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**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.
JUSTICE G. STRATHY

Feb DAY, THE 25TH
DAY OF JUNE, 2010

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, brought by the plaintiffs seeking an Order requiring the mailing to all Class Members of a clarifying notice re: certification and opt-out, was heard at a case conference June 23, 2010.

ON READING THE court-approved Notice of Certification and Opt-Out Form and the Banyan Tree Foundation letter dated May 25, 2010 and the proposed notice of clarification drafted by Class Counsel, and upon hearing the submissions of Class Counsel, counsel for Rochester Financial Limited, Promittere Capital Group Inc.,

Promittere Asset Management Ltd., Banyan Tree Foundation (the "Gift Program Defendants") and counsel for Fraser Milner Casgrain LLP ("FMC");

1. THIS COURT ORDERS that, on or before July 8, 2010, the Gift Program Defendants send the attached schedule "A" notice to all Class Members as identified from the records of the Gift Program Defendants, by a direct mailing;

2. THIS COURT ORDERS that, on or before August 3, 2010, the Gift Program Defendants send the attached schedule "B" notice and Revocation of Opt-Out Form to all Class Members who have on or before July 15, 2010, filed an Opt-Out Form with the Opt-Out Administrator;

3. THIS COURT FURTHERMORE ORDERS that the schedule "A" and "B" notices and Revocation of Opt-Out Form be posted on Class Counsel's website at www.classactionlaw.ca;

4. THIS COURT FURTHER ORDERS that Class Counsel provide the schedule "A" "B" notices and Revocation of Opt-Out Form to any person who requests it.

5. THIS COURT ORDERS that the Gift Program Defendants shall serve on all parties and file with the Court on or before July 14, 2010 an affidavit confirming compliance with paragraph 1 above.

6. THIS COURT ORDERS that the Gift Program Defendants shall serve on all parties and file with the Court on or before August 13, 2010 an affidavit confirming compliance with paragraph 2.

6RS. 7. THIS COURT ORDERS that the Gift Program Defendants shall ~~refrain from~~ **NOT COMMUNICATE** communicating with Class Members in writing without prior approval of the Court;

8. THIS COURT ORDERS that the plaintiffs may make submissions to the Court in respect of costs and expenses incurred as a result of the Banyan Tree Foundation Letter dated May 25, 2010, and incidental issues including this Order and matters arising therefrom.



(Signature of judge, officer or registrar)

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

JUN 28 2010

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



"SCHEDULE "A"

FOLLOW-UP NOTICE RE: CLASS PROCEEDING 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 (the "Class Members").

You will have received an earlier mailing providing you with notice of certification of this action as a class proceeding and information relating to how to either participate in the class proceeding or exclude yourself from it, including financial consequences and where you can obtain additional information.

That notice was approved by Order of the Ontario Superior Court of Justice as required under the provisions of the *Class Proceedings Act*.

Accompanying the notice was an Opt-Out Form which was also court approved.

You also received a letter on the letterhead of the Banyan Tree Foundation dated May 25, 2010.

The Banyan Tree Foundation letter was **NOT** approved by the court and should not have been sent-out to Class Members.

The Superior Court of Justice has approved the following clarification which is being sent to you by order of the Court.

CLARIFICATION

The Banyan Tree Foundation letter dated May 25, 2010, indicates "the class action suit agrees with the CRA's reassessment". That statement is inaccurate and misleading.

The Banyan Tree Foundation letter implies that all Class Members ought to opt-out and remove themselves from the class proceeding in order to continue to fight against the position of Canada Revenue Agency ("CRA").

It is premature to speculate on the outcome of the class proceeding and the impact or effect of it upon CRA objection proceedings.

It is also premature to speculate on the outcome of any objection to the position of CRA.

Class Members should not rely on the Banyan Tree Foundation letter. The court-approved Notice of Certification and Opt-Out Form provide Class Members with necessary information regarding the class proceeding.

REVOCATION OF OPT-OUT

Persons who have opted-out of the class proceeding because of reliance on the Banyan Tree Foundation letter dated May 25, 2010, will be given an opportunity to change their mind and revoke their decision to opt-out. Those individuals will receive a separate notice.

ADDITIONAL INFORMATION

Additional information regarding the lawsuit can be found at www.classactionlaw.ca.

