



This is the 1st affidavit
of Naomi Kovak in this case
and was made on 08/OCT/2014

No. S-121627
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAWRENCE BRIAN JER, JUN JER AND JANETTE SCOTT

PLAINTIFFS

AND:

**RASHIDA SAMJI, RASHIDA SAMJI NOTARY CORPORATION, SAMJI & ASSOC.
HOLDINGS INC., AND SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AFFIDAVIT

I, Naomi Kovak, of 400 – 856 Homer Street, Vancouver, British Columbia, SWEAR THAT:

1. I am an associate with the law firm of Camp Fiorante Matthews Mogerman, who together with Hordo Bennett Mounter LLP are counsel for the Plaintiffs (“Class Counsel”) in this matter, and as such I have personal knowledge of the facts and matters to which I have deposed hereinafter, save and except where the same are stated to be on information and belief, and where so stated I verily believe them to be true.

2. Attached as Exhibit “A” is a copy of the Notice of Hearing to approve the proposed Settlement Administration Plan, in the form approved by the Court by Order made September 10, 2014. I am informed by Paul Bennett that this notice was issued by Hordo Bennett Mounter LLP on September

29, 2014 by email and mail to all class members for whom Class Counsel have email and address information.

3. Class Counsel have made a slight amendment to the Settlement Administration Plan subsequent to its issuance to the class members as part of the Notice attached as Exhibit "A" to this Affidavit. The amendment concerns class members who do not make a claim for their settlement entitlement under the Settlement Administration Plan. A black-lined copy of the Plan showing the amendments made is attached to this Affidavit as Exhibit "B".

4. Under the original proposed Plan, all available settlement funds would have been distributed to class members who made a timely claim, with the effect that those who did not claim in time would forfeit their right to receive any benefit under the settlement. Under the amended Plan, Class Counsel may take additional investigative steps to locate and contact class members who do not make a claim, with the cost of such steps to be paid from that class member's settlement benefit.

5. This amendment has been made to the Settlement Administration Plan because Class Counsel considered that it was fairer and more appropriate to take all reasonable steps to provide class members with the benefits to which they are entitled under the settlement, in compensation of the losses they have suffered as a result of the Samji Ponzi scheme. If funds remained unclaimed after such efforts are taken, the Settlement Administration Plan provides that Class Counsel may apply to the Court for directions as to the distribution of any unclaimed settlement funds, which may then include a direction that the funds be distributed to claiming class members.

6. The Settlement Administration Plan also provides that the Bank Fund will be divided into two portions: \$8.1 Million for class members who only have claims against the Banks (whose net principal losses are estimated to total approximately \$23.3 Million) and \$400,000 for those persons who are also entitled to claim against the Coast Fund (whose net principal losses are estimated to total approximately \$2.9 Million). As set out in the Plan, the payment of approved legal expenses will be apportioned between these two respective portions of the Bank Fund, which

will leave \$5,320,621.28 in the Bank Fund for payment to class members who only have claims against the Banks and \$262,926.76 in the Bank Fund for those class members who are also entitled to claim against the Coast Fund, plus accrued interest on those amounts.

7. As stated in the Settlement Administration Plan, this division of the Bank Fund reflects Class Counsel's assessment that much of the responsibility for losses suffered by class members who had a claim against the Coast Defendants would be apportioned to those Defendants as between them and the Banks. This apportionment also reflects the basis upon which the settlement with the Banks was negotiated.

8. The Settlement Administration Plan also provides that each class member's claim in respect of their net principal loss must be adjusted to reflect the differential litigation risks of various class member's claims against the Banks for negligent processing of trust cheques, knowing assistance of breach of trust and negligence failure to investigate. The adjustments proposed by the Settlement Administration Plan are in relation to the following factors:

- (a) whether the investment was made by an instrument processed by RBC after November 29, 2009, which is when RBC first expressed in writing actual suspicion about the operations of Samji's account, or by an instrument processed after that date by TD or Vancity but preceded by an investment by the class member that had been processed through RBC;
- (b) whether the investment was made by way of an instrument processed by RBC prior to November 27, 2009 that was payable in trust, or preceded by such an instrument payable in trust;
- (c) whether investments which fall within the above two categories were made by a customer of RBC;

- (d) whether the investment was made by an instrument processed by TD and Vancity that was payable in trust; and
- (e) whether the investment was made pursuant to a non-trust instrument that did not fall within any of the above categories.

