

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

NO.: 500-06-000500-104

VIRGINIA NELLES, residing and domiciled at 30 Thornhill Avenue, in the City and District of Montreal, Province of Quebec, H3Y 2E2;

Plaintiff

-vs-

ROYAL BANK OF CANADA, a bank duly incorporated and constituted in accordance with the *Bank Act*, having a branch at 106 Beaurepaire Drive, in the City of Beaconsfield, Province of Quebec, H9W 0A1;

Defendant

MOTION INTRODUCTIVE OF CLASS ACTION PROCEEDINGS

THE PLAINTIFF RESPECTFULLY DECLARES:

I. INTRODUCTION

1. At all relevant times during the period from October 22, 1981 until August 28, 2008 (the "Period"), Earl Jones was a customer of the Royal Bank of Canada, Beaconsfield Branch;
2. At all relevant times during the Period, Earl Jones maintained an account at the Royal Bank of Canada, Beaconsfield branch, namely the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account");
3. On January 15, 2010, Earl Jones pleaded guilty to having used the Earl Jones In Trust Account at the Royal Bank of Canada to perpetrate a fraudulent Ponzi scheme throughout the Period;

4. By Judgment dated July 14, 2010, the Plaintiff was authorized to institute a class action against the Royal Bank of Canada on behalf of the following class, namely:

All persons, and estates of deceased persons, trustees, es qualit  trusts and corporations whose funds were deposited to the Earl Jones In Trust Account at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

(the "Class");

5. The present class action seeks compensatory damages for the financial losses sustained by the Plaintiff and the members of the Class, as a result of the Royal Bank of Canada's negligence, and lack of prudence and vigilance in the operation of the Earl Jones In Trust Account, as well as its willful blindness in facilitating the irregular and unlawful operation of the Earl Jones In Trust Account during the Period;

II. THE PONZI SCHEME

6. At all relevant times, Earl Jones held himself out to be a businessman of the highest integrity who administered funds on behalf of third parties, including individuals, corporations, estates and trusts;
7. At all relevant times, Earl Jones represented to the members of the Class that the funds he administered on their behalf would be deposited in a trust account at the Royal Bank of Canada and would be invested to generate returns;
8. Throughout the Period, monies belonging to the members of the Class were deposited into the Earl Jones In Trust Account at the Royal Bank of Canada;
9. Contrary to the representations made by Earl Jones to the members of the Class, Earl Jones never invested any of the funds that he collected in order to generate returns;
10. Instead, Earl Jones perpetrated a Ponzi scheme. Rather than investing the money that he collected from the members of the Class, Earl Jones deposited the money into the Earl Jones In Trust Account at the Royal Bank of Canada, and then used said money to:

- i) Make payments to certain members of the Class, which were ostensibly "returns", but which were in fact payments out of the very monies belonging to the Class members that had been deposited into the Earl Jones In Trust Account in the first place;
- ii) Withdraw substantial sums of money each and every year in order to live a life of luxury and to pay for his personal expenses and those of his family, such as mortgage payments and credit card bills, the whole as appears more fully from a Summary Report prepared by the Trustee in bankruptcy of Earl Jones and Earl Jones Consultant & Administration Corporation, a copy of which is produced herewith as **Exhibit P-1**;

III. THE LIABILITY OF THE ROYAL BANK OF CANADA

11. Earl Jones was able to use the Earl Jones In Trust Account at the Royal Bank of Canada to perpetrate his Ponzi scheme for approximately 27 years;
12. Earl Jones would never have been able to perpetrate such a massive fraud were it not for the negligence, lack of prudence and vigilance, and willful blindness on the part of the Royal Bank of Canada, as set forth herein;
13. The Royal Bank of Canada knew from the outset of the Period that Earl Jones was an administrator of the property of others, and that all of the money deposited to the Earl Jones In Trust Account belonged to third parties;
14. In Royal Bank of Canada's Sales Platform Profile, a copy of which is produced herewith as **Exhibit P-2**, Earl Jones was described as "administor (sic.) of estate";
15. The Royal Bank of Canada permitted Earl Jones to name and describe his account as "**Earl Jones In Trust**", the whole as appears more fully from a Royal Bank of Canada Client Profile of the Earl Jones In Trust Account printed on or about May 12, 1993, a copy of which is produced herewith as **Exhibit P-3**;
16. Throughout the Period, the Royal Bank of Canada and its authorized supplier continually provided cheques to Earl Jones containing the inscription "Earl Jones In Trust", knowing that such cheques would be issued to third parties who would understand, mistakenly, that the Earl Jones In Trust Account was a true "in trust" account. The Royal Bank of Canada accepted and honoured said cheques for payment throughout the Period;

