

**ONTARIO SUPERIOR COURT OF JUSTICE
(PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992)**

BEFORE THE HONOURABLE) TUESDAY, THE 26th DAY OF
MR. JUSTICE BELOBABA) JANUARY, 2016.
)

B E T W E E N :

NIZARALI LALANI

Plaintiff

-and -

EDWARD REEVES

Defendant



ORDER

THIS MOTION made by the Plaintiff for an order amending the Statement of Claim and certifying this action pursuant to s.5 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6, ("CPA") was heard on November 12, 2015 and January 15, 2015 at Toronto, Ontario.

ON HEARING submissions of counsel for the Plaintiff and of the self-represented Defendant, **AND UPON READING:**

- (a) the Plaintiff's 2012 Certification Motion Record;
- (b) the Affidavit of Edward Reeves, sworn on September 23, 2011;
- (c) the transcript of the Cross Examination of Edward Reeves held on October 27, 2015;

- (d) the transcript of the Cross Examination of Nizarali Lalani held on October 26, 2015;
- (e) the Plaintiff's 2015 2-volume Second Supplementary Motion Record;
- (f) the Plaintiff's 2015 Further Supplemental Certification Motion Record;
- (g) the Facta of the parties; and,
- (h) the Plaintiff's Books of Authorities,

1. **THIS COURT ORDERS** that the Plaintiff is hereby granted leave pursuant to section 2(3) of the *CPA* to bring this motion for Certification.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to s. 5 of the *CPA*.
3. **THIS COURT ORDERS** that Nizarali Lalani is appointed as the representative Plaintiff for the Class.
4. **THIS COURT ORDERS** that the Class is defined as:

All victims of the Damji Fraud whose monies were deposited into the bank accounts of 1096166 Ontario Ltd., o/a Cash Plus Services ("Cash Plus") located at the Bank of Montreal's Brown's Line and Evans bank branch, in the City of Toronto, between January 1, 2000, and March 31, 2002.
5. **THIS COURT ORDERS** that the following issues are certified as common issues:
 - (a) Did the Defendant engage in conduct between January 1, 2000, and March 31, 2002 which amounted to a knowing assistance of Salim Damji with respect to his defrauding of the Class Members?
 - (b) Did the Defendant engage in conduct between January 1, 2000, and March 31, 2002 which amounted to a knowing assistance of Salim Damji with respect to a breach of trust owed to the Class Members?

- (c) Did the Defendant engage in conduct between January 1, 2000, and March 31, 2002 which amounted to a knowing receipt of monies being defrauded by Salim Damji from the Class Members including trust monies?
- (d) Did the Defendant owe a duty of care to the Class Members with respect (i) to monies deposited into the bank accounts of 1096166 Ontario Ltd. o/a Cash Plus Services ("Cash Plus") at the Bank of Montreal's bank branch located at Brown's Line and Evans, in the City of Toronto, between January 1, 2000, and March 31, 2002 and (ii) to the Defendant's dealings with those bank accounts and/or Salim Damji?
- (e) If the answer to issue (d) above is yes, did the Defendant breach the said duty of care owed to the Class Members?
- (f) With respect to issues (b) and (c) above, were the monies deposited into the aforesaid bank accounts of Cash Plus with the Bank of Montreal between January 1, 2000, and March 31, 2002 subject to an express trust, a resulting trust or a constructive trust? If yes, should the Defendant be declared a constructive trustee for the Class Members of all monies deposited into the aforesaid bank accounts of Cash Plus with the Bank of Montreal between January 1, 2000, and March 31, 2002?
- (g) Have the Class Members suffered loss or damage as a result of any of the conduct referred to in issues (a), (b), (c) and (d) above? If so, what is the appropriate measure or amount of such loss or damage?
- (h) Were the monies deposited into the bank accounts of Cash Plus at the Bank of Montreal's Brown's Line and Evans bank branch between January 1, 2000, and March 31, 2002, monies which were defrauded from the Class Members and, if yes, is the Defendant obliged to repay those monies to the Class Members?
- (i) Should the Court award an aggregate assessment of monetary relief on behalf of some or all Class Members? If yes, what is the amount of the aggregate assessment and how should the Class Members share in the award?
- (j) Should the Defendant pay punitive damages to the Class Members? If yes, should such damages be assessed in the aggregate? If so, what is the amount of such damages including Pre-Judgment and Post-Judgment interest thereon?

6. **THIS COURT ORDERS** that the Plaintiff be at liberty to amend the Statement of Claim in accordance with the proposed Amended Statement of Claim attached hereto as Schedule "A"..
7. **THIS COURT ORDERS** that there be no costs of the motions of November 12, 2015 and January 15, 2016.
8. **THIS COURT ORDERS** that final form of Notice of Certification shall be approved by the court.
9. **THIS COURT ORDERS** that the opt-out deadline shall be 90 days after the first date of publication of the Notice of Certification as approved by the court.
10. **THIS COURT ORDERS** that the methods of publication of the Notice of Certification shall be:
 - (a) Internet

The Notice of Certification and the Certification Order, along with a summary of the terms of the Order, shall be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding; and
 - (b) E-mail

To the extent Class Members provide Class Counsel with e-mail addresses, Class Counsel will send the Notice of Certification via e-mail to Class Members at the e-mail addresses provided.
11. **THIS COURT ORDERS** that any member of the Class may opt-out of this Class Action by mailing or faxing to Landy Marr Kats LLP and/or Solmon Rothbart

Goodman LLP a signed and dated Notice of Opting-Out, which must be postmarked if sent by mail or received if sent by fax by no later than Monday, February 29, 2016. No Class Member may opt-out of the Class Action after the expiration of the opt-out period.

12. **THIS COURT ORDERS** that the Plaintiff's lawyers shall receive, review, document and record the written elections from Class Members opting-out of the Class Proceeding and, within thirty (30) days after the expiration of the opt-out period, deliver to the Court and to the Defendant an Affidavit listing the names of all persons who have opted-out of this Class Proceeding.



THE HONOURABLE JUSTICE BELOBABA

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

FEB 02 2016

PER / PAR:



NIZARALI LALANI

Plaintiff

-and-

EDWARD REEVES

Defendant

Court File No. **07-CV-338183 CP**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

ORDER

LANDY MARR KATS LLP

Barristers & Solicitors
2 Sheppard Avenue East - Suite 900
Toronto, Ontario M2N 5Y7

Samuel Marr / Keith M. Landy / David Fogel

Tel: 416-221-9343

Fax: 416-221-8928

AND

SOLMON ROTHBART GOODMAN LLP

Barristers & Solicitors
375 University Avenue - Suite 701
Toronto, Ontario M5G 2J5

Melvyn L. Solmon / Nancy Tourgis

Tel: (416) 947-1093

Fax: (416) 947-0079

Lawyers for the Plaintiff/Class Counsel