

March 3, 2008

Hamilton, Ontario

Class Action Lawsuit Commenced Over Leveraged Charitable Donation Program

A Statement of Claim was issued in the Ontario Superior Court of Justice in Toronto on February 27, 2008 claiming damages for breach of contract and negligence relating to the Banyan Tree Foundation Gift Program.

The Statement of Claim seeks damages of more than \$50,000,000.00.

The plaintiffs, Kathryn and Rick Robinson of Oakville, Ontario, are bringing the action under the *Class Proceedings Act, 1992*, on behalf of a class consisting of all persons who participated in the Banyan Tree Gift Program for the taxation years 2003 - 2007.

The claim is being pursued by Scarfone Hawkins ^{LLP} of Hamilton, a law firm with significant experience in handling class action claims on behalf of plaintiffs.

The Statement of Claim contains allegations which have yet to be proven in Court.

The Statement of Claim alleges that Promittere Capital Group Inc., Promittere Asset Management Ltd. and Banyan Tree Foundation, with the assistance of Rochester Financial Limited, developed, promoted, sold and administered a Gift Program under which participants borrowed money to make charitable donations in order to receive charitable donation receipts and concomitant tax credits.

Participants borrowed substantially all of the funds donated and actually paid in cash only a small portion of the total donation amounts.

A national law firm, Fraser Milner Casgrain ^{LLP} is also named in the lawsuit as it is alleged that it issued favourable tax opinion letters which were a necessary pre-requisite to the promotion of the Gift Program to the participants.

The claim alleges that Canada Revenue Agency has disallowed the charitable donation tax credits for 2003 and intends to do so for the tax years 2004 - 2007 resulting in class members being liable to Canada Revenue Agency for interest charges on income tax filing reassessments.

In addition, the claim alleges that security deposits paid by participants in the Gift Program have been compromised and that Promissory Notes remain outstanding with respect to all funds borrowed.

Last year, Gordon Lewis of Toronto was charged with fraud and theft relating to management of the security deposits paid. Police said that Lewis was investment

manager of Rochester Financial Limited Funds, purported to be conducting large financial investments on the Chicago Mercantile Exchange but actively concealed millions of dollars in losses and used investor money to finance his personal lifestyle. The case has not yet been heard/determined.

The claim alleges that the Gift Program continues to be promoted and sold.

Mentioned in the claim is Robert Thiessen of Toronto, an officer and director of Promittere Capital and Promittere Asset as well as president and director of Banyan Tree.

Lawyers for the plaintiffs, David Thompson and Matthew Moloci say that the proposed class proceeding represents not only the preferable procedure for dealing with this complaint, but the only available procedure presenting an opportunity for redress for class members.

Canada Revenue Agency pursues taxpayers where charitable donation credits are denied, but has no jurisdiction or authority to pursue the developers and promoters of the Gift Program.

Police authorities and other regulators do not have sufficient time or resources to pursue the alleged wrongdoers leaving the class proceeding as the only available mechanism for relief.

For more information contact David Thompson at Scarfone Hawkins ^{LLP}, 905-523-1333 or thompson@shlaw.ca.