17. In doing so, the Royal Bank of Canada facilitated Earl Jones in representing to the Class that their funds were being held in a true "in trust" account;
18. In fact, however, Earl Jones **and** the Royal Bank of Canada treated the Earl Jones In Trust Account as a **personal chequing account** belonging to Earl Jones;
19. Although the Royal Bank of Canada knew that the law prohibits an administrator of the property of others from commingling the funds being administered with personal funds, the Royal Bank of Canada knew that Earl Jones was using the funds in the Earl Jones In Trust Account as his **personal** funds, and the Royal Bank of Canada permitted and facilitated Earl Jones in doing so;
20. Furthermore, the Royal Bank of Canada attributed a VIP client status to Earl Jones, affording him numerous irregular and inappropriate privileges, which facilitated Earl Jones in perpetrating his Ponzi scheme. In particular,

A) Double-Endorsed Forged Cheques

- i) On numerous occasions throughout the Period, Earl Jones and his authorized representatives went to the Beaconsfield branch at the Royal Bank of Canada seeking to deposit cheques for substantial amounts of money into the Earl Jones In Trust Account, which were **not** payable to Earl Jones;
- ii) On the back of the foregoing cheques, there was an inscription stating "pay over to Earl Jones In Trust", and the purported signature of the third party beneficiary of the cheque;
- iii) The Royal Bank of Canada blindly accepted the deposit of said cheques into the Earl Jones In Trust Account, without ever making a single verification as to the authenticity of the "endorsement" on the back of the cheques;
- iv) The Royal Bank of Canada knew that once it accepted the deposit of such cheques into the Earl Jones In Trust Account, Earl Jones, who was not the beneficiary of the cheques, would be able to use the money for his personal benefit and that of his family;
- v) By failing to make any verifications regarding the authenticity of "endorsements" on the back of cheques that Earl Jones sought to deposit into the Earl Jones In Trust Account, the Royal Bank of Canada turned a blind eye to highly suspicious transactions which Earl Jones wished to make;

- vi) In fact, substantially all of the "endorsements" on the backs of the cheques were forgeries. A sample of cheques containing forged double endorsements which the Royal Bank of Canada accepted into the Earl Jones In Trust Account is produced herewith *en liasse* as **Exhibit P-4**;
- vii) If the Royal Bank of Canada had made elementary verifications as to the authenticity of the "endorsements", the Royal Bank of Canada would have easily uncovered that its customer was committing a crime of forging cheques, and the Royal Bank of Canada would have immediately put an end to the fraudulent scheme being perpetrated by Earl Jones;
- viii) By continually accepting the deposit of cheques containing forged "endorsements" into the Earl Jones In Trust Account without first making any verifications, the Royal Bank of Canada committed a fault, and knowingly disregarded the numerous clear directives given by the Courts of the Province of Quebec to banks in general, and to the Royal Bank of Canada in particular, to verify the authenticity of endorsements on the backs of cheques before accepting same for deposit;
- ix) The Royal Bank of Canada accordingly failed to act in a reasonable, prudent and vigilant manner, and recklessly disregarded the interests of the members of the Class;

