

**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*

**SUPPLEMENTARY MOTION RECORD
(Returnable November 15, 2006, adjourned from October 10, 2006)**

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor/M. Joanne MacMillan
LSUC Nos. 37030L/43529J
Tel: 416-777-6121/4629
Fax: 416-863-1716

INDEX

**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*

INDEX

Tab	Description	Page
1.	Supplementary Report to the Seventh Report of the Receiver	1
A.	Exhibit "A" – Order of Justice Ground for an Appointment of an Interim Receiver dated November 17, 2006	8
B.	Exhibit "B" – First Amended and Restated Initial Order of Justice Farley dated December 15, 2006	24
C.	Exhibit "C" – Order of Justice Farley dated December 15, 2006	42
D.	Exhibit "D" – Decision on Motion of Justice Spies dated June 8, 2006	57
E.	Exhibit "E" – Endorsement of Justice Spies dated September 19, 2006	84
F.	Exhibit "F" – Supplementary Endorsement on Costs dated October 20, 2006	96
G.	Exhibit "G" – Chart – Division of Time and Fees	99
H.	Exhibit "H" – Endorsement and Order of Justice Pepall dated October 10, 2006	107
I.	Exhibit "I" – Letter to Wayne Simpson and Courtney Wallis Simpson dated October 31, 2006 from Bennett Jones LLP	112

- J. Exhibit "J" – Email from Courtney Wallis Simpson dated November 1, 2006 to Bennett Jones LLP 113
- K. Exhibit "K" – Email from Courtney Wallis Simpson dated November 2, 2006 to Bennett Jones LLP 114
- L. Exhibit "L" – Email from Bennett Jones LLP dated November 2, 2006 to Courtney Wallis Simpson 115

TAB 1

**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

**SUPPLEMENTARY REPORT TO THE
SEVENTH REPORT OF THE RECEIVER**

Background

1. The purpose of this report is to provide the Court with further information relevant to the issues to be heard on November 15, 2006 at the return of the partially adjourned October 10, 2006 motion and to provide the Court with information requested by Justice Pepall on October 10, 2006.
2. By order dated November 17, 2005 (the "Initial Order"), Justice Ground appointed Michael J. Quilling (the "Receiver") as the receiver of the defendants' assets. Attached hereto and marked as **Exhibit "A"** is a copy of the Initial Order.

3. By orders dated December 15, 2005, Justice Farley, *inter alia*, authorized the Receiver to report to the Mortgage Fraud Scheme victims (Court File No. 05-CL-6178), to deal with the Real Estate Council of Ontario on behalf of all victims for the benefit of the receivership estate and, subject to the confirmation of the class proceedings judge, that the Mortgage Scheme class action be tried with or immediately after the within action. Attached hereto and marked as **Exhibits "B"** and **"C"** are copies of Justice Farley's orders dated December 15, 2005.

Receiver's First Fees Motion – April 26, 2006

4. The Receiver and the Receiver's counsel sought approval of their interim accounts on a motion before Justice Spies heard on April 26, 2006. Justice Spies, in her decision on the motion dated June 8, 2006, approved the Receiver's fees and made the following recommendations as to how Receiver's counsel's accounts might be approved in the future:

- (a) The Receiver's counsel's accounts should be detailed including the total charges for each category/issue of services (para. 91 and 111);
- (b) The number of lawyers working on this matter shall be pared down significantly (para. 111); and
- (c) Fee approval motion materials will be served well in advance of the approval motion return date (para 111).

5. In response to Justice Spies' Decision, the Receiver's counsel took the following steps:

- (a) Fees were reduced by 15%;

- (b) The accounts were separated by category of issue as follows:
- (i) General Receivership;
 - (ii) Real Estate;
 - (iii) Pahwa Mortgages; and
 - (iv) Dianor Shares.
- (c) The number of lawyers working on the matter was pared down and/or the time was written off. Articling student assistance is utilized on this matter and the time/fees associated with such work is now being written off;
- (d) The motion materials related to the October 10, 2006 fees motion were served on all parties and affected persons (including class members for whom we have contact information) six weeks before the motion return date.

Attached hereto and marked as **Exhibit "D"** is a copy of Justice Spies' Decision on Motion dated June 8, 2006.

6. As requested by Justice Pepall in her endorsement dated October 10, 2006, attached hereto and marked as **Exhibit "E"** is a chart setting out the Receiver's counsel's hours and fees for work done prior to Justice Spies' June 8, 2006 decision and the work done after the decision up to July 31, 2006 as well as a summary of the Receiver's accounts and disbursements.

Mortgage Scheme Class Action Counsel Fees

7. Pursuant to Justice Pepall's October 10, 2006 endorsement (Exhibit "H" below), Mr. Govedaris may make written submissions on costs including his costs for attendance on October 10, 2006. Mr. Govedaris previously sought costs of various motion attendances on a motion heard by Justice Spies. At paragraph 53 of Justice Spies' Endorsement dated September 19, 2006, Her Honour indicated that "[i]n the future Mr. Govedaris should advise counsel for the Receiver in advance if he intends to appear on a motion or otherwise incur costs that he would seek to claim from the receivership estate." At no time prior to the October 10, 2006 motion did Mr. Govedaris advise the Receiver's counsel that he intended to appear on the motion or otherwise incur costs that he would seek to claim from the receivership estate. Attached hereto and marked as **Exhibit "F"** is the endorsement of Justice Spies dated September 19, 2006. Attached hereto and marked as **Exhibit "G"** is Justice Spies' Supplementary Endorsement on Costs dated October 20, 2006.

Settlement of Wayne Simpson's Claim – Change in Circumstances

8. By order dated October 10, 2006, the Receiver was granted the authority to fully and finally resolve Kenneth Wayne Simpson's *Family Law Act* claim to half of the receivership estate terms. Attached hereto and marked as **Exhibit "H"** is a copy of Justice Pepall's October 10, 2006 endorsement and Order.

9. On October 31, 2006 the Receiver's counsel was advised by Detective Fred Kerr that Mrs. Simpson was moving back into the family home (587 Cam Fella Boulevard, Stouffville) in which Mr. Simpson was also resident. This is a material change in circumstances that the court

ought to be made aware of in light of the purported separation of Mr. and Mrs. Simpson and Mr. Simpson's related claim under the *Family Law Act*. Attached hereto and marked as **Exhibit "I"** is a copy of the letter to Wayne Simpson and Courtney Wallis Simpson from Bennett Jones LLP dated October 31, 2006.

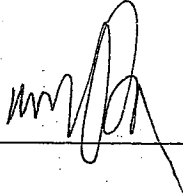
10. By email dated November 1, 2006, Mrs. Simpson advised the Receiver of her change in residence. Attached hereto and marked as **Exhibit "J"** is a copy of the email from Courtney Wallis Simpson to Bennett Jones LLP dated November 1, 2006.

11. By email dated November 2, 2006, Mrs. Simpson advised of a further pending change in residence. Attached hereto and marked as **Exhibit "K"** is a copy of the email from Courtney Wallis Simpson to Bennett Jones LLP dated November 2, 2006. Attached hereto and marked as **Exhibit "L"** is a copy of the email response from Bennett Jones LLP to Courtney Wallis Simpson dated November 2, 2006.

12. The Receiver has reached an agreement in principle with Mr. Simpson with respect to Mr. Simpson's *Family Law Act* claim to receivership assets, on the terms approved by the Court on October 10, 2006, however, in light of this new information, notice should be given to all interested parties and to the Court before executing an agreement with Mr. Simpson in order to provide an opportunity for interested parties to make submissions to the court. Such notice will be made by service of this report on interested parties, including receivership estate claimants, and posting this report on the Receiver's website.

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

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

SUPPLEMENTARY REPORT
TO THE SEVENTH REPORT
OF THE RECEIVER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

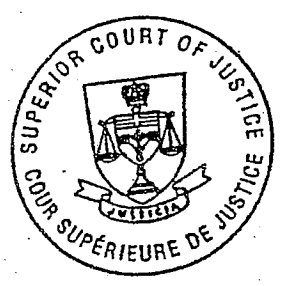
Solicitors for the receiver

TAB A

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

THE HONOURABLE) THURSDAY, THE 17TH DAY OF
MR. JUSTICE GROUND) NOVEMBER, 2005

BETWEEN:



UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES
AND CAMBO INVESTMENTS

Defendants

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

ORDER FOR AN APPOINTMENT OF AN INTERIM RECEIVER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the affidavits of Udayan Pandya and Richard Kwasniewicz and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendants

despite short notice of this matter, and upon being advised that Ms. Simpson is aware of this proceeding and that the relief sought would likely be granted if she did not attend,

1. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson and York Realty pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.
2. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.
3. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.
4. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.
5. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the defendants to take possession and control of all of the present and future assets, undertaking and property of the defendants and any funds, proceeds or

other assets directly or indirectly related to the funds allegedly raised by the defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the defendants in respect of the Property and to exercise all remedies of any of the defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the defendants and their advisors as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

7. **THIS COURT ORDERS** that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

8. **THIS COURT ORDERS** that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect the disbursement of funds to investors without further order of this Court.

9. **THIS COURT ORDERS** that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

10. **THIS COURT ORDERS** that the defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (a) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the defendants' names or not, pending the final determination of this action or further order of this Court;

- (b) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

11. **THIS COURT ORDERS** that the Receiver shall forthwith be entitled to take possession of and examine the defendants' books and records and make such inquiries as it deems prudent and necessary of the defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the defendants.
12. **THIS COURT ORDERS** that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.
13. **THIS COURT ORDERS** that the defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature,

howsoever stored or maintained, relating to the defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the defendants and it shall be deemed that the defendants shall have consented to the release of the Documents. The Receiver shall allow the defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

14. **THIS COURT ORDERS** that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

15. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the defendants and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, emails or other information sent or received by the defendants and/or its present and former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the defendants.

16. **THIS COURT ORDERS** that the Receiver shall have ongoing access to the defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

17. **THIS COURT ORDERS** that the Receiver is empowered to demand production from third parties (including but not limited to the defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

18. **THIS COURT ORDERS** that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this

paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedoms*. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

19. **THIS COURT ORDERS** that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been

provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

20. **THIS COURT ORDERS** that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

21. **THIS COURT ORDERS** that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

22. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfillment of its duties in carrying out the provisions of this order, save and except for any gross negligence or willful misconduct on its part.

23. **THIS COURT ORDERS** that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

24. **THIS COURT ORDERS** that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying

out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

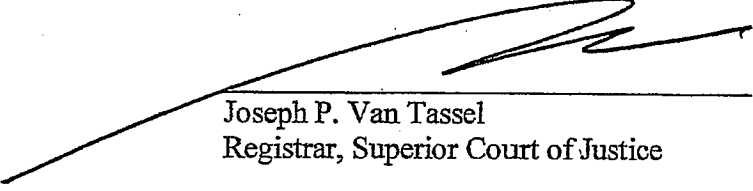
25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

26. **THIS COURT ORDERS** that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

27. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the *Ontario Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in

control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

28. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.



Joseph P. Van Tassel
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 17 2005

PER/PAR:

NB

Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal DescriptionL

PT LT 30 PL 54 Stouffville: PT LT 31 PL54 Stouffville, PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

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

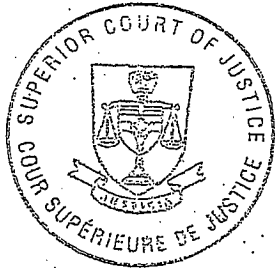
ORDER

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

TAB B



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MD*) THURSDAY, THE 15TH DAY OF
JUSTICE *FARLEY*)
) DECEMBER, 2005

BETWEEN:

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES
AND CAMEO INVESTMENTS

Defendants

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

FIRST AMENDED AND RESTATED INITIAL ORDER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the First Report of the Receiver dated December 13, 2005 and on hearing the submissions of counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and dispenses with further service thereof.
2. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson, Courtney Wallis Simpson c.o.b. as York Management Group and York Realty (the "Defendants") pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.
3. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.
4. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.
5. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.
6. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

7. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the Defendants to take possession and control of all of the present and future assets, undertaking and property of the Defendants and any funds, proceeds or other assets directly or indirectly related to the funds allegedly raised by the Defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and

disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the Defendants in respect of the Property and to exercise all remedies of any of the Defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the Defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the Defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the Defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the Defendants and their advisors, including the Mortgage Fraud Scheme victims who are class members in court file no. 05-CL-6178, as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

8. **THIS COURT ORDERS** that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

9. **THIS COURT ORDERS** that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other Defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect the disbursement of funds to investors without further order of this Court.

10. **THIS COURT ORDERS** that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

11. **THIS COURT ORDERS** that the Defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (a) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the Defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the Defendants' names or not, pending the final determination of this action or further order of this Court;
- (b) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank

accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the Defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

12. **THIS COURT ORDERS** that the Receiver shall forthwith be entitled to take possession of and examine the Defendants' books and records and make such inquiries as it deems prudent and necessary of the Defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the Defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the Defendants.

13. **THIS COURT ORDERS** that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

14. **THIS COURT ORDERS** that the Defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the Defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature, howsoever stored or maintained, relating to the Defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the Defendants and it shall be deemed that the Defendants shall have consented to the release of the Documents. The Receiver shall

allow the Defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

15. **THIS COURT ORDERS** that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the Defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

16. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the defendants and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, emails or other information sent or received by the Defendants and/or its present and former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the defendants.

17. **THIS COURT ORDERS** that the Receiver shall have ongoing access to the Defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The Defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

18. **THIS COURT ORDERS** that the Receiver is empowered to demand production from third parties (including but not limited to the Defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the Defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

19. **THIS COURT ORDERS** that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the Defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and*

Freedoms. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

20. **THIS COURT ORDERS** that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

21. **THIS COURT ORDERS** that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine

anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

22. **THIS COURT ORDERS** that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

23. **THIS COURT ORDERS** that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

No Proceedings Against the Debtor or the Property

24. **THIS COURT ORDERS** that no proceeding against or in respect of the Defendants or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all proceedings currently under way against or in respect of the Defendants or the Property are hereby stayed and suspended pending further Order of this Court.

No Exercise of Rights or Remedies

25. **THIS COURT ORDERS** that all rights and remedies against the Defendants, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Defendants to carry on any business which the Defendants are not lawfully entitled to carry on, (ii) exempt the Receiver or the Defendants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent

the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

26. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this order, save and except for any gross negligence or wilful misconduct on its part.

