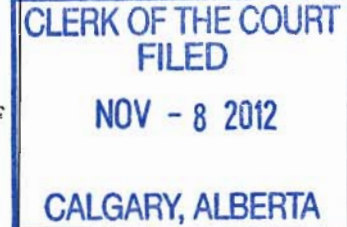


Clerk's Stamp:



COURT FILE NUMBER 1201-08021
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS (APPLICANTS) HARI HARNAM and GARY GUIDRY
DEFENDANTS SHARIFF CHANDRAN, CHITRA CHANDRAN, PHILIP C.
(RESPONDENTS) PINCUS, PLATINUM EQUITIES INC., GLENMORE & CENTRE REGISTERED INVESTMENTS LTD., GLENMORE & CENTRE REGISTERED CAPITAL LTD., ACCRETIVE ASSET MANAGEMENT CORP., GLENMORE & CENTRE RETAIL GP LTD., RIAZ MAMDANI, STRATEGIC FINANCIAL CORP., STRATEGIC EQUITY CORP., GLENMORE & CENTRE LTD. and ACCOLADE EQUITIES INC.
DOCUMENT APPLICATION

Proceeding under the *Class Proceedings Act*, SA 2003

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Calgary, Alberta T2P 1G1
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File No. 70907-1

NOTICE TO RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

| | |
|-------|---|
| DATE | <u>Wednesday, January 16, 2013</u> |
| TIME | <u>10:00 a.m.</u> |
| WHERE | <u>Calgary Courts Centre 601 – 5th Street SW, Calgary, Alberta</u> |

BEFORE WHOM Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The plaintiffs request an Order certifying this action as a class action.
2. The plaintiffs request an Order defining the class as follows:
 - (a) all persons who invested in the Calgary-based real estate investment scheme called Glenmore & Centre (the **Glenmore Investment**), excluding all persons who have divested this investment and had their investment funds returned in full, (the **Investors**); and
 - (b) in the class definition, "person" means any individual, partnership, corporation, cooperative, communal organization, trust, band or other association, excluding the defendants.
3. The plaintiffs request an Order appointing Hari Harnam and Gary Guidry as Representative Plaintiffs for the class members.
4. The plaintiffs request an Order certifying the following three sub-classes of class members:
 - (a) all Investors who invested in the Glenmore Investment through the purchase of limited partnership units in the Glenmore & Centre Retail Limited Partnership (the **Limited Partners**);
 - (b) all Investors who invested in the Glenmore Investment through the purchase of bonds in Glenmore & Centre Registered Capital Ltd. and the purchase of Class B, non-voting shares in Glenmore & Centre Registered Investments Ltd. (the **RRSP Investors**); and
 - (c) all Investors who invested in the Glenmore Investment and did not qualify as accredited investors under Alberta securities laws (the **Non-Accredited Investors**).
5. The plaintiffs request an Order appointing Hari Harnam and Gary Guidry as Representative Plaintiffs for the Limited Partners.
6. The plaintiffs request an Order appointing Hari Harnam as a Representative Plaintiff for the RRSP Investors.
7. The plaintiffs request an Order appointing Hari Harnam as a Representative Plaintiff for the Non-Accredited Investors.
8. The plaintiffs request an Order stating the nature of the claims as follows:
 - (a) the defendants Shariff Chandran, Chitra Chandran (together, the **Chandrans**), Philip C. Pincus (the Chandrans and Mr. Pincus are together the **Platinum Principals**), and Riaz Mamdani conceived of, structured and administered the Glenmore Investment;

