

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

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

**NOTICE OF MOTION**

THE DEFENDANTS in action no. 07-CL-6843 will make a Motion to a  
Judge presiding over the Commercial List on FRIDAY, the 28<sup>TH</sup> day of DECEMBER,

2007, at the hour of 10:00 o'clock in the forenoon or as soon after that time as the Motion can be heard at the Court House at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order granting leave for the Defendants in Action no. 07-CL-6843, Zapfe Holdings Inc. and Michael Sourlis, to intervene as parties Defendant in action no. 05-CL-6159 for the purposes of the within motion and to assert the relief sought herein;
2. An Order setting aside the order of Mesbur J. of March 9, 2006 in action no. 05-CL-6159 in so far as the said Order affects the Defendants, Zapfe Holdings Inc. and Michael Sourlis;
3. In the alternative, an Order varying the order of Mesbur J. of March 9, 2006 in action no. 05-CL-6159 and adding thereto that Michael J. Quilling, Receiver for Courtney Wallis Simpson, do grant to the Defendants, Zapfe Holdings Inc. and Michael Sourlis, a personal undertaking to indemnify them in respect of damages caused to them through the restraint of any dealing with their stock in Dianor Resources Inc;

4. An Order that the Plaintiff in action no. 05-CL-6159 post security for the costs of these proceedings (actions no. 07-CL-6843 and no. 05-CL-6159), stipulating the amount and form of such security and the time for paying the same into court;
5. In the alternative to the aforementioned personal undertaking, an Order granting leave of this Court to the Defendants Zapfe Holdings Inc. and Michael Sourlis to commence a separate proceeding against the Receiver in respect of damages in the form annexed hereto as Schedule "A";
6. An Order that a Case Timetable in action no. 07-CL-6843 be approved and set by this Honourable Court;
7. Costs of this motion on a substantial indemnity basis; and
8. Such further and other relief as to this Honourable Court may seem fit and just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Defendants have been impleaded in action no. 07-CL-6843 on the basis of their beneficial ownership of certain shares of Dianor Resources Inc. (hereinafter referred to as the "Shares") which are claimed by the Receiver to be the property of the estate of a certain Courtney Wallis Simpson;
2. a) The original receivership order of Ground J. in action no. 05-CL-6159 did not include the Shares as assets of the aforementioned estate; the Plaintiff

removed subsequently before Mesbur J. in that action to have all commercial activity with respect to the Shares enjoined by an Order of this Honourable Court;

b) The aforementioned Order of Mesbur J. in action no. 05-CL-6159 constitutes execution before judgement;

3. The Fourth Amended and Restated Initial Order of Mesbur J. made on March 9, 2006 (hereinafter referred to as the "Order") in action no. 05-CL-6159, which is a receivership proceeding, froze the Shares while the Defendants were not parties to that proceeding;

4. The Order constitutes execution before judgment in so far as it affects the Defendants;

5. There is no evidence that there is a real risk that the Defendants will dissipate the Shares or the proceeds thereof to defeat satisfaction of any judgment which might be obtained by the Plaintiff in action no. 07-CL-6843;

6. There is no evidence that the said Defendants have resorted to the movement of funds or shares from the jurisdiction of this Honourable Court or have failed to identify the location and quantum of the Shares;

7. The Plaintiff in action no. 05-CL-6159 did not offer an undertaking in damages in respect of the restraining order against the Shares;
8. The value of the shares fluctuates substantially over time as Dianor Resources Inc. is a resource stock and the Defendants have already seen a significant decline in the value of their equity in the Shares, to the prejudice of the Defendants;
9. The Defendants have counterclaimed in action no. 07-CL-6843 in respect of the losses caused by the Plaintiff's freezing of the Shares;
10. The Plaintiff in both proceedings is not a resident of Ontario nor of Canada but resides in Texas, one of the United States of America, and there is no indication that the Plaintiff has any assets within Ontario which might be made available to satisfy a judgment or an award of costs;
11. The Defendants in action no. 07-CL-6843 have been and continue to be directly and prejudicially affected by the order of Mesbur J., as the value of the Shares has declined substantially;
12. An undertaking as to damages is appropriate for any Freezing Order which is in the nature of injunctive relief;

13. The Defendants will rely on section 101(2) of the *Courts of Justice Act* and Rules 13, 31.10(1), 30.1.01(8), 37, 45, 56.01 and 59.06 of the *Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT  
THE HEARING OF THE MOTION:**

1. Affidavit of Werner Zapfe, sworn September 11, 2007 with exhibits attached thereto;
2. Affidavit of Michael Sourlis, sworn September 11, 2007 with exhibits attached thereto; and
3. Such further and other documents as counsel may advise and this Honourable Court may permit.

