

Court File No. 04-CV-2451

**ONTARIO  
SUPERIOR COURT OF JUSTICE****B E T W E E N:****PEGGY JANE DAVIS****Plaintiff****- and -**

CLIVE METCALF, TIMOTHY VOISIN, GEORGE VOISIN, ELAINE VOISIN, CLAYTON METCALF, SNC INSURANCE COMPANY (BARBADOS) INC., 1394174 ONTARIO INC. (d b a STOP 'N' CASH 1230), STOP 'N' CASH 1010 INC. (d b a STOP 'N' CASH 1010), STOP 'N' CASH 1020 INC. (d b a STOP 'N' CASH 1020), NEW MANOR DEVELOPMENTS LIMITED (d b a STOP 'N' CASH 1030), 1543570 ONTARIO INC. (d b a STOP 'N' CASH 1040), 1388200 ONTARIO LTD. (d b a STOP 'N' CASH 1100), THE REFERRAL GROUP LTD. (d b a STOP 'N' CASH 1110 and as STOP 'N' CASH 1580), 1361864 ONTARIO LIMITED (d b a STOP 'N' CASH 1120), STOP 'N' CASH 1130, 1404867 ONTARIO INC. (d b a STOP 'N' CASH 1140), 1396502 ONTARIO LTD. (d b a STOP 'N' CASH 1150), 1517380 ONTARIO INC. (d b a STOP 'N' CASH 1160), 1410160 ONTARIO INC. (d b a STOP 'N' CASH 1170), 1035507 ONTARIO INC. (d b a STOP 'N' CASH 1180) DINAH J. HOGG (c b a STOP 'N' CASH 1190), 1553618 ONTARIO INC. (d b a STOP 'N' CASH 1201), 1389584 ONTARIO LIMITED (d b a STOP 'N' CASH 1210), 1432615 ONTARIO INC. (d b a STOP 'N' CASH 1220), 1568560 ONTARIO INC. (d b a STOP 'N' CASH 1241), 1410176 ONTARIO INC. (d b a STOP 'N' CASH 1250), 1423043 ONTARIO LIMITED (d b a STOP 'N' CASH 1260), KRT ONE INC. (d b a STOP 'N' CASH 1270), 1325681 ONTARIO INC. (d b a STOP 'N' CASH 1290), 1410616 ONTARIO INC. (d b a STOP 'N' CASH 1300), 1484838 ONTARIO INC. (d b a STOP 'N' CASH 1320), 1432694 ONTARIO INC. (d b a STOP 'N' CASH 1330), 1399227 ONTARIO INC. (d b a STOP 'N' CASH 1350), 1438158 ONTARIO INC. (d b a STOP 'N' CASH 1360), 1445130 ONTARIO INC. (d b a STOP 'N' CASH 1370), 1457210 ONTARIO INC. (d b a STOP 'N' CASH 1380), 1465009 ONTARIO INC. (d b a STOP 'N' CASH 1390), 1445175 ONTARIO INC. (d b a STOP 'N' CASH 1400), FRANCHISE INVESTMENT GROUP INC. (d b a STOP 'N' CASH 1410), 2002415 ONTARIO LIMITED (d b a STOP 'N' CASH 1420), 1473451 ONTARIO LIMITED (d b a STOP 'N' CASH 1430), 1476550 ONTARIO LIMITED (d b a STOP 'N' CASH 1440), DYNAMIC DEVELOPMENTS INC. (d b a STOP 'N' CASH 1450), KRISWAY INC. (d b a STOP 'N' CASH 1470), STOP 'N' CASH 1480, BEST SALES INC. (d b a STOP 'N' CASH 1490), 2025579 ONTARIO LIMITED (d b a STOP 'N' CASH 1500), BARUKCIC HOLDING COMPANY INC. (d b a STOP 'N' CASH 1520), 1561593 ONTARIO INC. (d b a STOP 'N' CASH 1530), 1543441 ONTARIO INC. (d b a STOP 'N' CASH 1540), 1543541 ONTARIO LIMITED (d b a STOP 'N' CASH 1550), 1553785 ONTARIO LTD. (d b a STOP 'N' CASH 1560), 2025871 ONTARIO INC. (d b a STOP 'N' CASH 1590), 2028022 ONTARIO INC. (d b a STOP 'N' CASH 1600), 1573780 ONTARIO INC. (d b a STOP 'N' CASH 1610), 1561469 ONTARIO INC. (d b a STOP 'N' CASH 1620), 1587428 ONTARIO INC. (d b a STOP 'N' CASH 1630), 2036998 ONTARIO LIMITED (d b a STOP 'N' CASH 1640), 2024670 ONTARIO LIMITED (d b a STOP 'N' CASH 1650), STOP 'N' CASH 1660, 1445174 ONTARIO INC. (d b a STOP 'N' CASH 5010), 1449150 ONTARIO INC. (d b a STOP 'N' CASH 5020), 1484809 ONTARIO INC. (d b a STOP 'N' CASH 5040) and STOP 'N' CASH 1000 INC. (d b a STOP 'N' CASH 5050)

