

Court File No. 05-CL-6159

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

THE HONOURABLE *MR*  
JUSTICE *FARLEY*

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

**BETWEEN:**

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES  
AND CAMEO INVESTMENTS

Defendants

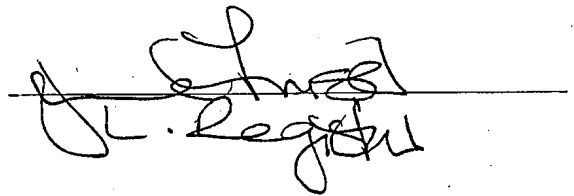
In the Matter of the *Class Proceedings Act, 1992*

**ORDER**

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

**UPON READING** the First Report dated December 13, 2005 of Michael J. Quilling (the "Receiver"), in his capacity as the court appointed receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Realty"), and upon hearing the submissions of counsel for the Receiver and the plaintiff, 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 the action as against Cameo Investments be dismissed forthwith without costs;
3. **THIS COURT ORDERS** that subject to the confirmation by the appointed judge in the class proceeding, action commenced as court file no. 05-CL-6178 (the "Mortgage Fraud Scheme Class Action") be tried together or immediately after this class action;
4. **THIS COURT ORDERS** that the plaintiff be granted leave to amend the statement of claim issued November 15, 2005 to add Courtney Wallis Simpson carrying on business as York Management Group as a defendant in the form of the amended statement of claim attached to this order as **Appendix I**.

  
J. Regan

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 20 2005

PER/PAR:

NB

**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*

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 15, 2005

Issued by "Local Registrar"  
Local registrar

Address of court office: 393 University Avenue  
Toronto, Ontario  
M5G 2J6

TO: COURTNEY WALLIS SIMPSON  
587 Cam Fella Boulevard  
Stouffville, ON L4A 7H3

AND TO: YORK REGION REALTY INC.  
19 Thicketwood Boulevard  
Stouffville, ON L4A 1K1

AND TO: WALLIS SIMPSON & ASSOCIATES  
37 Sandiford Drive  
Suite 301  
Stouffville, ON L4A 7X5

AND TO: CAMEO INVESTMENTS  
200 Bond St. W.  
Oshawa, Ontario  
L1J 2L7

AND TO: COURTNEY WALLIS SIMPSON (c.o.b. as YORK MANAGEMENT GROUP)  
587 Cam Fella Blvd  
Stouffville, Ontario  
L4A 7G9

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## CLAIM

1. The plaintiff claims against the defendants, Courtney Wallis Simpson ("Simpson"), York Region Realty Inc., Wallis Simpson & Associates, Courtney Wallis Simpson (c.o.b. as York Management Group) and Cameo Investments, as follows:

- (a) An order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff of the class, being those persons who are Canadian residents and who provided deposit monies in trust to the defendant Simpson and to the other defendants pursuant to fraudulent agreements of purchase and sale;
  - (b) A declaration that the defendants have been unjustly enriched as a result of the above conduct and hold all proceeds raised by them, or assets referable to such proceeds, as constructive trustees for the class and in particular a declaration that Simpson and the other defendants hold the property described at Schedules "A" and "B" hereto in trust for the class;
  - (c) damages for fraud, misrepresentation and breach of fiduciary duty in the amount of \$6,000,000;
  - (d) The appointment of a receiver (or alternatively, inspector) pursuant to Section 101 of the *Courts of Justice Act* with full power to investigate all matters pertaining to the raising of funds by the defendants as hereinafter set out, including powers to investigate the whereabouts of such funds (or assets referable to such funds), to compel the production of documents and examine third parties and full power to hold and preserve such funds or assets once ascertained pending further order of the court or, alternatively an interim pre-trial discovery order (a *Norwich Pharmacal* order) requiring persons with knowledge or documents relating to the matters in this action to provide such information to the plaintiff;
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- (e) Punitive, aggravated and exemplary damages in the amount of \$10,000,000;
- (f) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (g) The plaintiff's costs of this action on a substantial indemnity basis; and
- (h) Such further and other relief as to this Honourable Court appears just.

### **The Parties**

2. The plaintiff is a resident of the City of Mississauga, Ontario.
3. The defendant 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 defendant entities known as "Wallis Simpson & Associates" ("Simpson & Associates"), Courtney Wallis Simpson (c.o.b. as York Management Group) ("York Management") and "Cameo Investments" ("Cameo"). It is not known to the plaintiff at present whether Simpson & Associates and Cameo are trade names of corporations and, if so, the jurisdictions of their incorporations.

### **The Fraudulent Scheme**

4. In September 2005 Simpson, acting as a real estate broker induced the plaintiff to enter into an agreement of purchase and sale (the "Agreement") with respect to a commercial property in Stouffville, Ontario. It was a term of the Agreement that the
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plaintiff and his business partner, Mukesh Morar, provide deposit funds in the total amount of \$200,000 to York Realty. The plaintiff and Mr. Morar provided the deposit funds in trust to York Realty as required under the Agreement. These deposit funds were to be held by York Realty in trust pending completion or termination of the Agreement. Similar arrangements were made by the defendants with the other class members.

5. The receipt of deposit funds referenced at paragraph 5 above was made in furtherance of a fraudulent scheme perpetrated by the defendant Simpson. The purported vendors who are the actual property owners have denied signing the purported agreements of purchase and sale. Many of the agreements of purchase and sale purported to sell the same property. The defendants collected the deposits associated with the agreements of purchase and sale from more than one class member with respect to the sale of the same property. The agreements of purchase and sale entered into by the class members at the inducement of Simpson and the other defendants were fraudulent.