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Solicitors for the Defendants  
Zapfe Holdings Inc. and Michael Sourlis

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Solicitors for the Plaintiff

## SCHEDULE "A"

Court File No. :

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ZAPFE HOLDINGS INC. AND MICHAEL SOURLIS

Plaintiffs

- and -

MICHAEL J. QUILLING

Defendant

## STATEMENT OF CLAIM

TO THE DEFENDANT AS NOTED ABOVE

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff(s). 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 \$2,500.00 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 Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

DATE: September                      , 2007

Issued by: Per: \_\_\_\_\_  
Registrar  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario M5G 1E6

**TO: Michael J. Quilling  
Quilling, Selander, Cumiskey & Lownds, P.C.  
Bryan Tower  
2001 Bryan Street  
Suite 1800  
Dallas, Texas  
75201**

CLAIM

1. The Plaintiffs Zapfe Holdings Inc. and Michael Sourlis (hereinafter collectively referred to as the "Plaintiffs") claim as against the Defendant Michael J. Quilling (hereinafter referred to as the "Defendant"):
  - (a) damages in the amount of \$250,000.00 for negligence, abuse of the process of this Honourable Court and, in the alternative, wrongful interference with the economic interests and opportunities of the Plaintiffs in respect of certain shares, more particularly described in paragraph 2 below;
  - (b) pre- and postjudgment interest on the aforesaid sum pursuant to the Courts of Justice Act, R.S.O. 1990, Ch. C.43 as amended;
  - (c) their costs of this action plus all applicable taxes; and
  - (d) such further and other relief as this Honourable Court deems just.
2. The Plaintiff Michael Sourlis is an individual who is a resident of the Province of Ontario who was, at all material times, an owner of certain corporate shares in Dianor Resources Inc., also known as Ressources Dianor Inc. (hereinafter referred to as "Dianor").
3. The Plaintiff Zapfe Holdings Inc. is a corporation duly incorporated under the laws of the Province of Ontario who was, at all material times, an owner of certain corporate shares in Dianor.
4. The Defendant is a resident of Texas, one of the United States of America and is the Receiver of the estate of Courtney Wallis Simpson, York Region Realty Inc., Wallis Simpson & Associates,

Courtney Wallis Simpson carrying on business under the name and style of York Management Group and as Camco Developments and as York Group (hereinafter collectively referred to as "Simpson") pursuant to certain orders of this Honourable Court.

5. The Plaintiffs state, and the fact is, that the Defendant made certain representations to this Honourable Court on a motion made 'without notice' to the Plaintiffs herein which represented that the Plaintiffs were improperly in receipt of certain Dianor shares which had been registered in the name of Simpson, or one of them. As a result of this representation, this Honourable Court made an interlocutory mandatory injunctive order prohibiting trades with the said Dianor shares.
6. The Defendant, in making such a representation, well knew that it would result in an interlocutory order which made disposing of the Dianor shares an act of contempt and disobedience of a court order.
7. The Defendant proceeded to make the representation willfully and deliberately, with disregard to the interests of the Plaintiffs or concern for the value of their investments, and without having ascertained the true facts relating to the said Dianor shares.
8. The representation was not true and it was within the power of the Defendant to have discovered this, especially given the duties of a moving party on a 'without notice' motion for an injunction.
9. Further, the Defendant neglected, failed or refused to offer a personal undertaking as to damages in respect of this injunction, well knowing that Rule 40.03 of the Rules of Civil Procedure of Ontario required that such an undertaking be given.

10. In seeking the interlocutory injunction without proffering and granting the necessary undertaking, the Defendant knowingly and willfully circumvented an essential requirement for the aforementioned interlocutory injunction and thereby abused the process of this Honourable Court by shifting the risk of decline in the value of the Dianor shares to the Plaintiffs, which conduct is unconscionable and unreasonable and a misuse of ordinary civil process by unlawful means, as there was and is no legitimate interest in the Dianor shares for the Simpson estate nor any reason to dispense with the necessary undertaking.
11. In truth and in fact, the Dianor shares registered in Courtney Wallis Simpson's name, were at all material times, the property of the Plaintiffs and Courtney Wallis Simpson had effected the transfer of these Dianor shares into the Plaintiffs' names in writing well before the motion for the injunction.
12. The Plaintiffs state that by causing the injunction to issue and as a result of forcing the Plaintiffs to comply with it, the Defendant is obliged to indemnify and save harmless the Plaintiffs as a result of the loss in value of the 'frozen' Dianor shares.
13. The Plaintiffs state, and the fact is, that the Defendant was at all material times knowledgeable concerning the beneficial ownership of the Dianor shares, given its control over the Simpson estate and access to the necessary information or, alternatively, that the Defendant had the means of knowledge and chose not to investigate, preferring to remain willfully blind and that the Defendant had constructive knowledge of the pertinent facts and chose contrived ignorance recklessly, since he had no exposure or liability arising out of the interlocutory injunction. The Defendant chose to

exploit and capitalise upon the situation which he orchestrated to attempt to procure for the estate of Simpson further assets.

14. The Plaintiffs state, and the fact is, that the Defendant, in suppressing facts within his knowledge, information or belief in securing the injunction misused the process of this Honourable Court and attempted to and did secure a benefit for the Simpson estate without exposing himself to the burden of the necessary undertaking and, as such, has purported to profit from his own wrong.
15. The Plaintiffs plead that the value of the 'frozen' Dianor shares has decreased dramatically and that the inability to trade them has resulted in loss and damage to the Plaintiffs for which the Defendant is responsible. The Plaintiffs state that the Defendant could foresee likely damage to the Plaintiffs' economic interests through the improper interlocutory injunction.
16. The Plaintiffs propose that this action be tried at the City of Toronto.

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