

**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*

MOTION RECORD

**(Motion in Writing for Fees of the Receiver for the period July 1 to October 31, 2008
and Fees of Counsel to the Receiver for the period June 16 to October 31, 2008)**

BENNETT JONES LLP

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Solicitors for the receiver

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Barristers and Solicitors
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Plaintiff's counsel in Court File No. 05-CL-6178

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Defendants' counsel in Court File No. 07-CL-6843

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Solicitors for a claimant

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TAB 1

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

B E T W E E N:

UDAYAN PANDYA

Plaintiff

-and-

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

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

**NOTICE OF MOTION
(Motion in Writing for Fees of the Receiver for the period July 1 to October 31, 2008
and Fees of Counsel to the Receiver for the period June 16 to October 31, 2008)**

The court appointed receiver will make a motion in writing 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 in writing.

THE MOTION IS FOR:

1. Presentation of the Receiver's Tenth Report dated November 18.
2. An order that the interim fees, disbursements and GST from June 16 to October 31, 2008, are approved in the amount of \$74,711.84 and are to be paid to the counsel to the receiver,

Bennett Jones LLP, by the receiver, Michael J. Quilling, as a first charge on the receivership estate.

3. An order that the interim fees, disbursements and GST from July 1 to October 31, 2008 are approved in the amount of \$2,526.00 and are to be paid to the receiver, Michael J. Quilling, as a first charge on the receivership estate.

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 Wallis 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 defendants have been noted in default.

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 Simpson and York Realty.

The Receiver's Fees and Counsel Fees

4. Subject to paragraph 27 of the Order of the Honourable Justice Farley dated December 23, 2005, the Receiver's fees and the fees of Bennett Jones LLP, counsel to the Receiver, form a first charge from the assets recovered in the receivership.

5. As part of the within materials and in accordance with the Endorsement of the Honourable Justice Campbell dated October 3, 2008 (at Exhibit "Q"), the Receiver has reported on all matters outstanding in the receivership as well as the only remaining issue to be resolved prior to distribution.

Further Grounds

6. Rules 2 and 37.12 of the *Rules of Civil Procedure*.

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

1. The Receiver's Report dated November 18, 2008;
2. The Receiver's accounts;
3. The Affidavit of Lincoln Caylor sworn November 11, 2008;
4. The accounts of Bennett Jones LLP; and
5. Such other material as counsel may advise and this Honourable Court may permit.

TAB 2

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

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
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Defendants

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

**TENTH REPORT OF THE RECEIVER
(Dated November 18, 2008)**

Background

1. 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 defendants have not defended this action and have been noted in default. Courtney Wallis Simpson ("Simpson") pleaded guilty to several criminal and regulatory charges and was recently released from prison.

2. 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 Region Realty Inc. ("York Realty"). A copy of the Initial Order is attached and marked as **Exhibit "A"**.

3. 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. As described in greater detail below, these deposits were stolen by Simpson. A copy of the First Amended and Restated Initial Order is attached and marked as **Exhibit "B"**.

4. By order of the Honourable Justice Pepall, dated June 27, 2007, attached and marked as **Exhibit "C"**, it was ordered that the Receiver has 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) ("Lloyd's"), insurer for RECO, seeking a judicial determination of the issue of claimants' entitlement to consumer deposit insurance proceeds for deposits lost due to Simpson's conduct. Pursuant to this Order, the Receiver issued an application on August 1, 2007, which is attached and marked as **Exhibit "D"**.

5. In accordance with the Endorsement of the Honourable Justice Campbell dated October 3, 2008 (attached as Exhibit "Q"), the purpose of this tenth report of the Receiver is to:

- (a) update the court as to the status of the application against Lloyd's;

- (b) update the court as to the status of the action against Michael Sourlis and Zapfe Holdings Inc. with respect to the disputed transfer of certain Dianor Resources Inc. shares (the "Dianor Action");
- (c) describe the only remaining issue to be resolved in the receivership estate prior to distribution; and
- (d) obtain approval with respect to the fees and disbursements (and GST) of the Receiver.

Application Against Lloyd's

6. Simpson was a real estate agent who orchestrated numerous fraudulent transactions – cumulatively, more than 50 people were victimized.

7. A group of these transactions involved the purported purchase and sale of real property (the "Deposit Thefts"). There were 25 separate fraudulent transactions. The victims' deposits, which ranged in amount from \$5,000 to \$400,000, were misappropriated by Simpson. In total, approximately, \$3 million was misappropriated by Simpson through the Deposit Thefts.

8. RECO maintained an insurance policy to cover the losses incurred by the victims of the Deposit Thefts. At all material times, Lloyd's was the insurer of RECO. Simpson and York Realty, were "Registrants" under the insurance policy.

9. The narrow point of contention between the Receiver and Lloyd's concerns the limits of liability under the insurance policy. These limits are \$100,000 for each claim and \$500,000, aggregate, for each occurrence (or series of related occurrences).

