

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE DOHERTY)	MONDAY, THE 3 RD DAY
THE HONOURABLE JUSTICE FELDMAN)	FEBRUARY, 2014
THE HONOURABLE JUSTICE CRONK)	
THE HONOURABLE JUSTICE BLAIR)	
THE HONOURABLE JUSTICE JURIAN SZ)	

BETWEEN :

HOWARD GREEN AND ANNE BELL

Appellants
(Plaintiffs)

-and-

**CANADIAN IMPERIAL BANK OF COMMERCE, GERALD MCCAUGHEY,
TOM WOODS, BRIAN G. SHAW, AND KEN KILGOUR**

Respondents
(Defendants)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS APPEAL by the Appellants, Howard Green and Anne Bell, from the Order of the Honourable Justice Strathy of the Ontario Superior Court of Justice, dated July 3, 2012 was heard May 13-15, 2013 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Appellants' Appeal Book and Compendium and Exhibit Book, and on hearing the submissions of the lawyers for the parties and the lawyers for the interveners.


1. **THIS COURT ORDERS AND ADJUDGES** that the appeal from the denial of certification of and leave to commence the statutory claim under Part XXIII.1 of the *Securities Act* is allowed. Leave is granted pursuant to section 138.8 of the *Securities Act* to commence the statutory claim, and the statutory claim is certified as a class proceeding in respect of the common issues specified as pertaining to the statutory claim as set out in Schedule "A" hereto.
2. **THIS COURT ORDERS AND ADJUDGES** that the appeal from the denial of certification of the common law claim against the defendant Canadian Imperial Bank of Commerce ("CIBC") only is allowed and that claim is certified as against CIBC in respect of the common issues specified as pertaining to the common law claim as set out in Schedule "A" hereto.
3. **THIS COURT ORDERS AND ADJUDGES** that costs will be determined by further order of the Court in the event that the parties are unable to agree on costs.

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

APR 04 2014

PER / PAR:




Registration: Court de Appel For Ontario

Schedule "A"**Common law negligent misrepresentation issues certified as against CIBC:**

1. Did CIBC owe a duty of care to Class Members?
2. Did CIBC make representations, as set out in paragraphs 144 to 208 of the Second Amended Statement of Claim, concerning the overall extent of CIBC's CDO Exposure (as defined in the claim) and the extent of the impaired value of CIBC's CDO Portfolio and the hedges purchased to provide protection against the default of the RMBS and CDOs held directly and indirectly by CIBC during the Class Period, which were untrue, inaccurate or misleading? If so, what were the untrue, inaccurate or misleading representations made by CIBC, when, where and how?
3. Did CIBC make the representations described above negligently? If so, when, where and how were the representations made?
4. Were the representations described above publicly corrected? If so, when?
5. Did CIBC make the representations intending that the Class Members rely upon them in acquiring CIBC shares?

Issues on which leave to commence the statutory claim is granted:

- (a) the claim against CIBC and Brian Shaw in connection with the May 31, 2007 earnings conference call and against the three individual defendants who acquiesced in the statements made by Mr. Shaw;
- (b) the claim against CIBC and Woods in connection with the August 30, 2007 BNN interview;
- (c) the claim against CIBC, McCaughey and Woods in connection with the core documents, namely Q2, Q3, Q4 and fiscal 2007 financial statements and reports.

Common issues certified in the statutory action in respect of the above three misrepresentations on which leave is granted:

6. Did some or all of the representations, as described above, made by CIBC and the Individual Defendants, or any of them, during the Class Period, constitute a misrepresentation within the meaning of section 138.3 of the Securities Act?

7. If the answer to (6) is yes, did the Individual Defendants, or any of them, authorize, permit, acquiesce in the release of any or all of the public oral statements or documents containing a misrepresentation within the meaning of section 138.3 of the Securities Act?
8. If the answer to (6) is yes, did CIBC or the individual Defendants, or any of them, know that the non-core document as defined under the Securities Act or the public oral statement contained a misrepresentation, or deliberately fail to acquire knowledge that the non-core document or public oral statement contained the misrepresentation, or are guilty of gross misconduct in connection with the release of the non-core document or the making of the public oral statement that contained the misrepresentation?
9. If the answer to (6) is yes, have the Defendants, or some of them, established a reasonable investigation or expert reliance defence under the Securities Act?
10. Can any or all of the Defendants rely on section 138.7 of the Securities Act in order to limit their liability in the prescribed statutory amounts? If CIBC can rely on section 138.7 of the Securities Act, what was CIBC's market capitalization for the purposes of determining the cap on its liability?

Court of Appeal File No.: C55832
Court File No.: CV-08-359335

GREEN ET AL
APPELLANTS/PLAINTIFFS

v.

CANADIAN IMPERIAL BANK OF COMMERCE et al
Appellants/Defendants

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

ORDER

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