

Court File No. 01-CL-4192

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

-and-

BUCKINGHAM SECURITIES CORPORATION

Respondent

AND

**BDO DUNWOODY LIMITED,
in its capacity as Court-Appointed Receiver and Manager
Of Buckingham Securities Corporation**

Appellant

-and-

W.D. LATIMER CO. LIMITED

Respondent
In Appeal

NOTICE OF APPEAL

The appellant, **BDO DUNWOODY LIMITED** (the "Receiver"), in its capacity as Court-Appointed Receiver and Manager of Buckingham Securities Corporation

(“Buckingham”), **APPEALS** to the Court of Appeal from the Judgment of the Honourable Mr. Justice Ground dated October 17, 2002, made at Toronto.

The Appellant asks that the Judgment be varied so as to:

- (a) Declare that W.D. Latimer Co. Limited (“Latimer”) had constructive knowledge of the breach of trust committed by Buckingham in pledging to Latimer fully paid and excess margin securities held by Buckingham for its customers (the “Fully Paid and Excess Margin Securities”);
- (b) Set aside the security interest claimed by Latimer in the Fully Paid and Excess Margin Securities and declare the same void and unenforceable, without prejudice to Latimer’s rights to assert a claim as against specific customers of Buckingham on the basis of acquiescence; and
- (c) Direct that the costs of the proceedings below be paid by Latimer to the Receiver forthwith on a substantial indemnity scale.

THE GROUNDS OF APPEAL are as follows:

- (a) His Honour erred in law and misapprehended the evidence in failing to find that Latimer had knowledge of facts which should have put a reasonable person on inquiry as to a possible breach of trust by Buckingham prior to Latimer advancing credit to Buckingham by way of a margin account;

- (b) His Honour erred in failing to consider the evidence concerning the absence of regular transfers of securities from Buckingham's account at Latimer to a separate trust account in which Buckingham segregated the Fully Paid and Excess Margin Securities and in failing to conclude that the same ought to have put Latimer on notice of Buckingham's failure to segregate and hold such securities in trust;
- (c) His Honour erred in law and misapprehended the evidence in concluding that Latimer acted reasonably in the circumstances of this case, given that Latimer failed to request or review readily available information and documentation which would have confirmed the breach of trust by Buckingham;
- (d) His Honour erred and misapprehended the evidence in concluding that it would have been impractical or unreasonable for Latimer to have made additional inquiries in order to determine whether the securities held by Buckingham for its customers were being segregated, given that a simple request to examine regularly produced and readily available documentation would have revealed that Buckingham was not segregating its customer securities;
- (c) His Honour erred in law in equating industry standards and practice with reasonable conduct and in accepting industry standards and practice as a proxy for reasonable conduct in circumstances where such industry standards and practice are unduly casual and fall below the level of reasonable conduct and due diligence; and

- (f) Such further and other grounds as Counsel may advise and this Honourable Court accept.

November 15, 2002

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