27. **THIS COURT ORDERS** that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

28. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

29. **THIS COURT ORDERS** that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

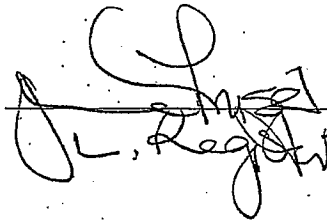
30. **THIS COURT ORDERS** that, except as otherwise specified herein, the Receiver is at liberty to serve any notice, form or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to the defendants or other appropriate parties at their respective addresses or other contact particulars as last indicated in the records of the defendants and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

31. **THIS COURT ORDERS** that the Receiver may serve any court materials in these proceedings (including, without limitation, application records, motion records, facta and orders) on all represented parties electronically, by e-mailing a PDF or other electronic copy of such materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list, and posting a copy of the materials to an internet website to be hosted by Quilling Selander Cummiskey Lownds (the "Website") as soon as practicable thereafter, provided that the Receiver shall deliver hard copies of such materials to any party requesting same as soon as practicable thereafter.
32. **THIS COURT ORDERS** that any party in these proceedings may serve any court materials (including, without limitation, application records, motion records, facta and orders) electronically, by emailing a PDF or other electronic copy of all materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list; provided that such party shall deliver both PDF or other electronic copies and hard copies of full materials to counsel to the Receiver and to any other party requesting same and the Receiver shall cause a copy to be posted on the Website, all as soon as practicable thereafter.
33. **THIS COURT ORDERS** that the Receiver be permitted to (i) enter into a new listing agreement with John Walley of Sutton Group in Stouffville, (ii) sell Simpson and York Realty's real property assets and contents, and (iii) make it a condition of the new listing agreement that all sales are subject to court approval and to hold all proceeds from the sales in an interest bearing account;
34. **THIS COURT ORDERS** that the Receiver, if so advised, be permitted to bring a lawsuit as against Lia Hurst and seek a certificate of pending litigation in order to regain possession of the properties alleged to be rightfully owned by Simpson and if successful, to sell those properties, the proceeds of which will be deposited into an interest bearing account;
35. **THIS COURT ORDERS** that the Receiver deal directly with the Real Estate Council of Ontario on behalf of all of the victims for the benefit of the estate who have submitted claims;
36. **THIS COURT ORDERS** that the Receiver or Receiver's counsel may examine Adam Cox and compel production of documents relevant to the real estate deposit scheme;

37. **THIS COURT ORDERS** that a bank account be opened in Toronto at a bank selected by the Receiver in Courtney Wallis Simpson's name, which account may accept deposits from Simpson but from which funds can be accessed only by the Receiver through Bennett Jones LLP;
38. **THIS COURT ORDERS** that all proceedings as against Simpson, York Realty, Wallis Simpson & Associates and York Management Group be stayed and that any and all consents to judgment endorsed by Simpson in her personal capacity or as director of York Realty or York Management Group, be deemed ineffective;
39. **THIS COURT ORDERS** that the posting of information on the Receiver's website be approved;
40. **THIS COURT ORDERS** that the claim form as filed with the court be approved;
41. **THIS COURT ORDERS** that, unless otherwise provided herein or by this Court, no document, order or other material need be served on any person in respect of these proceedings unless such person has served a Notice of Appearance on the solicitors for the Receiver and has filed such notice with this Court.
42. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to, any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the Ontario

Water Resources Act, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

43. THIS COURT SEEKS AND REQUESTS the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 20 2005

PER/PAR:



Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal Description:

PT LT 30 PL 54 Stouffville; PT LT 31 PL 54 Stouffville, PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

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

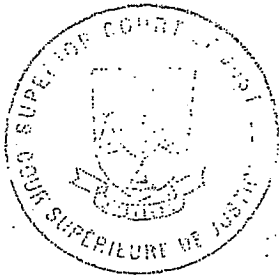
FIRST AMENDED AND
RESTATED INITIAL ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

TAB C



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MR*) THURSDAY, THE 15TH DAY OF
JUSTICE *FARLEY*) DECEMBER, 2005

BETWEEN:

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES
AND CAMEO INVESTMENTS

Defendants

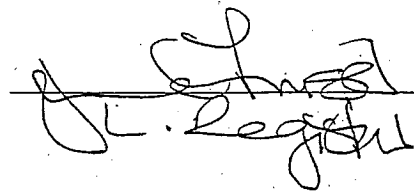
In the Matter of the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the First Report dated December 13, 2005 of Michael J. Quilling (the "Receiver"), in his capacity as the court appointed receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Realty"), and upon hearing the submissions of counsel for the Receiver and the plaintiff, no one appearing for the defendants despite notice of this matter;

1. **THIS COURT ORDERS** that the 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;
2. **THIS COURT ORDERS** that the action as against Cameo Investments be dismissed forthwith without costs;
3. **THIS COURT ORDERS** that subject to the confirmation by the appointed judge in the class proceeding, action commenced as court file no. 05-CL-6178 (the "Mortgage Fraud Scheme Class Action") be tried together or immediately after this class action;
4. **THIS COURT ORDERS** that the plaintiff be granted leave to amend the statement of claim issued November 15, 2005 to add Courtney Wallis Simpson carrying on business as York Management Group as a defendant in the form of the amended statement of claim attached to this order as **Appendix I**.


J. Regan

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 20 2005

PER/PAR:

NB

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 CAMEO INVESTMENTS

Defendants

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

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 15, 2005

Issued by "Local Registrar"
Local registrar

Address of court office: 393 University Avenue
Toronto, Ontario
M5G 2J6

TO: COURTNEY WALLIS SIMPSON
587 Cam Fella Boulevard
Stouffville, ON L4A 7H3

AND TO: YORK REGION REALTY INC.
19 Thicketwood Boulevard
Stouffville, ON L4A 1K1

AND TO: WALLIS SIMPSON & ASSOCIATES
37 Sandiford Drive
Suite 301
Stouffville, ON L4A 7X5

AND TO: CAMEO INVESTMENTS
200 Bond St. W.
Oshawa, Ontario
L1J 2L7

AND TO: COURTNEY WALLIS SIMPSON (c.o.b. as YORK MANAGEMENT GROUP)
587 Cam Fella Blvd
Stouffville, Ontario
L4A 7G9

CLAIM

1. The plaintiff claims against the defendants, Courtney Wallis Simpson ("Simpson"), York Region Realty Inc., Wallis Simpson & Associates, Courtney Wallis Simpson (c.o.b. as York Management Group) and Cameo Investments, as follows:

- (a) An order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff of the class, being those persons who are Canadian residents and who provided deposit monies in trust to the defendant Simpson and to the other defendants pursuant to fraudulent agreements of purchase and sale;
- (b) A declaration that the defendants have been unjustly enriched as a result of the above conduct and hold all proceeds raised by them, or assets referable to such proceeds, as constructive trustees for the class and in particular a declaration that Simpson and the other defendants hold the property described at Schedules "A" and "B" hereto in trust for the class;
- (c) damages for fraud, misrepresentation and breach of fiduciary duty in the amount of \$6,000,000;
- (d) The appointment of a receiver (or alternatively, inspector) pursuant to Section 101 of the *Courts of Justice Act* with full power to investigate all matters pertaining to the raising of funds by the defendants as hereinafter set out, including powers to investigate the whereabouts of such funds (or assets referable to such funds), to compel the production of documents and examine third parties and full power to hold and preserve such funds or assets once ascertained pending further order of the court or, alternatively an interim pre-trial discovery order (a *Norwich Pharmacal* order) requiring persons with knowledge or documents relating to the matters in this action to provide such information to the plaintiff;

- (e) Punitive, aggravated and exemplary damages in the amount of \$10,000,000;
- (f) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (g) The plaintiff's costs of this action on a substantial indemnity basis; and
- (h) Such further and other relief as to this Honourable Court appears just.

The Parties

2. The plaintiff is a resident of the City of Mississauga, Ontario.
3. The defendant 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 defendant entities known as "Wallis Simpson & Associates" ("Simpson & Associates"), Courtney Wallis Simpson (c.o.b. as York Management Group) ("York Management") and "Cameo Investments" ("Cameo"). It is not known to the plaintiff at present whether Simpson & Associates and Cameo are trade names of corporations and, if so, the jurisdictions of their incorporations.

The Fraudulent Scheme

4. In September 2005 Simpson, acting as a real estate broker induced the plaintiff to enter into an agreement of purchase and sale (the "Agreement") with respect to a commercial property in Stouffville, Ontario. It was a term of the Agreement that the

plaintiff and his business partner, Mukesh Morar, provide deposit funds in the total amount of \$200,000 to York Realty. The plaintiff and Mr. Morar provided the deposit funds in trust to York Realty as required under the Agreement. These deposit funds were to be held by York Realty in trust pending completion or termination of the Agreement. Similar arrangements were made by the defendants with the other class members.

5. The receipt of deposit funds referenced at paragraph 5 above was made in furtherance of a fraudulent scheme perpetrated by the defendant Simpson. The purported vendors who are the actual property owners have denied signing the purported agreements of purchase and sale. Many of the agreements of purchase and sale purported to sell the same property. The defendants collected the deposits associated with the agreements of purchase and sale from more than one class member with respect to the sale of the same property. The agreements of purchase and sale entered into by the class members at the inducement of Simpson and the other defendants were fraudulent.

6. In particular Simpson represented to the plaintiff and to other class members that:
- (a) She was the broker or agent with the authority to negotiate the purchase and sale of various commercial properties;
 - (b) Their deposit funds would be held in trust by York Realty pending completion or termination of the Agreements of Purchase and Sale;
 - (c) She acted on the authority of the various vendors involved in the Agreements of Purchase and Sale;

- (d) She was in the process of obtaining the documents necessary to complete the commercial real estate transactions; and
- (e) She could return their deposit funds or had already sent them a cheque in the amount of their deposit funds.

7. All class members relied upon the representations set out in paragraph 7 above.
8. All of the representations set out in paragraph 7 above were untrue. There were no valid agreements of purchase and sale with respect to the various commercial properties.
9. The plaintiff states that representations made by Simpson were made for the purpose of inducing the class members to invest in various commercial real estate ventures, were made with the intention that they would be relied upon by class members in investing and were relied upon by class members to their detriment in their real estate investments with Simpson and the other defendants.
10. In the event the defendant entities involved are incorporated in Canada, the plaintiff states that it is fit and proper that an order for restitution or damages be made against Simpson personally given her leading role in the fraudulent conduct and as her actions were designed to secure personal benefit. The plaintiff states that Simpson has personally received benefits from the deposit funds, the particulars of which are known to Simpson.

Breach of Fiduciary Duty

11. The plaintiff pleads that Simpson owed a fiduciary duty to him and to the class members to perform her duties faithfully, honestly, diligently and in good faith. The plaintiff pleads that Simpson breached those duties by wrongfully converting the plaintiff's and the class members' deposit funds.

Appointment of a Receiver

12. The plaintiff at present has no present knowledge as to the whereabouts of the approximately \$6,000,000 raised by the defendants or proceeds pursuant to the scheme above. The plaintiff pleads that it is just and convenient for the Court to appoint a person as receiver (or alternatively, as inspector) in order to ascertain the whereabouts of the funds raised (or assets referable to the funds) to preserve the funds or assets referable to the deposit funds pending final disposition of the action herein, and the ascertain and pursue any insurance proceeds such as that which might be available through RECO.

13. The plaintiff pleads that he is entitled to an accounting of the property as it came into the hands of the defendants and that he is entitled to trace the same and charge the defendants' property to the extent that the class members' property is traced thereto.

14. The plaintiff pleads that it is just and correct for the receiver to assess all claims by the class members and to advise the court on the distribution of the defendants' assets to the class members.

Constructive Trust

15. The defendants have been unjustly enriched as a result of their raising of approximately \$3,000,000 to \$6,000,000 in funds and that they hold any such funds (or assets referable to such funds) as constructive trustees for the class members.

This Action Survives Bankruptcy

16. The plaintiff pleads that the liability of the defendants arises out of their fraud, misappropriation or defalcation while acting in a fiduciary capacity and the plaintiff pleads and relies upon Section 178 of the *Bankruptcy and Insolvency Act* with respect to same.

Punitive Damages

17. The defendants' actions were intentional, reckless, criminal, highhanded and callous and the plaintiff pleads that the class members are entitled to an award of punitive and exemplary damages in respect of same.

Joint and Several Liability

18. The plaintiff claims that the defendants are jointly and severally liable for the damages suffered by the class members.

19. The plaintiff proposes that this action be tried at Toronto.

Date of Issue: November 15, 2005

BENNETT JONES LLP
Suite 3400, P.O. Box 130
One First Canadian Place
Toronto, Ontario
M5X 1A4

Jim Patterson / Lincoln Caylor /
M. Joanne MacMillan
Tel: (416) 777-6250 / 6121 / 4629
Fax: (416) 863-1716
LSUC No. 28199C / 37030L / 43529J

Solicitors for the plaintiff

Schedule "A"

587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

PIN 03715-0004
Whitchurch, Ontario

1038 Kawagama Lake Road
Dorsett, Ontario

PIN 03710-0193/0194
Stouffville, Ontario

Schedule "B"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Simplified Procedure)

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Jim Patterson / M. Joanne MacMillan
Tel: (416) 777-6250 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 28199C/43529J

Solicitors for the defendants

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

ORDER

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

TAB D

COURT FILE NO.: 05-CL-6159
DATE: 2006-06-08

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: UDAYAN PANDYA, Plaintiff

A N D:

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

BEFORE: SPIES J.

COUNSEL: *Lincoln Caylor* for the Plaintiff/Receiver

Gregory Govedaris, for the Plaintiffs in Action # 05-CL-6178, Glenn E. Cohen for Atlas Holdings, D.R. Rothwell for Ajay Pahwa and Courtney Wallis Simpson in person

HEARD: April 26, 2006

DECISION ON MOTION

OVERVIEW

[1] This is a motion by the court appointed Receiver for an order that the interim fees, disbursements and GST of counsel for the Receiver, for the period October 11, 2005 to April 12, 2006, be approved and be paid to counsel by the Receiver as the first charge on the receivership estate.

[2] By order of Ground J. dated November 17, 2005, Michael J. Quilling was appointed Receiver, pursuant to s. 101 of the Courts of Justice Act and Rule 41.02 of the Rules of Civil Procedure, over the assets of Courtney Wallis Simpson and York Region Realty Inc. (the "Initial Order").

[3] The Receiver subsequently provided four reports to the court, on four separate attendances. As explained further below, those reports set out in summary fashion the

- 2 -

activities of the Receiver and its counsel Bennett Jones LLP. It was not until the motion returnable March 9, 2006, that the Receiver sought court approval of the fees and disbursements of the Receiver and its counsel.

[4] At the attendance before Mesbur J. on March 9, 2006, the Receiver sought approval for its own fees in the amount of \$35,253.39 and for the fees and disbursement of Bennett Jones in the amount of \$234,434.79 (\$207,537.50 for fees and \$11,674.31 for disbursements plus GST).

[5] The material filed in support of the approval of the fees of Bennett Jones was only an invoice, which simply stated that the fees and disbursements were for "professional services rendered" for the period in question. Counsel also filed a one page "Summary of Time and Fees" which listed the lawyers/students who worked on the matter, their position within the firm, year of call, the total hours spent and hourly rate.

[6] Objection was taken to the fees of the Receiver and its counsel, by counsel for some of the claimants to the assets of the estate. Mesbur J. adjourned the Receiver's motion so that its counsel could particularize the fees and deliver particulars of the fees to the other parties.

[7] Further to the order of Mesbur J., the matter came on before me on April 6, 2006. At that time, after hearing the submissions of counsel appearing, I approved the interim fees and disbursements and GST of the Receiver for the period November 17, 2005 to February 28, 2006 in the amount of \$35,253.39.

[8] The motion with respect to the approval of the fees and disbursements of Bennett Jones was adjourned to April 26, 2006. The difficulty was that the Receiver had prepared a summary of counsel fees, which summarized the work done by each lawyer, but it did not set out the date on which the work was done and more importantly did not break down the work done into various categories of services rendered. Furthermore, no dockets were provided.

[9] Because of the way that the summary was prepared, it was impossible for counsel and for the court to assess the reasonableness of the fees and so unfortunately the motion to approve the fees and disbursements of Bennett Jones had to be adjourned again. Counsel for the Receiver was directed to provide to counsel appearing that day copies of dockets of Bennett Jones, redacted if necessary if there were concerns about solicitor/client privilege, along with a summary of the fees, grouping the time by lawyer in accordance with the main areas of work undertaken, so that an assessment of the fees could be made. The dockets and summary of fees were to be served by April 13, 2006. For any dockets that were redacted, counsel for the Receiver was directed to file unredacted copies in a sealed envelope with the court.

- 3 -

[10] The motion returned before me on April 26th. Counsel for the Receiver had prepared a new motion record with a summary of counsel fees broken down into some categories of services rendered, along with copies of the dockets. No dockets were redacted.

ISSUES

[11] Pursuant to the Initial Order, the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership, subject to approval of the quantum of costs by the court.

[12] On the return of the motion before me, the Receiver sought approval of the fees of its counsel in the amount of \$207,537.50 and disbursements in the amount of \$11,674.31 for a total with GST of \$234,434.79 for the period October 11, 2005 to February 21, 2006 and \$153,985 for fees and \$5,146.46 for disbursements for a total of \$170,230.30 with GST for the period from February 21, 2006 to April 12, 2006. The grand total that is submitted for approval is \$404,665.09 of which \$361,522.50 is fees.

