

**Form 4D  
Affidavit**

05-CL-6159

*ONTARIO*

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

**BETWEEN:**

**UDAYAN PANDYA**

**Plaintiffs**

**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**

**AFFIDAVIT  
OF GREGORY GOVEDARIS**

I, Gregory Govedaris, of the Town of Stouffville, in the Regional Municipality of York,  
**MAKE OATH AND SAY:**

1. I am a lawyer in the law firm of Govedaris Professional Corporation ("**Govedaris**"), counsel to the Plaintiff(s) in the companion action (05-CL-6178) wherein Four Seasons Drywall Systems & Acoustics Limited and Zapfe Holdings Inc. are Plaintiff(s), and as such have direct knowledge of the matters hereinafter deposed to. Where the information deposed herein has been gained from third parties and I do verily believe it to be true.

2. Initially (November 2005) Govedaris was contacted by individuals who advised us they had been defrauded by Courtney Simpson. Govedaris contacted the Police and RECO concerning these matters. The Police advised Govedaris that Mr. Lincoln Caylor of Bennett Jones LLP would be had brought a motion to appoint a Receiver. In order to avoid a duplication of effort, I contacted Mr. Caylor to discuss this matter and determine what efforts Bennett Jones LLP had undertaken on behalf of their client(s) to assist them in recovering their money and obtained a copy of their statement of claim.
3. I determined that (although Bennett Jones LLP had filed a claim) the claim was limited to those individuals who had provided deposit monies in trust to the defendant Courtney Wallis Simpson and/or the other named defendants pursuant to agreements of purchase and sale that were fraudulent or not otherwise consummated ("**Real Estate Deposit Victims**") – the claim made no provisions for those individuals who had provided deposit monies in trust to the defendant Courtney Wallis Simpson and/or the other named defendants pursuant to agreements of purchase and sale relating to interim condominium project deposit fund (occupancy mortgages) that were fraudulent or not otherwise consummated ("**Mortgage Fraud Victims**").
4. Govedaris was instructed to commence action 05-CL-6178 in order to preserve the rights of the Mortgage Fraud Victims ("**Mortgage Fraud Action**").
5. Govedaris understood that Bennett Jones LLP had commenced a class action law suit bearing Court File Number: 05-CL-6159 as against Simpson *et. al.* for fraud, misrepresentation and breach of fiduciary duty which arose out of the same of set of facts and parties as the Plaintiff(s) herein had commenced in Court File Number: 05-CL-6178.
6. I attended Court on December 15, 2005 before the Honourable Mr. Justice Farley and (1) obtained an Order "that subject to the confirmation by the appointed judge in the class proceeding, action commenced as court file no. 05-CV-6159 (the "**Real Estate Deposit Class Action**") be tried together or immediately after this class action." and (2) ensured

that the initial Order appointing the Receiver was amended so that Mortgage Fraud Victims could meet and discuss these matters with the Receiver and that the Receiver could deal directly with RECO on behalf of all victims who had submitted claims not just victims of the real estate deposit scheme.

7. Attached hereto and marked as Exhibit "A" is a true copy of the Order of the Honourable Mr. Justice Farley dated December 15, 2005.
8. Because the initial Order appointing the Receiver *inter alia* did not specify the procedure of the distribution of any proceeds and because the various claim(s) of the various creditor(s) had not been proven nor had their respective class been established there was the possibility that any distribution (including costs) by the Court Appointed Receiver may not have been in the best interests of all the proposed creditors of Simpson *et. al.* in both actions.
9. Because of the potential conflict that has arisen between Mortgage Fraud Victims and Real Estate Deposit Victims (especially in relation to possible RECO insurance claims) it is important that the procedure for the approval of accounts by the Receiver (which have been a benefit to the Receivership estate) be open, transparent and crystal clear.
10. In that regard, on June 8, 2006 the Honourable M. Justice Spies issued a decision (which is set out at Exhibit "K" in the Receiver's motion herein). At paragraph 111, the Honourable M. Justice Spies gives direction and advice concerning the approval of future accounts (*emphasis added*):

