



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

MADAME JUSTICE *HIMEZ* .)

THURSDAY, THE 28th DAY OF
NOVEMBER, 2002

**IN THE MATTER OF THE BANKRUPTCY OF
MICHAEL WILLIAM MAGEE**
of the City of Sault Ste. Marie, in the District of Algoma, Province of Ontario
(SUMMARY ADMINISTRATION)

Court File No.: 98-CL-3048

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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, Alan Lawson, Fisher Inc., the Trustee of the Estate of Roderick Alton, a Bankrupt and Richard Killen & Associates Ltd, the Trustee of the Estate of Michael Goselin

Defendants

Proceedings under the Class Proceedings Act, 1992

ORDER

THIS MOTION, made by the plaintiffs was heard this day at the Courthouse located at 393 University Avenue, Toronto, ON.

ON READING the notice of motion, the affidavit of Jeffrey D. Glatt, sworn October 22, 2002, filed, and the consent of the trustee in bankruptcy and of the bankrupt, Michael William Magee, and on hearing the submissions of counsel for the plaintiffs:

1. **THIS COURT ORDERS** that Claude Millard be and he is hereby authorized to continue to prosecute the claims against the bankrupt, Michael William Magee, on behalf of himself and as the representative plaintiff on behalf of the members of the North George Class and the Lionaird Class (collectively, the "Class Members") pursuant to the action bearing Court File No. 98-CL-3048 (the "Action") and to add the Trustee of the estate of Michael William Magee as a party defendant.
2. **THIS COURT ORDERS** that Claude Millard's right to prosecute the claims against the bankrupt, Michael William Magee, shall be solely for the purposes of (a) determining whether such claims constitute debts or liabilities which are not released by an order of discharge pursuant to s. 178(1) of the *Bankruptcy and Insolvency Act* and (b) establishing the final amount, for distribution purposes, of the claims of Claude Millard and the Class Members which claims shall be accepted by the trustee as claims proved in the bankruptcy of Michael William Magee.
3. **THIS COURT FURTHER ORDERS** that the Trustee is not required to defend the proceedings, and in the event that the Trustee does not defend the proceedings, it shall

not be subject to discovery nor productions of documents nor shall any costs be awarded against it.

4. **THIS COURT FURTHER ORDERS** that unless the debt or liability under any final judgment or order obtained in the Action comes within the provisions of subsection 178(1) of the *Bankruptcy and Insolvency Act*, the same shall be released by the discharge from bankruptcy of the bankrupt, Michael William Magee.

5. **THIS COURT FURTHER ORDERS** that pending any judgment obtained in the Action, Claude Millard may file a proof of claim in the bankruptcy of Michael William Magee on behalf of himself and all Class Members in the amount of \$5,700,000 substantially in the form of Schedule "A" annexed hereto and such proof of claim shall be accepted by the Trustee as an unsecured claim provable in the bankruptcy in the place and stead of proofs of claim filed on behalf of each of the Class Members individually; provided, however, that no distribution in the bankruptcy shall be made to Claude Millard or the Class Members based on such proof of claim unless and until a final judgment or order has been made in the Action and the time for all appeals has expired.

6. **THIS COURT FURTHER ORDERS** that pending any judgment obtained in the Action, Claude Millard may oppose the discharge from bankruptcy of Michael William Magee on behalf of himself and all Class Members.

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

NOV 29 2002

PER/PAR: 



SCHEDULE "A"

Bankruptcy and Insolvency Act ("BIA")

PROOF OF CLAIM

IN THE MATTER OF THE BANKRUPTCY OF MICHAEL WILLIAM MAGEE

AND THE CLAIM OF CREDITOR:

Claude Millard

Mailing Address:

871 Carmel Cres.

Millbrook, Ontario L0A 1G0

Phone No. 705-932-3393

Fax No.: 705-932-5266

DO HEREBY CERTIFY:

1. That:

- (a) I am the representative plaintiff in the action bearing court file number 98-CL-3048 (the "Action") against the debtor (and others).
- (b) The Action has been certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*.
- (c) To the best of my knowledge, information and belief as at the date hereof, the members of the North George Class and the Lionaird Class bound by the Action and the respective claims of each of them against the debtor (for principal only) are as set out in "Schedule A".
- (d) The filing of this proof of claim on behalf of myself and all other class members (collectively referred to herein as the "creditor") has been authorized by the Court.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. That the debtor was at the date of bankruptcy, namely the 30th day of August 2002, and still is indebted to the creditor as specified in the statement of account attached hereto and marked "Schedule A", after deducting any counterclaims to which the debtor is entitled.

Total Amount of Claim

\$5,700,000

4.

A. UNSECURED CLAIM

That in respect of the said debt, I do not hold any assets of the debtor as security and

I do not claim a right to a priority.

I claim a right to a priority under section 136 of the BIA.

B. SECURED CLAIM

That in respect of the said debt, I hold assets of the debtor as security, particulars of which are as follows:

Value of Security Held

C. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST

That I hereby make a claim under subsection 81.2(1) of the BIA.

5. To the best of my knowledge, the creditor and the debtor are not related or,

are related.

6. That the following are the payments that I have received from the credits that I have allowed to the debtor within the three months (or), if the creditor and the debtors are related within the meaning

Schedule "A"

Value of Proof of Claim

	Lionaird (\$CDN)	North George (\$US)	Total (\$CDN)
Principal Amount per most current Class List	\$ 3,937,600	\$ 2,534,120	
Less: Paid In September 2000	\$ 815,695	\$ -	
Less: Paid in April, 2001	\$ 380,000	\$ 383,310	
Less: Paid in December, 2001	\$ 196,880		
Less: Proposed to be paid in December, 2002	\$ 59,064		
Balance:	\$ 2,485,961	\$ 2,150,810	
Converted to \$CDN @ US\$1=CDN\$1.5589			
(Bank of Canada noon spot rate on August 30, 2002, the date of bankruptcy)	\$ 2,416,905	\$ 3,352,897	\$5,769,802
Rounded down to nearest \$100,000			\$5,700,000

Note: This schedule reflects the principal amount of all claims of all class members in the Action.

Claude Millard and Roger Grisé
- Plaintiffs -

v.

North George Capital Management Limited et al
- Defendants -

**ONTARIO
SUPERIOR COURT OF JUSTICE IN
BANKRUPTCY**

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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SOLICITORS FOR THE PLAINTIFFS