- (b) the Platinum Principals were the principals and directing minds of the following entities which were parties to transactions relating to and arising out of the Glenmore Investment: Platinum Equities Inc., Glenmore & Centre Registered Capital Ltd. (**Glenmore Capital**), Glenmore & Centre Registered Investments Ltd. (**Glenmore Registered Investments**), Accretive Asset Management Corp., Glenmore & Centre Retail GP Ltd. (the **Glenmore General Partner**) and Accolade Equities Inc. (together, the **Platinum Group**);
- (c) Mr. Mamdani was the principal and directing mind of the following entities which were parties to transactions relating to and arising out of the Glenmore Investment: Strategic Financial Corp., Glenmore & Centre Ltd. (**G&CL**) and Strategic Equity Corp. (together, the **Strategic Group**);
- (d) the plaintiffs and all class members invested in the Glenmore Investment, either through purchasing limited partnership units in Glenmore & Centre Retail Limited Partnership, purchasing bonds in Glenmore Capital or purchasing Class B, non-voting shares in Glenmore Registered Investments, or a combination of these three avenues;
- (e) in breach of the terms of the Limited Partnership Agreement dated September 17, 2008 (the **LPA**), and opposed to the representations made in the offering memoranda prepared and filed in connection with the Glenmore Investment (the **Offering Memoranda**), the Platinum Principals and Mr. Mamdani unlawfully conspired to administer the Glenmore Investment for their own personal use and benefit; and
- (f) due to the misconduct of the defendants, the plaintiffs and all members of the proposed class have lost the quantum of their initial investment in the Glenmore Investment as well as the opportunity to invest the funds invested in the Glenmore Investment in another legitimate investment.

9. The plaintiffs request an Order certifying the following issues as common issues for all Investors:

Piercing the Corporate Veil

- (a) did the Platinum Principals use the corporate structures of the companies in the Platinum Group as cloaks, shams or alter egos for the purpose of and to facilitate performing wrongful, unlawful and improper acts that have caused harm to the Investors, so that the corporate veils of these entities should be pierced?;
- (b) did Mr. Mamdani use the corporate structures of the companies in the Strategic Group as cloaks, shams or alter egos for the purpose of and to facilitate performing wrongful, unlawful and improper acts that have caused harm to the Investors, so that the corporate veils of these entities should be pierced?;

Conspiracy

- (c) did the defendants enter into an agreement, arrangement, or joint plan, form a common intention, or otherwise act together in a planned and concerted manner for the purpose of, among other things, setting up the Glenmore Investment, causing the Investors to invest in the Glenmore Investment and then wrongfully using the Investors' money for the defendants' personal use and benefit?;

- (d) did the defendants agree to and commit unlawful acts directed towards the Investors in order to further their conspiracy?;
- (e) if the answers to Conspiracy common issues (c) and (d) are "yes", what acts did each of the defendants perform in execution of their conspiracy?;
- (f) if the answers to Conspiracy common issues (c) and (d) are "yes", did the defendants know or ought the defendants to have known that injury to the Investors was likely to result from their unlawful conduct?;
- (g) if the answers to Conspiracy common issues (c) and (d) are "yes":
 - (i) can it be determined on a common basis whether or not the Investors suffered harm as a result of the various acts undertaken by the defendants in furtherance of their unlawful conspiracy?; and
 - (ii) if the answer to Conspiracy common issue (g)(i) is "yes", did the Investors suffer harm as a result of the various acts undertaken by the defendants in furtherance of their unlawful conspiracy?;

Unjust Enrichment

- (h) were the defendants enriched through their receipt and use of the funds invested in the Glenmore Investment by the Investors (**Investor Funds**)?;
- (i) did the Investors suffer a corresponding deprivation in the amount of such Investor Funds?;
- (j) was there a juristic reason for the defendants' enrichment?;

Statute of Elizabeth, Void for Illegality and Being Contrary to Public Policy

- (k) should the Glenmore General Partner's purchase of the property at issue in this action (the Property) from G&CL, including the conveyance of the Investor Funds between the Defendants, be set aside pursuant to the *Statute of Elizabeth*?:
 - (i) was there adequate consideration for the conveyance of the Investor Funds?; and
 - (ii) did the defendants' arrange and conduct the conveyances in order to delay or hinder the Investors from recovering the Investor Funds?;
- (l) did the defendants prepare and enter into the following agreements (together, the **Glenmore Agreements**) relating to the Glenmore Investment for unlawful and improper purposes:
 - (i) Purchase Agreement including the purchase price of \$21.8 million;
 - (ii) Mortgage in the original principal sum of \$15.5 million dated March 1, 2011;
 - (iii) Mortgage in the original principle sum of \$642,965.07 dated March 1, 2011;
 - (iv) Head Lease Agreement dated October 1, 2008;

- (v) Declaration of Bare Trust and Nominee Agreement dated March 1, 2011;
 - (vi) Head Lease Amending Agreement dated October 24, 2011;
 - (vii) LPA; and
 - (viii) the subscription agreements pursuant to which the Investors invested in the Glenmore Investment?;
- (m) are the Glenmore Agreements contrary to Alberta law?;
 - (n) if any or all of the Glenmore Agreements are found to be contrary to Alberta law, should any or all of the Glenmore Agreements be void for illegality or for being contrary to public policy?;

