

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

B E T W E E N:

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*

**SECOND REPORT OF THE RECEIVER
(Dated December 22, 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. 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"), the action as against Cameo Investments was dismissed, 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 Scheme Class Action") is to be tried together or immediately after this class action. A copy of the Procedural Order is attached hereto and marked as **Exhibit "B"**.

3. Also by order of the Honourable Mr. Justice Farley dated December 15, 2005 (the "First Amended and Restated Initial Order"), all proceedings, rights and remedies in respect of the remaining defendants, the Receiver or the remaining defendants' property were stayed. Further, it was ordered that the Receiver may enter into a new real estate listing agreement, that the Receiver deal directly with the Real Estate Council of Ontario ("RECO") on behalf of the class members who have submitted claims, that Adam Cox be examined and that an interest bearing bank account be opened to receive deposits. A copy of the First Amended and Restated Initial Order is attached hereto and marked as **Exhibit "C"**.

4. The purpose of this Second Report of the Receiver (the "Second Report") is to provide the Court with a status update with respect to the Receiver's activities since December 15, 2005, 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.

The Receiver's Activities

5. Since the First Amended and Restated Initial Order, issued on December 15, 2005, the Receiver has:

- (a) Served the First Amended and Restated Initial Order on all banks to which Simpson, York Realty and York Management (collectively "the Defendants") had a relationship and requested York Management Group's bank records. These banks are listed in Schedule "C" of the Initial Order;
- (b) Met with Courtney Wallis Simpson for further investigation;
- (c) Opened an interest bearing bank account;
- (d) Communicated, through counsel, with John Walley of Sutton Group – Town & Country Realty Ltd. regarding the listing agreement and the sale of real property;
- (e) Obtained the code for the key box to the Lake Kawagama property from Simpson and retained a real estate agent to undertake a fair market value assessment of the property and list it for sale;
- (f) Met with Brian Pendergast, Manager of Investigations at RECO to discuss the matter;
- (g) Contacted Adam Cox in order to compel his attendance at an examination pursuant to the Initial Order;
- (h) Reviewed all documents registered on the title of the Defendants' properties in favour of Ajay Pahwa;

- (i) Alerted the Ontario Securities Commission of the matter;
- (j) Prepared the Statutory Declaration to be utilized as a claim form for the victims of the fraud;
- (k) Posted orders, reports and other relevant information to the Receiver's website;
- (l) Received and responded to numerous inquiries from victims of the fraud and provided information to victims regarding the status of the claim.

(a) Securing Financial Accounts

6. The Receiver has taken steps to secure the Defendants' known bank accounts. The banks are listed in Schedule "C" to the Initial Order.

7. On December 20, 2005, the Receivers' counsel served the First Amended and Restated Order and the Procedural Order on all banks listed in Schedule "C" to the Initial Order and requested information pertaining to York Management Group. A list of all banks on which the First Amended and Restated Initial Order and the Procedural has been served is attached as **Exhibit "D"** to this report.

8. The Receiver's counsel has continued to follow up with bank representatives to ensure that accounts have been frozen and to collect all relevant account statements and transit numbers.

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

(b) Bank Account

10. On December 16, 2005, an interest bearing bank account was opened at Royal Bank of Canada, 20 King Street West, Toronto, Ontario. The account is under the name Bennett Jones LLP, in Trust.

11. This account has been established as a depository for the proceeds from the sale of any of Simpson's assets and any funds that Simpson may be receiving. Simpson has informed the Receiver and counsel that she is still working.

12. On December 18, 2005, counsel for the Receiver emailed Simpson requesting that she provide the Receiver with cheques from any recent commissions. To date the Receiver has not received any.

(i) Living Expenses

13. By email dated December 14, 2005, Simpson requested that a bank account opened in her name for general living expenses such as rent and food. Attached hereto and marked as **Exhibit "E"** is a copy of the email from Simpson.

14. On December 20, 2005, the Receiver and counsel met with Simpson at the offices of Bennett Jones LLP and Simpson reiterated her request stating that she literally had no money and no food in her house.

15. Simpson stated that her family has no other source of income.

16. At the meeting on December 20, Simpson presented the Receiver with a cheque for commissions in the amount \$5,430.25. She requested a portion of this amount for living expenses.

17. The Receiver took a photocopy of the cheque and permitted Simpson to take the cheque and cash it. She was directed to keep half of it for her living expenses and return the remainder to Bennett Jones LLP on December 22, 2005. Attached hereto and marked as **Exhibit "F"** is a copy of the cheque.

18. The Receiver recommends that a living allowance be established for Simpson subject to the approval of the Court.

19. Upon further investigation of Simpson's rent, grocery costs, and telephone bills and other expenses, the Receiver will report to the court his recommended living allowance.