9. It is Class Counsel's view that these factors are material to the litigation risk of each class member's claim because:

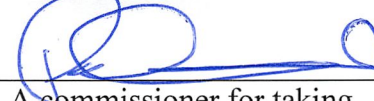
- (a) the existence of an actual suspicion by RBC of improper conduct in Samji's account created a stronger foundation for a claim of negligent failure to investigate, for those investors whose investments were processed through RBC accounts (which serves to establish proximity between the investor and RBC) and who continued to make investments with Rashida Samji after the suspicion existed;
- (b) an investor's instrument must be payable in trust in order to support the claim advanced against RBC for the negligent processing of trust instruments, which Class Counsel considered to be a relatively strong claim in the context of Samji's operation of her notary practice accounts at RBC;
- (c) in Class Counsel's view, the prospects for success of claims which fall within (a) and (b) above were greater if the investor was a customer of RBC, as there is greater proximity between the investor and RBC;
- (d) investors whose in-trust instruments were processed through TD also have a claim for negligent processing of trust instruments but in Class Counsel's view, this claim was not as strong as the same claim against RBC, as Samji was not operating her notary practice account at TD as she was at RBC; and
- (e) claims in relation to investments which do not fall within the above groups were, in Class Counsel's view, weaker than the above claims because the claims rested

on Samji's status as a notary and her repeated processing of trust cheques, without the additional factors discussed above.


10. The different litigation risks which Class Counsel considered arose from the above factors were applied by Class Counsel in negotiating the settlement with the Banks. It is Class Counsel's view that a fair and reasonable distribution of the proceeds from the settlement with the Banks must reflect these different litigation risks, as proposed by the Settlement Administration Plan.

11. The Settlement Administration Plan proposes that the Coast Fund be distributed on a pro-rata basis among those class members who are entitled to claim against the Coast Fund. This pro-rata distribution reflects Class Counsel's view that the claims of class members against the Coast Defendants shared the same fundamental litigation risk relating to the main claim of vicarious liability of Coast Capital for the conduct of its investment advisor Patel, and therefore these claims should be treated equally in terms of settlement distribution.

SWORN BEFORE ME
at Vancouver, British Columbia
on 08/OCT/2014



A commissioner for taking
affidavits for British Columbia
Paul R. Bennett

)
)
) 
) _____
) Naomi Kovak
)
)

THIS AFFIDAVIT was prepared by the law firm of Hordo Bennett Mounter LLP, whose place of business and address for service is 14th Floor - Sun Tower Building, 128 West Pender Street, Vancouver, British Columbia, V6B 1R8. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett

NOTICE OF HEARING TO APPROVE PROPOSED SETTLEMENT ADMINISTRATION PLAN IN THE SAMJI PONZI SCHEME CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY.

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS.

This is Exhibit "A" as referred to in the affidavit of Naomi Kovak sworn before me at Vancouver, B.C. this 8th day of OCTOBER 2014.
[Signature]
A Commissioner for taking Affidavits within British Columbia

TO: *Class Members*

WHAT IS THIS NOTICE ABOUT?

Class Counsel have prepared a plan for the administration of the settlement funds received from TD, RBC, and the Coast Capital Defendants in *Jer et al. v. Samji et al.*, SCBC Action No. S-121627 (Vancouver). A copy of the proposed Settlement Administration Plan is attached.

The proposed Settlement Administration Plan sets out the methodology for how claims will be evaluated and settlement funds paid out to Class members. At this time, Class members will not be receiving any funds under the settlement. The Plan establishes a process for how those claims will subsequently be handled.

The proposed Settlement Administration Plan is subject to Court approval.

WILL THE COURT APPROVE THE PROPOSED SETTLEMENT ADMINISTRATION PLAN?

The Court will review the proposed Settlement Administration Plan to determine whether it is fair, reasonable and in the best interests of the Class. The Plan will not take effect until the Court has approved the Plan.

The Settlement Administration Plan approval hearing will take place on **Wednesday, November 26, 2014 at 9:00 am** at the courthouse at 800 Smithe Street, Vancouver, B.C. Class members may attend.

The application materials for approval of the Settlement Administration Plan will be available at www.samjiclassaction.com.

WHAT OPTIONS DO CLASS MEMBERS HAVE?

Class Members have the option of supporting or opposing the Settlement Administration Plan. If you support the Plan, you are not required to take any steps at this time. If you intend to oppose the Plan, see the next section for instructions.

OBJECTING TO THE PROPOSED SETTLEMENT

Class Members are entitled to object to the proposed Settlement Administration Plan or any of its terms.