[13] Counsel opposing the motion objected to the approval of the fees, asserting that the fees are excessive, particularly given the recovery and size of the receivership estate and that the hourly rates charged are too high in all of the circumstances. There was no real issue with the disbursements, nor was it asserted that the Receiver or his counsel had exceeded their jurisdiction.

[14] The issues before me are what principles should I apply in considering the fees of counsel to the Receiver and what quantum of fees should I approve?

THE FACTS

[15] There are currently at least two proceedings against the defendants and both are class proceedings. They each relate to alleged fraudulent activity on the part of Simpson and her companies. The plaintiff in the class action herein, (the "Deposit Fraud Class Action"), first approached Bennett Jones in the fall of 2005 alleging that Simpson, who is a real estate agent, and her companies, defrauded him by retaining his deposit for the purported purchase of a commercial property. It is alleged that Simpson purported to "sell" the same two commercial properties in excess of a hundred times each and as a result there are many claimants in this class who claim for deposits paid on purchases that were a sham.

[16] Mr. Govedaris is counsel for plaintiffs in class action #05-CL-6178 (the "Mortgage Fraud Class Action"). In that action, it is alleged that Simpson and others defrauded the victims through the operation of a "Ponzi Scheme", convincing people to "invest" in interim occupancy mortgages that never existed.

- 4 -

Initial Order

[17] The Initial Order of Ground J. approved the appointment of Bennett Jones LLP as counsel to the Receiver but hourly rates were not approved. The order gives the Receiver the usual powers to preserve property of the defendants including investigatory powers and the Receiver is of course permitted to apply to this Court for advice and directions related to the proper exercise of its powers or for any variations to the order.

The First Report

[18] Counsel for the Receiver attended before Farley J. on December 13, 2005 and filed the First Report of the Receiver of the same date. That report summarized the nature of the two alleged frauds. At that time the Receiver estimated that there were eighteen victims of the deposit scheme fraud owed approximately \$3.6 million and at least 54 victims of the Ponzi Scheme/mortgage fraud with a total loss of approximately \$11 million.

[19] At that stage, counsel for the Receiver had issued the statement of claim in the Deposit Fraud Class Action. In the First Report, the Receiver recommended that the Mortgage Fraud Class Action be tried together with the Deposit Fraud Class Action and that the Initial Order be amended to add the mortgage fraud victims as a class of creditors to be considered by the Receiver.

[20] The Receiver reported on the various activities undertaken by the Receiver and its counsel since the date of the Initial Order, which included serving the Initial Order on all banks to which Simpson and York Realty had a relationship, asking that the bank accounts be frozen, registering the Initial Order on title to all properties owned by Simpson, attending at all properties owned by Simpson, (with the exception of the cottage property), speaking to the agent who had listed the real properties for sale (at the request of Simpson), reviewing Simpson's business records, examining Simpson under oath, communicating with the York Regional Police and dealing with claimants.

[21] The Receiver was in attendance with counsel for the examination of Simpson on November 29, 2005. On the same date the Receiver, accompanied by counsel, met with a detective from York Regional Police and conducted a cursory review of documents in the possession of the police as a result of the criminal charges pending against Simpson. Simpson consented to the Receiver reviewing this material.

[22] Simpson also co-operated with the Receiver in identifying the real property that she owned and in fact advised the Receiver of two properties that were registered in the name of Lia Hurst that Simpson claimed ownership to. The report stated that it appeared that the equity in the real property owned by Simpson might be

- 5 -

anywhere from approximately \$654,000 to approximately \$1.3 million depending on whether the Receiver was successful in setting aside certain charges.

[23] At that time, the Receiver recommended listing the real property with the agent that Simpson had already listed the properties with and that the proceeds from sale be deposited and held in an interest bearing account, that the Receiver, in consultation with counsel, determine whether a law suit was warranted against Hurst, including certificates of pending litigation, in order to regain those two properties, reviewing documents in the possession of York Regional Police (17 boxes), selling the contents of Simpson's business premises and conducting an examination of a third party, Adam Cox, who had been identified by Simpson as someone who likely had relevant information.

[24] At the time of this First Report, the Receiver was aware that the members of the Deposit Fraud Class Action had made claims to the Real Estate Council of Ontario ("RECO") with respect to their deposits, and had been informed by RECO that it was its position that Simpson's actions constituted one "occurrence" and that therefore there was a \$500,000 limit to the amount to be paid by RECO for all class members. The Receiver recommended that he deal directly with RECO and assist individuals who had yet to make a claim to do so and then report to the court. He reported that any payments from RECO be used for the benefit of the deposit fraud class only. I am advised by Mr. Govedaris however, that the claimants in the Mortgage Fraud Class Action may also have claims against RECO and so the Receiver and counsel for the Receiver will need to be concerned about this conflict, as Bennett Jones also represents the Deposit Fraud Class.

[25] The First Report also disclosed an issue concerning Ajay Pahwa who has asserted a claim in the receivership estate as a secured creditor. The Receiver takes the position that the three mortgages Pahwa has on properties belonging to Simpson have been paid off, or, in the alternative, are not valid because of illegal rates of interest.

[26] The Receiver also advised the court at this time that it had established a website to post information regarding the case.

[27] Farley J. by order dated December 15, 2005, authorized the Receiver to amend the statement of claim to add Simpson carrying on business as York Management Group as a defendant and to try the Mortgage Fraud Class Action together or immediately after the Deposit Fraud Class Action (subject to confirmation by the appointed judge in the class proceedings).

[28] A second order of Farley J. of the same date headed "First Amended and Restated Initial Order" restated all of the relief granted by Ground J. in the Initial Order and added other terms, which authorized the Receiver to enter into new listing agreements to sell the real property owned by Simpson, deal directly with RECO on

- 6 -

behalf of all victims of the Deposit Fraud scheme, examine Cox, and open a bank account to accept deposits from Simpson. That order also stayed all proceedings in respect of the defendants and their properties and approved a claim form and its distribution¹.

The Second Report

[29] The matter returned again before Farley J. on December 22, 2005 with the Second Report of the Receiver of the same date. In that report, the Receiver reported that the Receiver's counsel had continued to follow up with banks to ensure that accounts were frozen, met with Simpson for further investigation, that a separate interest bearing bank account had been opened to receive the proceeds from the sale of Simpson's assets and any funds that Simpson might be receiving, as Simpson was still working (subject to a living allowance for Simpson), that counsel had communicated with the agent that Simpson had already arranged, regarding the sale of various Simpson properties pursuant to a new listing agreement, and that a real estate agent had been retained to undertake a fair market assessment of the cottage property. Furthermore contact with Cox in order to compel his attendance at an examination had been made, the Statutory Declaration to be utilized as a claim form had been prepared and information had been posted to the website.

[30] With respect to the Hurst action, the Receiver reported that the properties were valued at between \$250,000 and \$275,000 each, but that there were mortgages registered on each of the properties in the amount of approximately \$221,000 and \$225,000. The Receiver advised it would continue to investigate to determine if there was sufficient equity to merit a lawsuit and, if in consultation with counsel, a lawsuit was warranted, that Hurst would be sued.

[31] With respect to RECO, the Receiver advised the court that the Receiver and its counsel had met with the manager of investigations of RECO. It appears the purpose of that meeting was simply to inform the manager of the activities of the Receiver to date and the orders that had been made.

[32] With respect to the Pahwa mortgages, counsel for Pahwa had served a notice of sale under mortgage with respect to one property. Based on the Receiver's investigation, which included a review of all documents registered on title, the Receiver recommended that the validity of the mortgages be challenged, that in the mean time no proceeds from any sale be paid to Pahwa and that funds claimed by Pahwa be held in the Receiver's bank account pending further order of the court.

¹ As I advised counsel for the Receiver, particularly as the amended Initial Order is not black lined, in order to determine the relief granted by Farley J. as compared to the relief previously granted by Ground J., it is necessary to do a paragraph by paragraph review of the two orders. Preferably the new order should have simply stated the additional relief and any amendments without restating the Initial Order.

- 7 -

[33] The Second Amended and Restated Initial Order of Farley J. dated December 23, 2005, authorized the Receiver to assert challenges to the validity, quantum and priority of the Pahwa, restrained Pahwa's power of sale proceedings and provided that upon approval of the sale of properties, that the amount claimed by Pahwa be held in a separate bank account pending further order.

Third Report

[34] The Receiver attended in court again on January 20, 2006 before Cumming J. with the Receiver's Third Report dated January 13, 2006. In that report, the Receiver reported that bankruptcy proceedings had been commenced against Simpson and York Realty and two receiving orders dated December 30, 2005 had been obtained. The Receiver recommended and obtained an order from Cumming J. that the bankruptcy proceedings be stayed, as were the related receiving orders.

[35] The Receiver also reported on its on-going review of Simpson's bank accounts, but there was still no statement that any of those accounts had contained funds.

[36] A new issue arose in this report concerning certain shares of Dianor Resources Inc. that had been owned by Simpson and had been transferred into two individual accounts held at RBC Dominion Securities, allegedly in breach of the Initial Order. This information came to the Receiver from a detective of the York Regional Police squad. Counsel for the Receiver requested that the share transfers be reversed and currently that is a further issue for the Receiver to pursue. RBC is holding approximately 500,000 shares which fluctuate in value and could be worth anywhere from \$.255 (the rolling 52 week low price) to \$2.18 (the rolling 52 week high) per share.

[37] The Third Report to the court also updated the court with respect to the progress on the sale of the various properties owned by Simpson which had all been listed for sale, with the exception of the cottage property, and the fact that an action had been commenced against Hurst and that certificates of pending litigation on title had been obtained. The Receiver recommended acceptance of an offer concerning one property.

[38] With respect RECO, the report disclosed that counsel for the Receiver had sent a letter requesting disclosure of information and that there had been no response. By that point it was estimated that eighteen victims of the Deposit Fraud had made claims to RECO.

[39] With respect to Cox, after several attempts, he finally attended at an examination but then refused to answer questions once he realized he was there to give evidence about the Simpson fraud. The Receiver had continued its review of

- 8 -

Simpson documents and discovered the existence of two other corporations for which it sought amendment, to have them added to the receivership.

[40] The Receiver also reported that counsel had written to the Crown assigned to the Simpson case requesting that a Restitution Order be sought against Simpson in the amount of approximately \$14.6 million representing the estimated loss occasioned by both the fraudulent deposit and mortgage schemes.

[41] Based on the report, the Third Amended and Restated Initial Order of Cumming J. dated January 20, 2006 directed that one property be sold with the amount of \$336,080, which is the amount of Pahwa's claim, to be held in a separate bank account to await the outcome of the Pahwa claim. A separate order of the same date added Simpson carrying on business as York Group and as Camco Developments as defendants.

Fourth Report

[42] When the matter proceeded before Mesbur J. on March 9th, she had the Fourth Report of the Receiver dated March 3, 2006. In that report the Receiver advised that it was using documents recovered from the police to verify and validate the claims of potential class members, particularly the alleged Mortgage Fraud class, in order to determine whether each individual investor had received less or more than their principal investment back. This was described as a complicated task for various reasons.

[43] By that date the actual claims made by members of both classes totaled approximately \$3.7 million. The Receiver stated that he had been in touch with the majority of the victims known to that date and had distributed the claim form to those individuals.

[44] The Receiver's estimate of the value of the assets in the estate at that time was set out in a chart outlining assets and potential recovery through the receivership. This chart listed total assets at \$3,225,000 with total liabilities at \$1,416,809 with a net estate total of \$1,808,191. The only assets listed were the real properties owned by Simpson, including the Hurst properties, the RECO claim at \$500,000 and the Dianor Resources shares at \$400,000, which appears to be a conservative number. The Pahwa claim was taken into account in the amount of \$336,080. As set out below, the interest of Simpson's husband in the matrimonial home was not considered.

[45] With respect to the Dianor Resources shares, the Receiver had communicated further with counsel for RBC Dominion. They were advised that the shares were frozen and that RBC would require a court order before complying with the

- 9 -

Receiver's request to reverse the transfer. RBC had not produced the requested documents to the Receiver by that date.

[46] The Receiver provided further reports with respect to the real property and the court approved the sale of a second property. He recommended that the sale price of the sale approved by Cumming J. be reduced because of substantial issues disclosed in the property inspection. The Receiver recommended listing the cottage property in the spring. With respect the Hurst properties, the Receiver reported that Hurst was willing to sign an acknowledgement and direction transferring title and the properties back to Simpson. The Receiver recommended that once that was done, that the properties be sold.

[47] With respect to RECO, the Receiver reported that twenty victims of the Deposit Fraud class had made claims to RECO totaling \$3,215,000. RECO agreed to provide disclosure of certain documents but continued to maintain its position that Simpson's actions constituted "one" occurrence and that therefore no more than \$500,000 would be available to all claimants under RECO's Consumer Deposit Insurance coverage. The Receiver stated that after reviewing the documentation, it would seek directions from the court regarding commencing an action against RECO's insurer.

[48] The Receiver reported on the examination of Cox and advised that based on that examination, it was not recommended that Cox be added as a defendant. The Receiver also reported on obtaining bank records from the ten bank branches, which the defendants were known to have used, which had been served with the Initial Order. By this point the Receiver had a complete compilation of the bank records for the past 6 years and stated that he was confident that he would be able to discern some patterns from the movement of funds.

[49] Pursuant to the order of Mesbur J., RBC Dominion Securities was ordered to produce documents related to the Dianor Resources shares to the Receiver, and the shares were frozen until April 6, 2006. In addition, the sale of one property was approved, as was a listing of the Hurst properties after they had been reconveyed to Simpson.

Affidavit of M. Joanne MacMillan sworn March 31, 2006

[50] When the matter proceeded on April 6, 2006 before me, no further report was filed but I did have the Affidavit of M. Joanne MacMillan sworn March 31, 2006. Further information was provided on the Dianor Resources shares issue and the fact that RBC had provided the Receiver's counsel with documents related to the transfer of the shares. Copies of these documents had been provided to the transferees of the shares and Mr. Govedaris in accordance with Justice Mesbur's order.

- 10 -

Receiver's Action Plan

[51] In accordance with my endorsement of April 6, 2006, the Receiver served and filed a proposed Action Plan. A review of this plan assists in considering the work the Receiver and its counsel has done and what is yet to be done in order to realize all of the assets of the receivership estate and determine and pay out the claims.

[52] The proposal with respect to the various issues is as follows:

- (a) **Dianor Resources Inc. Shares**-the Receiver recommends challenging the share transfer and ask that it be reversed and that the shares be returned to the receivership estate on the basis that the transfer took place after the freezing order had taken effect. The method of determining this issue is to be resolved at a 9:30 appointment to be scheduled on notice to all interested parties.
- (b) **The Pahwa Mortgages**- the Receiver proposes examining the lawyer who assisted placing the mortgages on title to Simpson's properties and then challenging the validity of the Pahwa mortgages and proceeding via an application seeking to discharge the Pahwa mortgages on various grounds. Various alternative relief is also proposed. A draft application was included with the Plan. This is another matter that is to be timetabled at a 9:30 appointment on notice to all interested parties.
- (c) **RECO Claim**- RECO's has an insurance policy with Lloyds that has limits of \$100,00 per claim and \$500,000 for each "occurrence". Twenty-six claims have been made to RECO. If they are characterized as individual claims, the maximum possible insurance coverage would be \$1,965 million. The Receiver is considering proceeding against RECO and Lloyds by adding them as defendants to the Deposit Fraud Class Action and a draft Fresh as Amended Statement of Claim was provided to the court. Research that considered the merits of such a claim was summarized in the affidavit of Ms. MacMillan. A decision on this claim was deferred. Recovery from RECO will raise other issues in that the Receiver is only proposing to distribute any recoveries to the Deposit Fraud Class. These issues were also deferred.
- (d) Finally a proposal for claims administration was set out. A statutory declaration that was approved by Farley J. has been provided to each claimant requiring claimants to indicate whether they are part of the Deposit or Mortgage Fraud classes. The Receiver will review each claim along with supporting documents and decide whether to reject, approve or amend the claim. Only the principal amount of the deposit or mortgage

- 11 -

investment will be validated. No procedure has yet been determined for claimants to contest the Receiver's determination.

