

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
AND CAMEO INVESTMENTS**

Defendants

In the Matter of the Class Proceedings Act, 1992

**FIRST REPORT OF THE RECEIVER
(Dated December 13, 2005)**

Background

1. 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"**.

2. The purpose of this First Report of the Receiver (the "First Report") is to provide the Court with a status update with respect to the Receiver's activities since the date of the Initial Order, the progress of the receivership generally, and to provide a factual basis upon which the Court may provide direction and grant certain relief recommended by the Receiver.

Proceedings Commenced Against Simpson (and Others)

3. There are currently three proceedings against the defendants (other than Cameo Investments) arising from similar factual circumstances. Of the three proceedings, two are class proceedings, each pertaining to a part of Simpson's fraudulent scheme. The third proceeding was commenced in Newmarket, Ontario and involves allegations similar to those in the within class proceeding. The relevant court file numbers and short styles of cause are as follows:

- (a) Walmsley v. Simpson and York Region Realty Inc. – Court file no. CV-05-077631-00 (the "Walmsley Action");
- (b) Pandya v. Simpson *et al.* – Court file no. 05-CL-6159 (the "Real Estate Deposit Class Action"); and
- (c) Four Seasons Drywall Systems & Acoustics Limited *et al.* v. Simpson *et al.* – Court file no. 05-CL-6178 (the "Mortgage Fraud Action").

4. Copies of the statements of claim in the Walmsley Action and the Mortgage Fraud Action are attached as **Exhibits "B"** and **"C"** respectively.

Fraud No. 1: "Robbing Peter to Pay Paul" – The Real Estate Deposit Scheme

5. In or about February 2003 up until September 2005, Simpson, acting as a real estate broker, and her company, York Region Realty Inc. ("York Realty") induced a number of individuals to enter into agreements of purchase and sale (the "Agreements") with respect to

commercial properties in Stouffville, Ontario. Many of the Agreements were with respect to the same property. Simpson admitted under oath that she sold two of the properties on more than 100 occasions each.

6. It was a term of the Agreements entered into by the victims that they provide deposit funds in an amount ranging from \$50,000 to \$400,000 to York Realty. These deposit funds were to be held by York Realty in trust pending completion or termination of the Agreement.

7. Despite being advised that Agreements were terminated and the deposit funds to be returned, to date, Simpson and York Realty have failed to return certain of the deposit funds.

8. Based on the information available to date, although several of the potential purchasers were repaid their deposit money, there are approximately eighteen victims of this scheme who are owed a total of approximately \$3.6M by Simpson pursuant to the fraudulent Real Estate Deposit Scheme set out above.

Fraud No. 2: "The Ponzi Scheme" – a Mortgage Investment Fraud

9. In 1998, Simpson devised a scheme in which investors provided her with funds for the purpose of investing in "interim occupancy mortgages." Simpson told the investors that she had a guaranteed investment vehicle in which the investor would provide funds to facilitate a purchaser moving into a condominium (prior to closing of the condominium purchase). She represented to the investors that prior to moving into the condominium that purchasers were required to put down a 25% deposit. Simpson told her investors that her company funded these interim occupancy funds for a return of \$800 to \$1,000 per \$5,000 deposit required. Simpson promised

remarkably high percentage returns ranging from 25% per week to 25% per month on the principal invested.

10. Investors would give Simpson money under the auspices of funding condominium purchases. Simpson would then redirect these funds to previous investors to repay their principal investment with profit. An overview of the rationalization used by Simpson to attract investors under the Mortgage Fraud Scheme is attached as **Exhibit "D"** to this report.

11. In the usual course, an actual interim occupancy mortgage is referred to as a "phantom mortgage" as there is no mortgage *per se*. The purchaser of the condominium pays an interim occupancy mortgage in order to take possession of the unit before actually taking title to the property. The payments are more akin to rent paid to the vendor than to mortgage payments.

12. Simpson, on cross-examination, indicated that there were a large number of victims of this scheme. To date, the Receiver is aware of approximately fifty-four victims and a total loss of approximately \$11M. The Mortgage Fraud Scheme class action has been commenced. Its members are victims of this scheme.

13. The Receiver has already been appointed for the purpose of realizing assets for the benefit of the Real Estate Deposit Scheme victims.

