

**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,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
AND CAMEO INVESTMENTS

Defendants

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

**THIRD REPORT OF THE RECEIVER
(Dated January 13, 2006)**

Background

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

2. By order of the Honourable Mr. Justice Farley dated December 15, 2005 (the "Procedural Order"), the Receiver's authority was extended over the assets of Courtney Wallis Simpson c.o.b. as York Management Group ("York Management"), the action as against Cameo Investments was dismissed, and subject to the confirmation by the appointed judge in the class proceedings, the action commenced as court file number 05-CL-6178 (the "Mortgage Fraud Scheme Class Action") is to be tried together or immediately after this class action. A copy of the Procedural Order is attached hereto and marked as **Exhibit "B"**.

3. Also by order of the Honourable Mr. Justice Farley dated December 15, 2005 (the "First Amended and Restated Initial Order"), all proceedings, rights and remedies in respect of the remaining defendants, the Receiver or the remaining defendants' property were stayed. Further, it was ordered that the Receiver may enter into a new real estate listing agreement, that the Receiver deal directly with the Real Estate Council of Ontario ("RECO") on behalf of the class members who have submitted claims, that Adam Cox be examined and that an interest bearing bank account be opened to receive deposits. A copy of the First Amended and Restated Initial Order is attached hereto and marked as **Exhibit "C"**.

4. By order of the Honourable Mr. Justice Farley dated December 23, 2005, (the "Second Amended and Restated Initial Order"), the Receiver was granted the power to challenge the validity, quantum and priority of the mortgages held by Ajay Pahwa (the "Pahwa Mortgages"). The exercise of power of sale or other enforcement upon the Pahwa Mortgages was restrained, pending further order of the Court. It was further ordered that upon court approved sale of the properties, the amounts claimed by Ajay Pahwa or such amount as directed by the court are to be

held in a separate bank account pending further order of the court. A copy of the Second Amended and Restated Initial Order is attached hereto and marked as **Exhibit "D"**.

5. The purpose of this Third Report of the Receiver (the "Third Report") is to provide the Court with a status update with respect to the Receiver's activities since December 23, 2005, the progress of the receivership generally and to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver.

The Receiver's Activities

6. Since the Second Amended and Restated Initial Order, issued on December 23, 2005, the Receiver has:

- (a) Communicated with Domenic Serra of Harris & Partners Inc., Trustees in Bankruptcy regarding the bankruptcy of Simpson and York Region Realty;
- (b) Continued to follow up with bank representatives to ensure that accounts have been frozen and to collect and review all relevant account statements and transit numbers;
- (c) Served the Order of Justice Ground dated November 17, 2005 and the Order of Justice Farley dated December 15, 2005 on Greater Toronto Area Savings and Credit Union;
- (d) Communicated with RBC Securities and Investigative Services regarding suspicious account activity;

- (e) Communicated with John Walley of Sutton Group – Town & Country Realty Ltd.;
- (f) Communicated with Stephen Leonard, a real estate agent with Chestnut Park in Lake of Bays regarding the Lake Kawagama property;
- (g) Issued a Notice of Action and obtained an order for the issuance and registration of Certificates of Pending Litigation on 6817 and 6541 Main Street, Stouffville;
- (h) Followed up with RECO regarding requested disclosure;
- (i) Attempted to examine Adam Cox under oath;
- (j) Reviewed all documents in possession of York Regional Police;
- (k) Contacted crown counsel regarding restitution;
- (l) Distributed the Statutory Declaration to be utilized as a claim form for the victims of the fraud;
- (m) Received and responded to numerous inquiries from victims of the fraud and provided information to victims regarding the status of the claim.

(a) Bankruptcy Proceedings

7. On January 3, 2006, the Receiver was notified that Bankruptcy proceedings had been commenced as against Simpson and York Realty. Two receiving orders dated December 30, 2005 were served upon Bennett Jones LLP. Attached hereto and marked as **Exhibit "E"** are the receiving orders.