**As for the approval of future accounts, I expect counsel for the Receiver to follow the procedure in the *Bakemates* decision. That decision makes it clear what information is required to support such a motion and I expect that counsel will include all of that information in the material filed with the court on the next motion for approval and that that motion record will be served well in advance and posted on the website so that all interested parties may make an informed assessment of the**

**reasonableness of the fees claimed and if necessary, prepare to defend the motion.** The categories for all services rendered must be more refined so that in addition to assessing the reasonableness of the future accounts, consideration can be given to what a client would normally want to know, namely, is the cost to pursue a particular course of action warranted given the likely outcome and the amount in issue. This will be necessary to determine how the remaining issues should be dealt with.

11. Attached hereto and marked as Exhibit "B" is a true extract of page 24 of the Decision on Motion of Justice Spies dated June 8, 2008.

12. On November 26, 2008 I consulted the website of the Receiver being [www.secreceiver.com](http://www.secreceiver.com) and could not locate the Receiver's motion record on the Receiver's website as directed should be done by Justice Spies.

13. As well the Receiver's motion is silent on the quantum of the receivership estate, receiver and legal fees incurred to date and the balance (if any) of the estate remaining to be distributed. At a minimum the Receiver's motion record should indicate the following:

**X (value of estate excluding RECO insurance policy)**

- **Y (receiver fees + legal fees (to date))**

**Z (value of the receivership estate remaining (if any))**

14. Before any further accounts are approved I do verily believe that the information sought in paragraph 13 herein be provided and together with the Receiver's motion record be posted on the Receiver's website.

15. I make this affidavit in response of the relief claimed in the Receiver's Notice of Motion.


Sworn before me  
at the Town of Stouffville  
in the Regional Municipality of York,  
on this 26<sup>th</sup> day of November, 2008.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

GIUSEPPE ANTONIO PALMA, a Commissioner, etc.  
Regional Municipality of York, for Govedaris  
Professional Corporation, Barristers and Solicitors.  
Expires June 6, 2011.

  
\_\_\_\_\_  
GREGORY GOVEDARIS

This is Exhibit "A" referred to in the  
affidavit of Gregory Govedaris  
sworn before me, this 26 day of  
November 2008



A COMMISSIONER FOR TAKING AFFIDAVITS

GIUSEPPE ANTONIO PALMA, a Commissioner, etc.  
Regional Municipality of York, for Govedaris  
Professional Corporation, Barristers and Solicitors.  
Expires June 6, 2011.

Form 59A

Order

05-CV-6178

ONTARIO

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.  
JUSTICE FARLEY

)  
)  
)

THURSDAY, THE 15<sup>th</sup> DAY OF  
DECEMBER, 2005

BETWEEN:

FOUR SEASONS DRYWALL SYSTEMS & ACOUSTICS LIMITED  
and ZAPFE HOLDINGS INC.

Plaintiffs

and

COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC.,  
YORK MANAGEMENT GROUP, WALLIS SIMPSON & ASSOCIATES,  
CAMEO INVESTMENTS and KENNETH WAYNE SIMPSON

Defendants

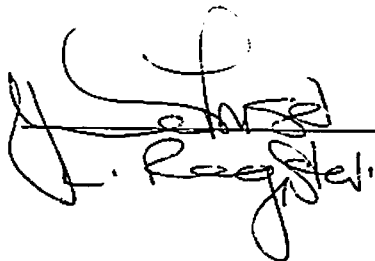
IN THE MATTER OF THE *Class Proceedings Act*, 1992

ORDER

THIS MOTION, made by Plaintiffs was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the Plaintiffs' Motion Record dated the 13<sup>th</sup> day of December, 2005, and upon hearing the submissions of counsel the plaintiffs, no one appearing for the defendants despite notice of this matter;

- 1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record be abridged to the date and time of actual service and that such service is valid service of the materials filed in support of this motion.
  
- 2. THIS COURT ORDERS that subject to the confirmation by the appointed judge in the class proceeding, action commenced as court file no. 05-CV-6159 (the "Real Estate Deposit Class Action") be tried together or immediately after this class action.

