

**Transcription of Justice Pepall's
Handwritten Endorsement of November 15, 2006**

**Pandya v. Simpson *et al.*
Court File No. 06-CL-6159**

Items 5 and 6 of the notice of motion originally returnable October 10, 2006 were adjourned to be heard by me today so that additional materials could be placed before the court.

The Receiver and Receiver's counsel had originally sought approval of their interim accounts before Spies, J. In her decision of June 8, 2006 she observed that there was duplication of legal work and also suggested that the hourly rates should be reduced by about 15%. She also noted that others should have done much of the work for which fees were claimed at lower rates. She also noted that the accounts should be detailed and include total charges for each category of services. She reduced the fees claimed substantially.

Counsel for the Receiver now seeks approval of its fees for the period April 1, 2006 to July 31, 2006 in the amount of \$103,893.13. This does not include disbursements. A separate outline of these has not been provided and are to be addressed on the next occasion that the Receiver is in court. The fees of the Receiver have not been adequately addressed and approval is also similarly adjourned. A breakdown of time is required.

The Receiver's counsel has done much to attempt to address the issues raised by Spies, J. In this regard, the fees allocated to the Dianor shares, the Pahwa mortgages and the General Receivership Activities have all be reduced by 15%. In addition, with respect to the Real Property realizations, a flat fee of \$10,000 is requested rather than the full fees of \$23,492.50. Although significant time was devoted to this category, recovery was disappointing. An effort was also made to reduce the number of timekeepers on the file and to replace work done by a lawyer with work done by articling students for which there has been no charge.

I must be satisfied that the fees claimed are fair and reasonable. For the most part I am but I am of the view that the number of lawyers working on the file for the relevant time periods was excessive. In light of the size of the estate, I am hard pressed to understand the need for a litigation counsel called in 2000 and another in 1995. I accept that special expertise may be required for real estate and insolvency matters. In all of these circumstances, I am reducing the fees claimed by \$10,000. Accordingly, fees of \$93,893.13 are approved on account of the fees of Receiver's counsel.

On October 10, 2006, I granted the Receiver authority to resolve Mr. Simpson's Family Law Act claim. The Receiver advised the court and others that for a period to time, Mrs. Simpson had moved back into the family home at 587 Cam Fella Boulevard in Stouffville. The Receiver continues to recommend that he proceed with the agreement in principle reached with Mr. Simpson. Both Mr. and Mrs. Simpson advised the Receiver and the Court that they are separated and living separate and apart; that the separation agreement entered into by them is not a sham; that Ms. Simpson has moved out; and that Mr. Simpson has brought proceedings for divorce. Both were advised by me of the provisions of R. 59.06 and that a court order may be set

aside on the grounds of fraud or facts arising or discovered after the order was made. Both assured me that the representations made to the court are accurate. On that basis, the Receiver is at liberty to complete the settlement with Mr. Simpson. Both Mr. and Mrs. Simpson were also told that they should not construe my comments as suggestions that they should be separated or divorced. They must simply be forthright and honest with the Receiver and the court.

Lastly, with respect to the written request of Mr. Govedaris which I authorized in the interests of reducing costs, Mr. Caylor did file an affidavit and as mentioned, further supporting materials are required before I approve the Receiver's fees.

Not including the Dianor shares which currently would have a value of \$410,000 the estimated value of the estate is \$1.4 million before any fees or other expenses.

Pepall, J.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Udayan Panda

Plaintiff(s)

AND

Anthony Wallis Smyson et al

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows): _____

Items 5 + 6 of the notice of motion originally returnable Oct 10, 06 were adjourned to be heard by me today so that additional materials could be placed before the court. The Receiver + Receiver's counsel had originally sought approval of their interim accounts before Spies J. In her decision of June 8, 06 she observed that there was duplication of legal work + also suggested that the hourly rates should be reduced by about 15%. She also noted that others should have done much of the work for which fees were claimed at lower rates. She also noted that the accounts should be detailed + include total charges for each category of services. She reduced the fees claimed substantially. Counsel for the Receiver now seeks approval of its fees for the period Apr 1, 2006 to July 31, 2006 in the amount of \$103,893.15. This does

Nov 15, 06

Date

St P Russell J

Judge's Signature

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

not include disbursements. A separate outline of these has not been provided + are to be addressed on the next occasion that the receiver is in court. The fees of the receiver have not been adequately addressed + approval is also similarly adjourned. A breakdown of time is required.

The receiver's ~~law~~ counsel have done much to attempt to address the issues raised by s. 20. In this regard, the fees allocated to the senior shares, the Pakwas mortgages + the General Receivership Activities have all been reduced by 15%. In addition, with respect to the real property realizations, a part fee of \$10,000 is requested rather than the full fees of \$23,492.50. Although significant time was devoted to this category, recovery was disappointing. An effort was also made to reduce the number of timekeepers on the file + to replace work done by a lawyer with work done by articling students for which there has been no charge.

I must be satisfied that the fees claimed are fair + reasonable. For the most part I am but I am of the view that the numbers of lawyers working on the file for the relevant time periods was excessive. In light of the size of the estate, I am hard pressed to understand the need for a litigation counsel called in 2000 + another in 1995. I accept that special expertise may be required for real estate + insolvency matters. In all of these circumstances, I am reducing the fees claimed by \$10,000. Accordingly fees of \$93,893.12 are approved as disbursements of the fees of receiver's counsel.

On Oct 10, 200, I granted the receiver

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

authority to resolve Mr Simpson's family law Act claim. The Receiver advised the court + others that for a period of time, Mrs. Simpson had moved back into the family home at 587 Camella Blvd in Stouffville. The Receiver continues to recommend that he proceed with the agreement in principle reached with Mr. Simpson. Both Mr + Mrs. Simpson advised the Receiver + the court that they are separated + living separate + apart; that the separation agreement entered into by them is not a sham; that Mrs. Simpson has moved out; + that Mr. Simpson has brought proceedings for divorce. Both were advised by me of the provisions of R 59.06 + that a court order may be set aside on the grounds of fraud or facts arising or discovered after the order was made. Both assured me that the representations made to the court are accurate. On that basis, the Receiver is at liberty to complete the settlement with Mr. Simpson. Both Mr + Mrs. Simpson were also told that they should not construe my comments as suggesting that they should be separated or divorced. They must simply be forthright + honest with the Receiver + the court.

Lastly with respect to the written request of Mr Geredans which I authorized in the interests of reducing costs, Mr Caylor did file an affidavit + as mentioned, further supporting materials are required before I approve the Receiver's

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

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SRP