

Defence

No. NSD2090 of 2013

Federal Court of Australia
District Registry: New South Wales
Division: General



Julie Gray

Plaintiff

Cash Converters International Limited (ACN 069 141 546) and others

Defendants

A. The group members

1. The second respondent, Ja-Ke Holdings (**Ja-Ke Holdings**) does not plead to the allegations contained in paragraph 1 of the amended statement of claim as those allegations do not concern it.

B. The parties

2. Ja-Ke Holdings admits the allegations contained in paragraph 2 of the amended statement of claim.
3. Ja-Ke Holdings does not plead to the allegations contained in paragraph 3 of the amended statement of claim as those allegations do not concern it.
4. Ja-Ke Holdings does not plead to the allegations contained in paragraph 4 of the amended statement of claim as those allegations do not concern it.

Filed on behalf of (name & role of party) Ja-Ke Holding Pty Ltd (Third Respondent)
Prepared by (name of person/lawyer) Peter John Adams
Law firm (if applicable) Adams & Partners Lawyers
Tel (02) 4722 6600 Fax (02) 4722 8955
Email lyn@adamslawyers.com.au
Address for service 443 High Street, Penrith, NSW, 2750
(include state and postcode) DX 8090 Penrith

5. In response to the allegations contained in paragraph 5 of the amended statement of claim, Ja-Ke Holdings:

- a. admits the allegations in subparagraph (a);
- b. admits that at all material times it operated a consumer credit service but otherwise denies the allegations in subparagraph (b);
- c. admits the allegations in subparagraph (c);
- d. admits the allegations in subparagraph (d);
- e. admits the allegations in subparagraph (e);
- f. says that the franchise agreement in respect of the Cash Converters Penrith store was at all material times between the second defendant and KJK Enterprises Pty Ltd and was dated 15 October 2010;
- g. says that in about early 2010, Ja-Ke Holdings entered into an oral agreement with KJK Enterprises Pty Ltd pursuant to which Ja-Ke Holdings undertook to provide consumer credit services at the Cash Converters Penrith store; and,
- h. says further that at all times, in its dealings with the plaintiff, and in its conduct of its business of providing consumer credit services, Ja-Ke Holdings strictly adhered to and faithfully observed and used the processes, protocols and systems, including software, provided by the first and second defendants for the purposes of that business.

C. Business structure of CC International and CCPL

6. Ja-Ke Holdings does not plead to the allegations contained in paragraph 6 of the amended statement of claim as those allegations do not concern it.

7. Ja-Ke Holdings does not plead to the allegations contained in paragraph 7 of the amended statement of claim as those allegations do not concern it.

8. Ja-Ke Holdings does not plead to the allegations contained in paragraph 8 of the amended statement of claim as those allegations do not concern it.

8A Ja-Ke Holdings does not plead to the allegations contained in paragraph 8A of the amended statement of claim as those allegations do not concern it.

8B Ja-Ke Holdings does not plead to the allegations contained in paragraph 8B of the amended statement of claim as those allegations do not concern it.

9. In response to the allegations contained in paragraph 9 of the amended statement of claim, Ja-Ke Holdings:

- a. denies that it is a party to a franchise agreement as alleged;
- b. admits that it used the MON-E system in order to originate and administer unsecured loans styled as 'cash advances';
- c. otherwise, does not know and cannot admit the allegations.

10. Ja-Ke Holdings does not plead to the allegations contained in paragraph 10 of the amended statement of claim as those allegations do not concern it.

D. Contravening conduct of Ja-Ke Holdings

11. In response to the allegations contained in paragraph 11 of the amended statement of claim, Ja-Ke Holdings:

- a. admits that in the period between 1 October 2010 (not 1 July 2010) and 12 October 2012, the plaintiff entered into 21 credit contracts with Ja-Ke Holdings that were styled as 'cash advances';

- b. admits that it advanced sums of between \$100 and \$250 to the plaintiff pursuant to the terms of each credit contract;
- c. says that the terms of each of the credit contracts between the plaintiff and Ja-Ke Holdings were contained in a document titled 'Cash advance contract';
- d. says further that at all times, in its dealings with the plaintiff, and in its conduct of its business of providing consumer credit services, Ja-Ke Holdings strictly adhered to and faithfully observed and used the processes, protocols and systems, including software, provided by the first and second defendants for the purposes of that business.

12. Ja-Ke Holdings admits the allegations contained in paragraph 12 of the amended statement of claim.

13. Ja-Ke Holdings admits the allegations contained in paragraph 13 of the amended statement of claim.

14. Ja-Ke Holdings admits the allegations contained in paragraph 14 of the amended statement of claim.

15. In response to the allegations contained in paragraph 15 of the amended statement of claim, Ja-Ke Holdings:

- a. admits that on each occasion that the plaintiff signed the Contract Form (as that term is defined in paragraph 13 of the Amended Statement of Claim), she also signed a document titled 'Cash advance early repayment election';
- b. admits that the plaintiff signed the document titled 'Cash advance early repayment election' prior to monies being advanced to her pursuant to the 'Cash advance contract';

- c. otherwise, denies the allegations; and,
- d. says further that at all times, in its dealings with the plaintiff, and in its conduct of its business of providing consumer credit services, Ja-Ke Holdings strictly adhered to and faithfully observed and used the processes, protocols and systems, including software, provided by the first and second defendants for the purposes of that business.