14. The Receiver recommends that the Mortgage Fraud Scheme class action be tried together with the Real Estate Deposit Scheme class action and that a first amended order be issued, revising the Initial Order, to add the Mortgage Fraud Scheme victims as a class of creditors to be

considered by the Receiver. Any other result would likely cause substantial conflicts, increased costs and judicial inefficiency.

The Receiver's Activities

15. Since the date of the Initial Order, the Receiver has:
- (a) served the Initial Order on all banks to which Simpson and York Realty had a relationship. These banks are listed in Schedule "C" of the Initial Order;
 - (b) requested all bank accounts in Simpson's and York Realty's names be frozen;
 - (c) registered the Initial Order on title to all properties owned by Simpson. These properties are listed in Schedule "B" to the Initial Order;
 - (d) attended at all of the properties owned by Simpson and listed in Schedule "B" to the Initial Order with the exception of the Lake Kawagama property;
 - (e) through counsel, Bennett Jones LLP, spoke to the agent who has listed the real properties for sale;
 - (f) attended at Simpson's and York Realty's former business premises;
 - (g) taken copies of Simpson's and York Realty's business records;

- (h) examined Simpson under oath to further understand the extent of the scheme and her assets;
- (i) communicated with third parties, including the York Regional Police, to gain a more comprehensive understanding of Simpson's and York Realty's assets and conduct; and
- (j) received numerous calls from victims and provided information to victims regarding the status of the claim.

Cameo Investments

16. The Receiver and counsel examined Simpson as to the nature and involvement of Cameo Investments in these schemes, if any.

17. Simpson advised under oath that she has no knowledge of any company named "Cameo Investments" but that she formerly registered a sole proprietorship in the name "Camco Investments."

18. While "Cameo Investments" was named as a defendant, the Receiver has investigated and based on the information to date, has concluded that "Cameo Investments" is a separate entity with no involvement in the matter. Further, the Receiver is satisfied that "Camco Investments" does not possess any assets or property and that it has not operated since November 2003.

19. The Receiver recommends that the action as against "Cameo Investments" be dismissed forthwith without costs.

Securing Financial Accounts

20. The Receiver has taken steps to secure the known bank accounts to which Simpson or York Realty presently have or formerly had a connection. The banks are listed in Schedule "C" to the Initial Order. On November 18, 2005, on behalf of the Receiver, Bennett Jones LLP served the Order of Justice Ground on all banks listed in Schedule "C" to the Initial Order. A list of all banks on which the Receivership Order has been served is attached as **Exhibit "E"** to this report.

21. Between November 18, 2005 and present, Bennett Jones LLP have been following up with bank representatives to ensure that accounts have been frozen and to collect for the Receiver all relevant account statements and transit numbers.

22. On November 29, 2005 at approximately 10:00 am, the Receiver, accompanied by counsel from Bennett Jones LLP, attended at the examination of Simpson during which she provided a summary of her previous and current bank, brokerage and other accounts. Attached at **Exhibit "F"** to this report is the list of accounts provided by Simpson.

23. During the examination, Simpson informed the Receiver and counsel that almost all funds that came into her possession, including, but not limited to earnings, rental income, commissions, client deposits, gifts and transfers were deposited into accounts under the name York Region Realty Inc. or York Management Group.

24. York Management Group, one of the sole proprietorship business names used by Ms. Simpson was not named as one of the original defendants but with this new information, the

Receiver recommends that it be added as a defendant in this action, that a first amended order be issued, revising the Initial Order to reflect this change, and that the first amended order be sent to the banks a second time requesting information regarding accounts in the name York Management Group. A copy of the proposed draft Amended and Restated Initial Order is attached as **Schedule "A"** to the Notice Of Motion. A copy of the proposed Amended Statement of Claim is attached as **Schedule "B"** to the Notice Of Motion.

25. At the examination, Simpson informed the Receiver that the York Regional Police have all relevant documents and electronic information relating to her bank accounts. Simpson consented to the Receiver reviewing this material.

26. On November 29, 2005 at approximately 3:00 pm, the Receiver, accompanied by counsel, met with Detective Fred Kerr and conducted a cursory review of all documents in the possession of the police including bank account statements, cheque books, and correspondence from the banks. Transit and account numbers were recorded and are currently being investigated by the Receiver.

27. The Receiver continues to review the financial accounts and account statements with a view to identifying any other accounts of relevance.

