

**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**

Court File No. 05-CL-6159

**AND 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**

**RESPONDING MOTION RECORD  
(Motion returnable December 28, 2007)**

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Solicitors for Zapfe Holdings Inc. and Michael Sourlis

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**Tab Document**

1. Affidavit of Lincoln Caylor (sworn October 26, 2007)
- A. Exhibit "A" – Excerpts of the Fourth Report of the Receiver (Dated March 3, 2006)
- B. Exhibit "B" – Affidavit of Service of the Motion Record (returnable March 9, 2006)
- C. Exhibit "C" – Affidavit of Service of the Notice of Motion (returnable April 6, 2006)

**Tab Document**

- D. Exhibit "D" – Affidavit of Service of the Notice of Motion (returnable April 6, 2006)
- E. Exhibit "E" – Affidavit of M. Joanne MacMillan (sworn March 31, 2006) with exhibits "A", "B" and "C" only
- F. Exhibit "F" – Letter from Bennett Jones LLP to G. Govedaris dated April 4, 2006
- G. Exhibit "G" – Endorsement of Justice Spies dated April 6, 2006
- H. Exhibit "H" – Letter from Bennett Jones LLP to C. Alexiou dated April 21, 2006
- I. Exhibit "I" – Excerpt of the Receiver's Action Plan pertaining to the Shares Issue
- J. Exhibit "J" – Affidavit of Service of the Motion Record (returnable April 26, 2006)
- K. Exhibit "K" – Statement of Claim issued January 22, 2007 (Court File No. 07-CL-6843)
- L. Exhibit "L" – Statement of Defence dated April 9, 2007 (Court File No. 07-CL-6843)
- M. Exhibit "M" – Letter from Bennett Jones LLP to C. Alexiou dated July 20, 2007
- N. Exhibit "N" – Letter from Bennett Jones LLP to G. Govedaris dated April 5, 2006
- O. Exhibit "O" – Letter from Bennett Jones LLP to C. Alexiou dated May 14, 2007
- P. Exhibit "P" – Letter from Bennett Jones LLP to C. Alexiou dated November 7, 2006

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**AFFIDAVIT OF LINCOLN CAYLOR  
(Sworn October 26, 2007)**

I, LINCOLN CAYLOR, of the City of Toronto, in the Province of Ontario, **MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Bennett Jones LLP, solicitors for the court appointed receiver herein and as such have knowledge of the matters hereafter deposed to. Where I make statements in the context of this affidavit which are not within my personal knowledge, I have identified the source of that information and belief, all of which information I have deposed to I verily believe. Where I have not identified the source of my information and belief, that information is within my personal knowledge.

### **Background**

2. There are two class action proceedings currently before the court with respect to claims arising from the conduct of Courtney Wallis Simpson and her businesses. I was advised by Det. Brian Morrison that Ms. Simpson plead guilty to criminal charges related to her conduct, the same conduct which is alleged to have caused losses to the plaintiffs in the two class action proceedings (described in further detail below).

3. Court file no. 05-CL-6159 is a claim proceeding in fraud, among other things, and also a receivership of the defendants' estate (the "Deposit Scheme Action"). The plaintiff in that action alleges that Ms. Simpson (a real estate agent) and her companies defrauded him and the class members by obtaining deposits for the purported purchase of commercial properties the alleged scheme involved. Ms. Simpson improperly retained the deposits and the real estate transactions were a sham. She purported to "sell" the same two commercial properties in excess of 100 times each. The defendants have been noted in default in the Deposit Scheme Action.

4. A separate class proceeding (court file no. 05-CL-6178) alleges that Ms. Simpson and others defrauded victims through the operation of a ponzi scheme convincing people to "invest"

in interim occupancy mortgages that never existed (the "Mortgage Scheme Action"). Zapfe Holdings Inc. ("Zapfe"), one of the moving parties on this motion, is named as a representative plaintiff in the Mortgage Scheme Action.

5. By order dated November 17, 2005, Justice Ground appointed Michael J. Quilling (the "Receiver") as the receiver of the defendants' assets. A copy of Justice Ground's Order is attached to the moving parties' Motion Record at **Tab 2(x)** as Exhibit X to the affidavit of Werner Zapfe.

**(a) Motion Returnable March 9, 2006**

6. The Receiver brought a motion returnable March 9, 2006 seeking, in part, an order freezing Dianor Resources Inc. share certificates (the "Shares") which are purportedly part of the receivership estate. The plaintiffs' counsel in the Mortgage Scheme Action, Mr. Govedaris, was served with the motion record, attended at the motion and made submissions on behalf of his clients, including Zapfe. Attached hereto and marked as **Exhibits "A"** and **"B"** are copies of excerpts of the Fourth Report of the Receiver which was before the court as part of the March 9<sup>th</sup> motion record and the affidavit of service with respect to the March 9, 2006 motion record.

7. By order dated March 9, 2006, Justice Mesbur ordered RBC Dominion Securities to freeze the Shares. Justice Mesbur further ordered that the motion be brought back before the court on April 6 to determine whether the Shares freeze order should continue. A copy of Justice Mesbur's order is attached at **Tab 2(k)** of the moving parties' Motion Record.