Questions for class counsel should be directed by telephone or in writing to:

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

ANA DOBSON
E-Mail: adobson@shlaw.ca

Tel: 905-523-1374 ext. 238
Fax: 905-523-5878

This notice has been approved by the Superior Court of Justice.
Questions about this notice should NOT be directed to the court.

Q. Roberts J

SCHEDULE "B"

**FOLLOW-UP NOTICE RE: CLASS PROCEEDING REGARDING BANYAN TREE FOUNDATION
LEVERAGED CHARITABLE DONATION PROGRAM**

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

You will have received an earlier mailing providing you with notice of certification of this action as a class proceeding and information relating to how to either participate in the class proceeding or exclude yourself from it, including financial consequences and where you can obtain additional information.

That notice was approved by Order of the Ontario Superior Court of Justice as required under the provisions of the *Class Proceedings Act*.

Accompanying the notice was an Opt-Out Form which was also court approved.

You also received a letter on the letterhead of the Banyan Tree Foundation dated May 25, 2010.

The Banyan Tree Foundation letter was NOT approved by the court and should not have been sent-out to Class Members.

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The Banyan Tree Foundation letter implies that all Class Members ought to opt-out and remove themselves from the class proceeding in order to continue to fight against the position of Canada Revenue Agency ("CRA").

It is premature to speculate on the outcome of the class proceeding and the impact or effect of it upon CRA objection proceedings.

It is also premature to speculate on the outcome of any objection to the position of CRA.

Class Members should not rely on the Banyan Tree Foundation letter. The court-approved Notice of Certification and Opt-Out Form

provide Class Members with necessary information regarding the class proceeding.

REVOCAION OF OPT-OUT

Persons who have opted-out of the class proceeding because of reliance on the Banyan Tree Foundation letter dated May 25, 2010, have an opportunity to change their mind and revoke their decision to opt-out. Attached is a revocation of Opt-Out Form. If you wish to change your mind and revoke your decision to opt-out of the class proceeding, you must complete this form and file it with the Opt-Out Administrator on or before **October 1, 2010**.

Opt-out administrator contact information:

- (a) by mail to: Nicholas Mastroluisi, C.A.,
Pettinelli, Mastroluisi LLP
6th Floor, 1 James Street South
Hamilton, ON L8P 4R5
- (b) by fax to: 905-522-6574
- (c) by e-mail to: nickm@petmas.ca

ADDITIONAL INFORMATION

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Questions for class counsel should be directed by telephone or in writing to:

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Barristers & Solicitors
One James Street South, 14th Floor
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ANA DOBSON
E-Mail: adobson@shlaw.ca

Tel: 905-523-1374 ext. 238
Fax: 905-523-5878

This notice has been approved by the Superior Court of Justice.
Questions about this notice should NOT be directed to the court.

Handwritten signature: G. Shuter

**CLASS PROCEEDING REGARDING
BANYAN TREE FOUNDATION LEVERAGED CHARITABLE DONATION PROGRAM
REVOCATION OF OPT-OUT FORM**

I read the Banyan Tree Foundation letter dated May 25, 2010 and mistakenly relied upon it in deciding to exclude myself from the class proceeding and completed an Opt-Out Form and filed with the Opt-Out Administrator.

I now wish to change my mind and revoke my decision to opt-out of the class proceeding.

NAME _____

ADDRESS _____

TELEPHONE _____

Area code / phone no. (Ext. if applicable)

I understand that by revoking my decision to opt-out, I agree to be bound by the result in the class proceeding.

DATE: _____

WITNESS

CLASS MEMBER OR REPRESENTATIVE

TO VALIDLY REVOKE A DECISION TO OPT-OUT, THIS FORM MUST BE MAILED, FAXED OR EMAILED TO NICHOLAS MASTROLUISI, C.A., PETTINELLI MASTROLUISI LLP, 1 JAMES STREET SOUTH, 6TH FLOOR, HAMILTON, ONTARIO, L8P 4R5, FAX 905-522-6574; EMAIL NICKM@PETMAS.CA ON OR BEFORE OCTOBER 1, 2010.

Nick Mastroi

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

SCARFONE HAWKINS LLP
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Tel : (905) 523-1333
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Solicitors for the Plaintiff