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COURT OF APPEAL FOR ONTARIO

RE: PERCY LEVY (Plaintiff/Respondent) – and – NELBAR FINANCIAL CORPORATION, ESSEX CAPITAL MANAGEMENT LTD., GEORGE NELSON ALLEN, ROBIN MORIARTY, BARBARA ALLEN, WOODBINE DRIVING RANGE LIMITED, FORMERLY KNOWN AS 884085 ONTARIO LIMITED, 1272327 ONTARIO INC., NELSON ALLEN FINANCIAL CORPORATION AND KUKOKE HOLDINGS INC. (Defendants/Appellant)

BEFORE: MCMURTRY C.J.O., WEILER AND BLAIR JJ.A.

COUNSEL: George Nelson Allen
appellant, appearing in person

Raymond F. Leach
for the respondent

**HEARD &
RELEASED
ORALLY:** May 16, 2006

On appeal from the judgment of Justice Ellen M. Macdonald of the Superior Court of Justice dated September 30, 2005.

ENDORSEMENT

[1] The appellant appeals from the summary judgment of the Honourable Madam Justice E. Macdonald, dated September 30, 2005, whereby the court ordered, *inter alia*, that judgment go against the appellant for \$10,610,807.94 to the persons listed in Master Linton's Interim Reports #1 and 2, plus post-judgment interest and \$3,500.00 for costs of the motion.

[2] The appellant asks this court to set aside the summary judgment and allow the matter to proceed to trial. The appellant submits that the cause of the loss was not his fraudulent conduct to which he pled guilty but the fact that his business was shut down and placed into receivership. Liability for the loss, he submits, was due to the Financial

Services Commission of Ontario coming in, freezing assets and liquidating them. He was never charged with any regulatory offence.

[3] In our opinion there is no genuine issue for trial as to the cause of the loss. The appellant's argument on this point was properly rejected at first instance. The cause of the losses was the appellant's fraudulent conduct as evidenced by his guilty plea.

[4] In the alternative, the appellant asks that this court only award summary judgment to the Sub-Class with regard to which the appellant has admitted misrepresentation. In our view, the factual admissions underlying the guilty pleas are sufficient to support a judgment for all plaintiffs for class action purposes. The damages have been assessed in this case by way of a reference before Master Linton arising out of the default proceedings against the appellant's companies. The appellant cooperated in the reference process with respect to most of the claimants and agreed with those amounts (Report #1). He disagreed with other amounts in a smaller number of cases but refused to participate in the proceeding before Linton in that regard. In report #2 Master Linton fixed those amounts and Justice Cumming subsequently approved them. Accordingly we are satisfied that the quantum of damages has been adequately assessed and again there is no genuine issue for trial.

[5] The appeal is dismissed with costs to the respondent awarded in the amount of \$14,500 inclusive of disbursements and GST. In addition the respondent is entitled to \$4600 outstanding costs with respect to two previous costs awards.

“R. Roy McMurtry C.J.O.”

“K. M. Weiler J.A.”

“R. A. Blair J.A.”