THE LAW

[53] Counsel did not provide any law to me with respect to the principles that I should consider in deciding this matter. It is my understanding that the leading case, at least in terms of the approval of the fees of a receiver, is *Re Bakemates Int'l Inc.*², a decision of the Ontario Court of Appeal.

[54] In the *Bakemates* case Borins J.A., speaking for the court, stated that when a receiver asks the court to approve its compensation, there is an onus on the receiver to prove that the compensation for which it seeks the court's approval is fair and reasonable (at para. 31). That is the test that I intend to apply, along with the other principles set out in *Bakemates*, in determining the approval of the Receiver's counsel's fees.

[55] Borins J.A. stated that the court could adjust the fees and charges of the receiver, just as it can in the passing of an estate trustee's accounts, and that the applicable standard of review is whether those fees and charges are "fair and reasonable" (at para. 35). He went on to refer to Bennett on Receiverships³ with approval and accepted as correct Bennett's discussion of the purpose of the passing of a receiver's accounts:

to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities and conduct to date. On the passing of accounts, the court has the inherent jurisdiction to review and approve or disapprove of the receiver's present and past activities even though the order appointing the receiver is silent as to the court's authority (at para. 36 quoting Bennett at pp. 459-60)

[56] In determining what is fair and reasonable remuneration, Borins J.A. observed that there is no guideline controlling the quantum of fees as there is in respect to a trustee's fees. He referred to what he described as the "leading case" in the area of receiver's compensation, *Belyea & Fowler v. Federal Business Development Bank*⁴, a decision of the New Brunswick Court of Appeal, and adopted with approval the observations of Stratton J.A. in *Belyea* that compensation is

usually allowed either as a percentage of receipts or a lump sum based upon time, trouble and degree of responsibility involved. The governing

² [2002], O.J. 3569

³ F. Bennett, 2nd Ed. (Scarborough Cohen Carswell, 1999)

⁴ (1983) 46 C.B.R. (N.S.) 244

- 12 -

principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his service and while sufficient fees should be paid to induce competent persons to service receivers, receiverships should be administered as economically as reasonably possible (at para. 44).

[57] Where a percentage of receipts is used, a court may look to the rate afforded to a trustee in bankruptcy as a guideline, which is seven and one-half percent of receipts after payment to secured creditors, subject to variation by the court.⁵ As I explain below however, this is not a receivership where in my view a fixed percentage would be fair to counsel for the Receiver. In my view the fees in this case must be assessed on a *quantum meruit* basis.

[58] The court in *Bakemates* approved of the *Beylea* factors to be applied when using a *quantum meruit* basis to assess a receiver's compensation, which include:

the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the results of the receiver's efforts, and the cost of comparable services when performed in a prudent and economical manner (at para. 45).

[59] Although Borins J.A. stated that the factors in *Beylea* are a "useful guideline", he was careful to point out that they should not be considered as exhaustive of the factors to be taken into account, as other factors may be material depending on the circumstances of the receivership (at para. 51).

[60] With these principles in mind, I turn to the positions of counsel in this case and the fees I have been asked to approve.

ANALYSIS

[61] Opposing counsel complained that the additional billing summaries prepared by counsel for the Receiver were not provided within the time that I specified, which left counsel with inadequate time to prepare for this motion. It appears from the Affidavits of Service, that the Summaries of Counsel Fees were not served until April 18th. The Motion Record was served on April 20th by email but part of the transmission was unsuccessful and so it was sent by same day courier on April 21st. No explanation was given for why the timeline in my order was not complied with. This is unfortunate

⁵ Bennett, *supra* at p. 472

- 13 -

as the court relies on parties with an interest in the receivership estate to act as a check on the activities of the Receiver and its counsel. However opposing counsel did not request an adjournment and so I have considered the matter based on the evidence before me.

[62] Opposing counsel did not suggest that the hours claimed by counsel for the Receiver had not been spent, but challenged the hourly rates and whether or not the work was done efficiently and whether all the time spent was warranted, particularly as it was argued that counsel for the Receiver should have known the nature of Simpson's assets and the value of the estate early on. As counsel observed, if the fees sought are approved as claimed, a very significant portion of the proceeds from the real estate assets will be committed to the legal fees incurred to date and recoveries for the claimants in the two class actions will largely depend upon the outcome of litigation concerning the Dianor Resource share issue, the Pahwa mortgage issue and the proposed action against RECO.

[63] Opposing counsel noted that up to the time of the Initial Order granted by Ground J. on November 17, 2005, counsel for the Receiver had incurred approximately \$40,000 in fees and there is not much dispute about that amount. The fees quickly escalated however and opposing counsel had no idea of how expensive the receivership had become until served with the motion record returnable March 9, 2006, which was served on March 4th. This meant that they did not have an opportunity to complain about the escalating costs before they were incurred. Counsel also complained that the Receiver's counsel has still left too much time unallocated to a particular category of work, leaving it difficult to assess the reasonableness of the time spent.

[64] Having considered the submissions of all counsel, and having reviewed the evidence filed in support of the fees claimed, including a line by line review of the actual dockets, and having considered the activities of the Receiver and its counsel as reflected in the Receiver's reports to the court, I have concluded that the Receiver's fees should be reduced by \$102,000 before GST. Counsel for the Receiver has not satisfied me that the hourly rates charged and all of the time spent is "fair and reasonable", given the factors I have considered that are relevant to the approval of the fees in this matter. My reasons are as follows.

[65] In coming to my decision, a significant consideration has been the amount of the fees to date, considering where we are in the receivership and the prospect of recovery for the claimants. In a passage from the *Belyea* case, not referred to by the Court of Appeal in *Bakemates*, Stratton J.A. stated:

Even though a professional is entitled to a fair, just and reasonable compensation measured by the reasonable value of the services rendered, the fees charged must bear some reasonable proportion to the amount of

- 14 -

money or the value affected by the controversy or involved in the employment. Thus, **in cases where a professional is aware of the amount at issue**, courts will impose an underlying or implied limit or maximum on the professional fees it will allow based on what is reasonable **in relation to the dollar amount involved in the particular case** (at para 11, emphasis mine).

[66] Clearly then, assessing the fees of counsel to the Receiver should not just be a matter of calculating the number of hours spent times a reasonable hourly rate. There should be some correlation of the costs to the benefits derived from the receivership. This cost-benefit analysis need not be precise or based upon the advice of expert analysis⁶

[67] I recognize however, that as observed by Bennett, referring to the trial decision in *Belyea*, that the court "should not necessarily penalize a receiver [and by extension the receiver's counsel] who expends considerable time in administering the estate, although recovery may be small"⁷. This point was not dealt with on appeal. Bennett goes on to state that when the receiver is appointed, the receiver may find the debtor's business affairs somewhat chaotic and the receiver may have to spend considerable time, which may not be productive from a financial point of view, organizing the affairs in order to be in a position to administer the receivership properly.⁸ Accordingly the time spent must be viewed in the context of the Receiver's duty to preserve the assets of the debtor and realize on those assets and administer the estate and the Receiver's ability to retain the services of legal counsel to assist in those duties as required.

[68] The first question then is when counsel for the Receiver was aware of the amount involved in this case, namely the estimated size of the receivership estate. In the First Report to Farley J. dated December 13, 2005 the Receiver estimated that the victims of the alleged frauds were owed in total, approximately \$14.6 million. As for assets, that First Report estimated the equity in real estate to be anywhere from \$654,000 to \$1.3 million. The claim by Pahwa had been asserted and the position of RECO was known. Although further information on the assets and claims became known to the Receiver and its counsel as the receivership progressed, it was certainly clear from the outset that subject to litigation with RECO, the assets of the estate were modest, particularly relative to the quantum of the claims.

[69] The numbers have not changed that much. Based on the statement of assets and liabilities filed before Mesbur J., the estimate of the net assets to be realized from the defendants is approximately \$1.8 million. This estimate assumes a \$500,000

⁶ Re Hoskinson (1976), 22 C.B.R. (N.S.) 127 at para. 26 (Ont. S.C.)

⁷ Bennett, supra at p. 474

⁸ Bennett, supra at pp. 474-475

- 15 -

recovery from the RECO insurance policy, which is the minimum recovery from RECO and the Dianor Resources shares claim at a value of the shares at \$400,000. This estimate of the share value may be conservative because the shares have recently been worth in excess of \$900,000, but the strength of this claim is unknown. With respect to the real estate, the estimate takes into account a liability with respect to Pahwa in the amount of \$336,080, which could be reduced if the Receiver is successful challenging the Pahwa mortgages. Simpson advised at the time of the argument of this motion that her husband was asserting his half interest in the matrimonial home, which is one of the properties to be sold by the receiver. The Receiver had not taken this into account before and this claim is not reflected in this estimate.

[70] Although precise amounts cannot be known at this time, it seems clear that the quantum of claims will by far outstrip the available assets. Furthermore, as I have already stated, the available assets are modest, particularly considering the quantum of fees sought by the receiver. Apart from the sale of Simpson's real estate, which represents approximately \$900,000 of the approximate amount of the estimated \$1.8 million recovery, which is subject to reduction by the claim of Simpson's husband, the disputes concerning RECO, the Dianor Resources shares and Pahwa are still to be litigated. Although this court can control the efficiency of the manner in which the Pahwa and Dianor Resources disputes are determined, it is likely that pursuit of the RECO insurance will require a full-blown lawsuit. Furthermore the quantification of the claims is ongoing but not completed, nor have any disputes resulting from that process been determined. In other words, there is still considerable cost to be incurred before all of the possible assets of the estate have been realized and the claims paid.

[71] It is also important to note that the Receiver and its counsel have been assisted by the fact that Simpson has cooperated. She identified all of her assets for the Receiver and has consented to the police sharing the information they have obtained in their investigation of the criminal charges. Furthermore she is not defending the class actions. Her co-operation was somewhat of a problem however, when she decided to consent to individual judgments early on. The Receiver's counsel has dealt with that.

[72] Finally it is important to observe that the complaints of opposing counsel, that the quantum of the fees of counsel for the Receiver has caught them by surprise, are legitimate. There is no obligation on counsel for the Receiver to come to the court more often in order to seek approval of fees, but when counsel wait for several months to do so, particularly in a case like this where significant costs are running up relative to the size of the estate, counsel for the Receiver is at risk that when they do come to court, the way in which they have done the work and the fees incurred may legitimately be criticized. It is not enough in these circumstances to rely on the fact that the work done was approved in a general way by the various orders of the court already referred to. When counsel wait to bring their accounts to the court for approval, they do so at their own risk.

- 16 -

[73] With this background in mind, I considered both the hourly rates charged by the Receiver's counsel, the time spent and the work done, in assessing the reasonableness and fairness of the accounts.

[74] I was advised by counsel for the Receiver, that the rates charged, are the usual rates charged by the various members of the firm in these matters. He acknowledged that they are at the "high end of the scale". Counsel advised however, that notwithstanding the Deposit Fraud Class Action was commenced by way of class action; counsel would not be seeking a multiplier or premium.

[75] The rates charged range from \$150.00 per hour for students at law to \$725.00 per hour for a tax partner (although I am told that that time has been written off). The bulk of the work was done by Lincoln Caylor, a 1995 call, at the rate of \$575.00 per hour (98 hours-\$78,000), M. Joanne MacMillan, a 2000 call, at the rate of \$450.00 per hour (160 hours-\$132,000), and Emily Atkinson, a 2005 call, at the rate of \$275.00 per hour (208 hours-\$114,000). All three lawyers are litigation counsel. There is some supervisory time by James Patterson, a 1988 call, at \$625.00 per hour. As well a real estate partner, who is a 1992 call, has time on the file at the rate of \$550.00 per hour. Other lawyers with specialty in bankruptcy and insolvency (\$650.00 per hour), class actions (\$525.00 per hour), as well as real estate law clerks at \$150.00 per hour, a litigation law clerk at \$175.00 and students at law ranging from \$150.00 to \$175.00 per hour have all worked on the file.

[76] Mr. Cohen, counsel for a deposit fraud claimant, argued that the hourly rates claimed should be reduced by as much as a third, and referred to the old cost grid. Counsel for the Receiver responded that this was not relevant to the task before me. I agree, in the sense that the cost grid reflects, in terms of substantial indemnity costs, costs that the opposing party is ordered to pay, and those rates are not necessarily reflective of the costs as between the lawyer and his or her own client. Normally, with competition in the marketplace and informed clients, rates will be established as between a lawyer and a client that are reasonable in all of the circumstances, although some clients I am sure will disagree with that proposition. Here, however the client is a member of a class and he is not paying the fees personally. The plaintiff in this action and a few others had retained Bennett Jones individually at the outset and as submitted by opposing counsel, it is extremely unlikely that they could have afforded or would have agreed to pay the hourly rates now charged by counsel for the Receiver.

[77] There are many "clients" who will be impacted by the fees charged. They did not negotiate the hourly rates, nor did the court ever approve them. The assumption that the court will automatically approve a "usual" hourly rate for Receiver's counsel is a faulty one in my view. In a case like this, the court, with the assistance of opposing counsel, has to play the role of what a client would ordinarily do, namely

- 17 -

consider whether the hourly rate is fair and reasonable in light of the nature of the work involved and the amount in issue.

[78] Although I accept the submissions of counsel for the Receiver, that this case is not a typical receivership, neither is the case complex. Setting aside whether or not two separate class actions or for that matter any class actions are needed, this case is primarily involved in the investigation and preservation of assets, dealing with victims and considering how best to pursue the litigation concerning the issues in dispute. This however, is a case where the amount of work involved may be somewhat disproportionate to the size of the receivership estate and so a percentage of the recovery would not be fair to counsel.

[79] The size of the receivership estate however should have some bearing on the hourly rates of counsel. I am of the view that an adjustment ought to be made to reflect the fact that, particularly after the size of the estate became known, the "usual" rates of counsel were too high relative to the size of the estate. Although the first statement of assets and liabilities was not put before the court until March 9, 2006, it is clear from the reports of the Receiver, that the Receiver and his counsel, had a general sense of the of the assets and liabilities of the defendants well before that. Certainly in early December, when preparation of the First Report dated December 13, 2005 was well underway, although the precise value of the estate would not have been known, the fact that the estate was a relatively modest one and that the potential claims were significant and would by far outstrip the amount of the estate, ought to have been known to the Receiver's counsel. Certainly at that point counsel should have considered whether or not the firm's usual hourly rates were suitable for this receivership. In fact in my opinion the usual rates, which Mr. Caylor acknowledged are at the "high end" of the scale, were not warranted from the outset.

[80] Although I would not reduce the hourly rates as significantly as suggested by opposing counsel, in my view they ought to be reduced by approximately 15%. Based on these considerations I find that there should be a reduction of the fees before GST in the amount of \$46,000 to reflect the fact that the hourly rates claimed are too high for this matter. In arriving at this amount, I have not applied a 15% reduction to the time docketed before early December 2005 of approximately \$80,000, by which point the information in the First Report was clearly known to counsel. I have however made an adjustment of 5% to that \$80,000 as well, as the rates were too high from the outset.

[81] I come then to the amount of time that is claimed.

[82] Counsel for the Receiver has not filed an affidavit that deals with any of the factors in the *Bakemates* case. The affidavits of Ms. Atkinson and Ms. MacMillan filed in support of this motion only identify the accounts, the summaries and the

- 18 -

dockets and depose that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter. The onus however is on counsel for the Receiver to satisfy me that the amount claimed for fees is fair and reasonable.

