

Court File No. 07-CL-6843

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

BETWEEN:

MICHAEL J. QUILLING, RECEIVER FOR
COURTNEY WALLIS SIMPSON

Plaintiff

-and-

ZAPFE HOLDINGS INC. AND MICHAEL SOURLIS

Defendants



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.

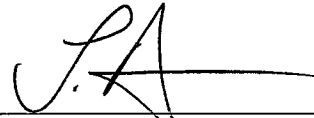
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs claim and \$100.00 for costs and have the costs assessed by the court.

Date: January 22 2007

Issued by:



Local Registrar

Address of Court Office: 393 University Avenue, 10th Floor
Toronto, ON
M5G 1E6

TO: Zapfe Holdings Inc.
72 Dynamic Drive Unit 6
Scarborough, Ontario
M1V 3X6

AND TO: Michael Sourlis
12 Sims Crescent
Richmond Hill, Ontario

CLAIM

1. The plaintiff, Michael J. Quilling, acting in his capacity as the court-appointed receiver for Courtney Wallis Simpson (the "Receiver") in the class proceeding known by Commercial List Court file no. 05-CL-6159, claims from the defendants, Zapfe Holdings Inc. ("Zapfe Holdings") and Michael Sourlis ("Sourlis"):

- (a) a declaration that, as of November 17, 2005, Courtney Wallis Simpson ("Simpson") was the registered holder and owner of the Dianor Resources Inc. shares represented by share certificates numbered 0-01476 and 0-01630 (collectively "the Shares")
- (b) a declaration that Simpson did not transfer the Shares to Zapfe Holdings and/or to Sourlis before November 17, 2005;
- (c) a declaration that the Shares are the property of the Simpson receivership estate in Court file no. 05-CL-6159;
- (d) in the alternative, a declaration that the transfer of the Shares from Simpson to Zapfe Holdings and/or to Sourlis, respectively, is unjust and void as against the creditors of Simpson as a preference pursuant to section 4 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A-33 (the "Act");
- (e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- (f) costs of this action on a substantial indemnity basis, plus applicable goods and services taxes thereon; and
- (g) such further and other relief as this Honourable Court deems just.

Background

2. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Receivership Order"), the Receiver was appointed pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and rule 41.02 of the *Rules of Civil Procedure* over the assets of Simpson and her related companies in class action proceeding court file no. 05-CL-6159 (the "Deposit Scheme Action").

3. Zapfe Holdings is a company incorporated pursuant to the laws of the province of Ontario with offices in Scarborough, Ontario. Zapfe Holdings is an unsecured creditor of Simpson.

4. Sourlis resides in Richmond Hill, Ontario and is an unsecured creditor of Simpson.

Related Proceedings

5. Simpson was a real estate broker. It is alleged in the Deposit Scheme Action that during 2005 Simpson induced various individuals to provide her with deposit funds for the purchase of commercial properties. The agreements of purchase and sale were fraudulent. Simpson has failed to return the deposits to the would be purchasers, now creditors of Simpson

6. A second class action proceeding was commenced by statement of claim issued by the Commercial List Court in court file no. 05-CL-6178 (the "Mortgage Investment Scheme"). In the

Mortgage Investment Scheme claim it is alleged that Simpson and her related companies, among others, induced individuals and companies to take part in an investment scheme. Simpson then used the funds from one person, or investor, to pay other persons or investors, purported investment returns.

Share Ownership

7. At all material times Simpson was the registered holder and owner of the Shares. Share certificate no. 0-01476 represents 301,923 common shares of Dianor held by Simpson effective December 7, 2004. Share certificate no. 0-01630 represents 217,391 common shares of Dianor held by Simpson as of January 28, 2005.

8. The shares represented by certificate no. 0-01476 may not be sold, transferred, hypothecated or otherwise traded on or through the facilities of the TSX Venture Exchange or otherwise in Canada or to or for the benefit of a Canadian resident before April 10, 2005.

9. The shares represented by certificate no. 0-01630 may not be sold, transferred, hypothecated or otherwise traded on or through the facilities of the TSX Venture Exchange or otherwise in Canada or to or for the benefit of a Canadian resident before May 29, 2005.

10. Pursuant to the Receivership Order, all property owned by Simpson vested in the Receiver on November 17, 2005. As of November 17, 2005, the Receiver had sole authority to transfer or otherwise convey Simpson's assets, including the Shares.

11. On or about November 23, 2005, Simpson purported to confirm to Computershare Investor Services ("Computershare") the re-registration of the Shares, then held and owned by Simpson, in the names of Zapfe Holdings and/or Sourlis respectively.

12. In December 2005, RBC Dominion Securities Inc. ("RBC") notified the Receiver that Simpson was attempting to transfer the Shares.

13. The Receiver pleads that the Shares are the property of the Simpson receivership estate in court file no. 05-CL-6159.

14. By order dated March 9, 2006 Madam Justice Mesbur ordered that RBC freeze the Shares.

Unjust Preference

15. In the alternative, if the court deems the Share transfer to have been effected prior to November 17, 2005, the plaintiff pleads that the transfer of the shares represented by:

(a) certificate number 0-01476 from Simpson to Zapfe Holdings is unjust and void as against the creditors of Simpson as a preference within the meaning of section 4 of the *Act*; and

(b) certificate number 0-01630 from Simpson to Sourlis is unjust and void as against the creditors of Simpson as a preference within the meaning of section 4 of the *Act*.

16. Zapfe Holdings received the shares from Simpson for no consideration.

17. Sourlis received the shares from Simpson for no consideration.

18. The Shares transfers were made by Simpson when she was unable to pay her debts in full or alternatively, when she knew that she was on the eve of insolvency.

19. Simpson transferred the Shares intending to give Zapfe Holdings and/or Sourlis a preference over her other creditors.

20. Simpson's other creditors were injured, delayed, prejudiced or postponed as a result of the Shares transfer by Simpson to Zapfe Holdings and/or to Sourlis.

21. The Receiver pleads that Zapfe Holdings and/or Sourlis were aware that Simpson was unable to pay her debts in full or alternatively, knew that Simpson was on the eve of insolvency when she transferred the respective shares to each of them.

22. The Receiver pleads that Zapfe Holdings and/or Sourlis, in obtaining the Shares from Simpson, intended to receive a preference over the other creditors of Simpson.

23. The Receiver pleads that the effect of the transfer of shares to Zapfe Holdings and/or to Sourlis from Simpson at the dates they were received provided both Zapfe Holdings and Sourlis with an unjust preference over the other creditors of Simpson and, accordingly, are void as against the other creditors of Simpson.

24. The Receiver pleads and relies on the *Assignments and Preferences Act*, R.S.O. 1990, c. A-33.

25. The Plaintiff proposes that this action be tried at the City of Toronto.

January 22, 2007

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Solicitors for the Plaintiff

Michael J. Qulling, Receiver for Courtney Wallis Simpson
Plaintiff

-and-

Zapfe Holdings Inc. et al.
Defendants

Court File No. 07-Cc-6843

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Solicitors for the Plaintiff