8. On January 4, 2006, counsel for the Receiver had a telephone conversation with Domenic Serrra and Jay T. Harris of Harris & Partners Inc., the trustees in bankruptcy. Counsel informed the trustees that the receiving orders were stayed pursuant to the Second Amended and Restated Order of Justice Farley dated December 23, 2005. The trustees in bankruptcy agreed that they would not oppose a motion to have the receivership orders set aside.

9. Following this conversation, on January 4, 2006, Harris & Partners Inc. wrote to the Superintendent of Bankruptcy, Abubakar Kahn, notifying him that the receiving orders should not have been issued and that there would be a motion to have them set aside. Attached hereto and marked as **Exhibit "F"** is a copy of the letter from Jay T. Harris to the Superintendent of Bankruptcy.

10. Counsel for the Receiver wrote to Harris & Partners on January 5, 2006 confirming its position. Attached hereto and marked as **Exhibit "G"** is a copy of the letter to Harris & Partners Inc.

11. The Receiver recommends that, pursuant to paragraphs 24 and 25 of the Second Amended and Restated Order of Justice Farley dated December 23, 2005, the two receiving orders dated December 30, 2005 be stayed pending further order of the court.

(b) Securing Financial Accounts

12. The Receiver's counsel has continued to follow up with bank representatives to ensure that accounts have been frozen and to collect all relevant account statements and transit numbers.

13. The Receiver continues to review the financial accounts and account statements with a view to identifying any other accounts of relevance.

(i) *Greater Toronto Area Savings & Credit Union Limited*

14. Counsel for the Receiver attended at the York Regional Police Fraud Unit on January 4, 2006 to review documents that had been seized by the police.

15. Upon review of the bank account information, it was discovered that Simpson had an account at Greater Toronto Area Savings & Credit Union Limited.

16. On January 11, 2006, Receivers' counsel served the order of Justice Ground dated November 17, 2005 and the order of Justice Farley dated December 15, 2005 upon Greater Toronto Area Savings & Credit Union Limited and requested information pertaining to Simpson, York Realty and York Management Group. Attached hereto and marked as **Exhibit "H"** is a copy of the letter sent to Greater Toronto Area Savings & Credit Union Limited absent the enclosures.

(ii) *RBC Securities and Investigative Services*

17. On November 17, 2005, the Initial Order was served on three Royal Bank of Canada ("RBC") branches located at 47 Main Street, Markham, 1181 Davis Drive East, Newmarket and 260 East Beaver Creek Road, Richmond Hill. Attached hereto and marked as **Exhibit "I"** is a list of banks served with the Initial Order.

18. On December 20, 2005, the same three RBC branch locations were served with the First Amended and Restated Initial Order. Attached hereto and marked as **Exhibit "J"** is a list of banks served with the First Amended and Restated Initial Order.

19. On January 3, 2006, counsel for the Receiver received from the RBC National Third Party Demands department copies of bank statements in regards to Courtney Wallis Simpson, York Region Realty and the York Group.

20. On January 10, 2006 the Receiver was advised by Detective Brian Morrison of the York Regional Police Fraud Unit that certain shares owned by Simpson had been transferred into two individuals' accounts in breach of the Initial Order. When one of the individuals into which the shares were deposited attempted to withdraw all of the funds, it raised red flags and the investigative services department at RBC was alerted who in turn alerted Detective Morrison.

21. On January 10, 2006, counsel for the Receiver spoke with Rob Northrope of the investigative services department at RBC who directed all inquiries to Greg Nawakowski ("Nawakowski") at RBC Securities.

22. On January 10, 2006, counsel for the Receiver spoke with Nawakowski who indicated that the original share certificates were in fact in Simpson's name and had been transferred into two separate accounts on December 15, 2005 and December 18, 2005.