[83] Counsel for the Receiver has filed a Summary of Counsel Fees for the period of November 4, 2005⁹ to February 21, 2006 and a similar summary for the period February 21, 2006 to April 12, 2006. These summaries break the time spent by counsel for the Receiver into the following categories and amounts:

- (a) The total fees claimed with respect to real property is \$46,750.
- (b) The total fees claimed with respect to RECO is \$25,295.
- (c) The total fees claimed with respect to the Dianor shares is \$5,642.50.
- (d) The total fees claimed with respect to the Pahwa mortgages is \$17,585.
- (e) The total fees claimed with respect to "general receivership activities" comprises the balance claimed of \$227,745.¹⁰

[84] With respect to the fees claimed with respect to real property, according to the summary this reflects the time spent maintaining properties, communicating with insurance companies, utilities companies, real estate agents, land registry office, counsel for purchasers, dealing with power of sale issue and inquiries (i.e. Pahwa), dealing with mortgages, registering orders on title, obtaining and registering certificates of pending litigation on title, transferring properties into receivership, obtaining vesting orders and getting the title of the properties cleared.

[85] As I have already stated, Simpson identified the properties and a decision was made to use her agent as she had already listed some of the properties. Time was spent finalizing the sale of two of those properties, although only one sale had closed in the time frame of the accounts submitted. In addition it appears that the time spent on the Hurst action, which included obtaining certificates of pending litigation, and some of the time spent on Pahwa is included in this category.

[86] Many of the matters listed such as maintaining the properties, communicating with insurance and utilities companies and matters of that sort is work which I would have expected the Receiver's staff to take care of at a lower cost¹¹. The fact that the Receiver is from Texas likely explains this, which is consistent with the fact that the Receiver's account was a small fraction of the fees of counsel for the Receiver. Counsel for the Receiver however, chose the Receiver and clearly counsel for the

⁹ I note that this is after the date when the fees claimed began to be incurred of October 11, 2005.

¹⁰ These amounts total \$323,017.50, which is almost \$40,000 less than the total fees claimed of \$361,522.50. The difference was explained on the basis that the summaries were estimates of the break down of fees. I expect that most of the explanation is that these summaries commence November 4, 2005 whereas the fees claimed commence October 11, 2005.

¹¹ The Receiver's hourly rate is \$400 US/hour so presumably its staff would be at lower rates.

- 19 -

Receiver chose to do much of the Receiver's work. This however exacerbates the problem of high rates, as the rates claimed for the lawyers involved in these activities are as high as \$575 and \$450. In my view others should have done much of this work at significantly lower rates. I have considered this in my reduction for inefficiency discussed further below.

[87] The real estate partner who presumably was mostly responsible for the work done on the sale of the properties is Scott Martyn and his rate is \$550. He was assisted by two real estate law clerks at the rate of \$150 per hour. This time however only reflects \$10,595 of the fees. It is impossible to determine how much of the time claimed relates to the Hurst action but clearly the total fee claimed for this category of work done seems excessive.

[88] With respect to the fees claimed with respect to RECO, again the amount claimed seems high. RECO's position was known by the time of the First Report and essentially what has happened since then is a meeting and correspondence with RECO, demanding and receiving documents in response to a request for disclosure of documents, a consideration of the legal issue including research (over \$8,000 for research done by two students is part of this category) and assisting victims with making claims. It is not clear how much of the time claimed includes the time spent preparing the opinion that was filed with the court concerning the RECO action, but I expect that some of that time is not part of the time claimed now, as the cut off for fees was April 12, 2006. I note that the costs of this aspect of the matter will have to be carefully considered before any further work is undertaken given that it is unclear whether or not the RECO claim benefits both class actions or not.

[89] I do not have any difficulty with the quantum of time claimed with respect to the Dianor Resource shares issue and the Pahwa mortgages issue, which, if successful, will benefit all victims.

[90] The most difficult issue arises with respect to the heading "general receivership activities". Although some effort has been made to break out some of the motion time and the dealings with the banks in that category, it essentially is a category reserved for all of the other time spent that is not included in the other categories set out. Opposing counsel complain that this is in breach of my direction and does not give them a real opportunity to assess the value of the work done. I agree. We do not know for example, how much time was spent preparing the statement of claim or the Hurst action or a particular Report for the court. This means, for example, that we can not assess the value of the work done in connection with the Hurst action relative to the limited equity in the two properties at issue in that action.

[91] The court in the *Bakemates* case stated that although there is no prescribed process, the accounts must be detailed including the total charges "for each

- 20 -

of the categories of services rendered" and in a form that can be easily understood by those affected by the receivership so that such persons can determine the amount of time spent by the receiver's employees and others that the receiver may have hired in respect to the "various discrete aspects of the receivership" (at para. 37). This was not done with respect to this general category and as a result the task of opposing counsel and the court is that much more difficult. It was not an option however to ask counsel for the Receiver to particularize this category further, as that would have necessitated yet another adjournment.

[92] The general receivership activities category includes, but is not limited to, commencing the proceedings, obtaining the receivership order, contacting victims, disseminating, collecting, processing and validating claim forms, obtaining bank records, reviewing bank records, tracing funds, reviewing records in the possession of York Regional Police, examining parties (Simpson and Cox), preparing reports for the court (4), reporting to the court and obtaining approval for steps taken (6 court attendances up to and including the attendance before me on April 6th), communicating with various parties including clients and class members and "developing and carrying out strategy for recovery". Again the Receiver's staff should have done some of this work if distance had not been an issue, such as the work done contacting victims and disseminating and processing claim forms. Again the fact this was done by lawyers at higher hourly rates means a deduction is required.

[93] The assessment of the fees in this category is a difficult task given the information that I have to consider. However, no one suggested that an assessment before an assessment officer or a line-by-line review was warranted, as the cost of that would be astronomical. Furthermore, opposing counsel did not go to the expense of cross-examining Ms. Atkinson on her affidavit or otherwise questioning counsel for the Receiver with respect to the accounts. That however, is understandable, as opposing counsel represent various claimants and do not have any certain access to the estate to cover their costs. Furthermore, the material in question was delivered too late to permit cross-examination without a further adjournment.

[94] Notwithstanding these concerns, fixing costs is not an unusual task for the court. Judges are expected now to fix costs following not only routine motions but also lengthy trials. Although the factors for assessing party and party costs may be different, the type of analysis required is similar and in fact the overriding direction now from the Court of Appeal is to assess what in our view is fair and reasonable in all of the circumstances.¹²

[95] In considering the number of hours and the nature of the work done on this matter, I am of the view that the sheer number of hours put in, given where we

¹² See *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291

are in this receivership, reflects a significant degree of inefficiency when I consider what work has been done based on the material filed. They are excessive and greatly exceed what I view as fair and reasonable.

[96] Part of this concern about efficiency and whether all of the work done was warranted, can be explained by the fact that eighteen different professionals charged time to the file. Although some of that can be justified on the basis that different expertise was needed (particularly litigation versus real estate), this always raises a concern about duplication of effort. In that regard I considered particularly the dockets of Mr. Caylor, Ms. MacMillan and Ms. Atkinson, as they have by far, the most time on the file and they all worked on the very same matters. In other words it cannot be said that either Ms. MacMillan or Ms. Atkinson handled discreet issues under the supervision of Mr. Caylor. Based on my review of the dockets, it appears that there was, as a result, unnecessary duplication. Mr. Caylor delegated many tasks to Ms. MacMillan who in turn delegated them to Ms. Atkinson.

[97] For example, with respect to materials for court including the Receiver's Reports, although Ms. Atkinson would usually bear the main responsibility for drafting the materials, both Ms. MacMillan and Mr. Caylor would review and often revise these materials, (see for example pp. 134-135, 138, 149-150, 153, 154, 219-220 of the Motion Record returnable April 26, 2006). In addition, although Ms. Atkinson was the one who typically accompanied Mr. Caylor on court attendances or on examinations, this necessitated bringing Ms. MacMillan (or in some cases Ms. Atkinson, where it was Ms. MacMillan who went to court or Mr. Caylor when Ms. MacMillan conducted the examination of Cox) up to speed after those attendances and this is reflected in the dockets, (see for example pp. 132, 140, 149, 224 of the Motion Record). In some cases all three attended court, (see page 142 of the Record) and naturally there were many occasions when all three met together to review the matter. These are intended only as examples. Clearly with all three lawyers working on the very same issues, coupled with the extraordinary number of other lawyers and students who worked on this file, duplication was inevitable.

[98] Furthermore there does not appear to have been a very clear demarcation if at all, between the various tasks undertaken by Ms. MacMillan and Ms. Atkinson. There are many references to Ms. MacMillan doing research, notwithstanding that she is more senior than Ms. Atkinson and of course the students at law who worked on the file, (see for example pp.124, 129, 140, 145, 150, 222, 223, 230 of the Motion Record).

[99] Although I accept that it may have been necessary for all three lawyers to work on the file at the early stages, when it was important to move quickly to freeze assets, once that phase was over, in my view much of the litigation work should have been delegated to Ms. Atkinson under the supervision of Mr. Caylor. This would have resulted in less unnecessary duplication and much of the work done by Ms. MacMillan

- 22 -

would have been done at a lower rate. Alternatively Ms. MacMillan should have been given more responsibility so that Mr. Caylor's time could be significantly reduced. Although three levels of counsel of varying experience may be warranted in a complex and large (in monetary terms) receivership, it is not warranted here. I have already commented on the particular need to conduct this receivership efficiently given the quantum of claims and the size of the estate. Furthermore, the matter is not complex. Accordingly, a deduction for this unnecessary duplication must be made.

[100] In considering the amount of this deduction, I have considered the fact that the duplication of effort reflects primarily on the time spent by Mr. Caylor, Ms. MacMillan and Ms. Atkinson and that accordingly the time they have spent should be reduced to eliminate this duplication, and as well a deduction should be made to reflect the fact that some of the work done by Mr. Caylor could have been done by Ms. MacMillan or alternatively a great deal of her work could have been done by Ms. Atkinson, under the direct supervision of Mr. Caylor, at a significantly lower hourly rate. Either way, unnecessary duplication would have been reduced and work would have been done at a lower hourly rate.

[101] In addition, consideration must be given to the number of hours docketed to accomplish particular tasks. As I have already noted, the time for the real property category seems high. Furthermore the time in the general category is excessive given the nature of the work done. For example a great deal of time was spent preparing the various reports of the Receiver to the court and the time seems high particularly given that each report repeated a great deal of the early report(s). I note that Ms. Atkinson docketed time to reviewing precedents for these reports (see Record at page 129). That is to be expected for inexperienced counsel, but all of that time should not have been billed to the file.

[102] It is apparent from reviewing the dockets that there was no consideration given to whether or not some docketed time should have been written off. I was advised that in the final analysis, approximately \$3,000 has been written off which in part reflects the time of the tax partner and presumably other time, although that has not been specified. Nevertheless, in my view there ought to have been a more substantial write-off of time. There are numerous examples of dockets where lawyers have recorded time spent to research and ascertain what type of procedure was necessary in order to accomplish a particular step in the proceeding.

[103] For example, Ms. Atkinson docketed time determining how to bring a motion in the Commercial List to appoint a receiver (page 125 of the Motion Record) and researching between the role of a trustee in bankruptcy and a court appointed receiver (page 144 of the Motion Record. Ms. Atkinson also docketed time to reviewing the protocol to obtain fee approval and determining the requirements of vesting orders (pp. 208, 235 of the Record). There was also repeated research done on class actions

- 23 -

by Ms. MacMillan notwithstanding that I am advised that Mr. Hoaken has expertise in that area and worked on the file.

[104] This type of basic information may not be known to inexperienced counsel but is fundamental knowledge that a client can reasonably expect his or her lawyer to know. It is not time that can be billed to the file. In commenting on this, I do not wish to be critical of the lawyers in question, as they need to take time to consider what to do when the process is unfamiliar to them. That is how one gains experience in the practice of law. That, however, cannot be at the expense of the client when it involves the fundamentals. I would have expected that the supervising lawyer would have written off these types of docketts and not include them in the accounts when rendered. That clearly was not done in this case and so again an adjustment to the fees claimed on this basis is warranted.

[105] In summary counsel for the Receiver has not satisfied me that the fees submitted are fair and reasonable. Simply put, in my opinion, counsel for the Receiver has not properly staffed or administered the work and resulting billing on this file. Considering all of these various deductions that in my view are necessary, I find that a deduction in the amount of \$50,000 of fees before GST for duplication and overall inefficiency is warranted. In arriving at this amount, I have taken into account the fact that I have already made a reduction to the hourly rates so that I do not "double count".

[106] I am also of the view that there must be a further reduction for the time spent by counsel for the Receiver in seeking court approval of its fees. The information provided to opposing counsel and the court before Mesbur J. was woefully inadequate and there is no explanation for why proper materials were not prepared at that time. Accordingly part of the time spent for that attendance was wasted in terms of this issue. Similarly, the problems opposing counsel raised with the further material provided in the first attendance before me on April 6, 2006 were predictable as well and so much of the time spent in court on that occasion was wasted. In addition, as already stated the third draft of the materials in support of this motion is still problematic and was served late. Had counsel for the Receiver prepared the necessary information for consideration by Mesbur J., a great deal of cost for all concerned would have been spared. Certainly the time spent by counsel for the Receiver for these wasted efforts should not be compensated.

[107] Accordingly there will be a further reduction of the fees (before GST) to take this consideration into account in the amount of \$6,000. The time spent with respect to the approval of fees was not separately categorized. I have calculated this amount by including some of the time spent by K. McPhie, who prepared the summaries, and part of the time spent by litigation counsel preparing for and attending

- 24 -

before Mesbur J. and again before me on April 6, 2006 and some of the time spent by counsel preparing the information that I directed.

[108] For these reasons, the fees claimed by Bennett Jones will be reduced by these various deductions in the total amount of \$102,000 before GST, in order to arrive at an amount for fees that in my opinion is fair and reasonable in all of the circumstances.

DISPOSITION

[109] Accordingly, the fees and disbursement of Bennett Jones LLP for the period from October 11, 2005 to April 12, 2006 are approved in the amount of \$259,522.50 for fees plus GST in the amount of \$18,166.58 and disbursements, inclusive of GST, in the amount of \$17,998.22 for a total of \$295,687.30.

[110] I do not intend to impose hourly rates on counsel for the Receiver with respect to future accounts submitted to the court but I trust that the conclusions that I have come to in reaching this decision will be taken into account. I expect that the number of lawyers working on this matter will be pared down significantly and that my concern about duplication will be dealt with.

[111] As for the approval of future accounts, I expect counsel for the Receiver to follow the procedure in the *Bakemates* decision. That decision makes it clear what information is required to support such a motion and I expect that counsel will include all of that information in the material filed with the court on the next motion for approval and that that motion record will be served well in advance and posted on the website so that all interested parties may make an informed assessment of the reasonableness of the fees claimed and if necessary, prepare to defend the motion. The categories for all services rendered must be more refined so that in addition to assessing the reasonableness of the future accounts, consideration can be given to what a client would normally want to know, namely, is the cost to pursue a particular course of action warranted given the likely outcome and the amount in issue. This will be necessary to determine how the remaining issues should be dealt with.

[112] Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action who has made a claim for a deposit of \$200,000, requested costs of his attendance on the motion in the amount of \$2,000 on a substantial indemnity basis, to be paid from the estate when Receiver's counsel is paid. He submits that this is fair if his efforts reduced the quantum of costs payable to Receiver's counsel. Atlas has been on the service list since the Initial Order and counsel has appeared on certain motions brought by the Receiver, including the attendances

- 25 -

before me on April 6th and 26th. He submits that his client has a direct and substantial interest in the outcome of the motion and that I have the discretion to award costs pursuant to both section 131 of the *Courts of Justice Act* and Rule 57 of the Rules of Civil Procedure.