Objections must be made in writing in advance of the application for approval of the Settlement Administration Plan by way of a letter or email. The letter or email objection must set out the names of the objector(s) and the specific basis for the objection.

This is Exhibit "____" as referred to in the
affidavit of _____
sworn before me at Vancouver, B.C.
this _____ day of _____ 20____
A Commissioner for taking Affidavits
within British Columbia

The letter or email objection must be received by Class Counsel by **4:00 p.m. on Friday, November 21, 2014**, by e-mail to info@samjiclassaction.com or mail or courier to Hordo Bennett Mounter LLP, 1400 – 128 West Pender St, Vancouver BC V6B 1R8, “Attention: Samji Class Action”.

The objections will be put before the Court. It will be up to the Court to decide at the hearing whether to permit Class members to present their objections orally, if they wish to do so.

**MORE INFORMATION ABOUT THE PROPOSED SETTLEMENT
ADMINISTRATION PLAN**

Contact info@samjiclassaction.com or visit www.samjiclassaction.com.

This notice has been authorized by the Supreme Court of British Columbia

Do not contact the Court about this notice

No. S-121627
Vancouver Registry

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BETWEEN:

LAWRENCE BRIAN JER, JUN JER AND JANETTE SCOTT

PLAINTIFFS

AND:

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DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

SETTLEMENT ADMINISTRATION PLAN

1. Determination of Each Class Member's Net Principal Loss

The Trustee in Bankruptcy for Rashida Samji, in conjunction with class counsel, will calculate the net principal loss for each investor in the Samji Ponzi scheme based on available records concerning the investments made in and payments received from the scheme.

Notice will be given by the Trustee in Bankruptcy of the amount of each investor's net principal loss which will constitute the investor's claim in the bankruptcy, pursuant to a claims process order made in the Samji bankruptcy proceeding. Investors will have the opportunity to dispute the calculation of their claim in the bankruptcy proceeding, in accordance with the terms of the claims process order.

The amount of each class member's principal loss as settled in the bankruptcy proceeding will be final and will form the basis for the calculation of their settlement entitlement in the class action. Once the amount of each class member's net principal loss has been settled in the bankruptcy, no further challenge may be made by the class member to the calculation of that net principal loss in the settlement distribution process.

2. Litigation Risk Adjustment for Class Members' Claims Against the Banks

Once the amount of each class member's net principal loss has been finally settled in the bankruptcy, each class member's claim will be adjusted to reflect the differential litigation risks of various class members' claims against the former Defendants, Royal Bank of Canada ("RBC"), and Toronto-Dominion Bank ("TD"), collectively "the Banks". This adjusted litigation value will be used to calculate each class member's pro-rata entitlement to payment from the Bank Settlement Fund, as set out in section 3 below. For clarity, this adjusted value is not the amount each class member will receive from the Bank Settlement Fund.

Class members' claims will be adjusted by allocating their net principal loss among the following groups of claims and applying the applicable percentage for that group to the loss so allocated:

- (a) Group A: losses attributable to amounts invested between November 27, 2009 and April 27, 2010 pursuant to instruments processed by RBC and losses attributable to amounts invested after April 27, 2010 by class members who had made investments before that date pursuant to instruments processed by RBC: 65%.
- (b) Group B: losses attributable to amounts invested prior to November 27, 2009 and which are attributable either to instruments payable in trust and processed by RBC, or to non-trust instruments processed by RBC which were preceded by an investment by the class member made pursuant to an instrument payable in trust and processed by RBC: 65%.
- (c) Group C: losses which fall within either Groups A or B, where the class member had an account at RBC at the time the investments were made which resulted in those losses: an additional 5% for total of 70%.
- (d) Group D: losses which do not fall within Group A and are attributable either to instruments payable in trust and processed by TD or Vancouver City Savings Credit Union ("Vancity"), or to non-trust instruments processed by TD or Vancity which were preceded by an investment by the class member made pursuant to an instrument payable in trust processed by the same financial institution: 55%.
- (e) Group E: losses attributable to all other investments, which are attributable to non-trust instruments processed through RBC, TD and Vancity that do not fall within Groups A to D: 35%.

A class member's net principal loss will be allocated to particular investments made by the class member on the basis of the first in/first out principle. Payments received by the investor will be deemed to have been received in repayment of the first investment made by the investor, and then the next investment and so on.

