

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

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

**RESPONDING MOTION RECORD OF THE
SECURED CREDITOR, AJAY PAHWA
(MOTION RETURNABLE DECEMBER 23, 2005)**

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IN THE MATTER OF *THE CLASS PROCEEDINGS ACT, 1992*

**AFFIDAVIT
(sworn December 22, 2005)**

I, **AJAY PAHWA**, of the Town of Richmond Hill, in the Regional Municipality of York, in the Province of Ontario, **MAKE OATH AND SAY:**

1. That I am a secured creditor of various premises owned by Courtney Wallis Simpson and as such have knowledge of the facts hereinafter deposed to.
2. That my father and I first met Ms. Simpson when we were looking around for properties to buy and put in offers for three different properties during the course of our attempts.
3. That we did pay deposits on all of these different properties.
4. That none of these deals were ever consummated and the deposits were always returned to us.
5. That Ms. Simpson then approached us with a proposition for us to make some money while we were looking around for the appropriate property to purchase. See Exhibit "A".

6. That this was a scheme wherein there would be financing for condo purchases until occupancy permits were available.

7. That this interested my father and I and we advanced certain monies to Ms. Simpson strictly as loans and not as deposits on any property.

8. That the monies we advanced were as follows:

(a)	December 3, 2004	\$ 200,000.00
(b)	December 15, 2004	\$ 100,000.00
(c)	February 11, 2005	\$ 100,000.00
(d)	February 11, 2005	\$ 100,000.00
(e)	February 24, 2005	\$ 100,000.00
(f)	March 8, 2005	\$ 200,000.00
(g)	May 10, 2005	\$ 200,000.00
(h)	June 22, 2005	\$ 40,000.00
(i)	June 28, 2005	<u>\$ 125,000.00</u>
TOTAL		\$1,165,000.00

9. That in order to secure some of these monies, I took back mortgages as security on various properties.

10. That these mortgages were placed on the properties after I was assured by the offices of Debra J. Sweetman, the lawyer involved that I would have a valid security on the properties.

KAWAGAMA LAKE

11. That the first mortgage was signed on March the 4th, 2005 and registered on March the 8th, 2005 as Mortgage No. 259537 on the property municipally known as 9 Kawagama Lake Road, Dorset, Ontario and more particularly described as Firstly, Part of Lot 1, Concession 13, designated as Parts 1 and 7, Plan 19R-3154 and Secondly, Part of the OSRA in front of Lot 1, Concession 13, Designated as Part 6, Plan 19R-3154, closed by By-Law 36, Registered as No. 12, Township of Sherborne, County of Haliburton. See Exhibit "B".

12. That this mortgage was for \$220,000.00 and was payable on demand.

13. This mortgage represented the monies loaned on February 24, 2005 being \$100,000.00.

14. This was done completely at her suggestion.

15. This mortgage is a second mortgage to the Royal Bank of Canada's mortgage which was registered on May 31st, 2002 in the amount of \$238,380.00. See Exhibit "C" being the Abstract of Title.

16. To date, no Notice of Sale under Mortgage has been issued.

MAIN STREET PROPERTY

17. That I further received a mortgage from Ms. Simpson which was registered on the 8th day of March, 2005 in the Land Titles Division of York Region (No. 65) as Instrument No. YR608874 and more particularly described as Part Lot 30, Plan 54 Stouffville; Part Lot 31, Plan 54 Stouffville; Part Lot 49, Plan 54 Stouffville, Part Lot 41, Plan 54 Stouffville, Parts 1, 7, 65R-2555; S/T R221467, R221469 Whitchurch Stouffville. See Exhibit "D" being the Abstract of Title. The mortgage was originally for \$220,000.00 pursuant to Charge No. YR6088874 registered on March 8, 2005 and subsequently amended by Notice YR695333 registered on June 28, 2005 increasing the mortgage to \$440,000.00. Attached hereto and marked as Exhibit "E" to this my Affidavit is a true copy of the mortgage and attached hereto and marked as Exhibit "F" to this my Affidavit is a true copy of the Notice.

18. This represents the monies loaned on March 8, 2005, June 22, 2005 and June 28, 2005.

19. This property is presently under Notice of Sale under Mortgage dated November 10, 2005. See Exhibit "G" attached hereto to this my Affidavit.

VACANT LAND

20. That I also registered a mortgage in the amount of \$210,000.00 being Mortgage No. YR598943 on or about the 10th day of February, 2005 on the property known as Part Lots 49 and 50, Plan 70 Stouffville, Part 2.

21. This Mortgage was in the amount of \$210,000.00 and represents the \$200,000.00 lent to her on or about February 10, 2005.

22. That this property is presently under Power of Sale as well. See Exhibit "I" attached hereto to this my Affidavit.

23. That attached to this my Affidavit and marked as Exhibit "J" are true copies of all of the cheques given to Ms. Simpson except for one cheque in the amount of \$100,000.00 which we are in the process of obtaining a copy of from the bank.

24. To date, she has repaid the sum of \$850,000.00 (not \$800,000.00 as suggested by Ms. Simpson) leaving an outstanding balance of \$315,000.00.

25. Monies were only advanced after Ms. Simpson's suggestion of providing securities on her properties so that I would have valid security on those properties.

26. That the Promissory Note in question was something drafted by her some time ago and presented to us and revised by us under her direction, but never signed to my knowledge.

27. At that time she was desperate to borrow more money from us and this was the inducement. At no time did we realize that it was illegal.

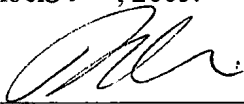
28. That certainly any excess over and above the amount due and owing on the mortgage will be turned back to the Receiver in order that that surplus be used to pay down her other creditors.

29. That when the notice period expires, I intend to commence Power of Sale proceedings on the cottage property in Haliburton as well.

30. That these are all good and valid mortgages entered into for monies received.

31. That I understand that any monies due and owing over and above the secured mortgages are part of the unsecured amounts due and owing by Ms. Simpson.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on December 22nd, 2005.



Commissioner for taking affidavits
(Richard H. Parker, Q.C.)



AJAY PAHWA