

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) TUESDAY, THE 3RD
)
JUSTICE G. STRATHY) DAY OF FEBRUARY, 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, made by the plaintiffs seeking disclosure of information and an interim order for preservation of assets, was heard this day at a case conference conducted via telephone conference call.

ON READING the motion record of the plaintiffs re: preservation of assets including the affidavit of John Loukidelis and exhibits sworn January 28, 2010; and the affidavit of Kathryn Robinson and exhibits sworn August 5, 2008; and upon hearing the submissions of counsel for the parties;

1. **THIS COURT ORDERS** that Rochester Financial Limited (“Rochester”), Promittere Capital Group Inc. (“Promittere Capital”), Promittere Asset Management Ltd. (“Promittere

Asset”), Banyan Tree Foundation (“Banyan Tree”), immediately disclose and provide to the plaintiffs and the co-defendants, Fraser Milner Casgrain (“FMC”) the following information, by no later than 5:00 p.m. on February 18, 2010:

- A. complete particulars in respect of the history of the receipts, holding and distribution of the \$53 million (approximately) received from participants of the Banyan Tree Foundation Gift Program (the “Gift Program”) during the taxation years 2003-2007 (the “Proceeds”) to charities including the names of the charity recipients, amounts distributed to each, dates of distribution, including hard copies or electronic stored information evidencing such history; including details of receipts, holdings and all dealings with the security deposits (the “Security Deposits”) including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;
- B. complete particulars of all the Security Deposits held by them or by any other on their behalf;
- C. complete particulars of the history of the receipts, holdings and all dealings with the Security Deposits including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;
- D. complete particulars of investment Security Deposits in any mortgage or mortgages including the municipal address, details of amounts and dates of monthly payments being made, those payments are made to as well as provision

of a copy of the mortgage(s); details of the history of the receipts, holdings and all dealings with where the Security Deposits including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;

- E. details as to what use is made of monthly amounts received through investment of the Security Deposits and the account into which the payments are made;
- F. particulars in respect of investments of approximately \$850,000.00 including location of funds, details of the holdings, account numbers, copies of the most recent six monthly statements and the name and contact information of the person or persons responsible for administration of the funds;
- G. particulars in respect of what has become of the balance of Security Deposits including disclosure of all steps taken to attempt to recover any Security Deposits no longer held by them or by any others on their behalf.

2. **THIS COURT ORDERS** that Rochester, Promittere Capital, Promittere Asset and Banyan Tree preserve and not dissipate, encumber, pledge or in any other respect dispose of or diminish the Proceeds and Security Deposits and any monies or assets held by them or by any others on their behalf, until further order of this Court.

3. **THIS COURT ORDERS** that Rochester, Promittere Capital, Promittere Asset and Banyan Tree are prohibited from disposing of, selling, dissipating, dealing with, transferring, assigning or encumbering all or any part of funds, monies or assets held by them or by any others

on their behalf including property such as mortgages, investments, equities and cash held in any account to their credit or held on their behalf, jointly or solely owned, directly or indirectly, beneficially or otherwise.

4. **THIS COURT FURTHERMORE ORDERS** that any party can return to the Court on such notice as is appropriate to seek an order (a) discharging this Order, or (b) varying its terms.


5. **THIS COURT ORDERS** that the costs associated with this motion be reserved to be dealt with by further Order of this Honourable Court.



(SIGNATURE OF JUDGE, OFFICER OR REGISTRAR)

ENTRÉES ET DÉPOSÉS À TORONTO
OFFICE DE LA CLERK
LE / DANS LE REGISTRE NO.:

FEB 18 2010

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

KATHRYN ROBINSON ET AL
Plaintiffs

-and-

ROCHESTER FINANCIAL LIMITED ET AL
Defendant

Court File No. 08-CV-349792

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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