To illustrate how the allocation process will work, suppose an investor has made three investments in the Ponzi scheme of \$100,000 each, the first in 2007, the second in 2009, and the third in 2011. Suppose the total payments received from the scheme total \$150,000, leaving the investor with a net principal loss of \$150,000. Under the first-in, first-out principle, the payments received by the class member are deemed to have been received against repayment of the first money into the scheme. This means that for this investor, the payments received by the investor are deemed to be in repayment of the first \$100,000 invested in 2007 and \$50,000 of the second \$100,000 invested in 2009. The net principal loss of \$150,000 is attributable to the remaining \$50,000 of the second investment in 2009, and a \$100,000 to the third investment in 2011.

Since this hypothetical investor's first two cheques were processed through RBC, the loss attributable to the third \$100,000 investment in 2011 will fall into either Group A or C depending on whether the class member was a customer of RBC. If the class member was a RBC customer, the claim relating to the third investment falls into Group C and the adjusted litigation value of the investor's claim with respect to this investment will be 70% or \$70,000. If the class member is not a RBC customer, the adjusted value of the investor's claim with respect to this investment will be 65% or \$65,000.

For the remaining \$50,000 of loss attributable to the 2009 investment, the value of the claim for this loss will depend upon whether the instrument by which the investment was made, or the instrument by which the 2007 investment was made which preceded it, was written in trust or not. If either instrument was payable in trust, the claim for this investment will fall either into Group B or C, depending on whether the class member is a RBC customer, and its value will be 65% or \$32,500, if the claim falls within Group B, or 70% or \$35,000, if the claim falls within Group C. If neither instrument was written in trust, the claim falls within Group D and the value will be 35% or \$17,500.

Once the adjusted litigation value of the class member's claim is determined through this process of allocation of the class member's loss into the various group of claims, the adjusted value of the class member's claim will be used to calculate the amount of the class member's pro-rata payment from the Settlement Fund, as set out below.

3. The Proportionate Share of the Bank Settlement Fund

The Bank Settlement Fund of \$8.5 million will be notionally divided into two portions. \$8.1 Million will be for payment of class members who only had claims against the Banks and did not have claims against the former Defendants, Arvin Patel, Coast Capital Savings Credit Union, Coast Capital Insurance Services Ltd. and Worldsource Financial

Management Inc., (collectively, "Coast Capital"). The remaining \$400,000 of the Bank Settlement Fund will be for claims of class members who also have claims against Coast Capital (the "Coast Capital Claimants"), as determined by class counsel from documentation provided in the litigation. This apportionment reflects class counsel's assessment that much of the responsibility for losses suffered by Coast Capital Claimants would be apportioned to Coast Capital, as between it and the Banks.

The total legal expenses paid from the Bank Settlement Fund (\$2,916,451.96) will be deducted proportionally from each of these respective portions of the fund. This means 95.3% (\$8.1 million divided by \$8.5 million) of the total legal expenses, equal to \$2,779,378.72 will be deducted from the \$8.1 million portion of the fund and 4.7% (\$400,000 divided by \$8.5 million) of the expense, equal to or \$137,073.24, will be deducted from the \$400,000 portion of the fund. This will leave \$5,320,621.28 in the fund for payments to class members who only have claims against the Banks and \$262,926.76 for payment to Coast Capital Claimants, plus accrued interest on those amounts.

Class members will be entitled to receive a pro-rata percentage of each of these respective portions of the Bank Settlement Fund, less any amounts paid as settlement administration expenses. The class members' presumptive percentage entitlement shall be calculated by dividing the total adjusted litigation value of the class member's claim by the total adjusted litigation value of all potential class members' claims against the applicable portion of the fund.

The final percentage entitlement of each class member who makes a claim in the class action will be calculated by dividing the litigation value of the class member's claim by the total litigation value of all class members who have made a claim in the class action against the applicable portion of the Bank Settlement Fund.

The class member's settlement benefit will be determined by multiplying the final percentage entitlement against the amount remaining in the applicable portion of the Bank Settlement Fund at the time of distribution.

4. The Coast Capital Settlement Fund

The Coast Capital Settlement Fund will be distributed to Coast Capital Claimants on a simple pro-rata basis. Each Coast Capital Claimant will be presumptively entitled to receive a percentage amount of the remaining settlement fund (after payment of legal expenses) that will be calculated by dividing their net principal loss as settled in the bankruptcy by the total net principal loss of all Coast Capital Claimants. If all Coast Capital Claimants eligible to make a claim in the class action do not do so, then the final entitlement paid to Coast Capital Claimants who make a claim will be calculated by dividing the net principal loss of each claiming Coast Capital Claimant by the total net principal loss of all claiming Coast Capital Claimants.

