

**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*

MOTION RECORD
(Returnable June 27, 2007)

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Solicitors for the plaintiff

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**ONTARIO
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**COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS, SIMPSON & ASSOCIATES,
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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

In the Matter of the Class Proceedings Act, 1992

**NOTICE OF MOTION
(Motion Returnable June 27, 2007)**

The court appointed receiver will make a motion on June 27, 2007 at 10:00 a.m. to a judge presiding over the Commercial List at 330 University Avenue in Toronto or as soon after that time as a motion can be heard.

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

THE MOTION IS FOR:

1. An order approving the receiver's recommendation that he be granted the authority to commence proceedings against Lloyd's of London (a.k.a. Nicholas Smith Attorney in Fact in Canada for Lloyd's of London) and against Courtney Wallis Simpson ("Simpson"), if necessary,

seeking a judicial determination of the issue of claimants' entitlement to consumer deposit insurance proceeds for deposits lost due to Simpson's conduct.

2. In the alternative, if the court does not approve this recommendation the receiver requests that he be released from any obligation he may have to pursue such insurance on behalf of the victims/claimants.

3. That time for service of the notice of motion and the motion record be abridged to the date and time of actual service and that such service is valid service of the materials filed in support of this motion.

4. Leave of the court to bring this motion, if necessary.

5. Such further and other Order as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The defendant, Courtney Simpson ("Simpson"), is a member of the Real Estate Council of Ontario ("RECO"), a broker under the *Real Estate and Business Brokers Act* and is the principal broker and controlling mind of the defendant, York Region Realty Inc. ("York Realty") and also of the other defendant entities.

2. There are currently two class action proceedings against the defendants arising from similar factual circumstances.

- (a) *Pandya v. Simpson et al.* – Court file no. 05-CL-6159 (the "Real Estate Deposit Action"); and

- (b) Four Seasons Drywall Systems & Acoustics Limited *et al.* v. Simpson *et al.* - Court file no. 05-CL-6178.

3. The defendants in the Real Estate Deposit Action have been noted in default. Simpson is currently serving a term of incarceration for criminal and regulatory charges related to this matter.

4. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), Michael J. Quilling (the "Receiver") was appointed receiver, pursuant to section 101 of the *Courts of Justice Act* and rule 41.02 of the *Rules of Civil Procedure*, over the assets of Simpson and York Realty.

The Real Estate Deposit Action

5. Simpson, acting as a real estate broker, and her company, York Region Realty Inc. induced a number of individuals to enter into agreements of purchase and sale (the "Agreements") with respect to commercial properties in Stouffville, Ontario. Many of the Agreements were with respect to the same property. Simpson admitted under oath that she "sold" two of the properties on more than 100 occasions each.

6. It was a term of the Agreements entered into by the victims that they provide deposit funds in an amount ranging from \$50,000 to \$400,000 to York Realty. These deposit funds were to be held by York Realty in trust pending completion or termination of the Agreement. Despite being advised that Agreements were terminated and the deposit funds to be returned, Simpson and York Realty failed to return certain of the deposit funds.

7. Based on the information available to date, there are approximately 26 victims of this scheme who are owed a total of approximately \$3.6M by Simpson pursuant to the fraudulent Real Estate Deposit Scheme set out above.

8. RECO has a Consumer Deposit Insurance program (the "Policy") in place. The Policy names Lloyd's of London ("Lloyd's") as the insurer. RECO and Simpson are named insureds under the Policy.

9. The Consumer Deposit Insurance program is in place to pay, on behalf of the named insureds, the amount of any claim for loss sustained by the claimant in a trade in real estate up to the policy limits. The policy's limits are: \$100,000 for each claim and \$500,000 for each occurrence. The deposits claimed to date total \$3,215,000.

10. If the Policy claims are characterized as individual claims (i.e. each claim is an "occurrence"), the maximum possible insurance coverage would be \$1,965,000.

11. Lloyd's will likely take the position that all of Simpson's fraudulent acts constitute "an occurrence" and that the maximum payout under the insurance is \$500,000 total on a *pro rata* basis.

12. It is acknowledged that any claim against Lloyd's will likely be defended thereby increasing costs against the receivership estate. All victims will benefit however if the proceeding is successful as some victims (with losses of up to \$100,000) will be made whole

leaving the balance of the estate accrued to date to be distributed to the remaining victims/class members.

