

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-

**COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS and as YORK GROUP**

Defendants

In the Matter of the *Class Proceedings Act, 1992*

**FIFTH REPORT OF THE RECEIVER
(Dated June 8, 2006)**

Background

1. This within class action is a claim proceeding in fraud, among other things, and a receivership of the estate of the defendants, Courtney Wallis Simpson, York Region Realty Inc., Wallis Simpson & Associates and Courtney Wallis Simpson carrying on business as York Management Group, Camco Developments and York Group. The plaintiff alleges that Ms. Simpson (a real estate agent) and her companies defrauded him and the class members by obtaining deposits for the purported purchase of commercial properties. Simpson improperly retained the deposits and the real estate transactions were a sham. She purported to "sell" the same two commercial properties in excess of 100 times each. A separate class proceeding alleges that Ms. Simpson and others defrauded victims through the operation of a ponzi scheme convincing people to "invest" in interim occupancy mortgages that never existed.

The Receivership

2. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), the Receiver was appointed pursuant to section 101 of the *Courts of Justice Act* and rule 41.02 of the *Rules of Civil Procedure*, over the assets of Courtney Wallis Simpson ("Simpson") and York Region Realty Inc. ("York Realty"). A copy of the Initial Order is attached hereto and marked as **Exhibit "A"**.

3. By order of the Honourable Mr. Justice Farley dated December 15, 2005 (the "Procedural Order"), the Receiver's authority was extended over the assets of Courtney Wallis Simpson c.o.b. as York Management Group ("York Management") and subject to the confirmation by the appointed judge in the class proceedings, the action commenced as court file number 05-CL-6178 (the "Mortgage Fraud Class Action") is to be tried together or immediately after this class action.

4. The purpose of this Fifth Report of the Receiver (the "Fifth Report") is to:

- (a) seek direction of the Court with respect to Maggie MacDonald's claims to certain funds;
- (b) seek approval of the sale of the property at 6817 Main Street, Stouffville, Ontario ("6817 Property");
- (c) seek a vesting order with respect to the sale of the 6817 Property; and
- (d) to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver.

Maggie MacDonald's Claim

5. Maggie MacDonald is a real estate agent who has assisted the Receiver in the marketing, maintenance and sale of the defendants' real property.

6. Prior to the receivership Ms. MacDonald sold properties at 30 South Road, Whitchurch/Stouffville and 39 Lakeview Avenue, Preston Lake in her capacity as an independent contractor providing services to the defendant, York Region Realty Inc. ("York Realty").

7. Funds in the amount of \$4,520.75 representing commissions earned with respect to the sale of 30 South Road, Whitchurch/Stouffville were provided, at the Receiver's request, to the Receiver by the listing broker Re/Max Omega Realty (1988) Ltd. ("Re/Max"). York Realty was the co-operating broker and Ms. MacDonald was the co-operating sales representative on that sale. The sale of this property is not related to the class proceedings and the Receiver is not aware of any other claim to these funds.

8. By letter dated March 22, 2006, the Real Estate Council of Ontario ("RECO") provided the Receiver's counsel with photocopied materials related to the transaction involving 30 South Road. RECO advised of their recommendation that the commission funds at issue be paid to the Receiver. Attached hereto and marked as **Exhibit "B"** are copies of the above-noted materials provided by RECO on March 22, 2006.

9. Funds in the amount of \$9,763.75 representing commissions earned with respect to the sale of 39 Lakeview Avenue, Preston Lake were provided to the Receiver by the listing broker Sutton Group – Town and Country Realty Ltd. York Realty was the cooperating broker and Ms. MacDonald was the co-operating sales representative on that sale. The sale of this property is not related to the class proceedings and the Receiver is not aware of any other claim to these funds.

10. By letter dated March 27, 2006, Ms. MacDonald provided the Receiver's counsel with, among other things, the supporting documents with respect to her claim for commissions on the

sale of 39 Lakeview Avenue. Attached hereto and marked as **Exhibit "C"** is a copy of Ms. MacDonald's correspondence dated March 27, 2006.