**Defendants**

**STATEMENT OF DEFENCE ON BEHALF OF THE DEFENDANTS,  
THE REFERRAL GROUP LTD., 1568560 ONTARIO INC.,  
2002415 ONTARIO LIMITED, DYNAMIC DEVELOPMENTS INC.,  
KRT ONE INC., 1423043 ONTARIO LIMITED, 140160 ONTARIO INC.,  
1587428 ONTARIO INC., 1543541 ONTARIO LIMITED, 1573780  
ONTARIO INC., 1476550 ONTARIO LIMITED, 1389584 ONTARIO  
LIMITED, DINAH J. HOGG and 1438158 ONTARIO INC.**

1. The defendants, The Referral Group Ltd., 1568560 Ontario Inc., 2002415 Ontario Limited, Dynamic Developments Inc., KRT One Inc., 1423043 Ontario Limited, 140160 Ontario Inc., 1587428 Ontario Inc., 1543541 Ontario Limited, 1573780 Ontario Inc., 1476550 Ontario Limited, 1389584 Ontario Limited, Dinah J. Hogg and 1438158 Ontario Inc. ("These Defendants") admit none of the allegations contained in the statement of claim, unless hereinafter specifically admitted.

2. These Defendants deny all of the allegations contained in the statement of claim unless hereinafter specifically admitted, and deny that the Class Members are entitled to the relief requested in paragraph 2 of the statement of claim, or to any relief at all.

3. These Defendants, except Dinah J. Hogg, were, at various times, franchisees operating payday loan outlet stores under the name "Stop 'N' Cash" pursuant to franchise agreements which they entered with the franchisor, the defendant, Stop 'N' Cash 1000 Inc. (the "Franchisor"). Beginning in or about May, 2004 These Defendants began severing their relations with the Franchisor and the Stop 'N' Cash organization. These Defendants are no longer Stop 'N' Cash franchisees, each having ceased operating Stop 'N' Cash outlets in 2004 or early 2005.

4. The defendant, Dinah J. Hogg, denies that she at any time owned or operated a Stop 'N' Cash franchise or any payday loan outlet. Ms. Hogg is a shareholder in the defendant, 1476550 Ontario Limited, which operated as Stop 'N' Cash 1440. She also owns an interest in another corporation, which operated Stop 'N' Cash 1190. At no time has Ms. Hogg acted in the capacity of a sole proprietor in respect of any Stop 'N' Cash franchise. Ms. Hogg requests that this action be dismissed as against her, with costs on a solicitor and client scale.

5. Each of These Defendants, while operating as a Stop 'N' Cash franchisee, operated a business providing small, short term loans to customers. These loans were made for periods of 2 to 14 days, with customers being required to repay their loans on a due date which coincides with the customer's next payday. Loans of this type are known commonly as "payday loans".

6. Each of These Defendants offered payday loans strictly in accordance with terms and conditions established by the Franchisor and set out in their respective franchise agreements and related documents. The specific method of doing business established by the Franchisor is referred to herein as the "Franchisor's business model". The Franchisor's business model required each franchisee to obtain life insurance and disability insurance in respect of each loan advanced to each customer. The franchisees were required to purchase this insurance exclusively through the defendant, SNC Insurance Company (Barbados) Inc. ("SNC Insurance"), on terms and conditions set out in separate written agreements made among the Franchisor, SNC Insurance and each franchisee.

7. In accordance with the Franchisor's business model, the full amount of the insurance premium or charge for each loan was to be collected by the franchisee from each borrower and then remitted to SNC Insurance. The Franchisor's business model further provided that if a loan is not repaid by reason of the borrower's death or disability, the franchisee was entitled to submit a claim to SNC Insurance for repayment of the loan under the terms of the life and disability insurance provided by SNC Insurance.

8. According to the Franchisor's business model, the amount of interest charged to each borrower was fixed at \$0.20 per \$100.00 loan, and cost of the life and disability insurance, also paid by the borrower, was \$19.80 per \$100.00 loan

9. Section 347 (2) of the *Criminal Code* excludes insurance charges from the definition of "interest" for the purposes of the section. Consequently, all amounts paid to These Defendants by borrowers on account of life and disability insurance, as described above, do not constitute interest. These Defendants specifically deny that SNC Insurance was a sham insurer and specifically deny the plaintiff's allegation that insurance was not being provided. Insurance was, in fact, being provided by SNC Insurance; the insurance charges and premiums collected from each borrower by These Defendants were legitimate insurance charges.

