

**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 as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

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

**SEVENTH REPORT OF THE RECEIVER  
(Dated August 28, 2006)**

**Background**

1. This within class action is a claim proceeding in fraud, among other things, and a receivership of the estate of the defendants, Courtney Wallis Simpson, York Region Realty Inc., Wallis Simpson & Associates and Courtney Wallis Simpson carrying on business as York Management Group, Camco Developments and York Group. The plaintiff alleges that Ms. Simpson (a real estate agent) and her companies defrauded him and the class members by obtaining deposits for the purported purchase of commercial properties. Simpson improperly retained the deposits and the real estate transactions were a sham. She purported to "sell" the same two commercial properties in excess of 100 times each. A separate class proceeding alleges

that Ms. Simpson and others defrauded victims through the operation of a ponzi scheme convincing people to "invest" in interim occupancy mortgages that never existed.

### **The Receivership**

2. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), the Receiver was appointed 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").

3. 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") 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 Class Action") is to be tried together or immediately after this class action.

4. The purpose of this Seventh Report of the Receiver (the "Seventh Report") is to:

- (a) seek direction of the Court with respect to the release of 6817 and 6451 Main Street, Stouffville, to the mortgagees for foreclosure and sale;
- (b) to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver; and
- (c) to report to the Court on the status of the proceedings.

### **The Receiver's Activities**

5. Since the May 2006, the Receiver has:

- (a) Assessed the validity of Ajay Pahwa's mortgages on the Simpson properties;
- (b) Met with Ajay Pahwa's counsel and engaged in without prejudice settlement discussions;
- (c) Followed up with bank representatives to ensure that accounts have been frozen and to collect, review and analyze all relevant account statements and transit numbers;
- (d) Followed up with Constantine Alexiou, counsel for Vern Zaphe and Michael Sourlis regarding the process by which the dispute over the transfer of the Dianor A Resources Inc. shares will be determined;
- (e) Communicated with John Walley and Maggie MacDonald of Sutton Group – Town & Country Realty Ltd. regarding the listing and sale of Simpson's properties;
- (f) Communicated with Stephen Leonard, a real estate agent with Chestnut Park in Lake of Bays regarding the Lake Kawagama cottage property;
- (g) Marketed the properties at 6817 Main Street and 6451 Main Street;
- (h) Co-ordinated the upkeep of the Simpson properties;
- (i) Communicated with Sandy MacKenzie of State Farm Insurance regarding insurance on the property located at 6072 Main Street, Stouffville;
- (j) Contacted RECO and the insurance adjustor, Leonard French & Co. Ltd. regarding the omnibus claim made by the Receiver;

- (k) Examined Z. Aga, Roger Rowan and Alan Schick under oath (transcripts attached hereto and marked as **Exhibits "R", "S" and "T"** respectively);
- (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; and
- (n) Obtained vesting orders and completed the sales of 6072 Main Street, 14 Stouffer Street and 1038 Kawagama Lake Road.

#### **Status of the Pahwa Mortgages**

6. The sum sought by Mr. Pahwa in respect of the mortgages he registered on the title of several of Simpson's properties, \$336,080, has been paid into a separate interest bearing account from the proceeds of the sale of 14 Stouffer Street and part of the proceeds from the sale of 6072 Main Street. Mr. Pahwa has cooperated with the Receiver by providing his consent to discharge the mortgages, thereby allowing the Receiver to close the sales of those encumbered Simpson properties.

7. The Receiver's counsel has reviewed the defendants' banking records received to date and determined the following:

- (a) Total amount advanced by Mr. Pahwa to the defendants - \$1,165,000;
- (b) Total amount paid by the defendants to Mr. Pahwa - \$1,379,500; and
- (c) Overpayment to Mr. Pahwa - \$214,000.

8. The Receiver's counsel and Mr. Pahwa's counsel have engaged in without prejudice settlement discussions in an effort to resolve the mortgages issues without further court intervention. The Receiver currently awaits receipt of requested documents from Mr. Pahwa. Attached hereto and marked as **Exhibit "Q"** is a copy of the chronology of the Pahwa mortgages and payments prepared by the Receiver's counsel.