(c) Real Property

(i) *Properties Owned by Simpson*

20. Mr. John Walley ("Walley") of Sutton Group – Town & Country Realty Ltd. in Stouffville has listed all of Simpson's properties with the exception of the property located at 9 Kawagama Lake Road (the "Kawagama Property"). Attached at **Exhibit "G"** to this report are the listings for the property located at 6072 Main Street (the "6072 Main Street Property"), the property located at 587 Cam Fella Boulevard (the "587 Cam Fella Property"), and the vacant lot located at Lot 14, Stouffer Street (the "Stouffer Street Property").

21. On December 20, 2005 Walley informed the Receiver and counsel that he had received an offer for the 6072 Main Street property for \$600,000.

22. On the afternoon of December 20, 2005, counsel was informed by Walley that Simpson had signed back the offer at \$650,000. Counsel reminded Walley that Simpson did not have control over her assets or the authority to deal with them, therefore she had no authority to sign back the offer. Walley was reminded that he was to deal with counsel or the Receiver only. In addition to the phone conversation, counsel sent a letter on December 21, 2005. Attached hereto and marked as **Exhibit "H"** is a copy of the letter sent to Walley.

(ii) *Kawagama Property*

23. The Receiver has retained a real estate agent to appraise and list the Kawagama property for sale. Simpson informed the Receiver at the examination on November 29, 2005 that the cottage has a key box on the door.

24. Simpson provided the Receiver with the code for the key box on December 20, 2005.

25. The Receiver recommends that the real estate agent attend at the Kawagama Property and undertake a fair market value assessment of the property. The Receiver is considering whether to list the property for sale now or to wait until Spring so as to avoid any diminution in value over the winter season.

26. Upon receipt of the agent's fair market assessment of the property, the Receiver will report to the court.

(iii) *Properties Not Owned by Simpson*

27. Simpson maintains that she is the rightful owner of two additional properties (6451 and 6817 Main Street, Stouffville) to which she does not currently have title.

28. On November 29, 2005, under oath, Simpson discussed the circumstances surrounding the conveyance of the 6451 and 6817 Main Street, Stouffville properties. 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.

29. 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 "I"** to this report are the title searches for 6451 and 6817 Main Street, Stouffville.

30. Walley of Sutton Group estimates the value of the properties to be between \$250,000 and \$275,000 each. There are mortgages registered on each of the properties in the amounts of \$220,697 and \$224,620.

31. The Receiver continues to investigate 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.

(d) Real Estate Council of Ontario ("RECO")

32. By order of Justice Farley dated December 15, 2005, the Receiver was granted the authority to deal directly with RECO on behalf of all of the victims who have submitted claims.

33. Based on the evidence available to date, it is estimated that eighteen victims of the Real Estate Deposit Scheme have made claims to RECO.

34. The Receiver understands, based on the information from certain class members, that RECO will likely take the position that Simpson's actions constitute one "occurrence" and that therefore no more than \$500,000 will be available to all claimants under RECO's Consumer Deposit Insurance coverage with respect to the Defendants.

35. In an effort to determine RECO's position in response to the claims, the Receiver and counsel attended at the offices of RECO located at 3250 Bloor Street West, Toronto, on December 20, 2005 and met with Brian Pendergast ("Pendergast"), the Manager Of Investigations.

36. The Receiver and counsel provided Pendergast with copies of the First Report of the Receiver, the First Amended and Restated Order and the Procedural Order.

37. Counsel advised Pendergast that the First Amended and Restated Order granted the Receiver the authority to deal directly with RECO on behalf of all of the within class of victims.

38. The Receiver informed Pendergast of a number of documents and information that were required to be produced by RECO. This list was then sent, on Pendergast's suggestion, by letter to Elizabeth Silcox ("Silcox"), counsel for RECO. Attached hereto and marked as **Exhibit "J"** is a copy of the letter sent to Silcox.

(e) Adam Cox

39. During the Receiver's examination of Simpson on November 29, 2005, Simpson told the Receiver that Adam Cox ("Cox") was an independent contractor whom she formerly employed.

40. Simpson told the Receiver that:

- (a) 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;
- (b) 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; and
- (c) that Cox works for ReMax All Stars in Stouffville.

41. Pursuant to the First Amended and Restated Order, counsel served a Notice of Examination on Cox and are in the process of obtaining his sworn evidence.

42. By fax dated December 16, 2005, counsel informed Cox that he was required to attend for an examination on December 20, 2005. Attached hereto and marked as **Exhibit "K"** is a copy of the letter sent to Cox.

43. In response to the fax dated December 16, 2005, Cox responded by fax stating that he would be "absent" from December 17, 2005 until December 31, 2005. Attached hereto and marked as **Exhibit "L"** is a copy of the response from Cox.

44. On December 19, 2005, counsel left two voice messages for Cox and sent him a letter informing him that he is required by court order to attend at the examination and requesting that he inform us of his reason for being unavailable. Attached hereto and marked as **Exhibit "M"** is a copy of the letter to Cox and the Notice of Examination.