10. Lloyd's maintains that the Deposit Thefts are one occurrence or a series of related occurrences such that the \$500,000 aggregate insurance policy limit applies. The Receiver argues that Lloyd's should pay each claim (as separate and unrelated occurrences) made by the victims of the Deposit Thefts up to \$100,000.

11. The difference in monetary terms between the Receiver's position with respect to the interpretation of the insurance policy and that of Lloyd's is more than \$1,500,000. The outcome of the proceeding against Lloyd's will have a significant impact on the victims' recovery in the receivership.

12. The Honourable Justice Lederman heard the Receiver's application on August 25, 2008. His Honour's reasons for judgment were released on October 8, 2008. The Receiver was entirely successful, securing more than \$2,000,000 for the victims of the Deposit Thefts and ensuring that many of these victims will recover 100% of their loss. Attached and marked as **Exhibit "E"** is a copy of the reasons for judgment. Attached and marked as **Exhibit "F"** is a sample copy of the letter sent on October 17, 2008 by the Receiver to the victims of the Deposit Thefts notifying them of the reasons for judgment. All insurance proceeds are to be paid directly to the victims of the Deposit Thefts pursuant to the Endorsement of the Honourable Justice Hoy dated April 21, 2008, attached and marked as **Exhibit "G"**.

13. Lloyd's recently delivered a notice of appeal, which is attached and marked as **Exhibit "H"**. The Receiver has notified the victims of the Deposit Thefts of Lloyd's intention to appeal the decision of the Honourable Justice Lederman.

Dianor Action

14. In accordance with the terms of the Initial Order, the Receiver has undertaken an extensive investigation of Simpson's assets.

15. On January 10, 2006, less than two months after the date of the Initial Order, this investigation into Simpson's assets led to suspicion that share certificate no. 0-01476 representing 301,923 common shares of Dianor Resources Inc. and share certificate no. 0-01630 representing 217,391 common shares of Dianor Resources Inc. (the "Dianor Shares") had been transferred into two individual accounts at Royal Bank of Canada ("RBC") in contravention of the Initial Order. At that time and in the few months that followed, the Dianor Shares were worth hundreds of thousands of dollars. For example, on April 5, 2006, the Dianor Shares were worth \$862,061.24.

16. On March 9, 2006, the Receiver obtained an order from the court requiring RBC to freeze the Dianor Shares until the propriety of the apparent transfer could be better assessed. On January 22, 2007 the Receiver commenced the Dianor Action. The Dianor Action involved competing ownership claims over the Dianor Shares.

17. The Receiver engaged in several without prejudice settlement discussions in an effort to resolve the Dianor Action without further court intervention. The value of the Dianor Shares plummeted. As of November 10, 2008, the Dianor Shares were worth approximately, \$49,334.83.

18. The Receiver has settled the Dianor Action on the basis of payment to the receivership estate in the amount of \$80,493.67. The other terms of settlement are contained in the order of the Honourable Justice Campbell attached and marked as **Exhibit "I"**. All terms of settlement in the Dianor Action have been met.

Remaining Issue in Receivership

19. With the exception of the appeal of the Honourable Justice Lederman's reasons for judgment in the Lloyd's matter (at Exhibit "E"), there are no remaining issues to be resolved in the receivership. Specifically, all real estate forming part of the receivership estate has now been sold. The matter involving certain mortgages obtained by Ajay Pahwa against three properties owned by Simpson and more particularly described as part of the Receiver's 8th report, has been settled and, as stated above, all terms of settlement in the Dianor Action have been completed.

20. All claims in the receivership estate have been thoroughly vetted by the Receiver. However, the Receiver does intend to meet with Simpson to review the claims prior to final approval and distribution. In addition, no distributions can be made until all avenues of appeal from the reasons for judgment of the Honourable Justice Lederman have been exhausted. Excluding the RECO/Lloyd's insurance funds, it is anticipated that there will be little, if any,

money to distribute. Again, the extent and the number of claims in the receivership estate will vary significantly based on the outcome of the Lloyd's appeal(s).

Receiver's Fees Motions

21. Subject to paragraph 27 of the Order of Justice Farley dated December 23, 2005, the Receiver's fees and the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership herein. A copy of the Order of Justice Farley dated December 23, 2005 is attached and marked **Exhibit "J"**.

22. The Receiver and the Receiver's counsel first sought approval of their interim accounts (dated October 11, 2005 to April 12, 2006) on a motion before Justice Spies heard on April 26, 2006. Justice Spies, in her decision on the motion dated June 8, 2006, approved the Receiver's fees. Attached and marked as **Exhibit "K"** is a copy of Justice Spies' Decision on Motion dated June 8, 2006.

