

DEC 18 2016

S1611539

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MERNA KIDD

PLAINTIFF

AND:

VENUE FINANCIAL LTD. and RENE CARLONI

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days of that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days of that service,
- (c) if you were served with the notice of civil claim anywhere elsewhere, within 49 days of that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties:

1. The representative Plaintiff, Merna Kidd, is a resident of Qualicum Beach, British Columbia.
2. The Defendant Venue Financial Ltd. ("Venue Financial") is a company incorporated under the laws of British Columbia with a registered office at 376 Main Street, Penticton, British Columbia
3. The Defendant, Rene Carloni ("Carloni"), is a resident of Penticton, British Columbia and is the sole officer and director of Venue Financial. Carloni exercises effective and actual control over and directs the management of Venue Financial.
4. Venue Financial is engaged in the business of lending money in British Columbia.
5. The representative Plaintiff brings this action on her own behalf and on behalf of all persons (collectively, the "Class") resident in British Columbia who:
 - (a) obtained a short-term loan at a Venue Financial location on terms which required the borrower to provide an interest in personal property as security for the loan (the "Class Loans") and,
 - (b) repaid the loan on time or within 160 days of when the loan was advanced.

The Defendants' Loan Business

6. Venue Financial was founded by Rene Carloni and Ian Kennedy on or about April 23, 2013. Ian Kennedy ceased to be a director of Venue Financial on or about September 23, 2013.
7. Venue Financial advanced the Class Loans to Class members and collected amounts in excess of the loan principal, in the form of charges, fees, interest or other payments, in respect of those Class Loans. (collectively, the "Loan Fees")

8. At all material times Venue Financial provided the Class Loans pursuant to standard form agreements and upon terms that required the borrower to provide security on personal property in order to obtain the loan, and to pay Loan Fees at an effective annual interest rate that exceeded 60% of the principal amount of each loan.

9. In particular, Venue Financial required Class Members to pay Loan Fees on the Class Loans in a total amount calculated as approximately 23% of the principal of each loan.

10. The Class Loans advanced by Venue Financial were advanced at the direction of and for the benefit of Carloni. The Loan Fees received by Venue Financial in respect of the Class Loans were paid in whole or in part to Carloni through the payment of salary, management fees, bonuses or dividends or were used or transferred by Venue Financial at the direction of Carloni.

The Plaintiff's Class Loans

11. On or around August 18, 2015, the Plaintiff obtained a one month title loan, for \$1,450.00, from the Venue Financial location in Nanaimo, B.C. In order to obtain the loan, the Plaintiff was required to execute a standard form promissory note, agreeing to pay Venue Financial the sum of \$1,783.50 on September 18, 2015. In order to obtain the loan, the Plaintiff was also required to provide Venue Financial with the security interest in her vehicle.

12. On or around September 18, 2015, the Plaintiff paid \$350.00 to Venue Financial, which consisted of \$333.50 in Loan Fees and \$16.50 toward the principal of the loan.

13. On or around September 18, 2015, the Plaintiff obtained a new loan from Venue Financial to repay the balance of the previous loan. The Plaintiff executed a new promissory note, in which the Plaintiff promised to pay Venue Financial \$1,763.20 on October 22, 2015. In order to obtain the loan, the Plaintiff was required to provide Venue Financial with the security interest in her vehicle.

14. On or around October 23, 2015, the Plaintiff paid \$360.00 to Venue Financial, which consisted of 332.01 in Loan Fees and a payment of \$27.99 toward the principal of the loan.

15. On or around October 23, 2015, the Plaintiff obtained a new loan from Venue Financial to repay the balance of the previous loan. The Plaintiff executed a new promissory note, in which the Plaintiff promised to pay Venue Financial \$1,728.77 on November 23, 2015. In order to obtain the loan, the Plaintiff was required to provide Venue Financial with the security interest in her vehicle.

16. On or around November 23, 2015, the Plaintiff obtained a new loan from Venue Financial to repay the balance of the previous loan. The Plaintiff executed a new promissory note, in which the Plaintiff promised to pay Venue Financial \$1,728.77 on December 23, 2015. In order to obtain the loan, the Plaintiff was required to provide Venue Financial with the security interest in her vehicle.