Securing Real Property

28. The Receiver has taken steps to secure the known real property to which Simpson has ownership.

29. It appears that the equity in the property owned by Simpson may be anywhere from approximately \$654,000 if the Receiver is not successful in setting aside certain charges discussed below to approximately \$1.3M if the Receiver is successful in setting aside these charges. Attached at **Exhibit "G"** to this report is an outline of the properties owned by Simpson, their estimated values and the charges against the properties in the form of mortgages.

Properties to Which Simpson has Title

30. On November 17, 2005, Bennett Jones LLP registered the Initial Order on title to all of the properties known to be in Simpson's name. A list of all properties on which the Receivership Order has been served is attached as **Exhibit "H"** to this report.

31. On November 29, 2005, at approximately 4:00 pm, the Receiver, with counsel and Simpson attended at the properties owned by Simpson with a view to conducting a preliminary assessment of their fair market value.

32. At the examination on November 29, 2005, Simpson informed the Receiver that she had already listed all of the properties with the exception of the Kawagama property with listing agent, John Walley of Sutton Group – Town & Country Realty Ltd. in Stouffville. Attached at **Exhibit "I"** to this report are the listings for the 6072 Main Street property, the 587 Cam Fella Boulevard property, and the Lot 14, Stouffer Street property.

33. The Receiver has reviewed the listing agreements and the qualifications of the listing broker, John Walley and is of the opinion that Sutton Group – Town & Country Realty Ltd. is qualified to handle the sales of the various properties.

34. The Receiver is in the process of retaining an agent to value and list the Kawagama property.

35. The Receiver recommends that the real assets listed in Exhibit "H" be sold and that all proceeds from their sale be deposited and held in an interest bearing account.

Additional Properties

36. By email dated November 25, 2005, addressed to the Receiver's counsel, among others, Simpson indicated that she was the rightful owner of two additional properties (6451 and 6817 Main Street, Stouffville) to which she does not currently have title. Attached at **Exhibit "J"** to this report is the email that Simpson sent to counsel regarding these properties.

37. On November 29, 2005, under oath, Simpson discussed the circumstances surrounding the conveyance of the 6451 and 6817 Main Street, Stouffville properties and the parties involved. She advised that in 2003 she used Lia Hurst ("Hurst") as a nominee to hide the properties by transferring title into Hurst's name. Simpson now advises that Hurst refuses to transfer the properties back.

38. On November 29, 2005, at approximately 4:00 pm, the Receiver, counsel and Simpson attended at 6451 and 6817 Main Street, Stouffville with a view to conducting a preliminary assessment of their fair market value.

39. The Receiver conducted a title search of 6451 and 6817 Main Street, Stouffville. The searches indicate that Simpson does not have title. Both properties name Lia Hurst as the

exclusive owner. Attached at **Exhibit "K"** to this report are the title searches for 6451 and 6817 Main Street, Stouffville.

40. The Receiver will investigate further to determine if there is sufficient equity in these properties to merit a lawsuit. If, in consultation with counsel, he determines such a lawsuit is warranted he will sue Lia Hurst and seek a certificate of pending litigation in order to regain possession of these properties for the benefit of the class members.

Co-operation with York Regional Police

41. The Receiver has been communicating with certain third parties who have knowledge of the Defendants' specific assets and business with a view to developing a more comprehensive understanding of the Defendants' assets and affairs.

42. In particular, on November 29, 2005 at approximately 1:00 pm, the Receiver met with Detective Fred Kerr of the York Regional Police to discuss the matter.

43. As noted above, Detective Fred Kerr and his team have taken possession of all relevant hard copy documents and electronic information from Simpson's business premises. The fraud unit has made these materials available to the Receiver for the purposes of his investigation with Simpson's consent.

44. At approximately 3:00 pm on November 29, 2005, the Receiver, accompanied by counsel attended at the offices of the York Regional Police Fraud unit and conducted a preliminary review of 17 boxes of documents produced by Simpson.

45. With the assistance and cooperation of the York Regional Police Fraud unit, the Receiver continues to conduct a detailed inventory and review of documents found at Simpson's office.

Securing Business Premises

46. The Receiver has taken steps to secure the business premises of Simpson and York Realty.

47. On November 29, 2005, at approximately 4:00 pm, the Receiver, accompanied by counsel and Simpson attended the business premises of York Region Realty Inc. and York Management Group at 6072 Main Street, Stouffville to secure the premises, conduct an inventory of the contents thereof, and conduct a preliminary assessment of the fair market value of the property and assets included therein.

