



SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

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FAX COVER SHEET

Date: 17 August 2010

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FROM:

Laurie Pietras, Secretary to The Honourable Mr. Justice Strathy

TOTAL PAGES (INCLUDING COVER PAGE): 4

MESSAGE:

Re: Robinson et al v. Rochester Financial Limited et al
Court file no. 08-CV-349792CP

See attached Endorsement released today.

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CITATION: Robinson v. Rochester Financial Limited, 2010 ONSC 4523
COURT FILE NO.: 08-CV-349792 CP
DATE: 20100817

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Kathryn Robinson and Rick Robinson, Plaintiffs/Moving Parties
Rochester Financial Limited et al., Defendants/Respondents

BEFORE: G.R. Strathy J.

COUNSEL: *David Thompson and Matthew G. Moloci*, for the Plaintiffs

Robert Cohen, for the Defendants Rochester Financial Limited, Banyan Tree Foundation, Promittere Asset Management Ltd. and Promittere Capital Group Inc.

Glenn Smith, for the Defendant Fraser Milner Casgrain LLP

DATE HEARD: August 17, 2010

ENDORSEMENT

[1] There are several motions, brought by the plaintiffs, before the Court, claiming the following relief:

- (a) an order striking the Statement of Defence of the defendants Rochester Financial Limited, Banyan Tree Foundation, Promittere Asset Management Ltd. and Promittere Capital Group Inc. (collectively, the "Gift Program Defendants"), on the ground that they have failed to comply with previous orders of the Court, including an award of costs in the amount of \$12,000 made by Mr. Justice Dambrot on May 31, 2010;
- (b) an order striking the counterclaim of Rochester Financial Limited on the ground that it discloses no reasonable cause of action and raises a claim that has not been certified as a common issue in this class action;
- (c) an order requiring the Gift Program Defendants to produce and disclose particulars of all security deposit amounts received by them for each class member for each year of participation in the Banyan Tree Gift Program;

- (d) an order scheduling the delivery of pleadings, affidavits of documents and discoveries;
- (e) an order declaring that certain opt-out forms delivered to the Opt-Out Administrator are void on the grounds, among others, that they are not in the proper form and have been solicited by the Gift Program Defendants; and
- (f) an order seeking costs against the Gift Program Defendants, in the total amount of \$49,832.61, with respect to the foregoing motions and other motions previously heard by the Court in this proceeding.

[2] At the commencement of the hearing before me, counsel for the Gift Program Defendants advised that he has had difficulties in obtaining instructions from his clients and as a result of this, and other issues, his firm is intending to bring a motion to remove itself as solicitors of record on behalf of those parties. He requested that these motions be adjourned to permit his firm's motion to be brought and to enable his clients to obtain new counsel.

[3] In addition, counsel for Fraser Milner Casgrain LLP advised that he had instructions to bring a motion for the appointment of a receiver of the Gift Program Defendants.

[4] Mr. Thompson on behalf of the class argued strenuously that some aspects of the motions should proceed in any event. He said that the Gift Program Defendants have failed to comply with previous orders of the Court and have interfered with the opt-out process. He submitted that there is a pressing need to prevent confusion amongst class members and to restore order to the opt-out process.

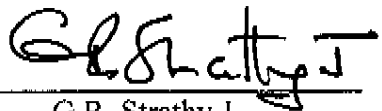
[5] As concerned as I am about these issues, which go to the very integrity of the Court's process, I am equally concerned to ensure that the Gift Program Defendants are given an opportunity to respond to these motions.

[6] I have therefore decided to adjourn the motions to Friday, September 10, 2010, a date that will be preemptory on the Gift Program Defendants. The motion by Cassels Brock & Blackwell LLP to be removed from the record may be made returnable on the same date. The motion by Fraser Milner Casgrain LLP for the appointment of a receiver may also be made returnable on that date.

[7] Counsel for the Gift Program Defendants shall ensure that a copy of this Endorsement is forwarded to his clients and to their principals. Those parties must make arrangements to retain counsel, who must be ready to respond to the motions on September 10, 2010 in the event that Cassels Brock and Blackwell is removed from the record. The motion being preemptory, the Gift Program Defendants must be prepared to proceed, whether or not they have retained counsel. If they have retained new counsel, that counsel must be prepared to proceed.

[8] A corporate party must be represented by counsel, except with leave of the Court. If the Gift Program Defendants have not retained counsel, they should therefore ensure that some

suitable representative attends on their behalf, prepared to request leave of the court and to make submissions on their behalf if leave is granted.



G.R. Strathy J.

DATE: August 17, 2010