

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR. JUSTICE) WEDNESDAY, THE 28TH DAY OF
FARLEY) FEBRUARY, 2002

B E T W E E N :

Claude Millard and Roger Grisé

Plaintiffs

- and -

North George Capital Management Limited, Triple A Financial Services Inc., North George Capital Limited Partnership, North George Capital II Limited Partnership, North George Capital III Limited Partnership, North George Capital IV Limited Partnership, North George Capital V Limited Partnership, Lionaird Capital Corp., Roderick Alton, Michael Magee, Robert McGillen, Kenneth Gill, Anne Gilmour, Michael Goselin, Goselin & Associates, Stewart and Associates, McColl Turner, Irv Dyck, M.R.S. Trust Company and Alan Lawson, Fisher Inc., the Trustee of the Estate of Roderick Alton, a Bankrupt

Defendants

Proceeding Under the Class Proceedings Act, 1992

**ORDER APPROVING SETTLEMENT AGREEMENT
WITH KENNETH GILL AND ANNE GILMOUR**

THIS MOTION, made by the plaintiffs for an Order, inter alia, approving and implementing the terms of a settlement agreement (the "Settlement Agreement") dated January 2, 2002 made between the plaintiffs and Kenneth Gill and Anne Gilmour (the "Settling Defendants"), was heard February 28, 2002 at 393 University Avenue, Toronto.

ON READING the Settlement Agreement, the affidavit of Jeffrey D. Glatt sworn February 14, 2002, the affidavit of Claude Millard sworn February 18, 2002 and the consent of the Settling Defendants and on hearing the submissions of counsel for the plaintiffs and no one appearing for the defendants,

Approval of Settlement Agreement

1. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Lionaird Class Members and is hereby approved.

2. **THIS COURT ORDERS** that upon the payment of the Settlement Funds-First Payment and Settlement Funds-Second Payment (as defined in the Settlement Agreement) to Class Counsel pursuant to and in accordance with the provisions of the Settlement Agreement, all claims which the Lionaird Class Members now or in the future can, shall or may have against the Settling Defendants for losses, damages, costs, expenses, fees, interest, GST or otherwise, pursuant to the within action or otherwise resulting from the subject matter of the action shall be finally and conclusively compromised, settled, released and discharged as against the Settling Defendants only.

Bar Orders

3. **THIS COURT ORDERS** that upon the payment of the Settlement Funds-First Payment and Settlement Funds-Second Payment to Class Counsel pursuant to and in accordance with the provisions of the Settlement Agreement, all claims for contribution, indemnity, subrogation

or other claims over by the Settling Defendants against McColl Turner, Robert McGillen, Stewart and Associates, M.R.S. Trust Company or their affiliated companies, officers, directors, partners, employees and agents (collectively the "Prior Settling Defendants") or against any other party or parties now or hereafter named as a defendant in this action or their affiliated companies, officers, directors, partners, employees, and agents other than the Settling Defendants (collectively, the "Non-Settling Defendants") for or in respect of the subject matter of this action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, be and the same are hereby forever barred.

4. **THIS COURT ORDERS** that upon the payment of the Settlement Funds-First Payment and Settlement Funds-Second Payment to Class Counsel pursuant to and in accordance with the provisions of the Settlement Agreement, all claims for contribution, indemnity, subrogation or other claims over by any Non-Settling Defendant or any Prior Settling Defendant against the Settling Defendants for or in respect of the subject matter of the Action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, be and the same are hereby forever barred.

5. **THIS COURT ORDERS** that if any Lionaird Class Member shall be entitled to judgment in this action (a "Primary Judgment") against any Non-Settling Defendant for any amount in respect of which such Non-Settling Defendant would have been entitled, but for the bar orders contained in this Order, to a judgment (a "Claims Over Judgment") against the Settling Defendants in respect of any claim for contribution, indemnity, subrogation or other claims over by such Non-Settling Defendant against the Settling Defendants for or in respect

of the subject matter of this action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, the amount of such Primary Judgment shall be reduced by the full amount of such Claims Over Judgment.

6. **THIS COURT ORDERS** that, for the purposes of establishing or refuting the amount of any Claims Over Judgment to which a Non-Settling Defendant would have been entitled, but for the provisions of the bar orders contained in this Order, the Plaintiffs and any Non-Settling Defendant may, with leave of the Court upon notice to the Settling Defendants, obtain:

- (a) documentary discovery and an Affidavit of Documents in accordance with the Rules of Civil Procedure from the Settling Defendants;
- (b) oral discovery of the Settling Defendants, the transcript of which may be read in at trial;
- (c) an undertaking by the Settling Defendants to produce a representative to testify at trial.

Unless otherwise ordered by the Court, the costs incurred by the Settling Defendants in relation to any such motion and in the participation in the Action required pursuant to any order granted on such motion are to be paid by the party bringing the motion forthwith.

7. **THIS COURT ORDERS** that, except as otherwise provided herein, the Settlement Agreement and this Order shall not prejudice or in any way interfere with the rights of the Plaintiffs to pursue all of their rights and remedies against all Non-Settling Defendants; no

waiver, release or discharge of any Non-Settling Defendant shall arise as a result hereof or thereof and the joint and several liability of all Non-Settling Defendants shall not be affected hereby or thereby.

Annulment of this Order

8. **THIS COURT ORDERS** that if, pursuant to and in accordance with the terms of the Settlement Agreement, any party exercises its right to terminate the Settlement Agreement, then this Order shall be null and void.

General Provisions

9. **THIS COURT ORDERS** that it shall remain seized of this matter for the purpose of any further approvals that may be required.

Justice Farley, Ontario Superior Court of Justice
(Commercial List)

Claude Millard, et al
– Plaintiffs –

v.

North George Capital Management Limited, et al
- Defendants -

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

**Order Approving Settlement
Agreement with Kenneth Gill
and Anne Gilmour**

GOWLING LAFLEUR HENDERSON LLP

Barristers and Solicitors
4900 Commerce Court West
P.O. Box 438
TORONTO, Ontario
M5L 1J3

Steven Sofer

Telephone: (416) 369-7240
Facsimile: (416) 369-7250

JEFFREY D. GLATT

Barrister and Solicitor
506 Russell Hill Road
Toronto, Ontario
M5P 2S9
telephone: (416) 484-7498
facsimile: (416) 484-8169