23. The Receiver and the Receiver's counsel next sought approval of their interim accounts (dated April 1 to July 31, 2006) on a motion before Justice Pepall heard on October 10 and November 15, 2006. Justice Pepall's endorsement is attached hereto as **Exhibit "L"**. Justice Pepall requested a billing summary setting out the Receiver's hours, fees and disbursements which was filed with the court and the motion was subsequently brought back as a motion in writing to deal with the remaining issues.

24. Justice Campbell heard the motion in writing and granted the requested relief. The Order of Justice Campbell dated March 5, 2007 is attached hereto as **Exhibit "M"**.

25. The Receiver next sought approval of his interim accounts (dated August 1, 2006 to June 30, 2007) on a motion in writing (Notice of Motion dated April 4, 2008). Justice Campbell heard the motion in writing and his Endorsement is attached hereto as **Exhibit "N"**.

26. As requested by Justice Campbell in his endorsement (Exhibit "N"), the receiver's counsel submitted a supplementary motion record containing back up documents regarding disbursements. Justice Campbell's Endorsement and Order are collectively attached as **Exhibit "O"**.

27. The Receiver and Receiver's counsel next sought approval of their interim accounts (dated July 1, 2007 to March 31, 2008) on a motion in writing (Notice of Motion dated May 2, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "P"**.

28. The Receiver and Receiver's counsel next sought approval of their interim accounts (Receiver's accounts dated April 1 to June 30, 2008, Receiver's counsel's accounts dated April 1 to June 15, 2008) on a motion in writing (Notice of Motion dated July 23, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "Q"**.

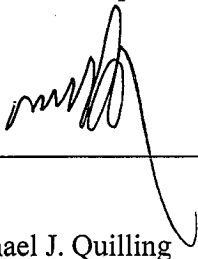
29. In the period commencing July 1, 2008 through to October 31, 2008 the Receiver incurred fee accounts in the amount of \$1,960.00, disbursements in the amount of \$468.00 and GST in the amount of \$98.00.

30. The Receiver has reviewed the accounts related to this receivership and the summary of fees and disbursements (**Exhibits "R" and "S"**) and verily believes that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter.

31. The Receiver has reviewed the material appearing at Tabs 3, 4, 5 and 6 of this Motion Record, including the Affidavit of Lincoln Caylor, and verily believes that these documents accurately reflect the time spent, fees incurred and disbursements made by counsel to the Receiver (in the total amount of \$74,711.84) in conjunction with this matter.

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

WSLegal\056445\00001\4959424v1

Exhibit A

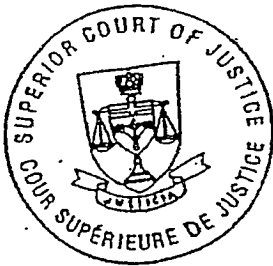
**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
MR. JUSTICE GROUND

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THURSDAY, THE 17TH DAY OF
NOVEMBER, 2005

BETWEEN:



UDAYAN PANDYA

Plaintiff

- and -

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

Defendants

In the Matter of the Class Proceedings Act, 1992

ORDER FOR AN APPOINTMENT OF AN INTERIM RECEIVER

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

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

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

1. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson and York Realty pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.

2. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.

3. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.

4. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.

5. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other

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

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

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

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

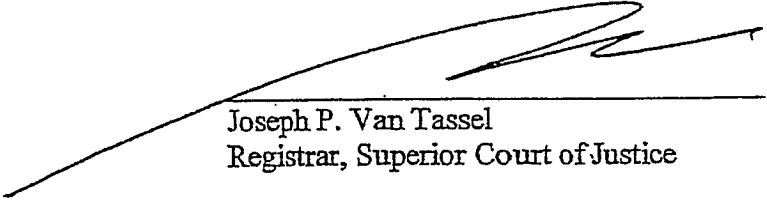
25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership:

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

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

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

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



Joseph P. Van Tassel
Registrar, Superior Court of Justice

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

NOV 17 2005

PER/PAR:

NB

Schedule "A"

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

Schedule "B"

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

Legal Description:

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

2. PIN 03715-0004
Whitechurch, Ontario

Legal Description:

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

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

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

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

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

Schedule "C"

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

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

v.

Udayan Pandya
Plaintiff

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

BETWEEN:

UDAYAN PANDYA

Plaintiff

- and -

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

Defendants

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

FIRST AMENDED AND RESTATED INITIAL ORDER

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

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

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

Preservation of Assets

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

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

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

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

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

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

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

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

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

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

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

Documents and Investigations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other

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

No Proceedings Against the Debtor or the Property

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

No Exercise of Rights or Remedies

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

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

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

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

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

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

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

31. **THIS COURT ORDERS** that the Receiver may serve any court materials in these proceedings (including, without limitation, application records, motion records, facta and orders) on all represented parties electronically, by e-mailing a PDF or other electronic copy of such materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list, and posting a copy of the materials to an internet website to be hosted by Quilling Selander Cummiskey Lownds (the "Website") as soon as practicable thereafter, provided that the Receiver shall deliver hard copies of such materials to any party requesting same as soon as practicable thereafter.