48. The Receiver found that all relevant documents and electronic hardware had previously been removed by the York Regional Police fraud unit.

49. The Receiver has found a purchaser for the contents of the office building. The Receiver will deal with Simpson to sell the contents of the building after which it will report to the court.

Real Estate Council of Ontario ("RECO")

50. Based on the information to date, it is estimated that eighteen members of the Real Estate Deposit Scheme class action have made claims to RECO.

51. The Receiver understands, based on the information from certain class members, that RECO's position is that Simpson's actions constitute one "occurrence" and that therefore there is a \$500,000 limit to the amount to be paid by RECO for the class members.

52. The Receiver recommends that he deal directly with RECO on behalf of all of the within class of victims and that he assist any individuals who have yet to make claims to do so. The Receiver will determine RECO's position in response to the claims and report to the court.

53. Any payments from RECO will be used for the benefit of those Real Estate Deposit Scheme class members who have made a claim to RECO.

Third Parties

54. During the examination, Simpson made reference to an individual named Adam Cox ("Cox"). Simpson indicated that he was an independent contractor whom she formerly employed.

55. Simpson told the Receiver that Cox was involved in the real estate deposit scheme from the outset and that he was likely in possession of a number of the Agreements of Purchase and Sale and receipts from the deposits.

56. Simpson told the Receiver that she contacted Cox requesting that he give all documents in his possession to the York Regional Police but that he has not done so.

57. The Receiver is informed that Cox works for ReMax All Stars in Stouffville.

58. The Receiver requests an order that Cox be examined and ordered to produce documents relevant to the real estate deposit scheme. If the Receiver determines that he is likely involved, the Receiver will seek the Court's direction to commence legal action against him.

Consents to Judgment

59. At the examination, Simpson told the Receiver under oath that she had signed two consents to judgment in respect of two separate proceedings. Simpson recalled that one of the consents had been signed in respect of the Walmsley Action referred to in paragraph 3 above but could not recall the other matter in which she had signed the consent to judgment. Attached hereto and marked as **Exhibit "L"** to this report is a copy of the consent to judgment in the Walmsley Action.

60. The Receiver recommends that all proceedings as against Simpson or York Realty or both be stayed and that this Court deem ineffective any and all consents to judgment that have been endorsed by Simpson prior to or after the appointment of the Receiver. The Amended and Restated Initial Order reflects this.

Simpson's and York Realty's Other Known Liabilities

Mortgages

61. Simpson advised the Receiver under oath that she borrowed \$500,000 from Ajay Pahwa ("Pahwa") pursuant to a promissory note. Pahwa demanded outrageous interest on the loans. Simpson told the Receiver that she needed the loan to pay certain of her "investors" back.

62. The *Criminal Code of Canada* regulates borrowing costs by establishing illegal interest rates. Section 347 of the *Criminal Code of Canada* makes it an offence to:

- (a) enter into an agreement or arrangement to receive interest at a criminal rate, or
- (b) actually receive payment or partial payment of interest at a criminal rate.

63. A "criminal rate" is defined as an effective annual rate of interest that exceeds 60% on the credit advanced under the agreement or arrangement. For the purposes of the *Criminal Code*, interest includes fees, charges and expenses whether in the form of a fine, penalty, commission or other similar charge or expense. Attached hereto and marked as **Exhibit "M"** is a copy of section 347 of the *Criminal Code of Canada*.

64. Based on the information to date, the Receiver is of the opinion that Pahwa charged illegal rates of interest. Under the promissory note, Pahwa demanded 10% per day compounded in the event of non-payment. He further demanded payment of an "additional late fee" of \$1,000.00 per day for every day that payment was not received. Attached hereto and marked as **Exhibit "N"** is an unsigned copy of the promissory note.

65. In furtherance of the loans advanced, Pahwa obtained mortgages against three of the properties owned by Simpson in the amount of \$650,000. 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 8, 2005 on:
PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2
65R256J4 (vacant lot); and
- (c) \$220,000 mortgage registered on March 9, 2005 on:
1038 Kawagama Lake Road, Dorset, ON, Con 13, PT LT 1
RP19R3154, Parts 1, 6, 7

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

66. Simpson advised the Receiver under oath that she has repaid the principal on the mortgages. She estimated having paid Pahwa in excess of \$800,000 but stated that he continues to demand further payments. It appears that Pahwa has charged Simpson interest on the interest on the interest.