23. Counsel for the Receiver wrote to Nawakowski on January 10, 2005 providing further copies of the Initial Order and the First Amended and Restated Initial Order and notifying him that Simpson did not have authority to make the transfer as all of Simpson's assets were frozen as of November 17, 2005. Counsel requested that the transfer be reversed and the funds held for the

Receiver. Attached hereto and marked as **Exhibit "K"** is a copy of the letter sent to Nawakowski regarding the transfer of shares.

24. On January 11, 2006, counsel for the Receiver followed up by telephone with Greg Nawakowski who confirmed that there were approximately 500,000 shares valued at approximately \$0.82 per share. Nawakowski indicated that the RBC legal team was meeting that afternoon and that they would provide counsel with all relevant documents as soon as possible. Counsel for the Receiver wrote to Nawakowski requesting copies of all RBC account statements, including bank account statements and investment statements with respect to Simpson, York Region Realty and York Management Group. Attached hereto and marked as **Exhibit "L"** is a copy of the letter sent to Nawakowski.

25. The Receiver continues to investigate this transaction. To date, RBC has not confirmed that the transfer has been reversed.

(c) Real Property

(i) *Properties Owned by Simpson*

26. Mr. John Walley ("Walley") of Sutton Group – Town & Country Realty Ltd. in Stouffville has listed all of Simpson's properties with the exception of the property located at 9 Kawagama Lake Road (the "Kawagama Property").

27. On January 9, 2006, Walley informed the Receiver and counsel that he had received two offers for the 6072 Main Street property.

28. On January 10, 2006 the Receiver signed back the highest offer making it conditional upon court approval. Attached hereto and marked as **Exhibit "M"** is a copy of the signed back offer.

29. The Receiver recommends that 6072 Main Street be sold for \$713,000 and that the proceeds from the sale be held in the Receiver's interest bearing bank account for the benefit of the estate. The Receiver recommends that, pursuant to the Second Amended and Restated Order, the amount of \$315,000, being the amount claimed by Ajay Pahwa, or such funds as the court may direct, be held in a separate interest bearing bank account, the disposition of which, may be dealt with by further order of the court.

(ii) *Kawagama Property*

30. The Receiver has been communicating with Stephen Leonard ("Leonard") of Chestnut Park Realty in Lake of Bays regarding the Kawagama Property.

31. The Receiver is considering whether to list the property for sale now or to wait until Spring so as to avoid any diminution in value over the winter season.

32. The Receiver is awaiting Leonard's valuation and upon receipt of his fair market assessment of the property, the Receiver will report to the court.

(iii) *Properties Not Owned by Simpson*

33. Simpson maintains that she is the rightful owner of two additional properties (6451 and 6817 Main Street, Stouffville) to which she does not currently have title.

34. On November 29, 2005, under oath, Simpson discussed the circumstances surrounding the conveyance of 6451 and 6817 Main Street (the "Hurst Properties"). She advised that in 2003 she used Lia Hurst ("Hurst") as a nominee to hide the properties by transferring title into Hurst's name. Simpson now advises that Hurst refuses to transfer the properties back.

35. The Receiver conducted a title search of the Hurst Properties. The searches indicate that Simpson does not have title. Both parcel registers name Lia Hurst as the exclusive owner. Attached at **Exhibit "N"** to this report are copies of the parcel registers for the Hurst Properties.

36. The Receiver commenced an action against Hurst on January 6, 2006 seeking damages for breach of trust, breach of fiduciary duty and breach of contract, an accounting of all of Hurst's assets, a declaration that the plaintiff is entitled to trace the monies that the defendant fraudulently obtained from Simpson and an order for the issuance and registration of certificates of pending litigation against title to the Hurst Properties. Attached at **Exhibit "O"** to this report is a copy of the issued Notice of Action.

37. Counsel for the Receiver appeared before Master Peterson on January 9, 2006 and obtained an order for the issuance of certificates of pending litigation as against title to the Hurst

Properties. Attached hereto and marked as **Exhibit "P"** is a copy of the order of Master Peterson.

