

**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*

**NOTICE OF MOTION  
(Motion Returnable October 10, 2006)**

The court appointed receiver will make a motion on October 10, 2006 at 10:00 a.m. to a judge presiding over the Commercial List at 330 University Avenue in Toronto or as soon after that time as a motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order approving the release of the property described as 6817 Main Street, Stouffville (the "Property") to the mortgagee for foreclosure and sale with all funds net of the mortgages and related fees to be distributed to the receivership estate.

2. An order dismissing court file no. 06-CV-303587PD3 against the defendant without costs.
3. An order discharging the certificate of pending litigation registered on the title of the Property in court file no. 06-CV-303587PD3.
4. An order approving the receiver's recommendations that:
  - (a) if no resolution has been negotiated with Ajay Pahwa by October 1, 2006, that the receiver proceed with an action against Mr. Pahwa seeking recovery of the \$214,000 overpayment; and
  - (b) the receiver attempt to negotiate the resolution of Wayne Simpson's Family Law Act claim, subject to the court's approval of any agreement between the parties, on the terms set out at paragraph 30 of the Receiver's Seventh Report.
5. An order that the interim fees, disbursements and G.S.T. from April 1 to July 31, 2006 are approved and are to be paid to counsel for the receiver, Bennett Jones LLP, by the receiver Michael J. Quilling, as a first charge on the receivership estate.
6. An order that the interim fees, disbursements and GST from March 1 to July 31, 2006 are approved and are to be paid to the receiver, Michael J. Quilling, as a first charge on the receivership estate.
7. That time for service of the notice of motion and the motion record be abridged to the date and time of actual service and that such service is valid service of the materials filed in support of this motion.

8. Leave of the court to bring this motion, if necessary.
9. Such further and other Order as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. The defendant, Courtney Simpson ("Simpson"), is a member of the Real Estate Council of Ontario ("RECO"), a broker under the *Real Estate and Business Brokers Act* and is the principal broker and controlling mind of the defendant, York Region Realty Inc. ("York Realty") and also of the other defendant entities.
2. This proceeding has been commenced as a class action against the defendants for fraud, unjust enrichment, breach of fiduciary duty and/or misrepresentation with respect to a large number of victims or class members.
3. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), Michael J. Quilling (the "Receiver") was appointed receiver, pursuant to section 101 of the *Courts of Justice Act* and rule 41.02 of the *Rules of Civil Procedure*, over the assets of Simpson and York Realty.

**Release of 6817 Main Street Property to the Mortgagee**

4. By order of the court dated January 9, 2006 in the related proceeding Quilling (Receiver) v. Hurst (Court File No. 06-CV-30358 7PD3) a certificate of pending litigation was registered on title of the Property.

5. The Receiver marketed the Property for several months, however he was unable to obtain an offer to purchase the Property for an amount in excess of the mortgage and related fees. In order to end the costs incurred by the receivership estate in relation to the Property, the Receiver advised the mortgagee that they could continue with their foreclosure and sale proceedings.

#### **The Hurst Action – Court File No. 06-CV-30358 7PD3**

6. A claim was commenced by the Receiver against Lia Hurst based on information received from Simpson, seeking the return of title of the 6451 and 6817 Main Street properties and damages in the amount of \$100,000. Ms. Hurst has cooperated with the Receiver and executed the documents necessary to return title of the above-noted properties to Simpson. The Receiver was advised by Simpson that Ms. Hurst likely did not have any exigible assets. Taking into consideration the costs of continuing the claim against Ms. Hurst, the Receiver has recommended that the action be dismissed without costs.

#### **The Pahwa Mortgages**

7. The sum sought by Mr. Pahwa in respect of the mortgages he registered on the title of several of Simpson's properties, \$336,080, has been paid into a separate interest bearing account.

8. The Receiver's counsel has reviewed the defendants' banking records received to date and determined the following Mr. Pahwa advanced \$1,165,000 to the defendants and received \$1,379,500 from the defendants.

9. The Receiver's counsel and Mr. Pahwa's counsel have engaged in without prejudice settlement discussions in an effort to resolve the mortgages issues without further court intervention. The Receiver currently awaits receipt of requested documents from Mr. Pahwa.

10. There is likely merit in pursuing Mr. Pahwa for the \$214,000 overpayment if Mr. Pahwa's claim cannot be resolved.

### **Wayne Simpson's Family Law Claim**

11. Wayne Simpson advised the Receiver several months ago that he had separated from Simpson and that he intended to pursue any rights he may have to receivership estate assets pursuant to the *Family Law Act*.

12. Wayne Simpson has recently advised the Receiver that he would settle his family law act claim on the following basis:

- (a) Mr. Simpson would take possession of 587 Cam Fella Blvd. (the "Matrimonial Home") and reside there with his children;
- (b) Mr. Simpson would arrange mortgage financing for the Matrimonial Home and would register a new first mortgage effective October 26, 2006, at which time he would pay out the existing First Line first mortgage.
- (c) Utilities, mortgage arrears, and insurance payments up to September 1, 2006 are to be paid by the Receiver from the receivership estate; and
- (d) Mr. Simpson would assume responsibility for all utilities, mortgage payments, insurance, maintenance costs and etc. effective September 1, 2006.

**The Receiver's Fees and Counsel Fees**

13. Subject to paragraph 27 of the Order of Justice Farley dated December 23, 2005, the Receiver's fees and the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership herein.

**Further Grounds**

14. Rule 2 of the *Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Receiver's Seventh Report;
2. Summary of Counsel Fees (April 1, 2006 to July 31, 2006);
3. The Receiver's accounts;
4. Bennett Jones LLP accounts; and
5. Such other material as counsel may advise and this Honourable Court may permit.

DATE: September •, 2006

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**Udayan Pandya**  
Plaintiff

v.

**Courtney Wallis Simpson et al.**  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Returnable October 10, 2006)**

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