

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

FRIDAY, THE 17th

JUSTICE G. STRATHY

DAY OF SEPTEMBER, 2010



EN

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 RE: STRIKE PLEADINGS

THIS MOTION, made by the plaintiffs, seeking an order striking the Statement of Defence of the defendants Rochester Financial Limited ("Rochester"), Promittere Capital Group Inc. ("Promittere Capital"), Promittere Asset Management Ltd. ("Promittere Asset") and Banyan Tree Foundation ("Banyan Tree") (collectively the "Gift Program Defendants"), and striking the counterclaim of Rochester, as well other incidental relief was heard September 10, 2010, at Osgoode Hall in Toronto, with decision being reserved until September 17, 2010.

ON READING the Motion Record of the plaintiffs including the affidavit of Michael B. Stanton and exhibits sworn July 27, 2010, the Supplementary Motion Record including the revised Notice of Motion and supplementary affidavit of Michael B. Stanton and exhibits sworn August 30, 2010, the Factum and Brief of Authorities of the plaintiffs, and the responding affidavit of Robert Thiessen and exhibits sworn September 9, 2001, and upon hearing the submissions of counsel for the parties;

1. THIS COURT ORDERS that the counterclaim of Rochester is struck, without prejudice to the right of Rochester to move for leave to amend the counterclaim and to add the claim as a common issue;

2. THIS COURT ORDERS that as a condition of bringing the motion referenced in paragraph 1 above and, in any event within 45 days, the Gift Program Defendants shall pay the costs awarded by Dambrot J. pursuant to Order dated May 31, 2010, (\$12,000.00) as well as the costs fixed in paragraph 4 below, as well as the costs awarded by Strathy J. pursuant to Order dated September 17, 2010 (Order Re: Opt-Out Forms);

3. THIS COURT ORDERS that the Gift Program Defendants shall, within 45 days, provide the plaintiffs with a list of class members identifying the amount of security deposit payment made by each class member, for each year of participation in the Banyan Tree Gift Program;

4. THIS COURT ORDERS that the Gift Program Defendants shall pay costs to the plaintiffs of various motions, fixed in the amounts set-out below, all payable within 45 days as follows:

DATE	MOTION	COSTS AWARDED (INCLUSIVE OF DISBURSEMENTS AND TAXES)
February 10, 2010	Disclosure and Interim Preservation	\$7,500.00
May 12, 2010	Production of list of class members	\$3,750.00
June 25, 2010	Clarification notice arising out of Rochester's letter to class members	\$10,000.00
September 10, 2010	Motion to strike defence and counterclaim and other relief	\$17,500.00
TOTAL		\$38,750.00

(Signature of judge, officer or registrar)

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

OCT 14 2010

PER / PAR:

KATHRYN ROBINSON ET AL.

V.

ROCHESTER FINANCIAL ET AL.

Court File No. 08-CV-349792-*CL* 000

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PROCEEDING COMMENCED AT
TORONTO

ORDER

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