17. On or about December 18, 2015, the Plaintiff's loan from Venue Financial was repaid. In particular, the Plaintiff sold her vehicle to a car dealership, and the car dealership discharged the loan.

18. The precise particulars of the Plaintiff's Class Loans are well known to Venue Financial.

Part 2: RELIEF SOUGHT

19. The Plaintiff seeks, on her own behalf and on behalf of Class members:

- (a) a declaration that the Loan Fees charged by Venue Financial are interest within the meaning and for the purpose of s. 347 of the *Criminal Code*, R.S.C., 1985, c. C-46;
- (b) a declaration that all agreements or arrangements made by Venue Financial to provide the Class Loans to the Class members are unlawful;
- (c) an accounting and restitution to the Plaintiff and Class members of all Unlawful Loan Fees, as defined in para. 3.9 below, received by the Defendants in relation to the Class Loans;
- (d) a declaration pursuant to s. 172(1)(a) of the *Business Practices and Consumer Protection Act*, R.S.B.C. 2004, c. 2 (the "BPCPA") that the collection by Venue

Financial of the Unlawful Loan Fees constitutes an unconscionable trade act or practice, contrary to s. 8(1) of the *BPCPA*;

- (e) an order pursuant to s. 172(3)(a) of the *BPCPA* that Venue Financial restore to the Class members the money that Venue Financial received from the collection of the Unlawful Loan Fees from the Class members in contravention of the *BPCPA*; and
- (f) interest.

Part 3: LEGAL BASIS

Section 347(1) of the *Criminal Code*

1. All of the Loan Fees charged and collected from the Class by Venue Financial in respect of the Class Loans, including the Loan Fees charged and collected by Venue Financial in respect of the Plaintiff's Class Loans, constitute interest for the purpose of s. 347(1) of the *Criminal Code*.
2. The effective annual rate of interest paid by the Class members and earned by Venue Financial as a result of the collection of the Loan Fees in relation to the Class Loans, including the effective annual rate of interest paid by the Plaintiff and earned by Venue Financial as a result of the collection of the Loan Fees in respect of the Plaintiff's Class Loans, exceeds 60% on the principal amount of each loan, calculated in accordance with generally accepted actuarial practices and principles, and constitutes a criminal rate of interest as defined in s. 347(1) of the *Criminal Code*.
3. The terms of the standard procedures or standard form agreements used by Venue Financial for the advance of the Class Loans to the Class members, including the procedures or agreements used by Venue Financial to advance the Plaintiff's Class Loans, require the payment of the Loan Fees on the due date of the Class Loan in an amount that results in an effective annual rate of interest in excess of 60%, and constitute agreements or arrangements to receive interest at a criminal rate, contrary to s. 347(1) of the *Criminal Code*.

4. The collection by Venue Financial of the Loan Fees from the Class members, in relation to the Class Loans, including the Loan Fees collected in respect of the Plaintiff's Class Loans, constitutes the receipt of interest at a criminal rate, contrary to s. 347(1) of the *Criminal Code*.

5. Venue Financial, knowingly and deliberately, entered into agreements for the advance of the Class Loans on terms which offend s. 347(1) of the *Criminal Code*, and received fees in respect of the Class Loans which violate s. 347(1) of the *Criminal Code*, for the purpose of earning an unlawful rate of return on the Class Loans.

6. The receipt by Carloni of some or all of the Loan Fees collected by Venue Financial, and the use and transfer of those Loan Fees by Venue Financial at the direction of Carloni, constitute the receipt by Carloni of interest contrary to s. 347(1) of the *Criminal Code*.

7. Carloni knowingly and deliberately, and for Carloni's own benefit, caused Venue Financial to enter into agreements for the advance of the Class Loans on terms which offend s. 347(1) of the *Criminal Code*, and to receive fees in respect of the Class Loans which violate s. 347(1) of the *Criminal Code*, for the purpose of earning an unlawful rate of return on the Class Loans.

8. The Class Loans are not "payday loans" within the meaning of s. 347.1(1) of the *Criminal Code*, because the Class Loans require borrowers to provide security on property in exchange for the loan. As a result, s. 347.1 of the *Criminal Code* does not apply to the Class Loans, and the Class Loans are not excluded from the application of s. 347(1) of the *Criminal Code*.