67. Pahwa's counsel, Richard Parker of Beard Winter LLP, 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 is paid on or before December 22, 2005, the property would be sold. Attached hereto and marked as **Exhibit "P"** to this report is a copy of the Notice of Sale Under Mortgage.

68. The Receiver, through counsel, wrote to Pahwa's counsel stating that the terms of the Initial Order precluded such foreclosure proceedings and noting that the Receiver would be

seeking the direction of the court regarding the disposition of Simpson's assets. Attached hereto and marked as **Exhibit "Q"** to this report is a copy of the letter sent to Pahwa's counsel.

69. The Receiver will investigate this matter further and in the interim recommends that the validity of the mortgages be challenged and any action purported to be taken upon such mortgages stayed.

Taxes, Insurance and Property Maintenance

70. The Receiver has attempted to assess the status of all properties owned by Simpson.

71. The Receiver requested that Simpson inform him of any outstanding tax liabilities owed by Simpson or York Realty.

72. The Receiver further requested all documentation regarding insurance on the properties so as to make certain that all properties are in fact insured.

73. Simpson agreed to collect and produce all outstanding bills and mortgage payments to ensure that there is no default on payments due. Attached hereto and marked as **Exhibit "R"** is a copy of an email from Simpson updating the Receiver as to outstanding bills and taxes on her properties.

Living Expenses

74. At the examination of Simpson on November 29, 2005, Simpson requested some funds be allocated to her for living expenses for her family. She informed the Receiver that her husband is currently unemployed. The Receiver will assess Ms. Simpson's living expense requests and report to the court with a recommendation.

75. The Receiver recommends that an account be opened in Toronto at a bank to be selected by the Receiver in Courtney Wallis Simpson's name, which account may accept deposits from Simpson if signed over by her to Bennett Jones LLP but from which funds can be withdrawn only by the Receiver through Bennett Jones LLP.

Public Communications

76. The Receiver has an established website, www.secreceiver.com, where he regularly posts information regarding cases which he handles so as to provide a readily accessible information source. Attached to this report and marked as **Exhibit "S"** is the proposed language which the Receiver recommends be added to the website with respect to these proceedings. If approved, the Receiver will update the materials from time to time as necessary and post all court filings and reports.

77. The Receiver also requests that the Court approve a claim form, which can be sent to anyone who believes they have a claim against the Receivership Estate. Attached to this report and marked as **Exhibit "T"** is a proposed claim form which the Receiver recommends be approved for usage.

Receiver's Requests and Recommendations

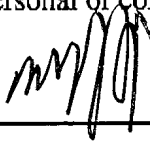
78. The Receiver requests the approval of the court in respect of all steps taken to date.
79. The Receiver recommends approval of the court to take the following steps:
- (a) dismiss the action as against Cameo Investments forthwith without costs;
 - (b) amend the Statement of Claim and Initial Order to name Courtney Wallis Simpson carrying on business as York Management Group as a defendant to the claim;
 - (c) enter into a new listing agreement with John Walley of Sutton Group in Stouffville, sell the real property assets listed in Exhibit "H" to this report making it a condition of the listing agreement that all sales are subject to court approval, and to hold all proceeds from the sales in an interest bearing account;
 - (d) commence an action as against Lia Hurst with respect to the two properties that were transferred from Simpson to Hurst so as to regain possession of those properties and liquidate them for the benefit of the class members;
 - (e) revise the Statement of Claim and the Initial Order appointing the Receiver so as to add the Mortgage Fraud Scheme victims as a

- sub-class, thereby having the Receiver act for the benefit of both classes;
- (f) deal directly with the Real Estate Council of Ontario on behalf of all victims of the Real Estate Deposit Scheme who have submitted claims;
 - (g) compel Cox to cooperate and produce relevant documents pertaining to the Real Estate Deposit Scheme;
 - (h) stay all proceedings as against Simpson, York Realty and York Management Group and deem ineffective any and all consent to judgments that have been endorsed by Simpson prior to or after the appointment of the Receiver;
 - (i) challenge all mortgages held by Ajay Pahwa on Simpson's property and oppose any and all action purported to be taken upon such mortgages;
 - (j) serve all counsel and the self-represented defendants by email;
 - (k) approve posting of information on website;
 - (l) approve claim form and its distribution;
 - (m) authorize sale of furniture and contents; and

- (n) opening of account generally and payment of reasonable living expenses.

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

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