPANY**

PARTY FILING THIS DOCUMENT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

NATIONAL MONEY MART COMPANY
McCarthy Tétrault LLP
4000, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9
Attention: John P. Brown / Sean S. Smyth
Phone: 403-260-3698
Fax: 403-260-3501
Email: ssmyth@mccarthy.ca
File: 007136-337303

1. Except as expressly admitted herein, the Defendant, NATIONAL MONEY MART COMPANY ("**Money Mart**") denies each allegation made in the Amended Statement of Claim (the "**Statement of Claim**").
2. Unless otherwise defined herein, capitalized terms used herein shall have the same meaning given to those terms in the Statement of Claim.
3. Money Mart has no information at the present time to contradict the allegations in paragraph 1 of the Statement of Claim concerning the Plaintiff, Gareth Young ("**Young**" or the "**Representative Plaintiff**").
4. In reply to paragraph 2 of the Statement of Claim, on September 18, 2014, this Honourable Court ordered that the class on behalf of which the Representative Plaintiff is

entitled to bring this Action is comprised of all persons who have borrowed money as a 'Fast Cash Advance' or 'Payday Loan' ("**Fast Cash Advance**") from Money Mart in Alberta and have repaid that Fast Cash Advance using the post-dated first party cheque provided in order to obtain the Fast Cash Advance, between October 16, 2001 and November 30, 2005.

Money Mart's Business

5. Money Mart provides financial services to ordinary Canadians throughout Canada. It offers a whole range of financial services. These services include cheque cashing, Western Union money transfers and money orders (Money Mart is the largest Western Union agent in Canada), foreign currency exchange, bill payments (Money Mart customers can make bill payments to more than 1,000 businesses and utilities), mailbox rentals, money orders, tax preparation and discounting (Money Mart is the only tax discounting company which provides consumers with a guaranteed same-day refund, in cash), and Fast Cash Advances.

6. Money Mart began as an entrepreneurial venture in 1982 in Edmonton, Alberta. In reply to paragraph 3 of the Statement of Claim, Money Mart was incorporated under the laws of Nova Scotia. Money Mart's goal from the outset was to provide excellent customer service, convenience and quality financial products and services. Most Money Mart store locations are open seven days a week and many are open 24 hours a day.

7. Money Mart adheres to a set of "best business practices" in offering its Fast Cash Advance and other services. Money Mart's Best Business Practices are now incorporated into the Code of Conduct of the Canadian Payday Loan Association. Money Mart has been instrumental in the formation of the Canadian Payday Loan Association (the "Association"). The Association is a national group of short term lenders which represents more than half of the 1350 short term loan outlets in Canada.

8. Money Mart and the other members of the Association have agreed to abide by the Association's Code of Conduct. A copy of the Association's Code of Conduct is posted in all Money Mart stores and on the Association's website and includes the practices described below.

- (a) Borrowers must have a chequing account and employment income.
- (b) Loans are limited to a set percentage of the borrower's net pay.
- (c) Customers may not extend or "rollover" a loan i.e. they are not permitted to use the proceeds of another advance to repay an existing loan.
- (d) If a customer is dissatisfied in any way with a loan, including any fees or interest that are to be paid, a customer may simply return the principal amount of the loan prior to the close of business the following day and the customer will not be charged any interest or fees of any kind.
- (e) Default fees and charges on a loan in default cannot exceed the maximum NSF fees charged by the major banks and there are restrictions on the interest that can be charged on default.
- (f) A loan cannot be made to a customer based on social assistance payments to be received by the customer.
- (g) The cost of the loan must be displayed prominently on all loan documentation.

9. The federal and provincial governments, including Alberta, recognize the need for service providers such as Money Mart. Both the federal and provincial government of Alberta have passed legislation that permits the short term loan industry to continue to carry on business in a regulated environment.

Cheque Cashing Services

10. Since Money Mart's inception in 1982, cheque cashing has been Money Mart's core business. It is the oldest and largest part of Money Mart's business. Money Mart cashes both first party cheques and second party cheques. A first party cheque is a cheque written by the customer on his/her own account. A second party cheque is a cheque written for the benefit of the customer by another party. These include payroll cheques, personal cheques, U.S. cheques, travelers cheques and Government cheques.

11. A significant advantage of Money Mart's cheque cashing service is that Money Mart does not put a "hold" on any cheques. That is, Money Mart does not wait for the cheques to clear before making cash available to the customer. Rather, Money Mart provides the customer with his or her cash right at the time of the transaction.

12. Money Mart's cheque cashing fee is comprised of two components, a per item fee (i.e. a flat fee for each cheque cashed) and a fixed percentage of the amount of the cheque to be cashed. The cheque cashing fees are different for a first party cheque and a second party cheque, to reflect the different risks of non-payment between the two types of cheques.