Unjust Enrichment

9. The Defendants have been enriched by the receipt of the Loan Fees paid by the Class members in respect of their Class Loans which have resulted in the payment by Class members of interest on the Class Loans in excess of the maximum rate permitted by s. 347(1) of the *Criminal Code* (the "Unlawful Loan Fees") and, in particular, the Defendants have been enriched by the receipt of the Unlawful Loan Fees paid by the Plaintiff.

10. Each of the Class members has been deprived by the payment of the Unlawful Loan Fees that each Class member paid in relation to the Class Loans and, in particular, the Plaintiff has been deprived by the payment of the Unlawful Loan Fees in respect of her Class Loans.

11. There is no juristic reason why the Defendants should have received or should retain the benefit of the Unlawful Loan Fees paid by each of the Class members, which have resulted in the receipt by the Defendants of interest at a criminal rate and, in particular, there is no juristic reason why the Defendants should retain the benefit of the Unlawful Loan Fees paid by the Plaintiff.

12. As set out in paras. 3.9 through 3.11 above, the Defendants have been unjustly enriched by the collection of Unlawful Loan Fees and the Class members, including the Plaintiff, are entitled to an accounting and restitution of those Unlawful Loan Fees.

Unconscionable Trade Practices

13. The Class members who obtained a Class Loan from Venue Financial are “consumers” within the meaning of the *BPCPA*.

14. The Class Loans advanced by Venue Financial to the Class members are “consumer transactions” within the meaning of the *BPCPA*.

15. Venue Financial is a “supplier” of a consumer transaction within the meaning of the *BPCPA*.

16. The terms and conditions upon which Venue Financial advanced the Class Loans to members of the Class, pursuant to which the Class members paid interest on their Class Loans at a criminal rate, are so harsh and adverse to the Class members as to be inequitable, and the making of Class Loans on such terms constitutes an unconscionable act or practice by Venue Financial within the meaning of s. 8(1) of the *BPCPA*.

17. The collection by Venue Financial of the Unlawful Loan Fees resulted in the receipt by the Defendants of interest on Class Loans at a criminal rate, within the meaning of s. 347 of the *Criminal Code*, and constitutes an unconscionable act or practice within the meaning of s. 8(1) of the *BPCPA*.

18. As a result of the unconscionable acts and practices of Venue Financial set out in paras. 3.16 and 3.17 above, Venue Financial has received the benefit of the Unlawful Loan Fees paid by the Plaintiff and other Class members.

19. The Plaintiff and other Class members are entitled under s. 172(3)(a) of the *BPCPA* to the restoration of the benefit that Venue Financial received as a result of the unconscionable acts and practices set out in paras: 3.16 and 3.17 above.

Joint and Several Liability of the Defendants

20. The Defendants are jointly and severally liable for the acts of Venue Financial in advancing loans to Class members on terms that offend s. 347(1) of the *Criminal Code*, and collecting Unlawful Loan Fees in relation to those loans that are prohibited by s. 347(1) of the *Criminal Code*, as these criminal acts were committed by Venue Financial at the direction and under the control and for the benefit of Carloni, who at all times was the directing mind of Venue Financial.

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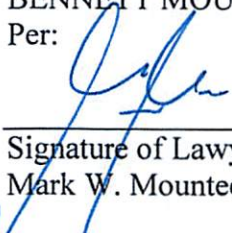
Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, B.C.

Date: DECEMBER 13, 2016

BENNETT MOUNTEER LLP

Per:



Signature of Lawyer for the Plaintiff
Mark W. Mounteer

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

THIS NOTICE OF CIVIL CLAIM was prepared by the law firm of Bennett Mounteer LLP, whose place of business and address for service is 1400 – 128 West Pender Street, Vancouver, British Columbia, V6B 1R8. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Mark W. Mounteer and Paul R. Bennett.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff seeks restitution of unlawful interest and restoration of losses caused by Venue Financial's unlawful and unconscionable trade acts and practices in connection with the Defendants' loan business.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an unemployment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional laws
- none of the above
- do not know

Part 4:

Business Practices and Consumer Protection Act, S.B.C. 2004, c.2

Class Proceedings Act, R.S.B.C. 1996, c.50

Criminal Code, R.S.C. 1985, c. C-46