[113] Counsel for Atlas submits that these proceeding may be compared to pension surplus distribution litigation and estate litigation where it is not unusual for the court to allow cost to all persons interested in the fund and who made submissions of assistance to the court, to be paid out of the fund.

[114] Counsel for the Receiver submits that it is unusual for a creditor to seek legal costs for court attendances in the context of a receivership unless the receiver has acted beyond his authority or inconsistent with his appointment. Typically, if a creditor has to attend or bring a motion, the creditor bears his own costs. This prevents multiple creditors' counsel from attending on the receiver's motions and seeking fees. It is submitted that the court ought not to encourage creditors by a cost award to unnecessarily attend at future hearings. No issue is taken as to the quantum claimed.

[115] Mr. Govedaris submits that there is no authority that he is aware of to support costs paid to third parties who retain counsel after a receiver has been appointed unless there has been impropriety *inter alia* by the receiver, which has been identified, by that third party. He agrees with the submission of counsel for the Receiver that even if I have the discretion to award costs I ought not to as it would encourage other parties to seek costs and that would increase costs for all potential claimants.

[116] In my view I have the discretion to make a costs award pursuant to section 131 of the *Courts of Justice Act*. Atlas is clearly a party affected by the relief sought. Although it is not usual for counsel for creditors to ask for costs, in these circumstances, the submissions from opposing counsel were of some assistance, although since they did not have adequate time to prepare, unfortunately most of the detailed review of the accounts was left to me.

[117] I see no reason why Mr. Cohen's client, who chose to have counsel attend to contest the accounts, should bear all of the expense for the benefit of all claimants to the estate. In my view however, costs on a partial indemnity basis for this attendance is warranted, particularly as Mr. Cohen had not previously asserted an intention to ask for costs.

[118] For these reasons, I award costs to Atlas Holdings and Investments Inc. in the amount of \$1,500 on a partial indemnity basis, to be paid from the estate when Receiver's counsel is paid.

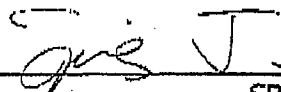
[119] I must add that this order as to costs is not an invitation for counsel who did not participate on the assessment of the costs on this motion to appear on future

- 26 -

motions and seek such an award. If more claimants wish to be represented on future motions to approve the fees, they will need to choose and rely on one counsel to represent all of their interests on the issue of costs.

[120] That brings me to Mr. Govedaris who has not asked for costs and in fact opposed the request by Mr. Cohen for costs. Had Mr. Govedaris sought costs, I would have awarded costs to him on the same basis. Going forward, I expect Mr. Cohen to cooperate with Mr. Govedaris on the issue of the fees and I will only be prepared to consider awarding one set of costs on future motions to approve fees. Mr. Cohen represents a member of the class represented by counsel for the Receiver. As Mr. Govedaris represents the Mortgage Fraud Class Action, I would prefer to hear from him given the potential for conflict with the Deposit Fraud Class Action that I have already referred to.

[121] Finally, I ask that counsel for the Receiver ensure that this decision is posted on the Receiver's website as soon as possible.



SPIESS J.

RELEASED: JUNE 8, 2006

JUN-08-2006 10:31

Received: 06/08/2006 10:26AM * Pg 28/28
JUGDES ADMIN RM 334

416 327 5417 P.28/28

COURT FILE NO.: 05-CL-6159

DATE: 2006-06-08

**SUPERIOR COURT OF JUSTICE -
ONTARIO****RE:** UDAYAN PANDYA, Plaintiff**A N D:**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**COUNSEL:** *Lincoln Caylor* for the
Plaintiff/Receiver*Gregory Govedaris*, for the
Plaintiffs in Action # 05-CL-6178,
Glenn E. Cohen for Atlas
Holdings, D.R. Rothwell for Ajay
Pahwa and Courtney Wallis
Simpson in person

DECISION ON MOTION

SPIES J.

JUN - 8 2006

TAB E

COURT FILE NO.: 05-CL-6178
DATE: 2006-09-19

**SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST**

RE: FOUR SEASONS DRYWALL SYSTEMS & ACOUSTICS LIMITED and ZAPFE HOLDINGS INC., Plaintiffs

A N D:

COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC., WALLIS, YORK MANAGEMENT GROUP, WALLIS SIMPSON & ASSOCIATES, CAMEO INVESTMENTS and KENNETH WAYNE SIMPSON, Defendants

BEFORE: SPIES J.

COUNSEL: *Gregory Govedaris*, for the Plaintiffs

Joanne MacMillan for the Receiver and Plaintiffs in Action 05-CL-6159,
Glenn E. Cohen for Atlas Holdings, *R. Maxwell* for RECO

HEARD: August 14, 2006

ENDORSEMENT

OVERVIEW

[1] There are currently at least two proceedings against Courtney Wallis Simpson and the other defendants and both are class proceedings. They each relate to alleged fraudulent activity on the part of Simpson, who is a real estate agent, and her companies.

[2] Mr. Govedaris is counsel for plaintiffs in this class action (the "Mortgage Fraud Class Action"). His clients allege that they provided deposit monies in trust to Courtney Simpson or the other defendants pursuant to agreements of purchase and sale relating to interim condominium project deposit fund (occupancy mortgages) that never existed. This is known as a Ponzi Scheme.

[3] Mr. Govedaris was originally retained in November 2005 and was instructed to petition Courtney Simpson and York Region Realty Inc. into bankruptcy. Two

petitions were filed. Mr. Govedaris was then advised that Lincoln Caylor of Bennett Jones LLP would or had brought a motion to appoint a Receiver.

[4] By order of Ground J. dated November 17, 2005, Michael J. Quilling was appointed Receiver over the assets of Courtney Wallis Simpson and York Region Realty Inc. (the "Initial Order"). Ground J. also approved the appointment of Bennett Jones LLP as counsel to the Receiver.

[5] Mr. Govedaris contacted Mr. Caylor and was sent a copy of a statement of claim by the plaintiff, Udayan Pandya in class action 05-CL-6159, (the "Deposit Fraud Class Action"). That claim alleges that Simpson and her companies defrauded the plaintiffs by retaining deposits for the purported purchase of commercial properties. It is alleged that Simpson purported to "sell" the same two commercial properties in excess of a hundred times each and as a result there are many claimants in this class who claim for deposits paid on purchases that were a sham.

[6] Mr. Govedaris determined that the Deposit Fraud Class Action made no provisions for his clients. Accordingly Mr. Govedaris was instructed to bring this action.

[7] Mr. Govedaris brings this motion on behalf of the representative plaintiffs in this action for an order that all costs, fees, disbursements and GST incurred by Govedaris Professional Corporation in carrying out its duties as counsel to the representative plaintiffs as a benefit to the receivership estate (Action 05-CL-6159) be a third charge on any of the assets recovered in the receivership, subject to approval of the quantum of costs by the Court.

[8] The motion is opposed by Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action which has made a claim for a deposit of \$200,000. The Receiver takes the position that to the extent that fees were incurred by Mr. Govedaris' firm in carrying out a task which was of benefit to the receivership estate, the Receiver does not oppose Mr. Govedaris seeking those fees and disbursements as a third charge on the receivership estate subject to the court's approval of the quantum of costs.

ISSUES

[9] The issue before me is whether or not to award Mr. Govedaris any costs for past services rendered and if so what quantum of fees should I approve? I am also asked to consider how his costs in the future should be dealt with.

THE FACTS

The First Report

[10] Counsel for the Receiver attended before Farley J. on December 13, 2005 and filed the First Report of the Receiver of the same date. Mr. Govedaris attended on that motion. That report summarized the nature of the two alleged frauds. At that time the Receiver estimated that there were eighteen victims of the deposit scheme fraud owed approximately \$3.6 million and at least 54 victims of the Ponzi Scheme/mortgage fraud with a total loss of approximately \$11 million.

[11] At that stage, counsel for the Receiver had issued the statement of claim in the Deposit Fraud Class Action. In the First Report, the Receiver recommended that the Mortgage Fraud Class Action be tried together with the Deposit Fraud Class Action and that the Initial Order be amended to add the mortgage fraud victims as a class of creditors to be considered by the Receiver.

[12] According to Mr. Govedaris he obtained the order at this time that subject to the confirmation by the appointed judge in class proceedings that the Deposit Fraud Action be tried together or immediately after this class action and he ensured that the Initial Order appointing the Receiver was amended so that the Mortgage Fraud Victims could meet and discuss these matters with the Receiver and that the Receiver could deal directly with RECO on behalf of all victims, not just those in the Deposit Fraud Scheme.

[13] At the time of this First Report, the Receiver was aware that the members of the Deposit Fraud Class Action had made claims to the Real Estate Council of Ontario ("RECO") with respect to their deposits, and had been informed by RECO that it was its position that Simpson's actions constituted one "occurrence" and that therefore there was a \$500,000 limit to the amount to be paid by RECO for all class members. The Receiver recommended that he deal directly with RECO and assist individuals who had yet to make a claim to do so and then report to the court. It is significant to note however that he reported that any payments from RECO be used for the benefit of the deposit fraud class only.

[14] Following the submissions of counsel for the Receiver and Mr. Govedaris, Farley J. by order dated December 15, 2005, authorized the Receiver try the Mortgage Fraud Class Action together or immediately after the Deposit Fraud Class Action (subject to confirmation by the appointed judge in the class

proceedings). Farley made no order with respect to the costs of Mr. Govedaris' attendance.

[15] A second order of Farley J. of the same date headed "First Amended and Restated Initial Order" restated all of the relief granted by Ground J. in the Initial Order and added other terms, which authorized the Receiver to among other things deal directly with RECO *on behalf of all victims of the Deposit Fraud scheme*. That order also stayed all proceedings in respect of the defendants and their properties and approved a claim form and its distribution.

[16] I was advised by Mr. Govedaris on an earlier motion however, that the claimants in the Mortgage Fraud Class Action may also have claims against RECO and so as I have previously stated in reasons released in connection with these matters, the Receiver and counsel for the Receiver will need to be concerned about this conflict, as Bennett Jones also represents the Deposit Fraud Class.

The Second Report

[17] The matter returned again before Farley J. on December 22, 2005 with the Second Report of the Receiver of the same date. Mr. Govedaris did not attend on that occasion and makes no claim for costs with respect to this report.

[18] With respect to RECO, the Receiver advised the court that the Receiver and its counsel had met with the manager of investigations of RECO. It appears the purpose of that meeting was simply to inform the manager of the activities of the Receiver to that date and the orders that had been made.

Third Report

[19] The Receiver attended in court again on January 20, 2006 before Cumming J. with the Receiver's Third Report dated January 13, 2006. Mr. Govedaris attended on this occasion. With respect RECO, the report disclosed that counsel for the Receiver had sent a letter requesting disclosure of information and that there had been no response. By that point it was estimated that eighteen victims of the Deposit Fraud had made claims to RECO. The Receiver also reported that counsel had written to the Crown assigned to the Simpson case requesting that a Restitution Order be sought against Simpson in the amount of approximately \$14.6 million representing the estimated loss occasioned by both the fraudulent deposit and mortgage schemes.

[20] In that report, the Receiver also reported that bankruptcy proceedings had been commenced against Simpson and York Realty and two receiving orders dated December 30, 2005 had been obtained. The Receiver

recommended and obtained an order from Cumming J. that the bankruptcy proceedings be stayed, as were the related receiving orders. These were the proceedings commenced by Mr. Govedaris and he was instructed to consent to a stay of both bankruptcies and both receiving orders. No order as to Mr. Govedaris' costs was made.

Fourth Report

[21] When the matter proceeded before Mesbur J. on March 9th, she had the Fourth Report of the Receiver dated March 3, 2006. Once again Mr. Govedaris attended. He states that on this occasion he made submissions about the efficacy of even proceeding by way of class action and the lack of particularity in the accounts rendered by Bennett Jones, which had been submitted for approval.

[22] In the fourth report, the Receiver advised that it was using documents recovered from the police to verify and validate the claims of potential class members, particularly the alleged Mortgage Fraud class, in order to determine whether each Individual Investor had received less or more than their principal investment back.

[23] By that date the actual claims made by members of both classes totaled approximately \$3.7 million. The Receiver stated that he had been in touch with the majority of the victims known to that date and had distributed the claim form to those individuals.

[24] The Receiver's estimate of the value of the assets in the estate at that time was set out in a chart outlining assets and potential recovery through the receivership. This chart listed total assets at \$3,225,000 with total liabilities at \$1,416,809 with a net estate total of \$1,808,191.

[25] With respect to RECO, the Receiver reported that twenty victims of the Deposit Fraud class had made claims to RECO totaling \$3,215,000. RECO agreed to provide disclosure of certain documents but continued to maintain its position that Simpson's actions constituted "one" occurrence and that therefore no more than \$500,000 would be available to all claimants under RECO's Consumer Deposit Insurance coverage. The Receiver stated that after reviewing the documentation, it would seek directions from the court regarding commencing an action against RECO's insurer.

[26] Mesbur J. adjourned the Receiver's motion to approve the fees and disbursements of Bennett Jones to April 6, 2006 so that counsel for the Receiver could particularize the fees. The order of Mesbur J. did not provide for any costs to be payable to Mr. Govedaris.

Attendance before me on April 6, 2006

[27] On April 6, 2006, after hearing the submissions of counsel appearing, including Mr. Govedaris, I approved the interim fees and disbursements and GST of the Receiver for the period November 17, 2005 to February 28, 2006 in the amount of \$35,253.39.

[28] The motion with respect to the approval of the fees and disbursements of Bennett Jones was adjourned to April 26, 2006, as information necessary to properly assess the costs of Bennett Jones had not been provided.

Attendance before me on April 26, 2006

[29] On the return of the motion the bulk of the time was spent in dealing with the fees and disbursements claimed by counsel for the Receiver. In accordance with my endorsement of April 6, 2006, the Receiver had also served and filed a proposed Action Plan which included the following with respect to RECO:

RECO Claim- RECO's has an Insurance policy with Lloyds that has limits of \$100,00 per claim and \$500,000 for each "occurrence". Twenty-six claims have been made to RECO. If they are characterized as individual claims, the maximum possible insurance coverage would be \$1,965 million. The Receiver is considering proceeding against RECO and Lloyds by adding them as defendants to the **Deposit Fraud Class Action** and a draft Fresh as Amended Statement of Claim was provided to the court. Research that considered the merits of such a claim was summarized in the affidavit of Ms. MacMillan. A decision on this claim was deferred. Recovery from RECO will raise other issues in that the Receiver is only proposing to distribute any recoveries to the Deposit Fraud Class. These issues were also deferred. (emphasis mine)

[30] Following the hearing of this motion, by a decision released on June 8, 2006, the fees and disbursement of Bennett Jones LLP for the period from October 11, 2005 to April 12, 2006 were approved by me in the amount of \$259,522.50 for fees plus GST in the amount of \$18,166.58 and disbursements, inclusive of GST, in the amount of \$17,998.22 for a total of \$295,687.30.

[31] Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class, requested costs of his attendance on the motion on April 26th in the amount of \$2,000 on a substantial indemnity basis, to be paid from the estate when Receiver's counsel is paid. He submitted that this was fair if his efforts reduced the quantum of costs payable to Receiver's counsel. Mr. Cohen submitted that his client has a direct and substantial interest in the outcome of the motion and that I had the discretion to award costs pursuant to both section 131 of the *Courts of Justice Act* and Rule 57 of the Rules of Civil Procedure.

[32] Counsel for the Receiver submitted that it is unusual for a creditor to seek legal costs for court attendances in the context of a receivership unless the receiver has acted beyond his authority or inconsistent with his appointment. Typically, if a creditor has to attend or bring a motion, the creditor bears his own costs. This prevents multiple creditors' counsel from attending on the receiver's motions and seeking fees. It was submitted that the court ought not to encourage creditors by a cost award to unnecessarily attend at future hearings.

