

**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 CAMEO INVESTMENTS

Defendants

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

**NINTH REPORT OF THE RECEIVER  
(Dated June 21, 2007)**

**Background**

1. The defendant, Courtney Simpson ("Simpson"), is a member of the Real Estate Council of Ontario ("RECO"), a broker under the *Real Estate and Business Brokers Act* and is the principal broker and controlling mind of the defendant, York Region Realty Inc. ("York Realty") and also of the other defendant entities.

2. This proceeding has been commenced as a class action against the defendants for fraud, unjust enrichment, breach of fiduciary duty and/or misrepresentation with respect to a large number of victims or class members. The claim alleges that the defendants received multiple deposits on the same properties and when the sales failed to close, the defendants did not return the deposit money to the would be purchasers (the "Real Estate Deposit Scheme"). The defendants have not defended this action and have been noted in default. Simpson pleaded guilty to several criminal and regulatory charges and is currently serving a prison sentence.

3. By Order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), Michael J. Quilling (the "Receiver") was appointed receiver, 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"). A copy of the Initial Order is attached hereto and marked as **Exhibit "A"**.

4. At paragraph 35 of the order of the Honourable Mr. Justice Farley dated December 15, 2005 ("First Amended and Restated Initial Order"), it was ordered that the Receiver deal directly with the Real Estate Council of Ontario ("RECO") on behalf of the class members who have submitted claims to RECO seeking to recover consumer deposit insurance for their lost deposits. A copy of the First Amended and Restated Initial Order is attached hereto and marked as **Exhibit "B"**.

5. The purpose of this Ninth Report of the Receiver (the "Ninth Report") is to provide the Court with his recommendations with respect to advancing claims for consumer deposit

insurance on behalf of victims of Simpson and to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver.

### **The Insurance Claim**

6. RECO has a Consumer Deposit Insurance program (the "Policy") in place. The Policy names Lloyd's of London ("Lloyd's") as the insurer and Aon Reed Stenhouse Inc. ("Aon") as the insurance broker. RECO and Simpson are named insureds under the Policy.

7. Based on the evidence available to date, it is estimated that 26 victims of the Real Estate Deposit Scheme have made claims to RECO under the Policy.

8. The Consumer Deposit Insurance program is in place to pay, on behalf of the named insureds, the amount of any claim for loss sustained by the claimant in a trade in real estate up to the policy limits. The policy's limits are: \$100,000 for each claim and \$500,000 for each occurrence.

9. The deposits claimed to date total \$3,215,000.

10. If the Policy claims are characterized as individual claims, the maximum possible insurance coverage would be \$1,965,000.

11. The Receiver understands, based on information provided to the receiver's counsel by victims of Simpson, that Lloyd's will likely take the position that Simpson's fraudulent acts



constitute "an occurrence" and that the maximum payout under the insurance is \$500,000 total on a pro rata basis.

### **Proposed Action**

12. The receiver recommends that the court grant the receiver the authority to commence proceedings against Lloyd's and Simpson (if necessary to trigger the Policy), seeking a determination of the "an occurrence" issue, among others. A copy of the proposed Notice of Application is attached hereto at **Schedule "C"**.

13. In the alternative, if the court does not approve this recommendation the receiver requests that he be released from any obligation he may have to pursue such insurance on behalf of the victims/claimants. The Real Estate Deposit victims will then have the opportunity to pursue such claims individually or accept any offer that the insurer may make in respect of such insurance claims.

14. The receiver has considered claiming damages against RECO for negligence in its failure to adequately monitor and regulate Simpson, however civil liability of public and regulatory agencies is fairly rare, and as such, the receiver does not recommend commencing negligence proceedings against RECO.

15. The receiver is satisfied that a cause of action as against Lloyd's and Simpson exists. He recommends proceeding with these claims. It is acknowledged however, that any claim against Lloyd's will likely be defended thereby increasing costs against the receivership estate. All victims will benefit if the proceeding is successful as some victims (with losses of up to

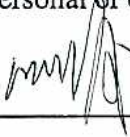
\$100,000) will be made whole leaving the balance of the estate accrued to date to be distributed to the remaining victims/class members.

### **Receiver's Requests and Recommendations**

16. The Receiver recommends that the court grant him the authority to commence a proceeding against Lloyd's and Simpson, if necessary, seeking a determination of the "an occurrence" issue among others in substantially the same form as attached hereto as Exhibit "C".

### **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

DMSTORLegal\056445\00001\522387v2