6. In particular Simpson represented to the plaintiff and to other class members that:
- (a) She was the broker or agent with the authority to negotiate the purchase and sale of various commercial properties;
  - (b) Their deposit funds would be held in trust by York Realty pending completion or termination of the Agreements of Purchase and Sale;
  - (c) She acted on the authority of the various vendors involved in the Agreements of Purchase and Sale;
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(d) She was in the process of obtaining the documents necessary to complete the commercial real estate transactions; and

(e) She could return their deposit funds or had already sent them a cheque in the amount of their deposit funds.

7. All class members relied upon the representations set out in paragraph 7 above.

8. All of the representations set out in paragraph 7 above were untrue. There were no valid agreements of purchase and sale with respect to the various commercial properties.

9. The plaintiff states that representations made by Simpson were made for the purpose of inducing the class members to invest in various commercial real estate ventures, were made with the intention that they would be relied upon by class members in investing and were relied upon by class members to their detriment in their real estate investments with Simpson and the other defendants.

10. In the event the defendant entities involved are incorporated in Canada, the plaintiff states that it is fit and proper that an order for restitution or damages be made against Simpson personally given her leading role in the fraudulent conduct and as her actions were designed to secure personal benefit. The plaintiff states that Simpson has personally received benefits from the deposit funds, the particulars of which are known to Simpson.

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### **Breach of Fiduciary Duty**

11. The plaintiff pleads that Simpson owed a fiduciary duty to him and to the class members to perform her duties faithfully, honestly, diligently and in good faith. The plaintiff pleads that Simpson breached those duties by wrongfully converting the plaintiff's and the class members' deposit funds.

### **Appointment of a Receiver**

12. The plaintiff at present has no present knowledge as to the whereabouts of the approximately \$6,000,000 raised by the defendants or proceeds pursuant to the scheme above. The plaintiff pleads that it is just and convenient for the Court to appoint a person as receiver (or alternatively, as inspector) in order to ascertain the whereabouts of the funds raised (or assets referable to the funds) to preserve the funds or assets referable to the deposit funds pending final disposition of the action herein, and the ascertain and pursue any insurance proceeds such as that which might be available through RECO.

13. The plaintiff pleads that he is entitled to an accounting of the property as it came into the hands of the defendants and that he is entitled to trace the same and charge the defendants' property to the extent that the class members' property is traced thereto.

14. The plaintiff pleads that it is just and correct for the receiver to assess all claims by the class members and to advise the court on the distribution of the defendants' assets to the class members.

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**Constructive Trust**

15. The defendants have been unjustly enriched as a result of their raising of approximately \$3,000,000 to \$6,000,000 in funds and that they hold any such funds (or assets referable to such funds) as constructive trustees for the class members.

**This Action Survives Bankruptcy**

16. The plaintiff pleads that the liability of the defendants arises out of their fraud, misappropriation or defalcation while acting in a fiduciary capacity and the plaintiff pleads and relies upon Section 178 of the *Bankruptcy and Insolvency Act* with respect to same.

**Punitive Damages**

17. The defendants' actions were intentional, reckless, criminal, highhanded and callous and the plaintiff pleads that the class members are entitled to an award of punitive and exemplary damages in respect of same.

**Joint and Several Liability**

18. The plaintiff claims that the defendants are jointly and severally liable for the damages suffered by the class members.

19. The plaintiff proposes that this action be tried at Toronto.

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Date of Issue: November 15, 2005

**BENNETT JONES LLP**  
Suite 3400, P.O. Box 130  
One First Canadian Place  
Toronto, Ontario  
M5X 1A4

Jim Patterson / Lincoln Caylor /  
M. Joanne MacMillan  
Tel: (416) 777-6250 / 6121 / 4629  
Fax: (416) 863-1716  
LSUC No. 28199C / 37030L / 43529J

Solicitors for the plaintiff

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**Schedule "A"**

587 Cam Fella Boulevard  
Stouffville, Ontario  
L4A 7H3

PIN 03715-0004  
Whitchurch, Ontario

1038 Kawagama Lake Road  
Dorsett, Ontario

PIN 03710-0193/0194  
Stouffville, Ontario

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**Schedule "B"**

1. Royal Bank of Canada  
Transit No. 02982  
47 Main Street  
Markham, Ontario
  2. Royal Bank of Canada  
Davis and Highway 404 Branch  
Toronto, Ontario
  3. Canadian Imperial Bank of Commerce  
Transit No. 01642  
4360 Highway 7  
Unionville, Ontario
  4. Bank of Montreal  
Town Square Branch  
Richmond Hill, Ontario
  5. TD Canada Trust  
Town Square Branch  
Richmond Hill, Ontario
  6. TD Canada Trust  
Davis and Highway 404 Branch  
Toronto, Ontario
  7. Bank of Nova Scotia  
Davis and Highway 404 Branch  
Toronto, Ontario
  8. HSBC  
Richmond Hill
  9. Laurentian Bank  
Newmarket, Ontario
-

**Udayan Pandya**  
Plaintiff

v.

**Courtney Wallis Simpson et al.**  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Simplified Procedure)

Proceeding commenced at Toronto

**AMENDED STATEMENT OF CLAIM**

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LSUC Reg. No. 28199C/43529J

Solicitors for the defendants

**Udayan Pandya**  
Plaintiff

v.

**Courtney Wallis Simpson et al.**  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

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

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
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