

Court File No. 05-CL-6159

**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*

**SIXTH REPORT OF THE RECEIVER
(Dated August 3, 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").

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 Sixth Report of the Receiver is to:

- (a) seek approval of the sale of the property at 1038 Kawagama Lake Road, Dorset, Ontario (the "Cottage") for \$375,000; and
- (b) seek a vesting order with respect to the sale of the Cottage.

Sale of the Cottage

5. Stephen Leonard, the listing agent with Chestnut Park Real Estate Limited Brokerage ("Chestnut Park"), provided an opinion as to the value of the Cottage to the Receiver in January 2006. In Mr. Leonard's opinion, \$375,000 was the highest price that the Cottage would be sold for. Mr. Leonard advised the Receiver that the Cottage would be more marketable if it was listed

for sale in the summer. Attached hereto and marked as **Exhibit "A"** is a copy of the Opinion of Value dated January 20, 2006.

6. On or about June 8, 2006, the Cottage was listed for sale with Chestnut Park at their offices in Dwight, Ontario. The Cottage was initially listed at \$449,000 at the Receiver's request based on information received from Simpson, with the agreement that if no offers were received on the Cottage within 3 weeks, that the list price would be reduced to \$395,000. Attached hereto and marked as **Exhibit "B"** is a copy of the Listing Agreement with Chestnut Park dated June 8, 2006. Attached hereto and marked as **Exhibit "C"** is a copy of the real estate listing of the Cottage Property.

7. The Cottage had been on the market for approximately 4 weeks when the first of 3 offers was received. The first offer was in the amount of \$360,000. Second and third offers in the amounts of \$350,000 and \$365,000 were received shortly thereafter.

8. Following receipt of the first offer by the Receiver, Simpson advised him that she would confirm with a real estate colleague in the Dorset area that the offer was for an appropriate amount given the current market conditions. Despite several assurances that she would provide the information to the Receiver, the promised information was never received. Simpson later advised the Receiver that her husband, Kenneth Wayne Simpson, wished to make an offer on the Cottage. Mr. Simpson eventually submitted an incomplete offer in the amount of \$365,000 with a \$1,000 deposit payable on acceptance.

9. The Receiver instructed the listing agent to reject the offers and request better offers from the three prospective purchasers on a confidential basis. One revised offer, in the amount of \$375,000 with a \$25,000 deposit, was received by the Receiver.

10. The Cottage Purchaser and the Receiver entered into an agreement of purchase and sale dated July 17, 2006 for the purchase price of \$375,000 (the listing agent's original assessment of the highest price that the Cottage would sell for.) Attached hereto and marked as **Exhibit "D"** is a copy of the Agreement of Purchase and Sale dated July 17, 2006.

11. There are two mortgages registered on the Cottage title. The Mortgage Information Summary received from the first mortgagee, Royal Bank of Canada, indicates mortgage arrears and related fees owing in the amount of \$230,998.06. The second mortgagee, Ajay Pahwa, has agreed to the discharge of his mortgage as set out in the draft vesting order (attached as Schedule "A" to the notice of motion.) Attached hereto and marked as **Exhibit "E"** is a copy of the Mortgage Information Statement dated June 12, 2006. Attached hereto and marked as **Exhibit "F"** is a copy of the consent received from Mr. Pahwa's counsel dated August 1, 2006.

12. The Receiver's counsel received an unsigned letter by fax on August 2, 2006, which appears to be from Kenneth Wayne Simpson. The letter states that Simpson has agreed to convey her interest in the Cottage to Mr. Simpson as part of the settlement of their matrimonial separation. Pursuant to the Initial Order, the Receiver has the sole authority, subject to the discretion of the Court, to convey Simpson's assets for the benefit of the receivership estate. The letter attaches the affidavit of Kenneth Wayne Simpson sworn August 2, 2006. The letter also attaches a document titled "Separation Agreement of Kenneth Wayne Simpson and Courtney Wallis Simpson" which, out of concern for the privacy interests of the Simpsons' children, is not attached to this report, but will be made available to the Court at the hearing of this motion. Attached hereto and marked as **Exhibit "G"** is a copy of the unsigned letter and the affidavit.

13. Mr. Simpson contacted the Receiver several months ago and advised that he believed that he was entitled to half of the receivership estate as a result of his separation from Simpson. Several months ago Simpson advised the Receiver's counsel that her new address was 195 Ramona Blvd., Markham, Ontario. On June 16, 2006, the Receiver's counsel received a cheque dated June 15, 2006, written on Mr. Simpson's TD Canada Trust account. Mr. Simpson's address on the cheque was the same as that of his wife noted above. Based on the foregoing the Receiver believes that Mr. Simpson continues to reside with his wife.

14. Serious allegations are made against Mr. Simpson in the Mortgage Fraud Class Action. The Receiver has concerns about the validity of Mr. Simpson's claims to the estate and as such, has not entered into an agreement with Mr. Simpson with respect to his claim to any portion of the proceeds of the receivership estate. Mr. Simpson may pursue a claim to the receivership assets however, subject to the discretion of the Court, such claim should not prevent the closing of the Cottage sale.

Vesting Order

15. Based on the receiver's past experience with land registry offices, it is likely that the Land Registry Office of Haliburton (No. 19), Minden will require an override of paragraph 10 of the Initial order in order to register the transfer of title of the Cottage to the purchaser. As such, notwithstanding the terms set out in paragraph 10 of the Initial Order, upon closing of the Cottage, title must vest in the names of: (a) Colin William Job (d.o.b. September 8, 1972); and (b) Kevin Walter Job (d.o.b. April 18, 1971). The draft vesting order is attached as **Schedule "A"** to the notice of motion.

The Receiver's Recommendations

16. The Receiver recommends approval of the court to take the following steps:
- (a) that the Cottage Property may be sold for \$375,000 pursuant to the Agreement of Purchase and Sale dated July 17, 2006; and
 - (b) that the proceeds from the sale of the Cottage Property be held in the Receiver's interest bearing bank account;

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