

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.
JUSTICE G. STRATHY

THURSDAY, THE 17TH
DAY OF NOVEMBER, 2011

B E T W E E N

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and



ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs, for approval of a notice to the Class in respect of the settlement approval hearing, was heard this day at a case conference.

ON READING the Written Submissions of the plaintiffs including the attached appendices, and upon hearing the submissions of counsel for the plaintiffs and counsel for Fraser Milner Casgrain LLP;

1. THIS COURT ORDERS that a settlement approval hearing take place on January 17, 2012, at 10:00 a.m. at 361 University Avenue, Toronto;

2. THIS COURT ORDERS that the Appendix "A" notice ("Notice") in connection with the settlement approval hearing is hereby approved;

3. THIS COURT ORDERS that notice of the settlement approval hearing be provided as follows:

a) Class Counsel to undertake a direct mailing of the Notice to all Class Members based on the best available contact information in the possession of Class Counsel, by November 30, 2011;

b) by Class Counsel posting the Notice on its website at www.classactionlaw.ca and on the Facebook and Twitter pages for www.classactionlaw.ca, by November 30, 2011;

c) By Class Counsel sending a copy of the Notice *via* email to the individuals listed on Appendix "B", by November 30, 2011;

4. THIS COURT FURTHER ORDERS that Class Counsel will report to the court at the settlement approval hearing of January 17, 2012, or prior, as to the mailing, internet posting and email distribution of the Notice.

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

NOV 21 2011

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

NB

G.R. Shattley J.

(Signature of judge, officer or registrar)

Appendix "A"

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
REGARDING BANYAN TREE FOUNDATION
LEVERAGED CHARITABLE DONATION PROGRAM**

Read this notice carefully as it may affect your legal rights.

PURPOSE OF THIS NOTICE

This notice is to all individuals who participated in the Banyan Tree Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007.

In 2008, the plaintiffs commenced a proposed class proceeding against Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Inc., Banyan Tree Foundation and Fraser Milner Casgrain LLP, in the Ontario Superior Court of Justice, Court File No. 08-CV-349792.

On January 19, 2010, the Ontario Superior Court of Justice certified this action as a class proceeding.

The representative plaintiffs in the class proceeding have reached a proposed settlement with the defendants on behalf of all Class Members, subject to obtaining necessary court-approval. The settlement is a compromise of disputed claims.

TERMS OF PROPOSED SETTLEMENT

The Plaintiffs will be requesting a declaration from the court that all promissory notes in favour of 1106999 Ontario Limited, Rochester Financial Limited and any other lender who provided loans under the Gift Program, are void and unenforceable against Class Members.

The defendants agree to establish a Settlement Fund of \$11,000,000.00. Each Class Member will be paid a portion of the Settlement Fund on a *pro-rata* basis in accordance with participation in the Banyan Tree Gift Program.

Pursuant to the terms of the proposed settlement, \$350,000.00 will be set aside for claims administration costs to be paid from the Settlement Fund.

The Court will be asked to approve a Counsel Fee of \$2,750,000.00, representing 25% of the Settlement Fund, plus payment of disbursements and applicable taxes.

The Court will also be asked to approve proposed compensation to be paid to the representative plaintiffs, Kathryn and Rick Robinson.

The Settlement Agreement and Distribution Plan will be published at www.classactionlaw.ca prior to the hearing date.

COURT HEARING

The Court will be asked to approve the proposed settlement as recommended by the representative plaintiffs, Class Counsel and the defendants and their counsel.

A court hearing will be held on **January 17, 2012**, at 10:00 a.m. EST, at 361 University Avenue, Toronto.

Class Members who do not oppose the proposed settlement do not need to appear at the hearing or take any action at this time. Class Members are bound by the terms of settlement if approved.

OBJECTIONS TO THE PROPOSED SETTLEMENT

At the hearing, the Court may consider any objections to the proposed settlement by Class Members. Class Members may, but need not, submit any objections in writing to Class Counsel on or before **January 6, 2012**:

BY MAIL TO:

**THE BANYAN TREE CLASS ACTION
SCARFONE HAWKINS LLP**

Barristers & Solicitors
One James Street South, 14th Floor, P.O. Box 926, Depot #1
Hamilton, Ontario, L8N 3P9

ATTENTION: DAVID THOMPSON/ MATTHEW G. MOLOCI

OR BY FAX TO: 1-905-523-5878

OR BY EMAIL TO: banyanclassaction@shlaw.ca

A written objection should include the following information:

- (a) the Class Member's name, address, telephone number, fax number, mail and e-mail address;
- (b) a brief statement of the nature of and reason for the objection; and
- (c) whether the Class Member intends to appear at the hearing in person or by counsel and, if by counsel, the name, address, telephone number, fax number mail and e-mail address of counsel.

Any objections to the settlement will be filed with the court and may be considered at the January 17, 2012 hearing.

If the Court approves the proposed settlement, all Class Members will be bound by the terms of the settlement, unless they have previously opted-out. If the proposed settlement is approved, there will be a further court-approved Notice detailing the settlement administration process.

ADDITIONAL INFORMATION

Questions for Class Counsel should be directed in writing or telephone to:

Scarfone Hawkins LLP

Barristers and Solicitors
One James Street South, 14th Floor, P.O. Box 926
Depot #1
Hamilton, Ontario, L8N 3P9

Attention: David Thompson/Matthew G. Moloci

Tel: 905.526.4394

Fax: 905.523.5878

E-mail: banyanclassaction@shlaw.ca

ADDITIONAL INFORMATION REGARDING THE SETTLEMENT CAN BE FOUND AT WWW.CLASSACTIONLAW.CA

**THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.
QUESTIONS ABOUT THIS NOTICE SHOULD NOT BE DIRECTED TO THE COURT.**

Appendix "B"

Name	Email
Robert Thiessen	<u>rthiessen@rogers.com</u>
Robert Eger	<u>robert.eger@shaw.ca</u>
Tim Millard	<u>tmillard@msmfca.ca</u>
John David Herring	<u>dave.herring@johnstonequipment.com</u>
Douglas H. Mathew (Thorsteinssons LLP)	<u>dhmathew@thor.ca</u>
Alexander Poole	<u>sandrapoole@rogers.com</u> <u>npfin2@golden.net</u>
Neil Friesen	<u>info@neilfriesen.com</u> <u>neil@neilfriesen.com</u>
Jim Booth	<u>jimbooth@sympatico.ca</u>

KATHRYN ROBINSON ET AL.

V.

ROCHESTER FINANCIAL ET AL.

Court File No. 08-CV-349792

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act, 1992*

PROCEEDING COMMENCED AT
TORONTO

ORDER

SCARFONE HAWKINS LLP

Barristers & Solicitors

One James Street South, 14th Floor

P.O. Box 926, Depot #1

Hamilton, Ontario

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DAVID THOMPSON (28271N)

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Lawyers for the plaintiffs, Kathryn Robinson and
Rick Robinson