

Court File No. 10-8619-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE MORAWETZ

) FRIDAY, THE  
)  
) 19<sup>TH</sup> DAY OF MARCH, 2010

B E T W E E N :

SA Capital Growth Corp.

Applicant

- and -

Robert Mander and E.M.B. Asset Group Inc.

Respondents

**APPLICATION UNDER** Rule 14.05(3)(g) of the *Rules of Civil Procedure*  
and section 101 of the *Courts of Justice Act*, R.S.O. 1990. c. C.43, as amended

**SECOND AMENDED ORDER**

**THIS MOTION** made by SA Capital Growth Corp. (the "Applicant") for an Order amending the order of this Court dated March 17, 2010 and made pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Richter Inc. as receiver (in such capacity, the "Receiver") of E.M.B. Asset Group Inc. and Robert Mander (the "Debtors") for the purposes and with the powers set out herein was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Davide Amato sworn March 15, 2010 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and those other parties present, no one appearing for any other party although duly served as appears from the affidavits of service of Lillian Symchych and Dwayne MacDonald sworn March 15, 2010 and on reading the consent of RSM Richter Inc. to act as the Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, RSM Richter Inc. is hereby appointed Receiver of the Debtors for the purposes and with the powers set out herein.

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated to do any of the following where the Receiver considers it necessary or desirable:

(a) subject to paragraph (a.2) below, to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to prevent any disbursement, withdrawal or transfer of funds by the Debtors or corporations or other entities associated with, related to or controlled by the Debtors ("Related Entities") or sale, encumbrance or transfer of personal or real property of the Debtors or Related Entities including that real property listed in Schedule B hereto (collectively, "Dispositions"), pending further order of this Court;

(a.1) "Related Entities" includes in particular, but is not limited to, the following corporations: Mand Asset Inc.; Dunn Street Gallery Inc.; Trafalger Capital Growth Inc. and Mander Group Inc.;

- (a.2) the Receiver shall forthwith, at the request of Robert Mander, direct in writing financial institutions identified by Robert Mander to withdraw funds to an aggregate maximum of \$5,000 per 7 day period;
- (b) to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to complete or effect any transactions otherwise undertaken in the ordinary course of the Debtors' business;
- (c) to direct any financial institution, wherever located and including those listed in Schedule A hereto, to cease to allow any withdrawals or transfers from any account that the Debtors or Related Entities, hold with such institution, including those listed in Schedule A hereto, unless otherwise directed by the Receiver in writing or by order of this Court;
- (d) to monitor and investigate the Debtors' and Related Entities affairs;
- (e) to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtors or Related Entities, including the real property specified in Schedule B hereto (collectively, the "Property"), pending further order of this Court, or any part or parts thereof, including, but not limited to, the changing of locks, security codes and passwords, the engaging of independent security personnel, the taking of physical inventories, and the control of access to the Debtors' and Related Entities' Records (as defined below) or premises;
- (f) to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to preserve and protect the Records (as defined below), pending further order of this Court;
- (g) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on

whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (h) to conduct examinations of any Person (as defined below), if deemed necessary in the Receiver's discretion;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

4. **THIS COURT ORDERS** that the Receiver shall file with the Court a report outlining its preliminary findings and recommendations with respect to the Debtors within 14 calendar days of the date of this Order.

5. **THIS COURT ORDERS** that the Receiver and any other interested party shall return to the Court within 21 calendar days of the date of this Order to consider the granting of further Orders that may be appropriate in the circumstances.

6. **THIS COURT ORDERS** that the Receiver may, in its sole discretion, apply to the Court at any time, on three (3) days notice, for an order that the Receiver shall be discharged as Receiver.

7. **THIS COURT ORDERS** that, in the event that the Receiver applies for discharge in accordance with paragraph 6, such discharge shall be granted on such terms as this Court deems appropriate.

## DEBTORS' ASSETS

8. **THIS COURT ORDERS** that no party shall undertake any Dispositions except with the prior written consent of the Receiver or leave of this Court.

9. **THIS COURT ORDERS** that any transfer, disposition, encumbrance or other dealing with the real property legally or beneficially owned by the Debtors, including that real property specified in Schedule B, following registration of this Order on title to such real property shall be invalid.