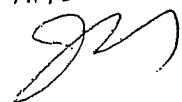
32. **THIS COURT ORDERS** that any party in these proceedings may serve any court materials (including, without limitation, application records, motion records, facta and orders) electronically, by emailing a PDF or other electronic copy of all materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list; provided that such party shall deliver both PDF or other electronic copies and hard copies of full materials to counsel to the Receiver and to any other party requesting same and the Receiver shall cause a copy to be posted on the Website, all as soon as practicable thereafter.

33. **THIS COURT ORDERS** that the Receiver be permitted to (i) enter into a new listing agreement with John Walley of Sutton Group in Stouffville, (ii) sell Simpson and York Realty's real property assets and contents, and (iii) make it a condition of the new listing agreement that all sales are subject to court approval and to hold all proceeds from the sales in an interest bearing account;

34. **THIS COURT ORDERS** that the Receiver, if so advised, be permitted to bring a lawsuit as against Lisa Hurst and seek a certificate of pending litigation in order to regain possession of the properties alleged to be rightfully owned by Simpson and if successful, to sell those properties, the proceeds of which will be deposited into an interest bearing account;

35. **THIS COURT ORDERS** that the Receiver deal directly with the Real Estate Council of Ontario on behalf of all of the victims of the real estate deposit scheme who have submitted claims;

of the victims for the benefit of the estate

36. **THIS COURT ORDERS** that the Receiver or Receiver's counsel may examine Adam Cox and compel production of documents relevant to the real estate deposit scheme;

37. **THIS COURT ORDERS** that the Receiver may commence an action against Ajay Pahwa in respect of the mortgages held by Mr. Pahwa in relation to three of Simpsons' properties;

38. **THIS COURT ORDERS** that a bank account be opened in Toronto at a bank selected by the Receiver in Courtney Wallis Simpson's name, which account may accept deposits from Simpson but from which funds can be accessed only by the Receiver through Bennett Jones LLP;

39. **THIS COURT ORDERS** that all proceedings as against Simpson, York Realty, Wallis Simpson & Associates and York Management Group be stayed and that any and all consents to judgment endorsed by Simpson in her personal capacity or as director of York Realty or York Management Group, be deemed ineffective;

40. **THIS COURT ORDERS** that the posting of information on the Receiver's website be approved;

41. **THIS COURT ORDERS** that the claim form as filed with the court be approved;

42. **THIS COURT ORDERS** that, unless otherwise provided herein or by this Court, no document, order or other material need be served on any person in respect of these proceedings unless such person has served a Notice of Appearance on the solicitors for the Receiver and has filed such notice with this Court.

43. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to

take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the *Ontario Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

⁴²
44. **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.

Dec 15/05

order to issue
in all for
J. H. H. H.

Schedule "A"

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

Schedule "B"

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

Legal Description:

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

2. PIN 03715-0004
Whitechurch, Ontario

Legal Description:

PT LT 30 PL 54 Stouffville; PT LT 31 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

FIRST AMENDED AND
RESTATED INITIAL ORDER

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

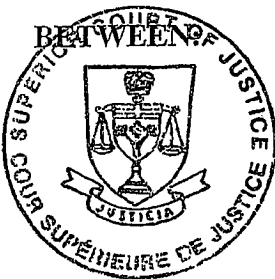
Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

Exhibit C

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *Madam*) WEDNESDAY, THE ²⁷21ST DAY OF
JUSTICE *Repall*) *June*
) ~~MARCH~~, 2007 *mp*



UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS, SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

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

ORDER

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

ON READING the materials filed, and on hearing the submissions of counsel for the receiver, *and counsel for the plaintiffs in court file no. 05-CL-6178,* no one appearing for the defendants who have been noted in default,

1. **THIS COURT ORDERS** that the receiver has 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. **THIS COURT ORDERS** 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.

✓ 3. *THIS COURT ORDERS that the receiver's*
counsel shall, on or before ~~July 31~~^{August 24}, 2007,
serve and file an action plan and
litigation budget with respect to
the proceedings described in paragraph
1 + present it to me at a 9:30 appointment
to be arranged by counsel. ✓

L. Repall, J.

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

JUN 27 2007

PER/PAR: *SV*

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

Proceeding commenced at Toronto

ORDER

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

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

Solicitors for the receiver

Exhibit D

Court File No.: 07-C-7122

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

BETWEEN:

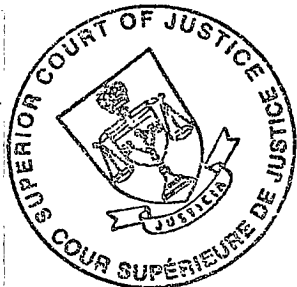
MICHAEL J. QUILLING, in his capacity as court appointed
receiver for COURTNEY WALLIS SIMPSON

