

Court File No. 05-CL-6159

**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. as YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

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

EIGHTH RECEIVER'S REPORT

Introduction

1. The purpose of this report is to provide the Court with a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver. This report is limited to the Receiver's recommendations with respect to settlement of the matters between Ajay Pahwa ("Pahwa") and the receivership estate.

Background

2. 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

3. 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"). Attached hereto and marked as **Exhibit A** is a copy of the Initial Order.

4. 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. Attached hereto and marked as **Exhibit "B"** is a copy of the Procedural Order.

The Pahwa Mortgages

5. In furtherance of loans advanced to Simpson, Pahwa obtained mortgages in the amount of \$870,000 against three of the properties owned by Simpson. 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 (6072 Main Street);
- (b) \$220,000 mortgage registered on March 9, 2005 on:
PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2 65R256J4 (14 Stouffer Street); 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.

Attached hereto and marked as **Exhibit "C"** are copies of title documents and instruments showing the mortgages registered in favour of Pahwa.

6. The underlying debt provided as consideration for the mortgages is not identified on the mortgage documents. Simpson advised the Receiver's counsel that she did not put the promissory notes on title because she did not have sufficient time to do so. Nevertheless, she assured the Receiver that the amount on title by virtue of the mortgages was related to promissory notes executed by her in favour of Pahwa.

7. Pahwa's counsel served Simpson with a Notice of Sale Under Mortgage in respect of the 6072 Main Street property on November 10, 2005. The Notice stated that default had been made in payment of the money due under the charge and the promissory note and that unless the sum of \$210,000 was paid on or before December 22, 2005, the property would be sold. Attached hereto and marked as **Exhibit "D"** to this report is a copy of the Notice of Sale Under Mortgage.
8. By letter dated December 1, 2005, the Receiver's counsel wrote to Pahwa's counsel and advised that the terms of the Initial Order precluded such foreclosure proceedings and noted that the Receiver would be seeking the direction of the court regarding the disposition of Simpson's assets. Attached hereto and marked as **Exhibit "E"** to this report is a copy of the letter sent to Pahwa's counsel.
9. In the Receiver's second report, the Receiver recommended to the court that rather than pay out the face value of Pahwa's mortgages, the validity of the mortgages be challenged, that any action purported to be taken upon such mortgages be opposed, that no proceeds from any sale shall be paid to Pahwa pursuant to any such mortgages and that any such funds that Pahwa claimed were to be held in the Receiver's bank account pending further order of the court.
10. Pursuant to the orders of Justice Cumming dated January 20, 2006 and Justice Mesbur dated March 9, 2006, the sum sought by Pahwa in respect of the mortgages he registered on the title of several of Simpson's properties, \$336,080, was paid into a separate interest bearing account from the proceeds of the sale of two of Simpson's properties, 14 Stouffer Street, Stouffville and 6072 Main Street, Stouffville. Pahwa 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. Attached hereto and marked collectively as **Exhibit "F"** are copies of the above-noted orders.

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

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

Attached hereto and marked as **Exhibit "G"** is a copy of the chronology of the Pahwa mortgages and payments prepared by the Receiver's counsel.

12. The Receiver's counsel and Pahwa's counsel have engaged in several without prejudice settlement discussions in an effort to resolve the mortgages issues without further court intervention. The Receiver, and Pahwa, subject to the Court's approval, have agreed to resolve the issues between Pahwa and the receivership estate. The proposed settlement agreement will result in funds in the total amount of \$406,080 accruing to the receivership estate.

The Receiver's Recommendations

13. The Receiver recommends that the Court approve the resolution of the Pahwa mortgages and overpayment issues as follows:

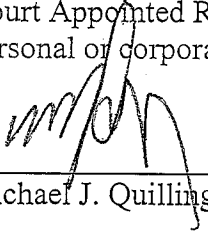
- (a) Payment by Ajay Pahwa to the Simpson receivership estate of certified funds in the amount of \$70,000;
- (b) Ajay Pahwa shall waive any entitlement he may have to the funds in the amount of \$336,080 currently held in a separate interest bearing account by the Receiver. These funds were held in respect of Pahwa's claim to mortgage proceeds from the

sale of Simpson's properties. These funds will now become part of the receivership estate;

- (c) Ajay Pahwa shall provide a sworn affidavit confirming all of the funds that he advanced to Simpson and as to all of the funds that he received from Simpson; and
- (d) Ajay Pahwa and the Receiver shall exchange mutually agreeable Mutual Releases conditional upon receipt of a sworn affidavit satisfactory to the Receiver's counsel as described at subparagraph (c) above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

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



Michael J. Quilling