9. There is likely merit in pursuing Mr. Pahwa for the \$214,000 overpayment if Mr. Pahwa's claim cannot be resolved.

#### **The Receiver's Efforts to Sell 6817 and 6451 Main Street**

10. In April 2006, following the return of title to the 6451 and 6817 Main Street properties from Lia Hurst, to whom Simpson had transferred the title, the Receiver retained Sutton Group Town and Country Realty Ltd. as listing agents to market and sell both properties. 6451 and 6817 Main Street were listed for sale by the Receiver in April 2006 for \$242,900 and \$249,000 respectively.

##### **(a) 6451 Main Street, Stouffville**

11. Attached hereto and marked as **Exhibit "A"** is a copy of the real estate listing for 6451 Main Street, Stouffville.

12. One conditional offer, in the amount of \$235,000 was received in May 2006 with respect to the 6451 Main Street property. The conditions were not waived and the offer became null and void. No subsequent offers were received. Attached hereto and marked as **Exhibit "B"** is a copy of the offer dated May 10, 2006.

13. The mortgage payout amount as of June 19, 2006, was \$242,391.95. The listing agent advised the Receiver that it was unlikely that 6451 Main Street would sell for more than \$240,000. By email dated June 20, 2006, Simpson advised the Receiver that, in light of the amounts owing on the property, the bank (mortgagee) could take it over. Based on the foregoing, the Receiver advised the mortgagee that they could proceed with their power of sale proceedings with any net proceeds to be paid to the receivership estate. Attached hereto and marked as **Exhibit "C"** is a copy of the mortgage payout statement dated June 19, 2006. Attached hereto and marked as **Exhibit "D"** is a copy of Simpson's email dated June 20, 2006. Attached hereto and marked as **Exhibit "E"** is a copy of the letter from the Receiver's counsel to the mortgagee's counsel dated June 21, 2006.

**(b) 6817 Main Street, Stouffville**

14. Attached hereto and marked as **Exhibit "F"** is a copy of the real estate listing for 6817 Main Street, Stouffville.

15. Offers in the amounts of \$235,000 and \$240,000 were received in April 2006 with respect to the 6817 Main Street property. A third offer in the amount of \$205,000 was received on July 9, 2006. The Receiver accepted the offer in the amount of \$240,000 from the purchaser, Havron Family Trust (the "Purchaser"). By order dated June 9, Justice Mesbur approved the sale of 6817 Main Street for \$240,000. Attached hereto and marked as **Exhibit "G"** is a copy of the Agreement of Purchase and Sale dated April 26, 2006.

16. The Purchaser failed to provide the deposit funds within the time required under the agreement of purchase and sale. The Purchaser also failed to provide a waiver of conditions within the time provided under the agreement of purchase and sale. As a result of the foregoing,

the agreement of purchase and sale became null and void. By email message dated July 10, 2006, Simpson advised that the Purchaser had given her a new offer in the amount of \$230,000. Attached and marked collectively as **Exhibit "H"** are copies of the correspondence from the Receiver's counsel with respect to the voided agreement of purchase and sale and Simpson's email dated July 10, 2006.

17. The mortgage payout amount as of July 7, 2006, was \$225,438.31. Commissions owing if 6817 Main Street sold for \$240,000, would be in the approximate amount of \$12,700. A third offer was received in July in the amount of \$205,000. As a result of the foregoing, and the listing agent's agreement that this property would not likely sell for more than \$240,000 in its present condition, the Receiver advised the mortgagee that it could proceed with its power of sale proceedings with any net proceeds from the sale of the property to be provided to the receivership estate. Attached hereto and marked as **Exhibit "I"** is a copy of the Cancellation of Listing Agreement dated July 17, 2006. Attached hereto and marked collectively as **Exhibit "J"** is a copy of the letter from the Receiver's counsel to the mortgagee's counsel dated July 14, 2006 and correspondence received from the mortgagee's counsel, Ms. De Prisco, dated July 26, 2006.

18. Certificates of pending litigation were registered on title of 6451 and 6817 Main Street in the action commenced by the Receiver against Lia Hurst. The Receiver will seek removal of these certificates by motion in writing in the Hurst action (court file no. 06-CV-303587PD3).