45. No examination has taken place yet.

(f) Ajay Pahwa Mortgages

46. The Receiver obtained copies of all of the mortgages in favour of Ajay Pahwa ("Pahwa") registered on title to the Defendants' properties.

47. On December 20, 2005, Simpson advised the Receiver that Pahwa was an "investor" in the mortgage investment scheme and that he secured his "investments" by way of promissory notes. Pahwa set the terms for his "investments" at \$10,000 per \$100,000 per week.

48. Simpson advised that Pahwa advanced approximately \$400,000 pursuant to promissory notes. Pahwa demanded outrageous interest on the loans.

49. Simpson told the Receiver that she needed the "investment" funds from Pahwa in order to pay certain of her "investors" back.

50. The *Criminal Code*, R.S. 1985, c. C-46 ("*Criminal Code*") regulates borrowing costs by establishing illegal interest rates. Section 347 of the *Criminal Code* 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.

51. 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 "N"** is a copy of section 347 of the *Criminal Code*.

52. Based on the evidence available to date, it is the Receiver's opinion that Pahwa charged rates of interest which are contrary to section 347 of the *Criminal Code*. Pursuant to the promissory note attached hereto as Exhibit "O", Simpson advised that Pahwa charged 10%-20% of \$100,000 per week. Pursuant to 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 "O"** is an unsigned copy of the promissory note.

53. Simpson stated that she was paying Pahwa \$50,000 per week every week for approximately six months. This amounts to \$1,200,000. This information has not yet been confirmed through bank records.

54. In furtherance of the loans advanced, Pahwa obtained mortgages against three of the properties owned by Simpson in the amount of \$870,000. 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 (the 6072 Main Street Property);

(b) \$220,000 mortgage registered on March 9, 2005 on:

PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2 65R256J4 (the Stouffer Street Property); 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 (the Kawagama Property)

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

55. The underlying debt provided as consideration for the mortgages is not identified on the mortgage documents. Simpson stated that she did not put the promissory notes on title because she did not have time. Nevertheless, she assured the Receiver that the amount on title by virtue of the mortgages is related to the promissory notes. There is no independent confirmation of this.

56. Simpson advised the Receiver during her examination 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.

57. 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 "Q"** to this report is a copy of the Notice of Sale Under Mortgage.

58. 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 "R"** to this report is a copy of the letter sent to Pahwa's counsel.

59. On December 15, 2005, at the appearance before Justice Farley, counsel for Pahwa requested that the issue of Pahwa's mortgages be adjourned to a later date as he had not yet had time to investigate the matter. Justice Farley adjourned the matter to December 23, 2005.

60. It is the Receiver's opinion that the mortgages in favour of Pahwa on Simpson's properties are connected to the promissory notes.

61. The Receiver has investigated this matter and recommends that the validity of the mortgages be challenged, that any action purported to be taken upon such mortgages may be opposed, that no proceeds from any sale shall be paid to Ajay Pahwa pursuant to any such mortgages and that any such funds that Ajay Pahwa claims are to be held in the Receiver's bank account pending further order of the court.

(g) Ontario Securities Commission

62. On December 19, 2005, counsel provided the OSC Manager, Inquiries & Contact Centre with copies of the Motion Record (returnable November 17, 2005) and the Motion Record (returnable December 15, 2005). Attached hereto and marked as **Exhibit "S"** is a copy of the letter sent to the OSC absent the enclosures.

63. The Inquiries Office has informed counsel for the Receiver that it will examine the materials and be in contact if further information is required.

(h) Cameo Investments

64. The Procedural Order dismissed the claim as against Cameo Investments without costs.

65. By letter dated December 15, 2005, counsel for the Receiver informed counsel for Cameo Investments that the matter had been dismissed as against Cameo Investments without costs. Attached hereto and marked as **Exhibit "T"** is a copy of the letter sent to counsel for Cameo Investments.

(i) **Public Communications**

66. 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.

67. The Receiver has posted all relevant court filings and reports in this matter.

(i) ***Proposed Claim Form***

68. At the attendance before Justice Farley on December 15, 2005, counsel for the Receiver presented the Court with a proposed Statutory Declaration form, which is to be distributed to anyone who believes they have a claim against the Receivership Estate. Attached hereto and marked as **Exhibit "U"** is a revised copy of the Statutory Declaration.

Receiver's Requests and Recommendations

69. The Receiver requests the approval of the court in respect of all steps taken to date.

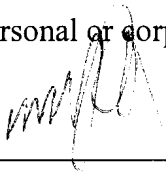
70. The Receiver recommends approval of the court to take the following steps:

- (a) challenge all mortgages held by Ajay Pahwa, oppose any action purported to be taken upon such mortgages, refuse payment of proceeds from any sale to Ajay Pahwa pursuant to any such mortgages and hold such funds that Ajay Pahwa claims in the Receiver's bank account pending further order of the court;
- (b) approve the Statutory Declaration form and its posting on website; and

- (c) approve the reasonable living allowance as proposed by the Receiver.

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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