38. The certificates of pending litigation were registered on title to the Hurst properties at approximately 4:00 pm on January 9, 2006. Attached hereto and marked as **Exhibit "Q"** are copies of the title documents for the Hurst properties showing the certificates of pending litigation.

39. On January 10, 2006, counsel served Hurst with a copy of the January 9, 2006 motion record and the order of Master Peterson. Attached hereto and marked as **Exhibit "R"** is a copy of the service letter without the enclosures.

(d) Real Estate Council of Ontario ("RECO")

40. By order of Justice Farley dated December 15, 2005, the Receiver was granted the authority to deal directly with RECO on behalf of all of the victims who have submitted claims.

41. Based on the evidence available to date, it is estimated that eighteen victims of the Real Estate Deposit Scheme have made claims to RECO.

42. The Receiver understands, based on the information from certain class members, that RECO will likely take the position that Simpson's actions constitute one "occurrence" and that therefore no more than \$500,000 will be available to all claimants under RECO's Consumer Deposit Insurance coverage with respect to the Defendants.

43. On December 21, 2005, counsel for the Receiver sent a letter to Elizabeth Silcox ("Silcox"), counsel for RECO requesting certain disclosure pursuant to the order of Justice Farley dated December 15, 2005. Attached hereto and marked as **Exhibit "S"** is a copy of the letter sent to Silcox.

44. Having received no response from Silcox, counsel for the Receiver wrote a further letter to her attention on January 11, 2006. Attached hereto and marked as **Exhibit "T"** is a copy of the letter sent to Silcox.

45. To date, the Receiver has not received a reply to its letters but will advise the court once such disclosure is made.

(e) Ontario Securities Commission

46. On December 19, 2005, counsel provided the OSC Manager, Inquiries & Contact Centre with copies of the Motion Record (returnable November 17, 2005) and the Motion Record (returnable December 15, 2005).

47. On January 9, 2006, Donna Martin Sidey, counsel at the OSC confirmed by letter that there are no issues in the this matter that are within the OSC's jurisdiction to pursue. Attached hereto and marked as **Exhibit "U"** is a copy of the letter from the OSC.

(f) **Adam Cox**

48. During the Receiver's examination of Simpson on November 29, 2005, Simpson told the Receiver that Adam Cox ("Cox") was an independent contractor whom she formerly employed.

49. Pursuant to the First Amended and Restated Order, counsel served a Notice of Examination on Cox and are in the process of obtaining his sworn evidence.

50. By fax dated December 16, 2005, counsel informed Cox that he was required to attend for an examination on December 20, 2005. Attached hereto and marked as **Exhibit "V"** is a copy of the letter sent to Cox.

51. In response to the fax dated December 16, 2005, Cox responded by fax stating that he would be "absent" from December 17, 2005 until December 31, 2005. Attached hereto and marked as **Exhibit "W"** is a copy of the response from Cox.

52. On December 19, 2005, counsel left two voice messages for Cox and sent him a letter informing him that he is required by court order to attend at the examination and requesting that he inform us of his reason for being unavailable. Attached hereto and marked as **Exhibit "X"** is a copy of the letter to Cox and the Notice of Examination.

53. On January 3, 2006, counsel for the Receiver wrote to Cox requesting his availability during the week of January 9, 2006 to attend and be examined. Attached hereto and marked as **Exhibit "Y"** is a copy of the letter sent to Cox.

54. On the afternoon of January 3, 2006, counsel for the Receiver had a telephone conversation with Cox explaining the purpose of the examination. Cox informed counsel that he would be available the week of January 9, 2006.

55. On January 5, 2006, Cox was served with a further Notice of Examination requiring him to attend on January 11, 2006. Attached hereto and marked as **Exhibit "Z"** is a copy of the Notice of Examination.