Applicant

- and -

NICHOLAS SMITH ATTORNEY IN FACT IN
CANADA FOR LLOYD'S UNDERWRITERS

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT

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

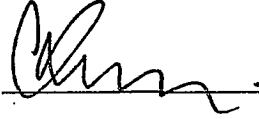
THIS APPLICATION will come on for a hearing on _____, 2007 and thereafter as the judge may direct at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

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: August 01, 2007

Issued by: 

Address of court office:

330 University Avenue
Toronto, Ontario
M5G 2T6 1R7-C

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 loss suffered by each consumer in a trade in real estate arising from the theft, fraud, misappropriation or wrongful conversion directly or indirectly by the Registrants of moneys or other property entrusted to or received by Simpson and/or York Realty in her or their professional capacity 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 \$3,660,000.00 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 \$3,660,00.00.

16. Lloyd's has refused to pay the claims in the amount of \$3,660,00.00.

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. Each misappropriated deposit is a theft, fraud, misappropriation or wrongful conversion directly or indirectly by a Registrant which 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. More than 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 pursuant to the Insurance Policy is approximately \$3,660,00.00.

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 affidavits and materials as counsel may advise and this Honourable Court may permit.

Date of Issue: , 2007

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

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

Solicitors for the applicant

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

v.

Nicholas Smith Attorney in Fact in
Canada for Lloyd's Underwriters
Respondents

Court File No. 07-6-7122

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

NOTICE OF APPLICATION

BENNETT JONES LLP
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Toronto, Ontario
M5X 1A4

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Tel: 416-777-6121 / 4629
Fax: 416-863-1716
LSUC Nos. 37050L/43529J

Solicitors for the applicant

Exhibit E

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

MICHAEL J. QUILLING, IN HIS CAPACITY AS)	<i>Lincoln Caylor & David Rainsberry,</i>
COURT APPOINTED RECEIVER FOR COURTNEY)	for the Applicant
WALLIS SIMPSON)	
)	
Applicant)	
)	
- and -)	
)	
NICHOLAS SMITH ATTORNEY IN FACT IN)	<i>Robert L. Falby, Q.C.,</i>
CANADA FOR LLOYD'S UNDERWRITERS)	for the Respondent
)	
Respondent)	
)	
)	
)	
)	Heard: August 25, 2008

LEDERMAN, J.

Nature of Application

[1] This application seeks the interpretation of the limits of liability of an insurance policy held by the Real Estate Council of Ontario to cover losses of consumer deposits. The policy provides that each claim has a limit of liability of \$100,000, but that the aggregate liability for each "occurrence" or "series of related occurrences" is \$500,000. The question is whether the claims at issue constitute separate occurrences, and if so, are any of these occurrences part of a series of related occurrences.

Facts

[2] Michael J. Quilling ("Applicant") is the court-appointed receiver of Courtney Wallis Simpson ("Simpson"). He acts on behalf of victims of a real estate deposit scheme, which is one of two different fraudulent schemes put in place by Simpson and her company, York Region

Realty Inc. The deposit scheme involved the purported purchase and sale of real property. Simpson stole 25 deposits, ranging in size from \$5,000 to \$400,000 from 22 different victims (3 of the victims are claiming twice).

[3] In addition to the deposit thefts, Simpson created a 'Ponzi' scheme, soliciting money from individuals to "invest" in "interim occupancy mortgages". She used the misappropriated deposits to fund her mortgage scheme. Simpson was convicted and sentenced to five years in jail and a restitution order for \$4.5 million was issued. The trial judge described the victims of both schemes as individual investors, not institutions, many of whom lost their life savings.

[4] Victims of the deposit thefts are covered by consumer real estate deposit insurance, held by the Real Estate Council of Ontario ("RECO"). RECO administers the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30. ("Act") on behalf of the Ontario government. Its mandate is to regulate the activity of trade in real estate in the public interest. The insurance policy is provided by Lloyd's Underwriters ("Respondent").

[5] The policy stipulates in the "Consumer Deposit Insurance Extension" section that the insurer agrees:

To pay on behalf of the Insured the amount of any Claim for Loss sustained by a Claimant in a trade in real estate in the Province of Ontario arising out of an Occurrence discovered during the Policy Period.

[6] However, there are coverage limits built into the policy. Each claim is limited to a \$100,000 recovery, where a "claim" is a demand of money arising out of an "Occurrence". An Occurrence is defined as:

"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, director, officer or manager of a Registrant of moneys or other property entrusted to or received by the Registrant in the Registrant's Professional Capacity.

[7] In addition, there is a \$500,000 aggregate limit for any one Occurrence or series of related Occurrences. The policy states:

The Limit of Liability – aggregate each Occurrence stated in the DECLARATIONS shall be the maximum liability of the Insurer and the Named Insured in any one Occurrence or series of related Occurrences. If the total amount of all Claims in any one Occurrence exceeds the aggregate Limit of Liability, then all Claims will be settled on a pro-rata basis in the same proportion that the aggregate Limit of Liability bears to the total amount of all Claims.