B) Commingling of Funds, Debit Cards and Credit Cards

- i) At all times throughout the Period, the Royal Bank of Canada knew that the law prohibited an administrator of the property of others from commingling funds belonging to the administrator and to his clients;
- ii) Although the Royal Bank of Canada knew that the money deposited into the Earl Jones In Trust Account belonged to third parties, and was to be administered by Earl Jones, by treating the Earl Jones In Trust Account as the personal account of Earl Jones, the Royal Bank of Canada facilitated Earl Jones in unlawfully using funds belonging to third parties for his personal benefit and that of his family;
- iii) In addition, the Royal Bank of Canada provided Earl Jones with debit cards and credit cards tied to the Earl Jones In Trust Account, enabling Earl Jones to withdraw cash, and to pay for personal expenses out of an account that the Royal Bank of Canada knew comprised funds belonging to third parties;
- iv) The Royal Bank of Canada therefore committed a fault in disregarding the fact that the Earl Jones In Trust Account comprised money belonging to third parties, and not to Earl Jones personally;

- v) As a result of the foregoing negligence on the part of the Royal Bank of Canada, Earl Jones was able to pay himself, or pay personal expenses, of approximately \$1 million per year during the Period (Exhibit P-1);
21. Not only was the Royal Bank of Canada negligent in facilitating the Ponzi scheme perpetrated by Earl Jones throughout the Period, the Royal Bank of Canada also turned a blind eye in 2001, after it specifically identified the irregular operation of the Earl Jones In Trust Account;
22. In particular, on or about November 7, 2001, an employee of the Royal Bank of Canada wrote a note summarizing the Earl Jones In Trust Account, a copy of which is produced herewith as **Exhibit P-5**, which states:
- “Mr. Jones returned my call. I offered him our ratelink essential package service because his fees are over \$150.00 every month. **He is using this account for business purposes as an In Trust account, however, I told him this is not a formal trust account and he could get himself in trouble because this is just a personal account in his name alone, the In Trust does not mean anything in this case.** He said his company is in the process of making big changes and he will look into it ...”
23. Notwithstanding the Royal Bank of Canada's identification of an irregular use of the Earl Jones In Trust Account, and notwithstanding that the note implies an imminent follow-up, the Royal Bank of Canada permitted Earl Jones to continue operating the Earl Jones In Trust Account in the identical irregular fashion, with the same irregular privileges, for approximately seven more years, without any follow up whatsoever;
24. As a result, from November 2001 until August 2008:
- i) Earl Jones continued perpetrating his Ponzi scheme;
 - ii) The Royal Bank of Canada continued to accept millions of dollars for deposit into the Earl Jones In Trust Account, including on the basis of forged endorsements on the backs of cheques that were never verified;
 - iii) The Royal Bank of Canada continued to allow Earl Jones to use debit cards to withdraw cash from the Earl Jones In Trust Account; and,
 - iv) The Royal Bank of Canada continued to allow Earl Jones to use the money in the Earl Jones In Trust Account to pay for personal expenses;

25. In January 2008, the Royal Bank of Canada again raised questions about the Earl Jones In Trust Account. On January 24, 2008, the Royal Bank of Canada's Salvatore Micielli sent an e-mail, a copy of which is produced herewith as **Exhibit P-6**, stating:

"... The client has listed himself as self-employed and has no identification on file. The client has one CDN account and no other products with RBC. **Notes on the account indicate there was prior knowledge in 2001 that the client was operating business through the personal account**, the client was notified and stated that he would look into it.

A 90-day review was conducted on the account; at present time there has been activity which is consistent with the client operating a trust business account. The information on the account however may be encoded incorrectly, since all the information on the account points to it being a personal account rather than a lawyer's trust account. A KYC will be sent to determine this."

26. On July 23, 2008, Earl Jones wrote to the Royal Bank of Canada in reply to the suggested changes to the Earl Jones In Trust Account:

"It is most advantageous for me to operate an "In Trust Account". We understand the rules and regulations that you have given my assistant Debra Stewart and certainly will abide by them. It is my understanding that an "In Trust Account" can be operated, however, the account must be set up under a new account number for specific classifications in the records of the Royal Bank. I certainly will concur with this necessity and would ask that this change be made.