Fast Cash Advance Agreements

13. In 1996, Money Mart began offering Fast Cash Advances to its customers. During the Class Period the Fast Cash Advance operated as follows:

- (a) Qualified Money Mart customers could borrow up to a percentage of their net pay cheque until the due date specified in the agreement (the "**Due Date**").
- (b) Interest was charged on the principal amount of the loan at an effective annual interest rate of less than 60% per year.
- (c) At the time of obtaining a loan, a customer signed a written agreement (the "**Fast Cash Advance Agreement**") the form and terms of which changed from time to time.
- (d) The customer provided a post-dated cheque drawn on his/her bank (or equivalent) account in an amount equal to:
 - (i) the principal of the Fast Cash Advance;
 - (ii) the interest on the Fast Cash Advance; and
 - (iii) Money Mart's standard first party cheque cashing fee.

14. A customer could always repay a Fast Cash Advance on or before the Due Date. In those instances the customer was only required to pay the Fast Cash Advance principal

plus interest pro-rated to the date of payment. The customer's post-dated cheque was returned to the customer. Since the cheque cashing service was not used where the customer repaid a Fast Cash Advance on or before the Due Date, the customer paid none of the cheque cashing fees associated with that service.

15. Alternatively, in conjunction with a Fast Cash Advance, a customer could utilize Money Mart's cheque cashing service to pay the Fast Cash Advance. If a customer did not repay a Fast Cash Advance in cash on or before the Due Date, the customer had elected to use Money Mart's cheque cashing service, and authorized Money Mart to deposit the customer's cheque. The customer's first party cheque, which included an amount in respect of Money Mart's fees for cashing a first party cheque, was then cashed by Money Mart.

16. The Fast Cash Advance service and the cheque cashing service (described above) are two separate and independent services offered to customers. The cheque cashing service is an optional service subject to its own charges. It could be used at the discretion of the borrower to repay a Fast Cash Advance. The cheque cashing fee which was charged in those circumstances was not part of the cost of the Fast Cash Advance. It was charged for the separate cheque cashing service.

Section 347(1) of the Criminal Code

17. Money Mart accepts the admissions made by the Representative Plaintiff in paragraphs 12(b), 14(b) and 16(b) of the Statement of Claim that the interest charged on all Fast Cash Advances, and in particular on the Fast Cash Advances advanced to the Representative Plaintiff and the Class, was less than 60% in each instance.

18. Money Mart denies the allegation made in paragraph 17 of the Statement of Claim that the cheque cashing fee paid by some, but not all borrowers, when they elected to repay their Fast Cash Advances using Money Mart's cheque cashing service constituted interest within the meaning of section 347 of the *Criminal Code*, RSC 1985, c. C-46.

19. Each Fast Cash Advance transaction, including each and every Fast Cash Advance transaction involving the Representative Plaintiff and every member of the Class

(collectively the "**Class Members**") was made pursuant to a Fast Cash Advance Agreement.

20. Each Class Member, of his or her own accord and without any compulsion by Money Mart, entered into a Fast Cash Advance Agreement and received the proceeds of Fast Cash Advances from Money Mart. Each Class Member used the proceeds from the Fast Cash Advances for his or her own personal benefit, in whatever manner he or she saw fit.

21. By the terms of a Fast Cash Advance Agreement the borrower, in consideration of receipt of a cash amount from Money Mart, agreed to pay Money Mart, on or before the Due Date, the principal amount of the Fast Cash Advance together with interest calculated at the rate set out in the Agreement.

22. Each and every Fast Cash Advance Agreement, including in particular each Fast Cash Advance Agreement to which a Class Member was a party, expressly provided the borrower with the right to repay the Fast Cash Advance on or before the Due Date. In those circumstances, the customer paid the principal amount of the Fast Cash Advance plus interest calculated at the rate set out in the Fast Cash Advance Agreement and pro-rated to the date of payment.

23. Where the customer repaid a Fast Cash Advance on or before the Due Date, the customer's post-dated cheque was returned to the customer, and the customer paid none of the fees associated with use of Money Mart's cheque cashing services.

24. By the terms of the Fast Cash Advance Agreement, the customer, including in particular each and every Class Member, also had the option to repay the amount owing in respect of a Fast Cash Advance by permitting Money Mart after the Due Date to deposit and cash the customer's first party cheque. In those circumstances, and only in those circumstances, and provided further that the customer's cheque was not returned dishonoured, the customer paid the fees associated with the use of the first party cheque cashing service. Any such fees were paid voluntarily by the customer, and each and every Class Member alleged to have paid such fees did so voluntarily, and as a result of

his or her own personal choice to exercise his or her contractual right to repay a Fast Cash Advance using the cheque cashing service.

