

**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. YORK MANAGEMENT GROUP
AND CAMEO INVESTMENTS

Defendants

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

**AFFIDAVIT OF COURTNEY WALLIS SIMPSON
(Sworn December 22, 2005)**

I, Courtney Wallis Simpson, of the town of Stouffville, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a defendant in this matter. Accordingly, I have personal knowledge of the matters deposed to in this affidavit. Where I rely upon information received from others, I state the source of the information and verily believe it to be true.
 2. This affidavit is submitted in support of the plaintiff's motion returnable December 23, 2005.
- 12/22

The Mortgage Scheme

3. In 1998, I devised a scheme in which investors provided me with funds for the purpose of investing in interim occupancy mortgages. I told the investors that I had a guaranteed investment vehicle in which the investor would provide funds to facilitate a purchaser moving into a condominium (prior to closing of the condominium purchase). I represented to the investors that prior to moving into the condominium that purchasers were required to put down a 25% deposit. I told the investors that my company funded these interim occupancy funds for a return of \$800 to \$1,000 per \$5,000 deposit required.

4. Investors gave me money under this scheme. I would then, among other things, redirect these funds to previous investors to repay their principal investment with profit.

The Promissory Notes

5. Ajay Pahwa ("Pahwa") was an investor in the mortgage investment scheme. He initially became involved in the scheme in November 2004. He provided me with approximately \$200,000 to invest in the scheme and I provided him with the return of his principal investment plus approximately a further \$20,000 sixty days later. In or about March 2005 he provided me with further funds and he secured his investments by way of promissory notes to which he set the terms.

6. Pahwa advanced approximately \$400,000 to me for investment. As a condition of advancing me the money, Pahwa demanded that I execute promissory notes with interest in excess of 60% per annum.

7. Pahwa charged me 10% to 20% of \$100,000 per week on the promissory notes. Pahwa demanded payment of 10% per day compounded in the event of non-payment. He further demanded payment of an "additional late fee" of \$1,000.00 per day for every day that payment was not received. Attached hereto and marked as **Exhibit "A"** to my affidavit is an unsigned copy of one of the promissory notes that I entered into with Pahwa.

8. I paid Pahwa \$50,000 per week every week for approximately six months. This amounts to a return of \$1,200,000 for a \$400,000 investment.

The Pahwa Mortgages

9. In order to secure his investment, Pahwa obtained mortgages in the total amount of \$870,000 against three of my properties. Specifically, Pahwa registered the following mortgages:

(a) \$210,000 mortgage registered on February 10, 2005 on:

PIN 03715-0004, 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 (the "6072 Main Street Property");

(b) \$220,000 mortgage registered on March 9, 2005 on:

PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2
65R256J4 (the "Stouffer Street Property"); and

- (c) \$220,000 mortgage registered on March 8, 2005 and a Notice of Agreement Amending the Charge registered on June 28, 2005 increasing the principal amount to \$440,000:

1038 Kawagama Lake Road, Dorset, ON, Con 13, PT LT 1
RP19R3154, Parts 1, 6, 7 (the "Kawagama Property").

10. Attached hereto and marked as **Exhibits "B", "C" "and "D"** to my affidavit are copies of title documents and instruments showing the mortgages registered in favour of Pahwa.

11. The underlying debt provided as consideration for the mortgages is not identified on the mortgage documents. I did not register the promissory notes on the title of my properties (described above) because I did not have time. The mortgage amounts are related to the promissory notes.

12. I have repaid the principal on the mortgages. I have paid Pahwa approximately \$800,000 and \$1,200,000 in repayment of funds advanced in the total amount of approximately \$400,000, inclusive of \$300,000 in principal and \$100,000 in deferred profit. Pahwa continues to demand further payments. I am not able to confirm the amount that I paid to Pahwa because the York Regional Police currently have possession of all my business records, including my bank records.

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

AFFIDAVIT OF COURTNEY
WALLIS SIMPSON
(Sworn December 22, 2005)

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

Lincoln Caylor / Emily Atkinson
Tel: (416) 777-6121 / 5740
Fax: (416) 863-1716
LSUC Reg. No. 37030L/50682L

Solicitors for the plaintiff

000203