[8] The Applicant argues that each deposit theft was a separate, unrelated Occurrence. The Respondent argues that they constitute a single Occurrence, and in the alternative, that they are a "series of related Occurrences" such that the \$500,000 limit applies.

Issues

1. Do the 25 deposit thefts constitute a single Occurrence within the meaning of the policy?
2. If not, do they, or a subset of them, constitute a series of related Occurrences, triggering the aggregate limit of liability?

1. *Single Occurrence or Separate Occurrences?*

Positions of the Parties

[9] Both the Applicant and the Respondent argue that the policy definitions are sufficiently clear on their face, but each holds they mean a different thing.

[10] The Applicant submits that Occurrence under the policy is defined in the singular. It is "...the theft" not "thefts". To consider all 25 separate acts of theft as one would stretch the singular "theft" to mean "thefts" which is beyond what the word can bear. The Applicant points out that there are no words *within* the definition of Occurrence to the effect of "an act or series of acts", nor indeed "the theft or series of thefts".

[11] The acts by Ms Simpson were separate, perpetrated on different days in relation to different transactions, with many different victims. The Applicant relies upon Hilliker's *Liability Insurance Law in Canada*, in which it states that all injuries flowing from one cause are one occurrence, but "[w]here, however, separate injuries result from separate acts, even though the acts may be of the same nature, each act constitutes a separate occurrence."¹

[12] The Respondent also relies upon the definition of Occurrence but points to the use of the plural word "moneys". The plural, it is claimed, indicates that Occurrence includes a scheme involving multiple instances of theft of money, or a single theft encompassing several transactions. It was agreed between the parties that the thefts by Ms Simpson were a fraudulent scheme. Therefore, the Respondent argues that they are a single "Occurrence".

The thefts are not a single Occurrence

[13] That the deposit thefts were part of a scheme does not make them a single Occurrence. The wording of the policy is plain: an "occurrence" means "...the theft, fraud, misappropriation or wrongful conversion" of deposits. To find that the 25 thefts perpetrated by Ms Simpson are a single Occurrence stretches the singular into plural and may also render the aggregate limit of liability meaningless.

¹ Gordon Hilliker, *Liability Insurance in Canada*, 3d ed. (Butterworths, 2001) pp. 63-4.

[15] Therefore, each of the 25 deposit thefts is a separate Occurrence.

[16] Having found each theft to be a separate Occurrence, it is necessary to determine whether they constitute a series of related thefts. This policy contains a coverage limit of \$500,000 in any one Occurrence or “series of related” Occurrences. If this limit applies, all 22 victims will share *pro rata* in the \$500,000.

[17] The Applicant argues that the deposit thefts are separate, unrelated occurrences, relying on *Pacific Rim Nutrition Ltd. v. Guardian Insurance Co. of Canada*². In that case, a bookkeeper stole cash portions of daily deposits, and on one occasion, stole money from the vault. The employer's employee theft insurance policy read:

[18] The trial judge found the deposit thefts to be a series of related acts, but held the vault theft was not part of the series, as the crime was dissimilar.

[19] To arrive at this conclusion, the trial judge reviewed a U.S. case which found that "...the common understanding of the word 'related' covers a very broad range of connections, both causal and logical".³ He then turned to the dictionary definition of "related" as "any connection, correspondence, or association" and held that "related" was not ambiguous. Since the deposit thefts were all by the same person, against the same employer, using the same method, they were all related because there was "no doubt a connection or association between each". However, he

³ See *Gregory v. The Home Insurance Co.*, 876 F.2d 602 (7th Cir. 1989).

found that the vault theft "was not in any way related" to the deposit thefts, because of the change in method of operation.⁴

[20] On appeal, the British Columbia Court of Appeal upheld the decision, noting that the decision in *American Commerce Insurance Brokers Inc. v. Minnesota Mutual Fire and Casualty Co.*⁵ supported the trial judge's approach. That case dealt with an employee of American Commerce who stole premiums paid in cash to the company, and who forged payroll cheques to herself. The policy had a limitation deeming all loss resulting from an act or series of related acts to be one occurrence. The court rejected a strict causal interpretation of "related" and said:

that a court may consider several factors in concluding whether dishonest acts are part of a "series of related acts," including whether the acts are connected by time, place, opportunity, pattern, and, most importantly, method or *modus operandi*.

[21] On that basis, the *Minnesota Mutual* court found that the premium thefts and payroll frauds were separate, unrelated occurrences.

[22] The Applicant submits that, similar to *Pacific Rim* and *Minnesota Mutual*, the deposit thefts are not related because Simpson's *modus operandi* was different in each case: different purchase and sale agreements, different warranties and representations, different properties, were used to secure a deposit from each victim.