56. On January 11, 2006, at approximately 2:00 pm counsel for the Receiver attended at the offices of Professional Court Reporters Inc. in Markham. Cox was in attendance.

57. Cox indicated to counsel that it was his understanding that he was there to be examined on matters relating to a claim he had with RECO for unpaid real estate commissions. Counsel explained that his unpaid real estate commissions were not the purpose of the examination but rather that this examination was about the Simpson frauds.

58. Cox refused to answer any questions without counsel present. He admitted to having notice of a pending examination since December 19, 2005 but had not yet retained counsel.

59. Cox undertook to retain counsel as soon as possible and to have his counsel contact Bennett Jones LLP to set up an examination during the week of January 16, 2006. Counsel for the Receiver went on record and confirmed this. Attached hereto and marked as **Exhibit "AA"** is a copy of the transcript from the examination dated January 11, 2006.

60. No examination has taken place yet.

(g) Documents in Possession of York Regional Police

61. On January 4, 2006, counsel for the Receiver attended at the York Regional Police Central Fraud Unit in Newmarket and completed a comprehensive review of all documents apprehended from Simpson.

62. During the course of the document review, counsel for the Receiver discovered bank account statements in the name of York Group and Camco Developments.

63. Corporate searches show that these entities are sole proprietorships.

64. The Receiver has copies of all relevant documents including the above mentioned bank statements and is investigating these accounts.

65. Neither York Group nor Camco Developments were named as defendants in the original claim, but with this new information, the Receiver recommends that they be added as defendants in this action, that a Third Amended and Restated Order be issued, revising the Second Amended and Restated Order to reflect this change, and that the Third Amended Order be sent to the banks requesting information regarding accounts in the name York Group and Camco Developments. A copy of the proposed draft third amended order is attached as **Schedule "B"** to the notice of motion.

(h) Crown Counsel

66. On January 3, 2006, counsel for the Receiver wrote to the Crown Attorney assigned to this case, Philip Enright requesting that a Restitution Order be sought as against Simpson in the amount of approximately \$14.6 million which amount represents the estimated loss occasioned by her fraudulent real estate deposit scheme and the mortgage investment scheme. Attached to this report and marked as **Exhibit "BB"** is a copy of the letter sent to the Crown.

67. The Receiver has not yet received a response from the Crown but will advise the court of such response when it is obtained.

(i) Public Communications

68. The Receiver has an established website, www.secreceiver.com, where he regularly posts information regarding cases which he handles so as to provide a readily accessible information source.

69. The Receiver has posted all relevant court filings and reports in this matter.

70. The Receiver has been in contact with the majority of the victims known to date and has distributed the claim form to those individuals.

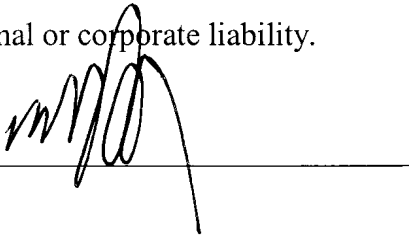
Receiver's Requests and Recommendations

71. The Receiver requests the approval of the court in respect of all steps taken to date.

72. The Receiver recommends approval of the court to take the following steps:
- (a) that the receiving orders dated December 30, 2005 be set aside pursuant to the Second Amended and Restated Initial Order of Justice Farley dated December 23, 2005;
 - (b) that Michael J. Quilling's power as receiver be extended over the assets of Courtney Wallis Simpson c.o.b. as York Group and Courtney Wallis Simpson c.o.b. as Camco Developments pursuant to section 101 of the *Courts of Justice Act*; and
 - (c) that the 6072 Main Street Property may be sold and the amount of \$210,000 or such amount as may be directed by the court be held in a separate bank account pending further order of the court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

Michael J. Quilling in his capacity as
Court Appointed Receiver with no
personal or corporate liability.

A handwritten signature in black ink, appearing to read 'M. J. Quilling', is written over a horizontal line.

Michael J. Quilling