Further Grounds

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

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

1. The Receiver's Ninth Report; and
2. Such other material as counsel may advise and this Honourable Court may permit.

DATE: June 21, 2007

BENNETT JONES LLP
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Fax: 416.863.1716

Solicitors for the receiver

TO: [The defendants have been
noted in default]

AND TO: Govedaris Professional Corporation
Barristers and Solicitors
6383 Main Street
Stouffville, ON L4A 1G4

Gregory Govedaris
Tel: 905-642-2090 ext. 302
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Plaintiff's counsel in Court File No. 05-CL-6178

AND TO: Berkow Cohen LLP
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Mr. Glenn E. Cohen
Tel: 416-364-4900
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Email: gcohen@berkowcohen.com

Counsel to a class member

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson et al.
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable June 27, 2007)

BENNETT JONES LLP
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Solicitors for the receiver

?

Tab 2

**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*

**NINTH REPORT OF THE RECEIVER
(Dated June 21, 2007)**

Background

1. The defendant, Courtney Simpson ("Simpson"), is a member of the Real Estate Council of Ontario ("RECO"), a broker under the *Real Estate and Business Brokers Act* and is the principal broker and controlling mind of the defendant, York Region Realty Inc. ("York Realty") and also of the other defendant entities.

2. This proceeding has been commenced as a class action against the defendants for fraud, unjust enrichment, breach of fiduciary duty and/or misrepresentation with respect to a large number of victims or class members. The claim alleges that the defendants received multiple deposits on the same properties and when the sales failed to close, the defendants did not return the deposit money to the would be purchasers (the "Real Estate Deposit Scheme"). The defendants have not defended this action and have been noted in default. Simpson pleaded guilty to several criminal and regulatory charges and is currently serving a prison sentence.

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

4. At paragraph 35 of the order of the Honourable Mr. Justice Farley dated December 15, 2005 ("First Amended and Restated Initial Order"), it was ordered that the Receiver deal directly with the Real Estate Council of Ontario ("RECO") on behalf of the class members who have submitted claims to RECO seeking to recover consumer deposit insurance for their lost deposits. A copy of the First Amended and Restated Initial Order is attached hereto and marked as **Exhibit "B"**.

5. The purpose of this Ninth Report of the Receiver (the "Ninth Report") is to provide the Court with his recommendations with respect to advancing claims for consumer deposit

insurance on behalf of victims of Simpson and to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver.

The Insurance Claim

6. RECO has a Consumer Deposit Insurance program (the "Policy") in place. The Policy names Lloyd's of London ("Lloyd's") as the insurer and Aon Reed Stenhouse Inc. ("Aon") as the insurance broker. RECO and Simpson are named insureds under the Policy.

7. Based on the evidence available to date, it is estimated that 26 victims of the Real Estate Deposit Scheme have made claims to RECO under the Policy.

8. The Consumer Deposit Insurance program is in place to pay, on behalf of the named insureds, the amount of any claim for loss sustained by the claimant in a trade in real estate up to the policy limits. The policy's limits are: \$100,000 for each claim and \$500,000 for each occurrence.

9. The deposits claimed to date total \$3,215,000.

10. If the Policy claims are characterized as individual claims, the maximum possible insurance coverage would be \$1,965,000.

11. The Receiver understands, based on information provided to the receiver's counsel by victims of Simpson, that Lloyd's will likely take the position that Simpson's fraudulent acts

constitute "an occurrence" and that the maximum payout under the insurance is \$500,000 total on a pro rata basis.

Proposed Action

12. The receiver recommends that the court grant the receiver the authority to commence proceedings against Lloyd's and Simpson (if necessary to trigger the Policy), seeking a determination of the "an occurrence" issue, among others. A copy of the proposed Notice of Application is attached hereto at **Exhibit "C"**.

13. In the alternative, if the court does not approve this recommendation the receiver requests that he be released from any obligation he may have to pursue such insurance on behalf of the victims/claimants. The Real Estate Deposit victims will then have the opportunity to pursue such claims individually or accept any offer that the insurer may make in respect of such insurance claims.

14. The receiver has considered claiming damages against RECO for negligence in its failure to adequately monitor and regulate Simpson, however civil liability of public and regulatory agencies is fairly rare, and as such, the receiver does not recommend commencing negligence proceedings against RECO.

15. The receiver is satisfied that a cause of action as against Lloyd's and Simpson exists. He recommends proceeding with these claims. It is acknowledged however, that any claim against Lloyd's will likely be defended thereby increasing costs against the receivership estate. All victims will benefit if the proceeding is successful as some victims (with losses of up to

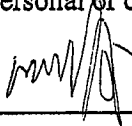
\$100,000) will be made whole leaving the balance of the estate accrued to date to be distributed to the remaining victims/class members.