10. These Defendants deny that they at any time agreed to receive, or received, interest at a criminal rate, as alleged in the statement of claim.

11. These Defendants deny that they conspired to breach s. 347(1) and s. 462.31 of the *Criminal Code* and put the plaintiff to the strict proof thereof.

12. Further, These Defendants deny that they conspired to cause injury to the Class Members, and they deny in fact causing any injury to the Class Members.

13. These Defendants deny that the Class Members have suffered damages as pleaded in the statement of claim or at all.

14. These Defendants therefore request that this action be dismissed as against them, with costs, on a substantial indemnity scale.

## **CROSSCLAIM**

15. These Defendants crossclaim against the defendants, Clive Metcalfe, George Voisin, Elaine Voisin, SNC Insurance Company (Barbados) Inc. and Stop 'N' Cash 1000 Inc. (collectively "the defendants by crossclaim") for:

- (a) full indemnity in respect of any amounts for which These Defendants are found liable to the Class Members;
  - (b) in the alternative, damages equal to all amounts for which These Defendants are found liable to the Class Members;
  - (c) costs of this crossclaim on a substantial indemnity scale; and
  - (d) such further or other relief as to this Honourable court may seem just.
- 
- (d) such further or other relief as to this Honourable court may seem just.

16. Each of These Defendants operated its Stop 'N' Cash location pursuant to a Franchise Agreement with the Franchisor, and in accordance with the Franchisor's business model. The defendant, Clive Metcalf ("Metcalf"), was the founder, principal and directing mind of the Franchisor. The defendant, George Voisin, acted at all times as solicitor on behalf of the Franchisor and SNC Insurance and was also a co-owner and principal, along with the defendant, Elaine Voisin, of SNC Insurance.

17. Prior to the making of their respective Franchise Agreements, These Defendants received information and representations from the defendants by crossclaim concerning the nature and organization of the Franchisor's business. In particular, the defendants by crossclaim advised These Defendants about the mandatory insurance aspect of the Franchisor's business model and specifically represented that SNC Insurance was a legitimate and licensed insurer, capable of providing the insurance required by the Franchisor's business model, and that the insurance in respect of which insurance charges were being collected from borrowers was legitimate insurance capable of being offered in the Province of Ontario.

18. In reliance on the truth and accuracy of these representations, and other representations made to them, each of These Defendants entered into franchise agreements with the Franchisor, and opened and operated payday loan stores in accordance with the Franchisor's business model.

19. The defendants by crossclaim owed a duty of care to These Defendants to ensure that all representations made to them during the course of the formation of the franchise

relationship were true and accurate, and to ensure that the Franchisor's business model would not result in the breach of any of the laws of Canada. The Franchisor also owed to These Defendants a duty of good faith and fair dealing.

20. If the insurance charges collected by franchisees pursuant to the Franchisor's business model were in fact interest under s. 347(1) of the *Criminal Code*, resulting in a breach of s. 347(1) and s. 462.31 of the *Criminal Code*, which is not admitted but expressly denied, then the defendants by crossclaim were negligent and breached their duty of care to These Defendants, by creating and promoting a business model the adherence to which would or could cause These Defendants to receive a criminal rate of interest, contrary to the *Criminal Code*.

21. Furthermore, if the insurance charges collected by franchisees pursuant to the Franchisor's business model were in fact interest under s. 347(1) of the *Criminal Code*, which is not admitted but expressly denied, then the representations made by the defendants by crossclaim to These Defendants, as pleaded in paragraph 17 hereof were false and grossly misleading and constituted fraudulent or, in the alternative, negligent misrepresentations.

22. It was an express, or in the alternative, implied, term of the respective franchise agreements between the Franchisor and These Defendants, and of the respective insurance agreements between These Defendants, SNC Insurance and the Franchisor, that the Franchisor's business model did not violate any of the laws of Canada, including s. 347 of the *Criminal Code*, and was legal in all respects. If the insurance charges collected by franchisees

pursuant to the Franchisor's business model were in fact interest under s. 347(1) of the *Criminal Code*, which is not admitted but expressly denied, then the Franchisor and SNC Insurance are in breach of the aforementioned terms of the franchise agreements and insurance agreements. The Franchisor and SNC Insurance are liable to These Defendants for all damages caused by the breach, including any amounts for which These Defendants are found liable to the Class Members.

23. These Defendants are therefore entitled to full indemnity from the defendants by crossclaim in respect of any liability to the plaintiff in this action.

24. These Defendants ask that this crossclaim be tried at the same time as, or immediately after, the main action herein.