11. Pursuant to the Independent Contractor Salesperson's Agreement entered into by Ms. MacDonald and York Realty, York Realty was entitled to 10 percent of Ms. MacDonald's net commissions. Ms. MacDonald claims entitlement in her capacity as the co-operating sales representative on the above-noted sales, to the sums of \$8,787.36 and \$4,068.67 respectively currently held by the Receiver as part of York Realty's estate. Attached hereto and marked as **Exhibit "D"** is a copy of the Independent Contractor Salesperson's Agreement.

12. By letter dated March 31, 2006, the Receiver's counsel, Bennett Jones LLP ("Bennett Jones") advised RECO that, among other things, the Receiver would seek the court's direction with respect to payment of Ms. MacDonald. Attached hereto and marked as **Exhibit "E"** is a copy of Bennett Jones's correspondence to Robert Maxwell at RECO.

13. By letter dated April 5, 2006, RECO advised the Receiver's counsel, *inter alia*, of the Director's proposal that no distribution of funds take place until there had been an opportunity for all interested persons to speak to the court. Attached hereto and marked as **Exhibit "F"** is a copy of RECO's correspondence dated April 5, 2006.

14. By letter dated May 31, 2006, RECO confirmed that it does not take any position, at that time, with respect to the manner in which the commission funds are distributed by the Receiver. RECO reserved its rights to make submissions at a later date. Attached hereto and marked as **Exhibit "G"** is a copy of RECO's correspondence dated May 31, 2006.

15. Ms. MacDonald has advised the Receiver that she is facing great financial distress due to the non-payment of these commission funds. She has advised the Receiver that she is unable to meet her ongoing financial obligations and that she is unable to continue here livelihood without receipt of these commission funds. Ms. MacDonald has worked very diligently to assist the Receiver with the marketing and sale of the defendants' properties. Based on the foregoing and on the Receiver's assessment of Ms. MacDonald's claim, on May 19, 2006 the Receiver provided Ms. MacDonald with an advance in the amount of \$4,068.67.

16. The Receiver has assessed Ms. MacDonald's claim and on the basis of Ms. MacDonald's ability to trace entitlement to the specific funds paid by Re/Max Omega Realty (1988) Ltd. and Sutton Group – Town and Country Realty Ltd. recommends that the court order that the commission funds be released to Ms. MacDonald and requests that the court approve the advance of funds in the amount of \$4,068.67 made to Ms. MacDonald on May 19, 2006.

Sale of 6817 Main Street

17. On June 1, 2006, the Receiver signed back an offer to purchase the 6817 Property for \$240,000. Attached hereto and marked as **Exhibit "H"** is a copy of the Agreement of Purchase and Sale.

18. The Receiver recommends that the 6817 Property be sold for \$240,000 and that the proceeds from the sale held in the Receiver's interest bearing bank account for the benefit of the estate. This property is scheduled to close on July 7, 2006.

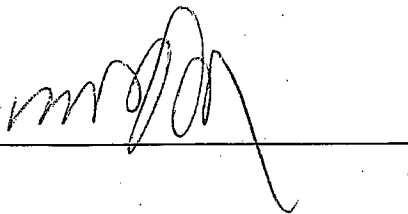
19. Upon closing of the sale of the 6817 Property a vesting order will be necessary in order to vest title in the purchaser's name.

The Receiver's Recommendations

20. The Receiver recommends approval of the court to take the following steps:
- (a) that the 6817 Property may be sold for \$240,000 pursuant to the Agreement of Purchase and Sale dated June 1, 2006;
 - (b) that the proceeds from the sale of the 6817 Property be held in the Receiver's interest bearing bank account;
 - (c) approval of the advance to Maggie MacDonald of funds in the amount of \$4,068.67 representing commissions earned with respect to the sale of 30 South Road, Whitchurch/Stouffville; and
 - (d) payment to Maggie MacDonald of funds in the amount of \$8,787.36 representing commissions earned with respect to the sale of 39 Lakeview Avenue, Preston Lake.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

Michael J. Quilling in his capacity as
Court Appointed Receiver with no
personal or corporate liability.



Michael J. Quilling