[23] The Applicant also argues that the identity of the victim is germane. Counsel referred to professional liability cases as examples of this analysis. These cases have policies which limit recovery per occurrence, deeming "more than one act, error or omission...in relation to the same professional service" to be one occurrence. In *Yang v. Canadian Lawyers' Insurance Assn*⁶, the trial judge held that a lawyer who had negligently invested the money of individuals unknown to each other in a shopping centre development had committed errors in separate professional services provided to each investor. In coming to this conclusion, the judge reviewed a Canadian case, *Royal Trust Corp of Canada v. American Home Assurance Co.*,⁷ and several U.S. cases. All the cases cited focused on who the client was, and if there were more than one, whether a distinct duty or service could be discerned.⁸ Similarly, here, the Applicant argues, the thefts were perpetrated against different victims, and must therefore be unrelated.

⁴ *Pacific Rim*, *supra* note 2, at paras. 53-56.

⁵ 551 N.W. 2d 224 (Minn. 1996) [*Minnesota Mutual*].

⁶ (1996) 133 D.L.R. (4th) 228, [1996] A.J. No. 172 (Q.B.), *aff'd* (1996) 147 D.L.R. (4th) 31, (C.A.), leave to appeal to S.C.C. refused, [1997] SCCA No. 318.

⁷ (1992) 90 D.L.R. (4th) 582, [*Royal Trust*], *aff'd* (1993) 100 D.L.R. (4th) 447 (N.S.C.A.).

⁸ *Royal Trust* was decided on the basis that the same service was provided to the same client, using the same instructions, between the same borrower and lender, albeit involving five properties. The properties were all subject to the same prior mortgage interest; the lawyer was supposed to have sought postponement agreements on them. The court found it "highly unlikely" that the lawyer would have been negligent with respect to one set of mortgages and not for the others (See p.604).

[24] The Respondent counters that the plain, dictionary, meaning of "related" includes "associated or connected", and "of the same type", which would include the deposit thefts at issue. In addition, prior case law has centered upon whether the perpetrator was the same in each theft, or in the case of multiple thieves, whether there was a conspiracy. According to the Respondent, Simpson was the sole thief, and so the thefts must be related. In *482467 Ontario Ltd. v. Wellington Insurance Co.*⁹ there were multiple thieves. Five or six employees of a Mr. Submarine shop had stolen cash deposit money; one employee had committed deposit thefts on three occasions. In holding the thefts were not related, the court noted there were "nine discrete transactions involving at least five different (and maybe a sixth) employees." The court went on to say at para. 11:

It has not been argued, nor do the circumstances reasonably invite the inference, that the employees were involved in any form of conspiracy such as to constitute the prima facie discrete acts into a "series of related acts". The most cogent argument that could be made on behalf of the responding party is to urge that the transactions associated with "A.M.P." be treated as "a series of related acts".

[25] *Pacific Rim*, in the Respondent's view, also supports the conclusion that the deposit thefts are related occurrences. In that case, the deposit thefts were "part of a systemic or continuing ongoing plan to steal cash from the insured"; here, too, the thefts were part of such a scheme.

Meaning of the word "related"

[26] The facts of the case clearly provide a series of Occurrences, so the meaning of "related" must be determined in the context of this policy. The dictionary definitions of the word "related" are as follows:

Canadian Oxford Dictionary lists "associated or connected with" and "of the same type; in the same group, category".¹⁰

Shorter Oxford English Dictionary: "having relation; having mutual relation; connected", where "relation" is defined as "the existence or effect of a connection, correspondence, or contrast between things; the particular way in which one thing stands in connection with another; any connection or association conceivable as naturally existing between things."¹¹

[27] If we take the definition to be "of the same type; in the same group, category, etc.", any two acts of theft are related, merely in their being thefts, without need for any other connection in time, place, or person. By this definition, the aggregate limit would apply to all thefts of all deposits by any Registrant for the duration of the policy. This would be an unreasonable

⁹ [1991] O.J. No. 1206 (Gen. Div.) [Wellington].

¹⁰ *Canadian Oxford Dictionary*, 2d ed., s.v. "related".

¹¹ *Shorter Oxford English Dictionary*, 5th ed., s.v. "related" and "relation".

interpretation of the policy. Clearly, then, not just any relation is necessary, but a particular kind of relation.

[28] As the word is broad in meaning, we must determine what its scope is in the context of this policy. The term "related" implies degree: things can be closely or tangentially related. The goal, then, is to determine what degree of relatedness fits with the intention of the parties to this insurance contract, given the objective of the contract and the facts surrounding it.

[29] As a reminder, the word appears under Coverage Limits, section 3(b):

The Limit of Liability – aggregate each Occurrence stated in the DECLARATIONS shall be the maximum liability of the Insurer and the Named Insured in any one Occurrence or series of related Occurrences.

[30] The provision is contained in a section entitled "Coverage Limits" within a "Consumer Deposit Insurance Extension" to RECO's Errors & Omissions Insurance policy. The thrust of the policy is that the insurer agrees

To pay on behalf of the Insured the amount of any Claim for Loss sustained by a Claimant in a trade in real estate in the Province of Ontario arising out of an Occurrence discovered during the Policy Period.