Dated: December 29, 2005

**JOHNSTON • MONTGOMERY**  
Barristers and Solicitors  
201 Byron Street South  
Whitby, Ontario  
L1N 4P7

John W. Montgomery LSUC#31984Q  
Tel: (905) 666-2252  
Fax: (905) 430-0878

Solicitors for the Defendants, Timothy Voisin;  
The Referral Group Ltd., 1568560 Ontario Inc.,  
2002415 Ontario Limited, Dynamic Developments  
Inc., KRT One Inc., 1423043 Ontario Limited,  
140160 Ontario Inc., 1587428 Ontario Inc.,  
1543541 Ontario Limited, 1573780 Ontario  
Inc., 1476550 Ontario Limited, 1389584 Ontario  
Limited, Dinah J. Hogg and 1438158 Ontario Inc.

**TO: SUTTS, STROSBERG LLP**

Barristers & Solicitors  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Harvey T. Strosberg  
Tel: (519) 561-6228  
Fax: (519) 561-6203

Solicitors for the Plaintiff

**TO: RICHARD J. MAZAR PROFESSIONAL CORP.**

Barrister & Solicitor  
Oshawa Executive Tower  
419 King Street West, Suite 210  
Oshawa, Ontario  
L1J 2K5

Richard J. Mazar  
Tel: (905) 571-2558  
Fax: (905) 571-3548

Solicitors for the Defendant, 1035507 Ontario Inc.

**TO: W. BUMSTEAD LITIGATION**

Barristers & Solicitors  
500 Dutton Drive  
Waterloo, Ontario  
N2J 4C6

Wayne Bumstead  
Tel: (519) 885-8290  
Fax: (519) 884-1026

Solicitors for the Defendants, George Voisin, Elaine Voisin,  
New Manor Developments Limited, 1404867 Ontario Inc.  
and 1449150 Ontario Inc.

**TO: MacDONALD TICKER & ASSOCIATES**

Barristers & Solicitors  
Suite 702, Park Place Corporate Centre  
15 Wertheim Court  
Richmond Hill, Ontario  
L4B 3H7

Kevin MacDonald  
Tel: (905) 731-9251  
Fax: (905) 731-7989

Solicitors for the Defendants, Clive Metcalf, Clayton Metcalf,  
Stop 'N' Cash 1010 Inc., Stop 'N' Cash 1020 Inc., New Manor  
Developments Limited, 1388200 Ontario Ltd., 1553618 Ontario  
Inc., 1432615 Ontario Inc., 1410616 Ontario Inc., 1484838  
Ontario Inc., 1399227 Ontario Inc., 1445175 Ontario Inc.,  
2025579 Ontario Limited, 1445174 Ontario Inc., 1449150  
Ontario Inc., 1484809 Ontario Inc., Stop 'N' Cash 1000 Inc.,  
Franchise Investment Group Inc., 1561593 Ontario Inc.,  
1561593 Ontario Inc. and 1561469 Ontario Inc.

**TO: RUETER SCARGALL BENNETT LLP**

Barristers & Solicitors  
200 King Street West, Suite 1701  
Box 28  
Toronto, Ontario  
M5H 3T4

Randy Bennett  
Tel: (416) 869-3538  
Fax: (416) 869-3411

Solicitors for the Defendants, 2036998 Ontario Limited,  
2024670 Ontario Limited, 2025871 Ontario Inc., 1325681  
Ontario Inc., 1543441 Ontario Inc. and 2028022 Ontario Inc.

11

**TO: STEINBERG MORTON FRYMER LLP**

Barristers & Solicitors  
5255 Yonge Street, Suite 1100  
Toronto, Ontario  
M2N 6P4

James C. Morton  
Tel: (416) 225-2777  
Fax: (416) 225-7112

Solicitors for the Defendants, 1396502 Ontario Ltd.,  
1517380 Ontario Inc., 1432694 Ontario Inc., Barukcic  
Holding Company Inc., 1438158 Ontario Inc., 1394174  
Ontario Inc., 1473451 Ontario Limited, Franchise  
Investment Group Inc., and 1589869 Ontario Inc.

**PEGGY JANE DAVIS**

v.

**CLIVE METCALF et al**

Plaintiff

Defendants

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT  
WINDSOR**

---

**STATEMENT OF DEFENCE**

---

**JOHNSTON • MONTGOMERY**

Barristers and Solicitors  
201 Byron Street South  
Whitby, Ontario  
L1N 4P7

**John W. Montgomery LSUC#31984Q**

Tel: (905) 666-2252

Fax: (905) 430-0878

Solicitors for the Defendant Timothy Voisin; The Referral Group Ltd., 1568560 Ontario Inc., 2002415 Ontario Limited, Dynamic Developments Inc., KRT One Inc., 1423043 Ontario Limited, 1410160 Ontario Inc., 1587428 Ontario Inc., 1543541 Ontario Limited and 1573780 Ontario Inc. 1476550 Ontario Limited, 1389584 Ontario Limited, Dinah J. Hogg and 1438158 Ontario Inc.