Receiver's Requests and Recommendations

16. The Receiver recommends that the court grant him the authority to commence a proceeding against Lloyd's and Simpson, if necessary, seeking a determination of the "an occurrence" issue among others in substantially the same form as attached hereto as Exhibit "C".

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

DMSTORLegal\056445\00001\522387v2

EXHIBIT "A"

Court File No. 05-CL-6159

**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 CAMEO 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.

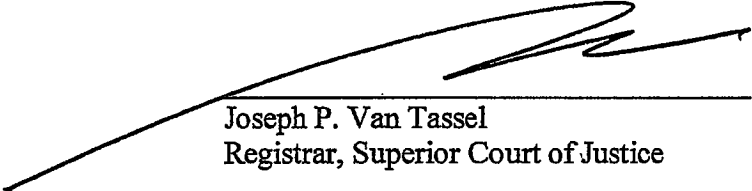
25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

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 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:

MB

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

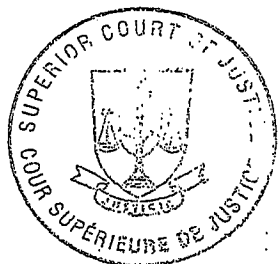
BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

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

Solicitors for the plaintiff

EXHIBIT "B"

Exhibit "B"



Court File No. 05-CL-6159

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

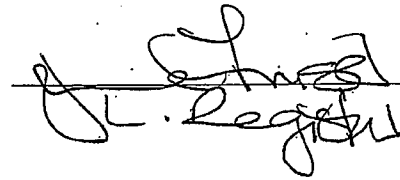
In the Matter of the *Class Proceedings Act, 1992*

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. Regier

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

Appendix "I"

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

EXHIBIT "C"

Court File No.:

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

BETWEEN:

MICHAEL J. QUILLING, in his capacity as court appointed
receiver for COURTNEY WALLIS SIMPSON

Applicant

- and -

COURTNEY WALLIS SIMPSON and
NICHOLAS SMITH ATTORNEY IN FACT IN
CANADA FOR LLOYD'S UNDERWRITERS

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on _____ at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with

proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by: _____

Address of court office: 330 University Avenue
Toronto, Ontario
M5G 2J6

TO: COURTNEY WALLIS SIMPSON
[address unknown]

AND TO: NICHOLAS SMITH ATTORNEY IN FACT IN
CANADA FOR LLOYD'S UNDERWRITERS
1155 rue Metcalfe
Suite 1540
Montreal, Quebec
H3B 2V6

APPLICATION

THE APPLICANT, Michael J. Quilling, in his capacity as court appointed receiver for Courtney Wallis Simpson (the "Receiver") makes an application for:

- (a) an order declaring that the Receiver is a "Claimant" as that term is defined in the Consumer Deposit Insurance Extension under Professional Liability Insurance policy number QK0502105 (the "Insurance Policy");
- (b) an order declaring that the Receiver is a Claimant on behalf of each and every consumer who sustained a loss in a trade in real estate arising from the theft, fraud, misappropriation or wrongful conversion directly or indirectly by Courtney Wallis Simpson ("Simpson") and/or York Region Realty Inc. ("York Realty") (collectively the "Registrants") of moneys or other property entrusted to or received by Simpson and/or York Realty in her or their professional capacity;
- (c) an order declaring that each agreement of purchase and sale on which a loss was occasioned is an "Occurrence" under the Insurance Policy;
- (d) an order declaring that the limits of each claim are \$100,000;
- (e) an order requiring Nicholas Smith Attorney In Fact in Canada for Lloyd's Underwriters ("Lloyd's") to pay to the Receiver the total amount of \$1,965,000 on behalf of all of the claimants who sustained losses in a trade in real estate arising from the theft, fraud, misappropriation or wrongful conversion directly or indirectly by Courtney Wallis Simpson

("Simpson") and/or York Region Realty Inc. ("York Realty") (collectively the "Registrants") of moneys or other property entrusted to or received by Simpson and/or York Realty in her or their professional capacity;

- (f) his costs of this application; and
- (g) such further and other relief as to this Honourable Court appears just.

THE GROUNDS FOR THE APPLICATION are:

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"). Simpson and York Realty are defendants in the Deposit Scheme Action.

3. The Real Estate Council of Ontario ("RECO") is a corporation incorporated pursuant to the laws of Canada. RECO administers the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30 and associated regulations on behalf of the Ontario Ministry of Government Services. RECO's mandate is to regulate the activity of trade in real estate in the public interest pursuant to its designation under the *Safety and Consumer Statutes Administration Act, 1996*, S.O. 1996, c.19.