[33] On that motion Mr. Govedaris submitted that there is no authority that he was aware of to support costs paid to third parties who retain counsel after a receiver has been appointed unless there has been impropriety *inter alia* by the receiver, which has been identified, by that third party. He agreed with the submission of counsel for the Receiver that even if I had the discretion to award costs I ought not to as it would encourage other parties to seek costs and that would increase costs for all potential claimants.

[34] I held that I had the discretion to make a costs award pursuant to section 131 of the *Courts of Justice Act*. I reasoned that Atlas was clearly a party affected by the relief sought. Atlas had been on the service list since the Initial Order and Mr. Cohen had appeared on certain motions brought by the Receiver, including the attendances before me on April 6th and 26th.

[35] Although it is not usual for counsel for creditors to ask for costs, in these circumstances, I found that the submissions from opposing counsel were of some assistance and could see no reason why Mr. Cohen's client, who chose to have counsel attend to contest the accounts, should bear all of the expense for the benefit of all claimants to the estate.

[36] For those reasons I held that costs on a partial indemnity basis for the attendance were warranted, particularly as Mr. Cohen had not previously asserted an intention to ask for costs. I awarded costs to Atlas in the amount of \$1,500 on a partial indemnity basis, to be paid from the estate when Receiver's counsel is paid.

[37] I included in my reasons my comment that my order as to costs was not an invitation for counsel who did not participate on the assessment of the costs on this motion to appear on future motions and seek such an award. I stated that if more claimants wished to be represented on future motions to approve the fees, they would need to choose and rely on one counsel to represent all of their interests on the issue of costs.

[38] Mr. Govedaris did not ask for costs on that motion at the time and in fact as I have stated opposed the request by Mr. Cohen for costs. I stated in my reasons that had Mr. Govedaris sought costs, I would have awarded costs to him on the same basis. I also stated that "[g]oing forward, I expect Mr. Cohen to co-operate with Mr. Govedaris on the issue of the fees and I will only be prepared to consider awarding one set of costs on future motions to approve fees. Mr. Cohen represents a member of the class represented by counsel for the Receiver. As Mr. Govedaris represents the Mortgage Fraud Class Action, I would prefer to hear from him given the potential for conflict with the Deposit Fraud Class Action that I have already referred to."

Motion by Mr. Govedaris for his fees

[39] During the course of submissions on the motion before me on April 6, 2006, there was a brief discussion about the fact that Mr. Govedaris intended to seek costs generally given the work he was doing on behalf of the Mortgage Fraud Class. In fact I recall expressing the need to have Mr. Govedaris' input given the potential conflict for counsel for the Receiver already referred to. Mr. Govedaris understood from that discussion that he would need to proceed by way of a motion to secure his costs and brought such a motion returnable May 30, 2006. Accordingly he made no request for costs with respect to this attendance before me.

[40] On May 30, 2006 Mr. Govedaris' motion was placed before Morawetz J. who adjourned the motion to June 14, 2006 before me.

[41] On June 14th Mr. Govedaris' motion was adjourned to June 30, 2006 before me to give Mr. Govedaris an opportunity to file a further supporting affidavit in support of his motion. I understand that the motion was adjourned one further time on consent without an attendance and was then argued before me on August 14, 2006.

ANALYSIS

[42] Mr. Cohen did not argue that I have no discretion to award Mr. Govedaris any costs of the motions he attended on before me but that I should not award costs for his attendances before other judges in that the judges who heard those motions are now *functus* and those orders are final.

[43] Mr. Cohen was also very concerned that any order that I make deal with the past and not provide that Mr. Govedaris automatically receive costs going forward. He argued that I was without jurisdiction to make a blanket costs award *in futuro*. He also argued that what might be for the benefit of the receivership estate would be too imprecise as a way to determine the costs Mr. Govedaris would be entitled to. Mr. Cohen suggested that in the future Mr. Govedaris advise counsel for the Receiver in advance if he intended to appear on a motion or otherwise incur costs that he would seek to claim from the estate. Future costs orders would then be decided as matters arose. Counsel for the Receiver agreed with this submission but otherwise took no position on the motion.

[44] As for quantum, Mr. Cohen pointed out that the conflict for the Receiver is only with respect to RECO and that the orders already made, direct the Receiver to meet with the Mortgage Fraud class members and that the Receiver is to deal directly with RECO on behalf of all victims for the benefit of the estate who have submitted claims. It is in this regard that the conflict clearly arises however and so in my mind there is no doubt that it is necessary for Mr. Govedaris to represent the interests of the Mortgage Fraud class when there is a potential for conflict with the Deposit Fraud class.

[45] As I held on the Receiver's Costs motion, I have the discretion to make a costs award pursuant to section 131 of the Courts of Justice Act, at least on the motions where Mr. Govedaris appeared before me. Where he appeared before other judges and an order for costs was not made, it is reasonable to infer that no order as to costs was intended. In my view I do not have any discretion to go back to those attendances and award costs even if I accept that Mr. Govedaris' attendance benefited the receivership estate.

[46] Mr. Govedaris' Bill of Costs includes his time in preparing the statement of claim in this action. Mr. Cohen objects to this because he alleges that this work was done to benefit only Mr. Govedaris' clients not the entire receivership estate. I am not prepared to go back in time and award costs to Mr. Govedaris for this time because it was incurred for the benefit of his clients only. There is some unfairness in this however because the time spent by the

Receiver's counsel in the other class action included a great deal of time with respect to the preparation of the claim in that action and other steps that could only be considered to have benefited the Deposit Fraud class. There were court orders authorizing the Receiver to commence that action however, which do not exist in the case of this action. It is my understanding that no work is currently being done by either Mr. Govedaris or Bennett Jones that pertains to these class actions per se. For the past work done by each firm recognition that that work benefited only one class should be taken into account when distributions are made. In other words, in my view, the members of the Deposit Fraud class should bear that part of the fees and disbursements incurred by Bennett Jones in bringing that class action and the members of the Mortgage Fraud class should bear Mr. Govedaris' costs. The same would apply to any costs incurred in the future and I suggest that Mr. Govedaris keep track of that time separately in the same way that I have advised counsel for the Receiver to. In my view once there are distributions of funds available to the claimants subject to approval of the quantum, Mr. Govedaris' costs for preparing the statement of claim in this action and other costs related to this action should be approved for payment from the receivership estate.

[47] I am however prepared to exercise my discretion and award Mr. Govedaris some costs for those attendances before me as set out herein. This is an unusual receivership, not only because of the two class actions but also because the Receiver has retained counsel to represent the Receiver but the same firm also represents the Deposit Fraud Class members and there is a clear conflict between those groups of claimants and the Mortgage Fraud Class members represented by Mr. Govedaris. That is why I have advised all counsel from the outset of my dealings with this matter that I want to hear from Mr. Govedaris on these motions. This has been particularly important with respect to the steps the Receiver intends to take with respect to RECO. In addition Mr. Govedaris was also of assistance on the motion dealing with the Receiver's counsel's costs.

[48] In my view because of Mr. Govedaris' role in acting for the Mortgage Fraud Class members, I see no reason why he should not be compensated for his time on a substantial indemnity basis to the extent that it benefits the receivership estate or is necessary because of the conflict. I must however consider the time claimed in the context of this estate. As I stated in my Receiver's Costs Decision, although precise amounts cannot be known at this time, it seems clear that the quantum of claims will by far outstrip the available assets. Furthermore, the available assets are modest, particularly considering the quantum of fees already incurred by the Receiver. There is still considerable cost to be incurred before all of the possible assets of the estate have been realized and the claims paid.

[49] In Mr. Govedaris' Bill of Costs all of the hours claimed are his and he has claimed his time at the rate of \$400 per hour. Mr. Govedaris was called to the bar in 1993 and accordingly is a couple of years senior to Lincoln Caylor, a 1995 call, who has done a great deal of the work for the Receiver. As set out in my Receiver's Costs Decision, Mr. Caylor claimed his time at the rate of \$575 per hour. The time for M. Joanne MacMillan, a 2000 call, was claimed at the rate of \$450 per hour. Among other deductions I found that those rates were too high for this matter for various reasons and reduced the rates of Mr. Caylor, Ms. MacMillan and others by approximately 15%. This brought Mr. Caylor's rate down to approximately \$515 per hour. On this basis Mr. Govedaris' substantial indemnity rate is clearly reasonable.

[50] Accordingly with respect to those motions where Mr. Govedaris appeared before me, I award him costs on a substantial indemnity basis as follows:

- (a) Attendance on motion on April 6, 2006 - \$2,400
- (b) Attendance on motion on April 26, 2006 - \$3,000

[51] The amounts awarded are close to the amounts claimed. I considered whether to try and parse the time spent on matters where there was a potential conflict but in my view that would be unfair to Mr. Govedaris. On both occasions his attendance was of assistance to me because of his role as counsel to the plaintiffs in this action.

[52] As for disbursements I am prepared to award Mr. Govedaris the amount of \$1,000. The other half of the disbursements claimed is for parking and mileage, which in my view is not recoverable.

[53] As for future costs payable to Mr. Govedaris, I accept the proposal made by Mr. Cohen and supported by counsel for the Receiver as set out above. In the future Mr. Govedaris should advise counsel for the Receiver in advance if he intends to appear on a motion or otherwise incur costs that he would seek to claim from the receivership estate. Those costs should not be limited to costs in connection with motions but could include time dealing for example with the Receiver on the RECO issue. All of that time should be docketed and then submitted to the court for approval on notice to the service list. Future costs orders would then be decided as matters arose.

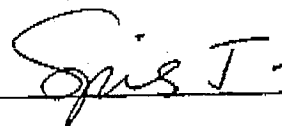
[54] I did not receive Cost Outlines from counsel or any submissions with respect to costs of this motion. Mr. Govedaris is to provide me with his Cost Outline within 15 days of the release of this decision and serve that Cost Outline on counsel for the Receiver and Mr. Cohen. Any submissions as to the amount

- 12 -

95

claimed or costs generally are to be sent to me within 10 days of receipt of Mr. Govedaris' Cost Outline. There is to be no reply without leave.

[55] The costs awarded to Mr. Govedaris for previous attendances before me in the amount of \$6,400 plus GST shall be a third charge in favour of Govedaris Professional Corporation on any of the assets recovered in the receivership and shall be paid once funds are available, when the Receiver and counsel for the Receiver are paid their costs approved by the court.



SPIES J.

RELEASED: SEPTEMBER 19, 2006

TAB F

COURT FILE NO.: 05-CL-6178

DATE: 20061020

**SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST****RE:** FOUR SEASONS DRYWALL SYSTEMS & ACOUSTICS LIMITED and ZAPFE HOLDINGS INC., Plaintiffs**A N D:**

COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC., WALLIS, YORK MANAGEMENT GROUP, WALLIS SIMPSON & ASSOCIATES, CAMEO INVESTMENTS and KENNETH WAYNE SIMPSON, Defendants

BEFORE: SPIES J.**COUNSEL:** *Gregory Govedaris*, for the Plaintiffs*Joanne MacMillan* for the Receiver and Plaintiffs in Action 05-CL-6159,
Glenn E. Cohen for Atlas Holdings, *R. Maxwell* for RECO**HEARD:** August 14, 2006**SUPPLEMENTARY ENDORSEMENT ON COSTS**

[1] Mr. Govedaris brought a motion on behalf of the representative plaintiffs in this action for an order that all costs, fees, disbursements and GST incurred by Govedaris Professional Corporation in carrying out its duties as counsel to the representative plaintiffs as a benefit to the receivership estate (Action 05-CL-6159) be a third charge on any of the assets recovered in the receivership, subject to approval of the quantum of costs by the Court. He submitted a Bill of Costs in the amount of \$28,264 plus GST.

[2] The motion was opposed by Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action, which has made a claim for a deposit of \$200,000. The Receiver took the position that to the extent that fees were incurred by Mr. Govedaris' firm in carrying out a task which was of benefit to the receivership estate, the Receiver did not oppose Mr. Govedaris seeking those fees and disbursements as a third charge on the receivership estate subject to the court's approval of the quantum of costs.

[3] By an endorsement released September 19, 2006, I granted Mr. Govedaris' motion in part and ordered that he be awarded costs for previous attendances before me in the amount of \$6,400 plus GST and that those costs be a third charge in favour of Govedaris Professional Corporation on any of the assets recovered in the receivership and be paid once funds are available, when the Receiver and counsel for the Receiver are paid their costs approved by the court.

[4] I have now had an opportunity to review the written costs submissions of both Mr. Govedaris and Mr. Cohen. Mr. Govedaris seeks costs of the motion against Mr. Cohen's client in the amount of \$4,000 on a substantial indemnity basis. He argues that Mr. Cohen's client should not have opposed the motion.

[5] Mr. Cohen submits that no costs should be ordered against his client and that he should receive costs for the motion in the amount of \$3,500 plus GST. He argues that as no opposition was forthcoming from the Receiver's counsel, that it was necessary for someone on behalf of the "class" to oppose Mr. Govedaris' motion and that his submissions resulted in a substantial reduction of the costs claimed by Mr. Govedaris. Specifically of the claim of approximately \$20,000 for fees, Mr. Govedaris was awarded \$5,400.

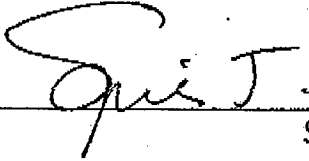
[6] Mr. Govedaris did achieve some success on the motion and so I am prepared to award him some costs but in my view the fact that he was unsuccessful in recovering a considerable portion of the fees requested must be taken into account. I do not accept his submission that the motion should not have been opposed or that he was substantially successful.

[7] In addition, I disagree that Mr. Cohen's client should pay Mr. Govedaris clients' costs of the motion. The Receiver's counsel did not make any submissions in opposition to the costs claimed by Mr. Govedaris' clients and apart from attendance on the motion I presume the costs of the Receiver's counsel for the motion will be minimal. I accept the submission of Mr. Cohen that given that Receiver's counsel did not oppose the motion that it was in the interest of the receivership estate that he do so. On that basis, as I did with respect to the Receiver's counsel's costs motion, I am prepared to award Mr. Cohen's client some costs of the motion.

[8] In my view the claim for costs by both Mr. Govedaris and Mr. Cohen is too high particularly when I consider the fact that on a much more substantial motion I awarded Mr. Cohen costs on a partial indemnity scale in the amount of \$1,500, payable from the estate. I must also be mindful of fact that the estate is modest in comparison to the claimants in both "classes".

[9] Considering the factors in Rule 57.01(1) and the direction from our Court of Appeal that I consider what a losing party would reasonably expect to pay, I

award Mr. Govedaris and Mr. Cohen each costs of the motion in the amount of \$1,250 all inclusive, payable from the receivership estate and to be paid when Receiver's counsel is paid.



SPIESS J.

RELEASED: October 20, 2006

TAB G

DIVISION OF TIME AND FEES
In Accordance with Order of Justice Spies
Released June 8, 2006

Period 1 – April 1, 2006 to June 8, 2006

Period 2 – June 9, 2006 to July 31, 2006

Dianor Shares

Primary Tasks: Considering the appropriate process and communicating with counsel with respect to the procedure for determining the share ownership.

Summary of Time and Fees

Issue	Individual	Total Time	Total Fees
Dianor Shares	L. Caylor (@ \$575.00)		
	Period 1 – April 1, 2006 to June 8, 2006	0.00	\$ 0.00
	Period 2 – June 9, 2006 to July 31, 2006	0.10	\$ 57.50
	J. MacMillan (@ \$450.00)		
	Period 1 – April 1, 2006 to June 8, 2006	1.30	\$585.00
	Period 2 – June 9, 2006 to July 31, 2006	0.00	\$0.00
TOTALS			\$642.50
Reduced by 15%			\$546.13

Pahwa Mortgages

Primary Tasks: Reviewing banking records to determine the quantum of funds repaid to the mortgagee and engaging in without prejudice negotiations with the mortgagee's counsel.