25. In circumstances where Money Mart deposited a customer's first party cheque and the cheque was returned dishonoured the Fast Cash Advance principal and interest were not repaid on the Due Date and no first party cheque cashing fee was paid by the customer or collected by Money Mart. Money Mart states, and the fact is, that certain of the Representative Plaintiff's and the Class Members' cheques were dishonoured from time-to-time and, on those occasions, not only did the Representative Plaintiff and Class Member not pay the cheque cashing fee, they also did not repay the Fast Cash Advance principal or interest.

26. In further answer to the whole of the Statement of Claim and in particular the allegations in paragraphs 17 through 20 of the Statement of Claim, Money Mart specifically denies that:

- (a) the fee charged by it in connection with the use of the first party cheque cashing service was a fee paid or payable for the advancing of credit or as part of a Fast Cash Advance transaction;
- (b) the fee charged by it when a customer used the first party cheque cashing service in connection with the repayment of a Fast Cash Advance was interest as that term is defined under s. 347 of the *Criminal Code*;
- (c) a Class Member paid and Money Mart collected interest contrary to the terms of s. 347 of the *Criminal Code* by collecting a fee from any Class Member for such Class Member's use of the separate first party cheque cashing service in connection with the repayment of any Fast Cash Advance; and
- (d) it profited illegally at the expense of the Class Members.

There Has Been No Unjust Enrichment and No Tracing Order is Possible

27. Money Mart denies any unjust enrichment, as alleged in paragraphs 21 through 24 of the Statement of Claim, and specifically denies that any Class Member at any material

time paid any sum to Money Mart to which Money Mart was not lawfully entitled. In particular, Money Mart states that there was a juridical reason for the payments received from the Representative Plaintiff and the Class Members, namely, in respect of the interest received, the Fast Cash Advance Agreement, and in respect of the cheque cashing fees, a contractual entitlement to receive such separate fees, or quantum meruit for the service rendered. Further, if any Class Member suffered a deprivation as alleged, Money Mart specifically denies that at any material time it was enriched unjustly and at such Class Member's expense.

28. Further, Money Mart, states that certain Class Members and the Representative Plaintiff failed to repay their Fast Cash Advances and any cheque cashing fee and have suffered no deprivation in relation to such unpaid Fast Cash Advances. Money Mart has received nothing and can have no liability to Class Members for any amount in respect of any such unpaid Fast Cash Advances.

No Unconscionable or Unlawful Practice

29. Money Mart denies that it was, in respect of any of the Fast Cash Advance Agreements entered into by the Representative Plaintiff and the Class Members, a "supplier" or "credit grantor" within the meaning of the *Fair Trading Act* at the relevant times. Money Mart further denies that the Fast Cash Advance Agreements were "credit agreements" within the meaning of the *Fair Trading Act* at the relevant times. Money Mart further denies that the Fast Cash Advance transactions were "consumer transactions" within the meaning of the *Fair Trading Act* at the relevant times and that it engaged in any unfair practice under the *Fair Trading Act*. Money Mart specifically denies that it failed to disclose, or that it misstated any thing required to be disclosed by the *Fair Trading Act* with respect to any Fast Cash Advance Agreement.

30. Money Mart denies that it was, in respect of any of the cheque cashing fees paid by the Representative Plaintiff and the Class Members, a "supplier" or "credit grantor" within the meaning of the *Fair Trading Act* at the relevant times. Money Mart further denies that the cheque cashing fees were "credit agreements" within the meaning of the *Fair Trading Act* at the relevant times. Money Mart further denies that the cheque cashing fees were

“consumer transactions” within the meaning of the *Fair Trading Act* at the relevant times and that it engaged in any unfair practice under the *Fair Trading Act*. Money Mart specifically denies that it failed to disclose, or that it misstated any thing required to be disclosed by the *Fair Trading Act* with respect to the cheque cashing fees.

31. Money Mart denies that the cheque cashing fees were within the “cost of the loan” within the meaning of the UTA. Money Mart denies that the cost of any of the Fast Cash Advance transactions entered into by the Representative Plaintiff and the Class Members was excessive, harsh or unconscionable within the meaning of the UTA.

32. Money Mart further denies that the Representative Plaintiff and any Class Member is entitled to recover any amount from Money Mart on account of such amount being in excess of 60% or pursuant to any statute.

Delay and Limitation Periods

33. Further, and in the alternative, neither the Representative Plaintiff nor any Class Members are entitled to the amounts claimed because of the delay in bringing this action by operation of the *Limitations Act* and laches.