10. **THIS COURT ORDERS** that no financial institution, wherever located, with notice of this Order shall permit any transfer or disbursement of any funds whether currently deposited or received in the future in any account held in the name of either of the Debtors without the prior written consent of the Receiver or leave of this Court.

10.1 **THIS COURT ORDERS** that the Receiver may, in its discretion, provide a key to access the premises at 223 Church St., Oakville, to Colleen Auriemma, and in the event that a key is so provided, Colleen Auriemma shall not provide that key or a copy thereof to Robert Mander or to any other person.

## DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

11. **THIS COURT ORDERS** that (i) the Debtors or Related Entities, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control.

12. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors or Related Entities, and any computer programs, computer tapes,

computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

15. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in

respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors or Related Entities, without written consent of the Receiver or leave of this Court.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized

banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Debtors, or as may be ordered by this Court.

### **RECEIVER'S ACCOUNTS**

20. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and also subject to any security interests perfected in accordance with the *Personal Property Security Act* (Ontario) as of the date of this Order or any security interest in any real property of the Debtors, including the real property listed in Schedule B, which has been properly registered on title to such real property as of the date of this Order.

21. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the



normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **GENERAL**

23. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors or Related Entities, or either of them.

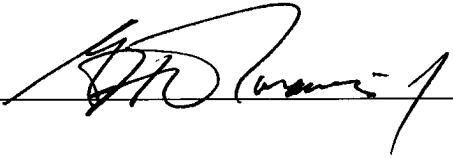
25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States, or elsewhere, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtors estates with such priority and at such time as this Court may determine.

28. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to read "Joanne Nicoara", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO..

MAR 19 2010

PER / PAR: JSN

Joanne Nicoara  
Registrar, Superior Court of Justice

## **Schedule A**

### **Banking Institutions**

HSBC Bank Canada  
102-271 Cornwall Road, Unit A  
Oakville, Ontario L6J 7Z5

Account # : 930289 010

HSBC Bank Canada  
2500 Appleby Line  
Burlington, Ontario L7L 0A2

Account # : 003747 150

EMB Asset Group  
Scotia Bank  
207 Lakeshore Road East at George  
Oakville ON L6J 1N4

Account Number: 30742 00840 18

EMB Asset Group  
HSBC Bank Canada  
2500 Appleby Line  
Burlington, ON L7L 0A2

Account number: 342-013734-001  
342-013734-002

Dunn Street Gallery Inc.  
HSBC Bank Canada  
2500 Appleby Line  
Burlington, ON L7L 0A2

Account number: 342-013734-001

## **Schedule B**

### **Real Property**

Lot 1, Plan 466, Oakville, being all of PIN 24796-0025 (LT), Land Registry Office #20, municipally known as 1225 Lawrence Cres., Oakville, Ontario.

Part Lot E, Block 3, Plan 1, Parts 9 and 27, Reference Plan 20R12967, Parts 2 and 4, Reference Plan 20R12968; Oakville, being all of PIN 24813-0327 (LT), Land Registry Office #20, municipally known as 223 Church St., Oakville, Ontario.

Part Lot E, Block 3, Plan 1, Parts 11 and 29, Reference Plan 20R12967, Parts 1 and 3, Reference Plan 20R12968, being all of PIN 24813-0328 (LT), Land Registry Office #20, municipally known as 225 Church St., Oakville, Ontario.

Parcel 8-1, Section 62M547; Lot 8, Plan 62M547; subject to LT235295; subject to LT220459; Flamborough City of Hamilton, being all of PIN 17524-0005 (LT), Land Registry Office #62, municipally known as 17 Stonebury Place, Freelton, Ontario.

Part Lot 26, Concession 3 WHS Caledon as in RO1108476, save and except Part 5 Plan 43R-16764; Caledon, being all of PIN 14280-0322 (LT), Land Registry Office #43, municipally known as 1650 High Point Road, Caledon, Ontario.

Part Lot 26, Concession 3 WHS Caledon, Part 4, Reference Plan 43R16764; Caledon, being all of PIN 14280-0316 (LT), Land Registry Office #43.

SA Capital Growth Corp.

Applicant

and  
E.M.B. Asset Group Inc., et al.  
Respondents

Court File No: 10-861900CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND AMENDED ORDER**

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