

'Sham' charitable tax lawsuit settled

Steve Buist

December 2, 2011

Nearly 3,000 people who participated in a charitable donation program that was later ruled a "sham" by the Canada Revenue Agency have reached a settlement in their three-year-old class action lawsuit.

Banyan Tree Foundation, three related companies and Toronto-based law firm Fraser Milner Casgrain LLP have agreed to contribute \$11 million to settle the class action lawsuit involving people who contributed to the Banyan Tree Foundation Gift Program between 2003 and 2007.

The settlement agreement will be presented in Toronto court on Jan. 17 for a judge's final approval.

The donors were represented by Hamilton lawyers David Thompson and Matthew Moloci of Scarfone Hawkins LLP.

According to court documents, the gift program was structured as a mechanism to provide donations to various charities. In exchange, donors to the program were to receive charitable tax receipts.

But CRA determined that the gift program was a sham and the donors were required to pay taxes and interest on arrears after having their returns reassessed. In some cases, donors took out loans to make contributions to the gift program.

The Toronto law firm was included in the lawsuit because the donors alleged that the firm provided legal opinions in 2002 and 2003 that the gift program complied with charitable donation tax rules.

The law firm tried to argue that the opinion letters were never intended to be read by the donors and were intended only for Banyan Tree Foundation and the other three companies. The donors successfully argued, however, that the law firm's opinions were used to help promote the gift program.

The settlement agreement states that the defendants make no admission of "liability or wrongful conduct."

Donors who are part of the class action will receive pro-rated shares of the settlement fund.