Summary of Time and Fees

Issue	Individual	Total Time	Total Fees
Pahwa Mortgages	L. Caylor (@ \$575.00)		
	Period 1 - April 1, 2006 to June 8, 2006	0.00	\$ 0.00
	Period 2 - June 9, 2006 to July 31, 2006	1.00	\$ 575.00
	J. MacMillan (@ \$450.00)		
	Period 1 - April 1, 2006 to June 8, 2006	2.80	\$1,260.00
	Period 2 - June 9, 2006 to July 31, 2006	4.60	\$2,070.00
	E. Atkinson (@ \$275.00)		
	Period 1 - April 1, 2006 to June 8, 2006	13.80	\$3,795.00
	Period 2 - June 9, 2006 to July 31, 2006	0.0	\$ 0.00
	Law Clerk (@ \$175.00)		
Period 1 - April 1, 2006 to June 8, 2006	3.50	\$ 612.50	
Period 2 - June 9, 2006 to July 31, 2006	0.0	\$ 0.00	
TOTALS			\$8,312.50
Reduced by 15%			\$7,065.63

Real Property

Primary Tasks: Marketing, maintaining and selling 6072 Main Street, 6817 Main Street, 6451 Main Street, 14 Stouffer Street and 1038 Kawagama Lake Road properties. Despite the receiver's and the listing agent's efforts, the properties at 6817 Main Street and 6451 Main Street were not sold and would not likely sell for amounts in excess of the mortgage amounts owing. Significant time was devoted to acquiring and attempting to sell these properties, without recovery to the receivership estate. The overall fees related to the Real Property matter were reduced to the flat fee of \$10,000 plus disbursements, from an amount of approximately \$24,000.

Summary of Time and Fees

Issue	Individual	Total Time	Total Fees
Real Property*	L. Caylor (@ \$575.00)		
	Period 1 - April 1, 2006 to June 8, 2006	0.00	\$ 0.00
	Period 2 - June 9, 2006 to July 31, 2006	1.10	\$ 632.50
	S. Martyn (@ \$550.00)		
	Period 1 - April 1, 2006 to June 8, 2006	12.80	\$ 7,040.00
	Period 2 - June 9, 2006 to July 31, 2006	0.80	\$ 440.00
	J. MacMillan (@ \$450.00)		
	Period 1 - April 1, 2006 to June 8, 2006	3.10	\$ 1,395.00
	Period 2 - June 9, 2006 to July 31, 2006	9.80	\$ 4,410.00
	E. Atkinson (@ \$275.00)		
	Period 1 - April 1, 2006 to June 8, 2006	13.60	\$ 3,740.00
	Period 2 - June 9, 2006 to July 31, 2006	0.00	\$ 0.00
	Law Clerk (@ \$150.00)		
	Period 1 - April 1, 2006 to June 8, 2006	30.70	\$ 4,605.00
Period 2 - June 9, 2006 to July 31, 2006	8.20	\$ 1,230.00	
TOTALS			\$23,492.50
Flat Fee			\$10,000.00

General Receivership Activities

Primary Tasks: See summary below **

Summary of Time and Fees

Issue	Individual	Total Time	Total Fees
General Receivership Activities**	L. Caylor (@ \$575.00)		
	Period 1 - April 1, 2006 to June 8, 2006	17.40	\$ 10,005.00
	Period 2 - June 9, 2006 to July 31, 2006	2.90	\$ 1,667.50
	J. MacMillan (@ \$450.00)		
	Period 1 - April 1, 2006 to June 8, 2006	66.8	\$ 30,060.00
	Period 2 - June 9, 2006 to July 31, 2006	66.30	\$ 29,835.00
	R. Sahni (@ \$450.00)		
	Period 1 - April 1, 2006 to June 8, 2006	0.30	\$ 135.00
	Period 2 - June 9, 2006 to July 31, 2006	0.00	\$ 0.00
	E. Atkinson (@ \$275.00)		
	Period 1 - April 1, 2006 to June 8, 2006	93.30	\$ 25,657.50
	Period 2 - June 9, 2006 to July 31, 2006	0.00	\$ 0.00
	Law Clerk(@ \$175.00)		
	Period 1 - April 1, 2006 to June 8, 2006	8.30	\$ 1,452.50
Period 2 - June 9, 2006 to July 31, 2006	15.40	\$ 2,695.00	
TOTALS			\$101,507.50
Reduced by 15%			\$86,281.38

*Activities relating to real property include, but are not limited to:

- (a) maintaining properties;
- (b) communicating with insurance companies, utilities companies, real estate agents, land registry office, counsel for purchasers;
- (a) dealing with power of sale issues and inquiries;
- (b) dealing with mortgagees;
- (c) registering orders on title;
- (d) obtaining and registering CPLs on title;
- (e) transferring properties into receivership;
- (f) obtaining vesting orders;
- (g) getting title of properties cleared;

**General Receivership Activities include but are not limited to the following:

- (a) commencing the proceedings;
- (b) obtaining the receivership order;
- (c) contacting victims;
- (d) disseminating, collecting, processing and validating claim forms;
- (e) obtaining bank records;
- (f) reviewing bank records;
- (g) tracing funds;
- (h) reviewing records in possession of York Regional Police;
- (i) examining parties;
- (j) preparing reports for the court;
- (k) reporting to court and obtaining approval for steps taken;
- (l) communicating with the Ontario Securities Commission, the Financial Services Commission of Ontario, clients, class members, York Regional Police, crown counsel, defence counsel;
- (m) developing and carrying out strategy for recovery;

Summary of Time and Fees – TOTALS***

Individual	Period 1 April 1 to June 8, 2006	Period 2 June 9 to July 31, 2006, 2006	Total Fee
L. Caylor @ \$575.00	17.40	4.00	
Sub-total Fee	\$10,005.00	\$2,300.00	\$12,305.00
J. MacMillan @ \$450.00	70.90	70.90	
Sub-total Fee	\$31,905.00	\$31,905.00	\$63,810.00
R. Sahni @ \$450.00	0.30	0.00	
Sub-total Fee	\$135.00	\$0.00	\$ 135.00
E. Atkinson @ \$275.00	107.10	0.00	
Sub-total Fee	\$29,452.50	\$0.00	\$29,452.50
Law Clerk @175.00	11.80	15.40	
Sub-total Fee	\$2,065.00	\$2,695.00	\$ 4,760.00
SUB-TOTAL			\$110,462.50
Reduced by 15%			\$93,893.13
Flat Fee on Real Property Matters			\$10,000.00
TOTAL			\$103,893.13

*** Does not include flat fee for real property matters.

Year of Call

Lawyer	Year of Call
E. Atkinson	2005
L. Caylor	1995
J. MacMillan	2000
S. Martyn	1992
R. Sahini	2000

DMSTORLegal\056445\00001\463383v1

SUMMARY OF THE RECEIVER'S TIME AND FEES

March 1, 2006 To August 25, 2006

Name	Total Hours	Rate Per Hour	Billing
M.J. Quilling	80.60	400.00	\$32,240.00
L. Smith	33.40	115.00	3,841.00
B. Rodine	8.20	150.00	1,230.00
Total			\$37,311.00

DISBURSEMENTS

March 1, 2006 To August 25, 2006

Expenses	
Travel	\$5,429.94
Fax	44.30
Long Distance Phone	19.76
Express Mail	235.30
Locksmith Service	797.56
Photocopying	119.33
Postage	1.50
Total	\$6,647.69

TAB H

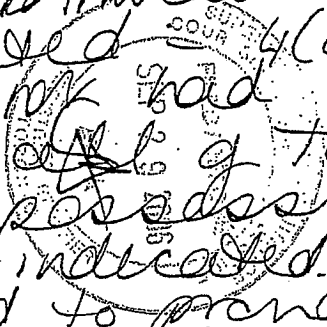
Oct 10 / 06

Ms McMullan - Receiver
Mr Simpson personally
Mr Rothwell for Plaintiff
Mr Gavedaris for TTS in companion class action

Udayan Pandya
Plaintiff

The motion requests a variety of relief (!) I am advised by the Receiver's counsel + by Mr. Simpson that a written separation agreement was entered into by Mr + Ms. Simpson + it up to the terms of the agreement with the Receiver set forth in para 30 of the Receiver's 7th report. The Receiver is authorized to settle Mr Simpson's claims against the Estate + Receivership on those terms.

(2) The relief requested in paragraphs 1, 2, 3 + 4a is granted. Mr Rothwell ^{in behalf of Mr. Pandya} submits that the relief requested 4(a) is premature as the Receiver has had an opportunity to review all of the banking records now in its possession. The Receiver's counsel has indicated that the banks have now agreed to provide it with copies of cheques within 30 days at their own cost. After the Receiver has



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

MOTION RECORD
(Returnable October 10, 2006)
Volume 1 of 2

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 370301/43529J

Solicitors for the receiver

Oct 10 / 06

had an opportunity to review these documents, ~~it~~ to the extent such power was not already granted by earlier orders, ~~the~~ ^{the receiver} is authorized to proceed with an action against Mr. Lakua for recovery of funds.

- (3) With respect to items 5, + 6, I have a real concern about the quantum of fees being incurred in this receivership + particularly legal fees. That said, they may be justified, however, for me to properly consider the amounts claimed, I should have the earlier endorsements + decisions on fees requested + awarded. In particular, I understand that Opies I give detailed directions on an approach to be taken to fee requests - this matter, however, ~~those~~ that endorsement is not before me. I am adjourning items 5 + 6 to be heard by me on a date to be fixed. It would also be helpful to have a more detailed breakdown as to when the time claimed was spent relative to the directions given. Mr. Govedaris may make written submissions on costs including his costs of attendance today (24 Sept, 2).

Tab I

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

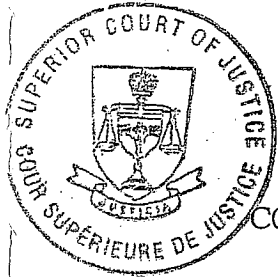
THE HONOURABLE MADAM)
JUSTICE PEPALL)
TUESDAY, THE 10th DAY OF
OCTOBER, 2006

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*

ORDER

THIS MOTION, made by the receiver for an Order approving the receiver's recommendations as set out in the receiver's seventh report, was heard this day.

ON READING the materials filed, and on hearing the submissions of counsel for the receiver, from David Rothwell on behalf of Ajay Pahwa and from Kenneth Wayne Simpson on his own behalf, no one appearing for the defendants,

1. **THIS COURT ORDERS** that the receiver may proceed with an action against Ajay Pahwa seeking recovery of funds overpaid to him by the defendants.

2. **THIS COURT ORDERS** that the receiver has authority to fully and finally resolve Kenneth Wayne Simpson's *Family Law Act* claim to half of the receivership estate on the following terms:

- (a) Mr. Simpson shall take possession of 587 Cam Fella Blvd., Stouffville, Ontario (the "Property");
- (b) Mr. Simpson shall arrange mortgage financing for the Property and shall register a new first mortgage effective not later than 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 shall assume responsibility for all utilities, mortgage payments, insurance, maintenance costs and etc. effective September 1, 2006.



DAVID EVANS
REGISTRAR

ENTERED AT / INSCRIF À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 07 2006

PER/PAR: 

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

ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

MCR

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L / 43529J

Solicitors for the receiver

Tab J

BENNETT JONES

LLP

3400 One First Canadian Place
 PO Box 130
 Toronto Ontario
 Canada M5X 1A4
 Tel 416.863.1200
 Fax 416.863.1716
 www.bennettjones.ca

M. Joanne MacMillan
 Direct Line: 416.777.4629
 e-mail: macmillanj@bennettjones.ca
 Our File No.: 56445.1

October 31, 2006

Via Email

Wayne Simpson
 587 Cam Fella Boulevard
 Stouffville, ON L4A 7H3

Courtney Wallis Simpson
 587 Cam Fella Boulevard
 Stouffville, ON L4A 7H3

Dear Mr. and Mrs. Simpson:

**Re: Simpson Receivership
 587 Cam Fella Boulevard/Proposed Settlement**

When we attended before Justice Pepall on October 10, 2006, we advised the court that it was our understanding that you had entered into a separation agreement with each other. We have been advised that Courtney has moved back into 587 Cam Fella Boulevard, Stouffville, Ontario. Courtney's residence in the purported matrimonial home is a material change that the court should be made aware of. If, after taking this new information into consideration, the court approves the proposed settlement with Wayne Simpson, the receiver will proceed with the settlement on the terms previously discussed. The receiver, as an officer of the court, cannot currently proceed with the proposed settlement due to this change in circumstances.

We confirm that, to date, we have not received the information that we requested with respect to interest accrued on the mortgage principal and also confirmation of the date of the foreclosure/power of sale by the mortgagee. We will require this information prior to finalizing the terms of the proposed settlement.

We have contacted the court and Justice Pepall is available for a 30 minute hearing on November 15, 2006. We will confirm shortly if we are able to secure this court date in order to advise the court of this new issue and also to deal with the fees issue that was adjourned from October 10, 2006.

Yours truly,



BENNETT JONES LLP

MJM/eg

cc: Michael Quilling
 Glenn Cohen
 Gregory Govedaris

Joanne MacMillan

From: Courtney Wallis Simpson <courtneywallissimpson@rogers.com>
To: <macmillanj@bennettjones.ca>, <caylorl@bennettjones.ca>, gregory govdaris <gregory@govedaris.com>
Date: 01/11/2006 6:02 AM

to Whom It May Concern;

In an effort of full disclosure please be advised that effective today's date I will be temporarily residing at 587 Cam Fella Blvd., Stouffville, renting a room from my estranged husband Wayne Simpson. The house we were renting from his mother at 95 Ramona Blvd., Markham was sold and has now closed, thus requiring me to vacate. I intend to reside at 6817 Main Street, Stouffville as a friend of mine is in the process of purchasing it and has agreed to let me rent the house as it is within close proximity to my children, whom I intend to allow to stay in the house at Cam Fella in an attempt to bring some stability to their lives after what they have endured this past year..In addition, due to the fact that all of the information on my credit bureau, I am unable to pass the requirement of a successful "credit check", though I have tried, so for now I am not wanting to live in my car again, I have taken Wayne Simpson's most generous offer of being his "tenant" until the house at 6817 Main Street closes. I will advise at that time what my contact particulars are. Wayne Simpson's current home telephone number is 905-91-0566. I have notified the York Region Police of my residence status so your informing them is unnecessary.

If any additional information is required, please let me know.

Courtney Wallis Simpson

Tab K

Joanne MacMillan

From: Courtney Wallis Simpson <courtneywallissimpson@rogers.com>
To: <macmillanj@bennettjones.ca>
Date: 02/11/2006 10:57:30 AM

Joanne;
I do not know if it is relevant to your court proceedings, but it looks as if I have found suitable accomodation elsewhere in Stouffville. I will have confirmation tonight, but if you require this information please let me know.

Thank you.
Courtney

Tab L

Joanne MacMillan - Re: (residence)

From: Joanne MacMillan
To: Simpson, Courtney Wallis
Date: 02/11/2006 1:49:44 PM
Subject: Re: (residence)

You should provide us with that information.

M. Joanne MacMillan
Bennett Jones LLP
Direct No. (416) 777-4629
Main No. (416) 863-1200
Fax No. (416) 863-1716

>>> Courtney Wallis Simpson <courtneywallissimpson@rogers.com> 02/11/2006 10:57:08 AM >>>

Joanne;

I do not know if it is relevant to your court proceedings, but it looks as if I have found suitable accomodation elsewhere in Stouffville. I will have confirmation tonight, but if you require this information please let me know.

Thank you.
Courtney

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

SUPPLEMENTARY MOTION RECORD
(Returnable November 15, 2006,
adjourned from October 10, 2006)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor/M. Joanne MacMillan
LSUC Nos. 37030L/43529J
Tel: 416-777-6121/4629
Fax: 416-863-1716

Solicitors for the plaintiff