16. Ja-Ke Holdings denies the allegations contained in paragraph 16 of the amended statement of claim.

17. In response to the allegations contained in paragraph 17 of the amended statement of claim, Ja-Ke Holdings:

- a. admits that the plaintiff provided the signed Contract Form and the signed CAERE prior to monies being advanced to her pursuant to the terms of the cash advance contract; and
- b. otherwise, denies the allegations.

18. In response to the allegations contained in paragraph 18 of the amended statement of claim, Ja-Ke Holdings:

- a. denies the allegations;
- b. says that the terms of each of the Gray Cash Advance Contracts were contained in the Contract Form, being the document titled 'Cash advance contract'; and
- c. says further that each of the Gray Cash Advance Contracts was entered into upon execution of the Contract Form by, or on behalf of, the parties.

19. In response to the allegations contained in paragraph 19 of the amended statement of claim, Ja-Ke Holdings:

- a. Denies that its intention was as alleged; and,
- b. Otherwise, does not know and cannot admit the allegations.

19A Ja-Ke Holdings denies the allegations contained in paragraph 19A of the amended statement of claim.

20. In response to the allegations contained in paragraph 20 of the amended statement of claim, Ja-Ke Holdings:

- a. denies the allegations;
- b. says that to the extent the Court finds that the annual percentage rate under each of the cash advance contracts exceeded 48% in contravention of clause 5(1) of Sch 3 of the NSW Act, then, pursuant to clause 5(2) of Sch 3 of that Act, any provision that imposed such a rate may be void only to the extent that it imposed a rate in excess of 48% per annum; and,
- c. says further that at all times, in its dealings with the plaintiff, and in its conduct of its business of providing consumer credit services, Ja-Ke Holdings strictly adhered to and faithfully observed and used the processes, protocols and systems, including software, provided by the first and second defendants for the purposes of that business.

21. Ja-Ke Holdings denies that the plaintiff is entitled to the relief claimed in paragraph 21 of the amended statement of claim.

22. Ja-Ke Holdings admits the allegations contained in paragraph 22 of the amended statement of claim.

23. Ja-Ke Holdings denies the allegations contained in paragraph 23 of the amended statement of claim.

24. Ja-Ke Holdings denies the allegations contained in paragraph 24 of the amended statement of claim.

25. Ja-Ke Holdings denies the allegations contained in paragraph 25 of the amended statement of claim.

E. Business system of CC International and CCPL and involvement in contravention by Ja-Ke Holdings

26. In response to the allegations contained in paragraph 26 of the amended statement of claim, Ja-Ke Holdings:

- a. admits that CC International and CCPL had effective control over its conduct in respect of the system by which it would offer and administer unsecured loans styled as 'cash advances';
- b. denies that, at all material times, it was a NSW Franchisee, as that term is defined in subparagraph 1(a)(ii)(A) the amended statement of claim; and,
- c. otherwise, does not know and cannot admit the allegations.

27. Ja-Ke Holdings does not plead to the allegations contained in paragraph 27 as those allegations do not concern it.

28. Ja-Ke Holdings does not plead to the allegations contained in paragraph 28 as those allegations do not concern it.

29. In response to the allegations contained in paragraph 29 of the amended statement of claim, Ja-Ke Holdings:

- a. denies that it was a NSW Franchisee, as that term is defined in subparagraph 1(a)(ii)(A) the amended statement of claim; and,
- b. otherwise, does not know and cannot admit the allegations.

30. Ja-Ke Holdings does not plead to the allegations contained in paragraph 30 as those allegations do not concern it.

31. Ja-Ke Holdings does not plead to the allegations contained in paragraph 31 as those allegations do not concern it.

32. Ja-Ke Holdings does not plead to the allegations contained in paragraph 32 as those allegations do not concern it.

F. Claims of Group Members

33. Ja-Ke Holdings does not plead to the allegations contained in paragraph 33 as those allegations do not concern it.

34. Ja-Ke Holdings does not plead to the allegations contained in paragraph 34 as those allegations do not concern it.

G. Involvement of CC International and CCPL in contraventions by the NSW Franchisees and CC Cash Advance with respect to the group members

35. Not used

36. Not used.

37. Ja-Ke Holdings does not plead to the allegations contained in paragraph 37 as those allegations do not concern it.

38. Ja-Ke Holdings does not plead to the allegations contained in paragraph 38 as those allegations do not concern it.
39. Ja-Ke Holdings does not plead to the allegations contained in paragraph 39 as those allegations do not concern it.
40. Ja-Ke Holdings does not plead to the allegations contained in paragraph 40 as those allegations do not concern it.
- 40A Ja-Ke Holdings does not plead to the allegations contained in paragraph 40A as those allegations do not concern it.
- 40B Ja-Ke Holdings does not plead to the allegations contained in paragraph 40B as those allegations do not concern it.
41. Ja-Ke Holdings does not plead to the allegations contained in paragraph 41 as those allegations do not concern it.
42. Ja-Ke Holdings does not plead to the allegations contained in paragraph 42 as those allegations do not concern it.
43. Ja-Ke Holdings does not plead to the allegations contained in paragraph 43 as those allegations do not concern it.
44. Ja-Ke Holdings does not plead to the allegations contained in paragraph 44 as those allegations do not concern it.
45. Ja-Ke Holdings does not plead to the allegations contained in paragraph 45 as those allegations do not concern it.

Date: 2 September 2014



Signed by Peter John Adams
Lawyer for the Third Respondent

Certificate of lawyer

I Peter John Adams certify to the Court that, in relation to the defence filed on behalf of the Third Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 2 September 2014



Signed by Peter John Adams
Lawyer for the Third Respondent