Disgorgement and Constructive Trust

- (o) would the defendants have generated or obtained the revenue that they generated in connection with the Glenmore Investment, but for their misconduct?;
- (p) is an equitable remedy such as disgorgement or constructive trust against the defendants appropriate for ensuring that the defendants do not profit from their wrongful acts and to deter others like the defendants from engaging in similar misconduct?;
- (q) is there anything that would render the imposition of an equitable remedy against the defendants unjust or improper in the circumstances?; and

Punitive Damages

- (r) was the defendants' misconduct harsh, high-handed, malicious and oppressive so as to warrant an award of punitive or exemplary damages?

10. The plaintiffs request an Order certifying the following issues as common issues for all Limited Partners:

Breach of Contract

- (a) did the Glenmore General Partner breach the terms of the LPA?;

Negligence

- (b) did the Glenmore General Partner owe the Limited Partners a duty of care?;
- (c) did the Platinum Principals owe the Limited Partners a duty of care?;
- (d) if the Glenmore General Partner or the Platinum Principals owed a duty of care to the Limited Partners, did any of them breach that duty of care?; and
- (e) if the Glenmore General Partner or the Platinum Principals breached a duty of care owed to the Limited Partners, did that breach cause the Limited Partners to suffer harm?

11. The plaintiffs request an Order certifying the following issues as common issues for all RRSP Investors:

Breach of Contract

- (a) do the RRSP Investors have any contractual rights arising from the LPA?;
- (b) if yes, did the Glenmore General Partner breach the terms of the LPA?;

Negligence

- (c) did the Glenmore General Partner owe the RRSP Investors a duty of care?;
- (d) did the Platinum Principals owe the RRSP Investors a duty of care?;
- (e) did Glenmore Registered Investments owe the RRSP Investors a duty of care?;
- (f) did Glenmore Capital owe the RRSP Investors a duty of care?;
- (g) if the Glenmore General Partner, the Platinum Principals, Glenmore Registered Investments or Glenmore Capital owed a duty of care to the RRSP Investors, did any of them breach that duty of care?; and
- (h) if the Glenmore General Partner, the Platinum Principals, Glenmore Registered Investments or Glenmore Capital breached a duty of care owed to the RRSP Investors, did that breach cause the RRSP Investors to suffer harm?

12. The plaintiffs request an Order certifying the following issues as common issues for all Non-Accredited Investors:

Misrepresentations under Section 204(1) of the Alberta *Securities Act*

- (a) did the Offering Memoranda prepared by the Platinum Principals contain misrepresentations?; and
- (b) if the Offering Memoranda prepared by the Platinum Principals contained misrepresentations, do any non-individual statutory defences apply?

13. The plaintiffs request an Order for such further relief as this honourable Court considers appropriate and just.

Grounds for making this application:

- 14. The pleadings herein disclose a cause of action against the defendants;
- 15. There is an identifiable class of two or more persons;
- 16. There are three identifiable sub-classes of two or more persons;
- 17. The claims of the class members and sub-class members raise common issues respecting the within litigation;

18. A class action will be preferable procedure for resolution of the common issues; and
19. Hari Harnam and Gary Guidry are appropriate to be appointed as representative plaintiffs for the class members and sub-class members, and:
 - (a) will fairly and adequately represent the interests of the class and sub-classes;
 - (b) have produced a draft plan of proceeding that sets out a workable method of advancing the action; and
 - (c) do not have, on the common issues, interests that are in conflict with the interests of other class members or sub-class members.

Material or evidence to be relied on:

20. The Affidavit of Hari Harnam, sworn November 5, 2012;
21. The Affidavit of Gary Guidry, sworn November 5, 2012;
22. The pleadings and proceedings herein; and
23. Such other and further material as counsel may advise.

Applicable Rules:

24. Rule 2.6(1) of the *Alberta Rules of Court*.

Applicable Acts and Regulations:

25. *Class Proceedings Act*, SA 2003, c. C-16.5.

Any irregularity complained of or objection relied on:

26. N/A

How the application is proposed to be heard or considered:

27. Orally, in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.