[31] In the definitions, the following terms are germane:

"Claim" means a demand for money arising out of an Occurrence.

"Claimant" means a customer or client of a **Registrant** and includes an individual or any proprietorship, partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm, or other legal or commercial activity.

"Loss" means loss of deposit in the form of moneys or other property which has been entrusted to or received by a **Registrant** in his/her **Professional Capacity** from a customer or client arising out of a trade in real estate but does not include **Commission**.

"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, director, officer or manager of a **Registrant** of moneys or other property entrusted to or received by the **Registrant** in the **Registrant's Professional Capacity**.

[32] These definitions paint a clear picture of the intention of the parties to create protection for consumers who provide deposits to a registered real estate agent or broker. This impression is reinforced by the circumstances surrounding the contract. The Statement of Agreed Facts

explains that RECO, who maintains the policy, administers the *Real Estate and Business Brokers Act, 2002*¹² on behalf of the province. RECO's mandate is to "regulate the activity of trade in real estate in the public interest".¹³ The *Act* requires deposit insurance for consumers.¹⁴

[33] These facts, and the wording of the above definitions, point to the conclusion that the identity of the consumer claimant would be an important factor in interpreting the wording of the policy.

[34] *Pacific Rim* and *Minnesota Mutual* identified other factors to be considered, including time, place, opportunity, pattern, and most importantly, method. The Applicant provided affidavits of two victims outlining the various documents, conditions, and representations used by Simpson in perpetrating the various thefts, in an effort to show that each transaction was varied from the others. This was likely in light of the emphasis placed in both those cases on *modus operandi* as a controlling factor. That factor might have more importance in employee theft cases, but in the case at bar, involving consumer deposit insurance, the identity of the victim is the key determinant, because this accords with the intentions of the parties to protect consumers, as discerned from the wording and origin of the policy. In this regard, the professional liability cases such as *Yang* and *Royal Trust* are analogous. They turn upon the duty and service rendered separately to each client, just as here the definition of relatedness should turn upon the identity of the client.

[35] The Respondent argued that *Wellington* and *Pacific Rim* demonstrate that where the identity of the perpetrator is the same, or the perpetrators were acting in a conspiracy, the resulting thefts are related. However, as noted above, the relatedness must be determined in light of the policy and its purpose. Both of those cases involved a policy designed to manage the risk of one party, the employer. In so far as the identity of the party suffering the loss is part of the matrix of factors to be considered, the identity was fixed. The policy at issue manages the risks faced by consumers of real estate, so the fact that all thefts were perpetrated by one person must be weighed against the fact that there were many different and unrelated victims, all of whom were clients of Simpson.

[36] From the material provided, it would appear that 22 of the 25 transactions would be unrelated from the next, involving different victims and different properties. The cases of multiple fraud against a single victim would, however, be captured by the aggregate limit, given the information available. In those cases, the thief is the same, the victim is the same, and the type of occurrence causing the loss is the same.

[37] It should be noted that in other circumstances, much like in *Pacific Rim*, multiple losses of one victim might not be related.

¹² S.O. 2002, c. 30, Schedule C [the *Act*].

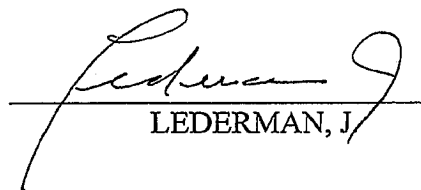
¹³ Statement of Agreed Facts, Application Record, Tab B, paras. 11, 12.

¹⁴ See O. Reg. 579/05, s. 11, enacted under the *Act*. Other provinces have created statutory assurance funds to achieve a similar purpose.

Conclusion

[38] Therefore, an order will go declaring that each of the deposit thefts in respect of the 22 victims made by Simpson are separate occurrences of "theft, fraud, misappropriation or wrongful conversion" of funds and, except for the additional deposit thefts of 3 of the victims, they do not constitute a "series of related occurrences" within the meaning of the policy.

[39] If the parties cannot otherwise agree as to costs of the application, they may make written submissions within 30 days.


LEDERMAN, J.

DATE: October 8, 2008

COURT FILE NO: 07-CL-7122
DATE: 20081008

**SUPERIOR COURT OF JUSTICE
ONTARIO
Commercial List**

MICHAEL J. QUILLING, IN HIS CAPACITY AS COURT
APPOINTED RECEIVER FOR COURTNEY WALLIS
SIMPSON

- AND -

NICHOLAS SMITH ATTORNEY IN FACT IN CANADA
FOR LLOYD'S UNDERWRITERS

BEFORE: THE HONOURABLE MR. JUSTICE
SIDNEY N. LEDERMAN

REASONS FOR JUDGMENT

LEDERMAN, J.

DATE: October 8, 2008