(b) **Motion Returnable April 6, 2006**

8. The motion to determine the Shares freeze was originally scheduled to be brought back before the court on April 6, 2006. Bennett Jones LLP served Mr. Govedaris with the Receiver's motion materials consisting of a notice of motion and the affidavit of M. Joanne MacMillan (sworn March 31, 2006). Mr. Sourlis was also served with the same documents as Mr. Govedaris on March 31, 2006. Attached hereto and marked as **Exhibits "C"** and **"D"** are copies of the affidavits of service.

9. Attached hereto and marked as **Exhibit "E"** is a copy of the affidavit of M. Joanne MacMillan (sworn March 31, 2006) with exhibits "A", "B" and "C" included.

10. By letter dated April 4, 2006, Bennett Jones LLP confirmed its consent to Mr. Sourlis' and Zapfe's request to adjourn the April 6 motion. The letter also confirmed Mr. Sourlis' and Zapfe's consent to extending the Share freeze order. Attached hereto and marked as **Exhibit "F"** is a copy of the letter dated April 4, 2006.

11. On April 6, 2006, Justice Spies adjourned the hearing of the Share freeze issues to April 26, 2006 noting that Mr. Zapfe and Mr. Sourlis had retained Gus Alexiou as counsel. Attached hereto and marked as **Exhibit "G"** is a copy of the Justice Spies endorsement dated April 6, 2006.

12. By letter dated April 21, 2006 Bennett Jones provided Mr. Alexiou, as requested, with court filings and orders relating to the Deposit Scheme Action. On that same day, Mr. Alexiou



was also served with a copy of the Receiver's Action Plan. Attached hereto and marked as **Exhibits "H", "I" and "J"** are copies of the letter dated April 21, 2006, excerpts from the Receiver's Action Plan pertaining to the Shares Issue and the related affidavit of service.

**(c) Motion Returnable April 26, 2006**

13. Prior to the return of the April 26, 2006 motion I spoke with Mr. Alexiou and the parties agreed to the following: (a) the Shares freeze order would remain in place; and (b) the parties would work out the procedure for how ownership of the shares would be adjudicated. Mr. Alexiou requested that his clients be named as parties in the proceeding to determine share ownership. I attended before Justice Spies on April 26, 2006 and advised the court of the parties' consent to continue the Shares freeze order and the parties agreement to negotiate the procedure by which the Shares ownership would be determined. Justice Spies recommended, and I agreed that the Shares ownership be determined by summary trial on an expedited basis before the Commercial List Court. I am advised by Joanne MacMillan, an associate working on this matter at Bennett Jones LLP, that this proposal was discussed with Mr. Alexiou following the April 26 motion, however, Mr. Alexiou advised that his clients would not consent to the summary procedure and required full documentary production, examination for discovery and trial of the matter. A copy of Justice Spies decision on the April 26<sup>th</sup> motion is attached at **Tab 2(w)** of the moving parties' motion record.

**(d) The Dianor Shares Action**

14. The statement of claim in court file no. 07-CL-6843, an action seeking determination of the Shares ownership, was issued by the court on January 22, 2007 (the "Dianor Shares Action").

The defendants served their statement of defence on April 9, 2007. Attached hereto and marked as **Exhibits "K"** and **"L"** respectively are copies of the statement of claim and the statement of defence.

15. The parties exchanged affidavits of documents on June 29 and July 10, 2007. By letter dated July 20, 2007, the Receiver served notices of Examination upon the Dianor Shares Action defendants. Attached hereto and marked as **Exhibit "M"** is a copy of the correspondence dated July 20, 2007.

(e) **Recommendation to Sell the Shares Pending the Determination of their Ownership**

16. Prior to commencement of the Dianor Shares Action, by letter dated April 5, 2006 sent to Zapfe's then counsel Mr. Govedaris, the Receiver's counsel confirmed that it would recommend to the Receiver "a sale of the Dianor Resources Inc. shares with the proceeds of the sale paid into a frozen account pending a determination of the legal and beneficial ownership of the proceeds of the sale." To date, I have not received a response to that correspondence. Attached hereto and marked as **Exhibit "N"** is a copy of the correspondence dated April 5, 2006.


17. A further letter with the same advice was sent to Zapfe's and Mr. Sourlis' counsel on May 14, 2007. To date, I have not received a response to that correspondence. Attached hereto and marked as **Exhibit "O"** is a copy of the correspondence dated May 14, 2007.

18. By letter dated November 7, 2006, the Receiver's counsel advised Mr. Alexiou of the basis upon which the Receiver would be exempt from providing security for costs in the Dianor

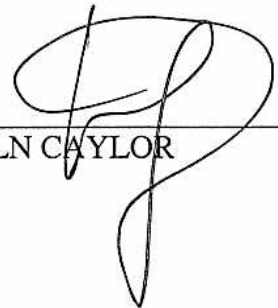
Shares Action. Attached hereto and marked as **Exhibit "P"** is a copy of the correspondence dated November 7, 2006.

19. I make this affidavit in response to the motion brought by Zapfe Holdings Inc and Michael Sourlis and for no improper purpose.

SWORN BEFORE ME at the City of )  
Toronto, in the Province of Ontario, this )  
26<sup>th</sup> day of October, 2007. )

  
\_\_\_\_\_)  
A COMMISSIONER FOR OATHS )  
in and for the Province of Ontario )

*n. J. macmillan*

  
\_\_\_\_\_)  
LINCOLN CAYLOR )