4. RECO maintains an insurance program and a claims process specifically for misappropriated deposit funds (the "Insurance Policy"). The Insurance Policy is designed to protect the consumer from losses due to the theft, fraud, misappropriation, wrongful

conversion directly or indirectly of moneys or property held on deposit for the consumer by the salesperson or broker.

5. Simpson is a named insured under the Insurance Policy.

6. The respondent, Lloyd's, is the insurer of the Insurance Policy.

7. In September 2005 Simpson, acting as a real estate broker induced approximately 26 people and/or corporations (collectively the "Claimants") to each enter into agreements of purchase and sale (the "Agreements") with respect to commercial properties in Stouffville, Ontario. It was a term of the Agreements that the Claimants provide deposit funds in the total amount of \$50,000 to \$200,000 to York Realty. Each Claimant provided the deposit funds in trust to York Realty as required under the Agreements. These deposit funds were to be held by York Realty in trust pending completion or termination of each of the Agreements.

8. The receipt of deposit funds referenced at paragraph 7 above was made in furtherance of a fraudulent scheme perpetrated by Simpson and York Realty. The purported vendors who are the actual commercial 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. Simpson collected the deposits associated with the agreements of purchase and sale from more than one Claimant with respect to the sale of the same property. The agreements of purchase and sale entered into by the Claimants at the inducement of Simpson were fraudulent.

9. In particular Simpson represented to the Claimants:

- (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.

10. Each of the Claimants relied upon the representations set out in paragraph 9 above.

11. All of the representations set out in paragraph 9 above were untrue. There were no valid agreements of purchase and sale with respect to the various commercial properties.

12. The Insurance Policy names Lloyd's as the insurer and RECO and Simpson as "Named Insureds". The Consumer Deposit Insurance program, which includes the Insurance Policy, is in place to protect the consumer for loss of deposits caused by real estate broker fraud, misappropriation of funds or insolvency.

13. Claimants under the Consumer Deposit Insurance program, pursuant to the process set out on RECO's website, must submit a Notice of Claim form to RECO's

insurance department. The claim form authorizes RECO and Lloyd's to investigate the claim. RECO conducts a preliminary investigation before forwarding the claim to RECO.

14. The applicant and Claimant have submitted claim forms to RECO.
15. The deposits claimed to date total \$3,215,000.
16. Lloyd's has refused to pay the claims in the amount of \$3,215,000.
17. The policy was entered into by RECO on behalf of and for the benefit of people who give deposits to registrants, including the claimants. The applicant and these claimants are legitimate third party beneficiaries of the policy and are thereby entitled to step into the shoes of RECO and/or Simpson and assert their claim as against Lloyd's.
18. The policy's limits are \$100,000 for each claim and \$500,000 for each occurrence.
19. Lloyd's has advised the Claimants that it intends to pay valid claims up to the aggregate coverage limit of \$500,000 per occurrence on a *pro rata* basis. Lloyd's deems Simpson as an occurrence.
20. "Occurrence" is defined in the Insurance Policy as follows:

"Occurrence" means the insolvency of a Registrant or the theft, fraud, misappropriation or wrongful conversion directly or indirectly by a Registrant or present or former employee, by the Registrant in the Registrant's Professional Capacity.
21. Each claim is based upon a different agreement of purchase and sale and involves different purchasers or Claimants. The applicant pleads that each misappropriated deposit is a separate occurrence or event, therefore, each claimant is entitled to a maximum of

\$100,000 or the claimant's deposit amount if less than \$100,000 from Lloyd's for each misappropriated deposit.

22. Twenty six claims have been made to RECO to date. Based on the amounts claimed by each claimant, the total amount owing by Lloyd's is \$1,965,000 .

23. Rules 14.05(3)(d) and (h), 17.02(f)(i) and (o) of the *Rules of Civil Procedure*.

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

- (a) the affidavit of Michael J. Quilling, receiver for Courtney Wallis Simpson, to be sworn and the exhibits thereto; and
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

Date of Issue: , 2007

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LSUC Nos. 37030L / 43529J

Solicitors for the applicant

Michael J. Quilling, in his capacity as court appointed
receiver for Courtney Wallis Simpson
Applicant

v.

Courtney Wallis Simpson *et al.*
Respondents

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

BENNETT JONES LLP
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LSUC Nos. 37050L/43529J

Solicitors for the applicant

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson et al.
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable June 27, 2007)

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