### **Havron Family Trust**

19. The prospective purchaser of 6817 Main Street initially provided deposit funds in the amount of \$5,000 drawn on a TD Canada Trust account at the branch at 9600 McCowan Road, Markham. The payor information was covered blacked out and covered by a white sticker. The

cheque was returned to the Receiver's counsel due to non-sufficient funds. A bank draft was later provided to the Receiver in respect of the deposit funds. In an effort to return the funds to the Purchaser after the agreement of purchase and sale became void, counsel for the Receiver removed the white sticker from the cheque. Despite the black ink applied over the payor information, upon close inspection it was revealed that the payor name is: Kenneth W. Simpson, 195 Ramona Blvd., Markham. Mr. Simpson is the spouse of the defendant Simpson and currently resides at 195 Ramona Blvd., Markham. The original NSF cheque described above will be made available to the court at the hearing of this motion.

20. According to the Public Advisory dated June 19, 2006, RECO revoked Simposn's broker registration on June 16, 2006. The Public Advisory states that Simpson was registered as an employee of Century 21 Royal Windsor Realty Inc. on January 6, 2006. The Havron Family Trust agreement of purchase and sale was submitted to directly to the Receiver by Century 21 Royal Windsor Realty Inc. Attached hereto and marked as **Exhibit "K"** is a copy of the Public Advisory.

21. Simpson registered a sole proprietorship named "Havron Management Services" under the *Business Names Act*. Attached hereto and marked as **Exhibit "L"** is a copy of the Business Names Report for Havron Management Services.

22. Simpson has requested the return of the 6817 Main Street deposit funds on behalf of the "purchaser". Attached hereto and marked collectively as **Exhibit "M"** is correspondence exchanged between Simpson and the Receiver's counsel with respect to this issue. The correspondence attached as Exhibit "N" is also relevant to this issue.



23. Based on the foregoing, it appears that Mr. Simpson and/or Courtney Simpson were the undisclosed purchasers behind the Havron Family Trust offer to purchase 6817 Main Street, or, at a minimum, that Mr. Simpson provided the deposit funds on behalf of the Havron Family Trust. Mr. Simpson has advised the Receiver's counsel that he used the Havron Family Trust, which he oversees, to purchase the property on behalf of Mr. Mott who was unable to attend to the purchase himself.

24. Attached hereto and marked as **Exhibit "N"** is a copy of the Mutual Release dated July 18, 2006 directing payment of the deposit funds to "Michael Mott". The Receiver's counsel requested written confirmation from the purchaser's agent, Daniel Passante, and the purchaser, of who the deposit funds must be returned to. Written confirmation was received on August 8, 2006. The deposit funds were returned to Mr. Mott by cheque dated August 9, 2006. Attached hereto and marked as **Exhibit "O"** is a copy of the fax from Mr. Passante.

### **Havron Management Services**

25. Further to paragraph 17 above, review of the Wallis Simpson & Associates HSBC bank account records indicate that from February 5, 2003 to October 24, 2003, cheques totaling \$43,426,975.78 were made payable to Havron Management Services ("Havron"). Similarly, cheques written on Havron Management Services' Laurentian bank account and payable to Wallis Simpson & Associates totaled \$29,885,852.16. The Receiver's counsel has requested that TD Canada Trust, the entity that now owns the former Laurentian bank branches in question, provide full banking records with respect to Havron's accounts in order to attempt to trace the funds. Attached hereto and marked as **Exhibit "P"** is a copy of the spreadsheet summarizing the transactions between Wallis Simpson & Associates and Havron in 2003.

### **Claim Against Lia Hurst**

26. A claim was commenced by the Receiver against Lia Hurst based on information received from Simpson, seeking the return of title of the 6451 and 6817 Main Street properties and damages in the amount of \$100,000. Ms. Hurst has cooperated with the Receiver and executed the documents necessary to return title of the above-noted properties to Simpson. The Receiver was advised by Simpson that Ms. Hurst likely did not have any exigible assets. Taking into consideration the costs of continuing the claim against Ms. Hurst, the Receiver recommends that the action be dismissed without costs.

### **Pending Matters**

#### **(a) Dianor Shares**

27. Counsel are working to prepare an agreed upon procedure for determining the validity or invalidity of the transfer of the Dianor Shares to Mr. Zapfe and to Mr. Sourlis. The Receiver recommends that the matter be dealt with within the current action by way of mini-trial pursuant to the terms of the Initial Order and as suggested by Justice Spies. Mr. Zapfe and Mr. Sourlis' counsel has been unavailable until recently. The Receiver recommends proceeding with a mini-trial.