As for an account that we would require pertaining to, for example, our estates and our trusts that we administer to, I would like to know and set up the type of account that will allow us to deposit and withdraw transactions relating to the various trusts and estates that we have under our administration. In all cases, I am either a Trustee and/or Executor and/or officially appointed the administrator for the Trustees and/or the Executors. Documentation is held at our office. One specific account would be required as we do at any one time administer to some twenty-five to thirty estates and have well over fifty trusts that we are administering to at any one time. Our Debra Stewart advised me that you felt a specific type of account could be opened, however, when depositing cheques payable to a specific estate, a special notation would have to be placed on the reverse side of the cheque.

We do receive cheques from our clients payable to themselves and we have commenced working with them to have these cheques made payable to Earl Jones In Trust and/or to the name of the new account that would be opened as requested above.”

A copy of this letter and the transmittals sent with same are produced herewith as **Exhibit P-7** *en liasse*;

27. Notwithstanding the foregoing, the Royal Bank of Canada did not end its relationship with Earl Jones at this time, and did not investigate further; the Royal Bank of Canada simply opened a **Business** Deposit Account in the name of Earl Jones Consultant & Administration Corporation, the account bearing number 00361-003-1012350, which allowed Earl Jones to continue perpetrating his Ponzi scheme;
28. On August 28, 2008, at the request of the Royal Bank of Canada, Earl Jones simply transferred the money in the Earl Jones In Trust Account to the Earl Jones Consultant & Administration Corporation Account, permitting Earl Jones to continue the same “trust business”, only out of a different account. A copy of the Client Agreement dated July 24, 2008 and Certificate of Incorporation for Earl Jones Consultant & Administration Corporation of May 16, 1984 are produced herewith *en liasse* as **Exhibit P-8**. Copies of statements for both accounts from August 2008, together with the cheque drawn upon the Earl Jones In Trust Account, payable to Earl Jones Consultant & Administration Corporation, are produced herewith *en liasse* as **Exhibit P-9**;
29. Earl Jones Consultant and Administration Corporation and Earl Jones, personally, were declared bankrupt on July 29 and August 10, 2009, respectively;

IV. THE DAMAGES

30. Substantial amounts of money belonging to the members of the Class were deposited to the Earl Jones In Trust Account, were never invested and were never fully reimbursed;
31. As appears from a preliminary report of the Trustee to the bankruptcy of Earl Jones, a copy of which is produced herewith as **Exhibit P-10**, the creditors of Earl Jones, including the Plaintiff and members of the Class, have filed proofs of claim totaling in excess of \$74,500,000.00;

32. The Trustee in bankruptcy to Earl Jones and to Earl Jones Consultant and Administration Corporation believes that the members of the Class will not receive any dividend;
33. The Royal Bank of Canada is liable to the members of the Class, collectively, for the sum of money deposited to the Earl Jones In Trust Account which was not fully reimbursed to the members of the Class (the "Collective Loss");
34. The Collective Loss sustained by the Plaintiff and the members of the Class is estimated to be \$40,000,000.00, the whole subject to amendment following expertise;
35. The present Motion is well-founded in fact and in law;

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT OF THIS HONOURABLE COURT:

- (A) MAINTAINING** the Motion Introductory of Class Action Proceedings;
- (B) CONDEMNING** the Royal Bank of Canada to pay damages in the amount of \$40,000,000.00, to compensate the Class for the Collective Loss, the whole with interest at the legal rate as well as the additional indemnity provided by law, to be calculated from and as of February 5, 2010;
- (C) DECLARING** that the Royal Bank of Canada is liable for the costs of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Plaintiff and the members of the Class;
- (D) ORDERING** collective recovery of the total amount of the claims herein;
- (E) ORDERING** that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;
- (F) ORDERING** that the Royal Bank of Canada advise all members of the Class of the present Class Action Proceedings;
- (G) CONDEMNING** the Royal Bank of Canada to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, reports, expertise and publication of notices.

MONTREAL, August 17, 2010.

(SGD) Stein & Stein Inc.
STEIN & STEIN INC.

(SGD) KUGLER KANDESTIN, LLP
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