5. Notice to Class of the Settlement Administration Plan and Entitlement

Class members will be given notice of the application to approve this Settlement Administration Plan by email and by mail, in the same manner as they were given notice of the settlement approval hearings.

Once the Settlement Administration Plan has been approved and the claims of class members have been settled through the bankruptcy process, class members will receive notice of their presumptive entitlements from the settlement funds and will be required to submit a claim form confirming that they wish to receive their settlement entitlements and their contact details.

6. Challenges to Entitlement

Class members who submit claim forms will have the opportunity at that time to dispute the calculation of their presumptive entitlement. Class members will not be able to dispute their net principal loss as determined in the bankruptcy proceedings, or the litigation values of the various groups of claims as set by this Settlement Administration Plan once it is approved by the Court, but may only challenge the application of those litigation values to their net principal loss. Class members may also challenge class counsel's determination as to whether they are a Coast Capital Claimant.

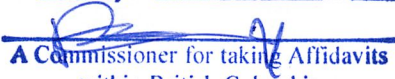
Any challenges by class members to their claim entitlement that cannot be resolved through class counsel will be referred to the Court for final determination. There will be no appeal from that determination.

7. Cost of Settlement Administration

All third party costs of settlement administration, such as the cost of postage or of third party assistance in the calculation of settlement entitlements, will be paid from the respective Settlement Fund which applies to the claims in relation to which the expenses were incurred.

No further fees will be paid to class counsel in respect of the claims process.

No actions may be brought against class counsel concerning the claims administration without leave of the Court.

This is Exhibit "B" as referred to in the
affidavit of NAOMI KOVAK
sworn before me at Vancouver, B.C.
this 8th day of OCTOBER 2014

A Commissioner for taking Affidavits
within British Columbia

8

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The amount of each class member's principal loss as settled in the bankruptcy proceeding will be final and will form the basis for the calculation of their settlement entitlement in the class action. Once the amount of each class member's net principal loss has been settled in the bankruptcy, no further challenge may be made by the class member to the calculation of that net principal loss in the settlement distribution process.

This is Exhibit "A" as referred to in the
affidavit of _____
sworn before me at Vancouver, B.C.
this _____ day of _____ 20____
A Commissioner for the Peace
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2. Litigation Risk Adjustment for Class Members' Claims Against the Banks

Once the amount of each class member's net principal loss has been finally settled in the bankruptcy, each class member's claim will be adjusted to reflect the differential litigation risks of various class members' claims against the former Defendants, Royal Bank of Canada ("RBC"), and Toronto-Dominion Bank ("TD"), collectively "the Banks". This adjusted litigation value will be used to calculate each class member's pro-rata entitlement to payment from the Bank Settlement Fund, as set out in section 3 below. For clarity, this adjusted value is not the amount each class member will receive from the Bank Settlement Fund.

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The class member's settlement benefit will be determined by multiplying their final percentage entitlement against the amount remaining in the applicable portion of the Bank Settlement Fund at the time of distribution.

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The class members' settlement benefit will be determined by multiplying their percentage entitlement against the amount remaining in the Coast Capital Settlement Fund at the time of distribution.

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Class members ~~who submit claim forms~~ will have the opportunity at that time to dispute the calculation of their presumptive entitlement by submitting a Notice of Dispute. Class members will not be able to dispute their net principal loss as determined in the bankruptcy proceedings, or the litigation values of the various groups of claims as set by this Settlement Administration Plan once it is approved by the Court, but may only challenge the application of those litigation values to their net principal loss. Class members may also challenge class counsel's determination as to whether they are a Coast Capital Claimant.

Any challenges by class members to their claim entitlement that cannot be resolved through class counsel will be referred to the Court for final determination. There will be no appeal from that determination.

7. Cost of Settlement Administration

All third party costs of settlement administration, such as the cost of postage or of third party assistance in the calculation of settlement entitlements, will be paid from the respective Settlement Fund which applies to the claims in relation to which the expenses were incurred.

No further fees will be paid to class counsel in respect of the claims process.

No actions may be brought against class counsel concerning the claims administration without leave of the Court.

8. Unclaimed Amounts

If a class member does not file a Notice of Confirmation claiming their settlement entitlement, class counsel may take such steps as they consider necessary to locate and contact the class member and issue their settlement entitlement to them. Any expenses incurred in so doing shall be reimbursed to class counsel from the settlement benefit payable to the class member.

If any settlement funds remain unclaimed after class counsel has taken such steps, class counsel may apply for directions to the Court as to the disposition of the unclaimed amounts, which may include distribution of those amounts to claiming class members.