

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GRISEL ALONSO, AS RECEIVER FOR ELM TREE INVESTMENT ADVISORS, LLC, ELM  
TREE INVESTMENT FUND, LP, ELM TREE 'e' CONOMY FUND, LP, ELMTREE  
MOTION OPPORTUNITY, LP, and ETOPIA, LP

PLAINTIFFS

- and -

TED GREENWALD

DEFENDANT

**DEFENDANT'S FACTUM**

PART I – OVERVIEW

1. In 2006 the Defendant entered into a partnership with Fred Elmaleh (Cyber Investments International, Inc.) to purchase a 4-plex property in Fort Lauderdale based on the proposed purchase agreement (Affidavit Exhibit A) presented by Fred Elmaleh. The Defendant sent Fred Elmaleh \$120,000.00 CDN (\$100,000.00 USD) as 50% partnership in the purchase. After the supposed purchase was completed the Defendant requested on numerous occasions for Fred Elmaleh to supply documents of the purchase of the property but each time Fred Elmaleh had excuses why he could not send the documents. This went on for over a year when finally Fred had informed the Defendant that he was able to sell 2 of the units and he sent the Defendant \$50,000.00 USD as the Defendant's share of the proceeds. Then, the 2008 recession hit the U.S.

and the real estate market values plummeted. The Defendant continued on numerous occasions (Affidavit Exhibit B) to inquire from Fred Elmaleh what is happening with the remaining properties and also to obtain some documentation as to the ownership of the properties. These requests continued for years with no result. Finally by 2014 the value of real estate in the U.S. had started to regain its value and the Defendant made a final request that either Fred send some proper documentation or he buy out the Defendant's share in the properties. As shown in the email correspondences (Affidavit Exhibit C) Fred agreed to send the Defendant \$55,000.00 USD as payout of the Defendant's share of the properties. The Defendant agreed to this and Fred was supposed to wire transfer the sum of \$55,000.00 USD to the Defendant's TD Bank U.S. Account. There was 2 attempts to wire this sum (Affidavit Exhibit D) (the first wire transfer was converted to CDN currency before it hit the TD Bank and was rejected by the Defendant because there would have been great losses due to the double conversion (Affidavit Exhibit E), the second wire transfer had some incorrect information and was rejected by the TD Bank). The funds from the wire transfers were returned to the originating bank account (Affidavit Exhibit F). Finally Fred agreed that he would send a cheque (Affidavit Exhibit G). This was deposited on Aug 20, 2014 as shown in the list of transactions from the Defendant's TD U.S bank account (Affidavit Exhibit H). This was the only funds ever received by the Defendant from Fred Elmaleh during the time period pertaining to the Plaintiff's Claim..

## PART II – SUMMARY OF FACTS

1. It was discovered by the lawyers the Defendant hired to defend this case in the US Court that the supposed property purchased by Fred Elmaleh for which the Defendant had sent him \$120,000.00 CDN never existed and it was a Ponzi scheme Fred orchestrated on the Defendant.

2. The emails between Fred Elmaleh and the Defendant were shown to the Plaintiff's lawyers in Jan 2017 (Affidavit Exhibit I) and also introduced as evidence in court on Mar 27, 2017. These emails clearly show that the only sum ever mentioned was \$55,000.00 USD (Affidavit Exhibit C) not \$110,000.00 USD as claimed by the Plaintiff.

3. The Defendant's TD Bank account (Affidavit Exhibit H) clearly shows that no wire transfers were received during the period claimed by the Plaintiff. The Plaintiff's only evidence was to show that the wire transfers were sent but no evidence was ever produced to show that those wire transfers were received by the Defendant.

4. The email obtained from the TD Bank wire transfer department (Exhibit E) clearly shows that one of the wire transfers was returned to the sender and returned to the originating bank account (Exhibit F). The Plaintiff having access to the accounts where the wire transfer originated from, clearly knew this and yet claimed that the Defendant received the funds from this wire transfer.

5. Therefore Defendant states and the fact is that the Judgement obtained in the United States was obtained fraudulently and deceitfully.

6. The Defendant therefore asks that this action be dismissed against him with costs on a substantial indemnity basis.

January 7, 2019

**Ted Greenwald**  
**7 Townsgate Dr.**  
**Suite 1010**  
**Thornhill, Ontario**  
**L4J 7Z9**  
**(416) 580-2349**  
**Fax No. 905-326-0464**

**The Defendant**

**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

Tel: 416-862-7525  
Fax: 416-862-7661

**Malcolm N. Ruby (#25970G)**

Tel: 416-862-4314

Fax: 416-863-3614

[malcolm.ruby@gowlingwlg.com](mailto:malcolm.ruby@gowlingwlg.com)

**Matthew Doak (#65867W)**

Tel: 416-814-5636

Fax: 416-862-7661

[matthew.doak@gowlingwlg.com](mailto:matthew.doak@gowlingwlg.com)

Lawyers for Plaintiff

GRISEL ALONSO, AS RECEIVER FOR ELM TREE  
INVESTMENT ADVISORS LLC ET AL

- and -

TED GREENWALD

Plaintiff

Defendant

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

DEFENDANT'S FACTUM

GOWLING WLG (CANADA) LLP  
Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**Malcolm N. Ruby (#25970G)**

Tel. 416-862-4314

Fax 416-863-3614

malcolm.ruby@gowlingwlg.com

**Matthew Doak (#65867W)**

Tel. 416-814-5636

Fax 416-862-7661

matthew.doak@gowlingwlg.com

Lawyers for the Plaintiff