#### **(b) Banking Records**

28. The Receiver's counsel has been advised by several banks that they require a fee of \$5 to \$15 per cheque copy. Based on counsel's review of the banking records obtained to date, Simpson wrote thousands of cheques on multiple accounts. The potential cost of obtaining copies of those cheques at even \$5 a cheque would likely amount to several thousand dollars if not tens of thousands of dollars. It is the Receiver's position that third parties such as the banks,

pursuant to sections 13 and 17 of the Initial Order, must comply with requests for financial information and must do so on a without fee basis. The Receiver has reiterated his request for cheque copies from several banks. If the banks take the position that the documents will only be produced for a fee, the Receiver will seek the court's direction on notice to the banks at a future court date.

### ***Family Law Act Claim***

29. Wayne Simpson has advised the Receiver that he is separated from Simpson and that he intends to pursue any rights he may have to receivership estate assets pursuant to the *Family Law Act*. Mr. and Mrs. Simpson purport to have entered into a separation agreement whereby Mr. Simpson acquired full ownership of the residence at 587 Cam Fella Blvd. clear of any encumbrances and also ownership of the property at 1038 Kawagama Lake Road (now sold). The Receiver's counsel has requested that Mr. Simpson contact them to discuss the potential resolution of Mr. Simpson's claim.

30. Wayne Simpson has advised the Receiver that he would settle his family law act claim on the following basis:

- (a) Mr. Simpson would take possession of 587 Cam Fella Blvd. (the "Property") and reside there with his children;
- (b) Mr. Simpson would arrange mortgage financing for the Property and would register a new first mortgage effective October 26, 2006, at which time he would pay out the existing First Line first mortgage.

- (c) Utilities, mortgage arrears, and insurance payments up to September 1, 2006 are to be paid by the Receiver from the receivership estate; and
- (d) Mr. Simpson would assume responsibility for all utilities, mortgage payments, insurance, maintenance costs and etc. effective September 1, 2006.

31. The Receiver recommends that the court approve the resolution of Mr. Simpson's family law act claim on the terms set out above.

### **Estate Value**

32. The Receiver's current estimate of the value of the assets in the estate is between \$1.4 and \$1.8 million. Claims in excess of \$9.4M have been received by the Receiver who has now begun the claims assessment process.

### **Witness Examinations**

33. Simpson advised the Receiver that several individuals involved in the Mortgage Scheme received payments from her in excess of their initial "investment". Messrs. Aga, Schick and Rowan were 3 of the individuals that Simpson indicated had been overpaid. On November 17, 2005 and June 21, 2006 the Receiver and/or the Receiver's counsel examined these individuals for the purpose of assessing whether or not they had received significant payments from Simpson under the Mortgage Scheme.

34. Each of the individuals claimed to have either lost money or just recovered their investment. Mr. Schick and Mr. Rowan both testified that they had lost a portion of their investments. Mr. Aga testified that he recovered his investment from Simpson. The banking

records received to date confirm that funds were provided by these individuals to Simpson and that she, in turn, made cheques payable to each of them. Once the Receiver has obtained copies of all of the cheques from Simpson's accounts he will be able to assess the veracity of the testimony of these witnesses and to determine if other investors were overpaid and proceedings should be commenced against these overpaid individuals seeking the return of funds which should form part of the receivership estate.

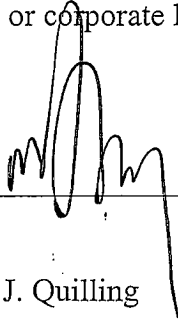
### **The Receiver's Recommendations**

35. The Receiver recommends approval of the court to take the following steps:

- (a) the release of 6817 and 6451 Main Street, Stouffville, to the mortgages for foreclosure and sale with all funds net of the mortgages and related fees to be distributed to the receivership estate;
- (b) dismiss the action against Ms. Hurst without costs;
- (c) discharging the certificates of pending litigation registered on the title of 6817 and 6451 Main Street;
- (d) If no resolution has been negotiated with Mr. Pahwa by October 1, 2006, that the Receiver proceed with an action against Mr. Pahwa seeking recovery of the \$214,000 overpayment; and
- (e) attempt to negotiate the resolution of Wayne Simpson's Family Law Act claim, subject to the court's approval of any agreement between the parties.

**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 'Michael J. Quilling', is written over a horizontal line. The signature is stylized and cursive.

Michael J. Quilling

DMSTORLegal\056445\00002\435937v1