Set Off

34. Money Mart has rights of set-off and a counterclaim against the Representative Plaintiff and all other Class Members who have defaulted on a Fast Cash Advance or failed to pay Money Mart any other amount properly due to Money Mart, whether in respect of a Fast Cash Advance or any other service provided by Money Mart to the Class Member, pursuant to the Class Member’s agreements with Money Mart.

35. Money Mart has incurred costs and expenses as a result of the defaults of such Class Members, including costs and expenses in connection with collection or other proceedings taken against the said Class Members to collect amounts properly due and owing to Money Mart.

36. It was a term, either express or implied, of the agreements between Money Mart and each of the said Class Members that all such costs and expenses would be paid by the

such Class Members to Money Mart, in addition to the Fast Cash Advance principal amount of the debt and lawful interest due to Money Mart.

37. Money Mart is entitled to set off so much of the Fast Cash Advance principal, interest and/or all other amounts owing to Money Mart that have not been paid by the said Class Members as is sufficient to extinguish such Class Members' claims against Money Mart. Money Mart is entitled to judgment against the said Class Members for any balance due and owing to Money Mart after all such set-offs are applied.

38. The said Class Members' failure to pay such Fast Cash Advance principal, interest and other amounts constitutes a breach of the respective Fast Cash Advance Agreements entered into by them in respect of which Money Mart has suffered damages for which the said Class Members are liable. Further, and in the alternative, the said Class Members' failure to pay such Fast Cash Advance principal, interest and other amounts results in their unjust enrichment to Money Mart's deprivation without juridical reason. Further, and in the alternative, the said Class Members' receipt and retention of such Fast Cash Advance principal constitutes money had and received for which the said Class Members are bound to account or for which they are obligated to pay on the basis of *quantum meruit*. Money Mart is entitled to judgment against the said Class Members for any balance due and owing to Money Mart after all such set-offs are applied.

39. Until Money Mart's rights of set-off and counterclaim have been determined, liability cannot be established against Money Mart by any such Class Member, and no aggregate assessment of monetary relief can be made.

Knowledge of Illegality

40. Further, and in the alternative, if any term of a Fast Cash Advance Agreement is determined by this Honourable Court to be illegal (which is denied), the Representative Plaintiff and the Class Members obtained certain of the Fast Cash Advances with full knowledge of the alleged illegality of the Fast Cash Advances. In particular, the Representative Plaintiff obtained certain loans from Money Mart after the commencement of this Action on his behalf as did other Class Members. Such Fast Cash Advance

Agreements were entered into by the Representative Plaintiff and Class Members *in pari delicto*, and they are not entitled to any relief in respect of such Fast Cash Advances.

Money Mart Has No Liability to the Plaintiffs

41. In answer to the whole of the Statement of Claim, Money Mart denies that it has any liability either to the Representative Plaintiff or to any person or persons on whose behalf the Plaintiff brings this action, described collectively in the Statement of Claim as the "Class" or "Class Members."

There is No Entitlement to Any Relief

42. In further answer to the whole of the Statement of Claim, and alternatively, if Money Mart engaged in any wrongful conduct as alleged (which is not admitted but denied) and has any liability to any Class Member as a result (which is also not admitted but denied) any Class Member who is or was bankrupt, or who, in respect of the claims made in this action, has settled with Money Mart, has no status or standing to pursue any further claim against Money Mart.

43. If the Representative Plaintiff or Class Members have sustained the damages alleged in the Statement of Claim, which is expressly denied:

- (a) any alleged damages were caused solely and exclusively by their own acts and omissions and not by Money Mart;
- (b) the plaintiffs or class members have failed or refused to take any, or any reasonable steps to mitigate such damages; and
- (c) such damages are excessive and too remote to be recoverable.

RELIEF SOUGHT

44. The Defendant, NATIONAL MONEY MART CORPORATION, respectfully requests that this Honourable Court grant judgment:

- (a) dismissing this Action against it, and in particular the claims of the Representative Plaintiff and of the Class Members he represents, and;

- (b) in the alternative,
 - (i) ordering an accounting of what is due to Money Mart from the Representative Plaintiff and all other Class Members who have, defaulted on a Fast Cash Advance or failed to pay Money Mart any other amount properly due to Money Mart, whether in respect of a Fast Cash Advance or any other service provided by Money Mart to the Class Member, pursuant to the Class Member's agreements with Money Mart together with prejudgment and post judgment interest on the said amounts;
 - (ii) setting off such amounts as are owed to Money Mart by such Class Members against any amounts awarded to such Class Members herein; and,
 - (iii) pursuant to the counterclaim hereto, ordering such Class Members to pay Money Mart all amounts owing to it after the above set-offs are applied;
- (c) awarding costs on such basis as this Honourable Court deems appropriate in the exercise of its discretion, including G.S.T.; and
- (d) granting such other relief as this Honourable Court deems just in the circumstances.