  
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ENTERED AT THE COURT OF QUEBEC  
ON / BOOK NO:  
LE / DANS LE REGISTRE

DEC 2 5 2005

PER/PAR: NB



FOUR SEASONS DRYWALL SYSTEMS & ACOUSTICS LIMITED  
and ZAPFE HOLDINGS INC.

COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC.,  
YORK MANAGEMENT GROUP,  
WALLIS SIMPSON & ASSOCIATES,  
CAMEO INVESTMENTS and KENNETH WAYNE SIMPSON

05-CL-6178

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN THE MATTER OF THE *Class Proceedings Act*, 1992

PROCEEDING COMMENCED AT Toronto


ORDER

GOVEDARIS PROFESSIONAL CORPORATION  
Barristers and Solicitors  
6383 Main Street  
Stouffville, Ontario L4A 1G4  
Attention: Gregory Govedaris  
LSUC No. A034693I

Tel: 905-642-2090  
Fax: 905-642-2101

Solicitors for the plaintiffs

This is Exhibit "B" referred to in the  
affidavit of Gregory Govedaris  
sworn before me, this 26 day of  
November 2008



A COMMISSIONER FOR TAKING AFFIDAVITS

GIUSEPPE ANTONIO PALMA, a Commissioner, etc.  
Regional Municipality of York, for Govedaris  
Professional Corporation, Barristers and Solicitors.  
Expires June 6, 2011.

before Mesbur J. and again before me on April 6, 2006 and some of the time spent by counsel preparing the information that I directed.

[108] For these reasons, the fees claimed by Bennett Jones will be reduced by these various deductions in the total amount of \$102,000 before GST, in order to arrive at an amount for fees that in my opinion is fair and reasonable in all of the circumstances.

### DISPOSITION

[109] Accordingly, the fees and disbursements of Bennett Jones LLP for the period from October 11, 2005 to April 12, 2006 are approved in the amount of \$259,522.50 for fees plus GST in the amount of \$18,166.58 and disbursements, inclusive of GST, in the amount of \$17,998.22 for a total of \$295,687.30.

[110] I do not intend to impose hourly rates on counsel for the Receiver with respect to future accounts submitted to the court but I trust that the conclusions that I have come to in reaching this decision will be taken into account. I expect that the number of lawyers working on this matter will be pared down significantly and that my concern about duplication will be dealt with.

[111] As for the approval of future accounts, I expect counsel for the Receiver to follow the procedure in the *Bakemates* decision. That decision makes it clear what information is required to support such a motion and I expect that counsel will include all of that information in the material filed with the court on the next motion for approval and that that motion record will be served well in advance and posted on the website so that all interested parties may make an informed assessment of the reasonableness of the fees claimed and if necessary, prepare to defend the motion. The categories for all services rendered must be more refined so that in addition to assessing the reasonableness of the future accounts, consideration can be given to what a client would normally want to know, namely, is the cost to pursue a particular course of action warranted given the likely outcome and the amount in issue. This will be necessary to determine how the remaining issues should be dealt with.

[112] Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action who has made a claim for a deposit of \$200,000, requested costs of his attendance on the motion in the amount of \$2,000 on a substantial indemnity basis, to be paid from the estate when Receiver's counsel is paid. He submits that this is fair if his efforts reduced the quantum of costs payable to Receiver's counsel. Atlas has been on the service list since the Initial Order and counsel has appeared on certain motions brought by the Receiver, including the attendances

UDAYAN PANDYA

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

05-CL-6159

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE *Class Proceedings Act*, 1992

PROCEEDING COMMENCED AT Toronto

AFFIDAVIT OF GREGORY GOVEDARIS

GOVEDARIS PROFESSIONAL CORPORATION

Barristers and Solicitors  
6383 Main Street  
Stouffville, Ontario L4A 1G4

Attention: Gregory Govedaris  
LSUC No. A034693I

Tel: 905-642-2090

Fax: 905-642-2101

Solicitors for the plaintiffs in Court File No.: 05-CL-6178