

**CITATION:** Ontario Securities Commission v. Sbaraglia, 2011 ONSC 6392  
**COURT FILE NO.:** CV-10-883-00CL  
**DATE:** 20111028

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE: ONTARIO SECURITIES COMMISSION, Applicant**

**AND:**

**PETER SBARAGLIA, MANDY SBARAGLIA, CO CAPITAL GROWTH INC. AND 91 DAYS HYGIENE SERVICES INC., Respondents**

**BEFORE: MORAWETZ J.**

**COUNSEL:** M. P. Gottlieb, for the Receiver, RSM Richter Inc.

Evan Cobb, for S. A. Capital Growth Corp.

P-E Veel, for Certain Creditors of CO Capital Growth Corp.

Stephen Turk, for Pero Asset Inc.

Dr. Peter Sbaraglia, In Person

**HEARD:** October 3, 2011

**ENDORSEMENT**

[1] S. A. Capital Growth Corp. is a creditor in the receivership of Robert Mander, EMB Asset Group Inc. and related entities (the "Mander Debtors").

[2] RSM Richter Inc. is the receiver (the "Mander Receiver") of the assets, undertakings and properties of the Mander Debtors pursuant to court order dated March 17, 2010.

[3] RSM Richter Inc. is receiver (the "Receiver") of the assets, undertakings and properties of Dr. Peter Sbaraglia, Dr. Mandy Sbaraglia, CO Capital Growth Corp. ("CO") and 91 Days Hygiene Services Inc. (collectively, the "CO Debtors").

[4] The Receiver seeks authorization to use the net proceeds of the CO Debtors' assets (the "CO Assets") to reimburse the Mander Debtors for fees incurred by the Receiver and its counsel relating to the CO Debtors and paid by the Mander Debtors.

[5] S. A. Capital Growth Corp. supports the relief sought by the Receiver. If the relief is not granted, fees incurred by the Receiver will have to be paid by the Mander Debtors, thereby, reducing any potential distribution to the creditors of the Mander Debtors.

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[6] The motion is opposed by Pero Asset Inc. ("Pero"), and by counsel acting on behalf of certain creditors of the CO Debtors and Dr. Peter Sbaraglia. If the relief sought by the Receiver is granted, it would reduce the likelihood of a distribution to creditors of the CO Debtors.

[7] The issue involved in this motion is discreet. This is not the time nor the place to review circumstances that led to the appointment of the Receiver. Suffice to say, there was a business relationship between the Mander Debtors and the CO Debtors and that Ponzi schemes were operating. The result has been that a number of creditors have suffered substantial losses.

[8] Dr. Sbaraglia filed an affidavit which, for the most part, raised issues that were the subject of the hearing that led to the appointment of the Receivership. In my view, the affidavit and any resulting argument was irrelevant for the purposes of this motion.

[9] At issue is whether the Receiver's fees should be paid from the assets of the CO Debtors or from the assets of the Mander Debtors. At the present time, the assets of the CO Debtors are far less than what was anticipated. The argument put forth by counsel on behalf of Pero and by counsel for certain creditors of the CO Debtors is that it would be inequitable for the fees of the Receiver to be paid from the CO Assets as it would likely leave nothing available for the creditors of the CO Debtors. Counsel argue that certain costs claimed by the Receiver were incurred as a result of a court order made in the Mander proceedings which necessitated an investigation of the activities of the CO Debtors and these costs should be paid from the assets of the Mander Debtors. This investigation produced information which was ultimately used in the proceedings that led to the appointment of the Receiver.

[10] Notwithstanding that the creditors of the CO Debtors face the prospect of limited or no recovery, I have not been persuaded that their opposition to this motion is well founded. Paragraph 24 of the CO Debtors' Receivership Order, specifically addresses the issue. This paragraph provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements and they were granted a charge on the property of the CO Debtors, as security for such fees and disbursements, both before and after the making of the order on December 23, 2010 (the Fresh As Amended Order being dated March 31, 2010). The foundation of the CO Receivership Order was based on, among other things, the evidence in the Seventh and Ninth Reports produced by the Mander Receiver. It is also noted that the OSC made an application for the CO Receivership Order more than three months prior to the granting of the order.

[11] The language of the CO Receivership Order in respect of the Receiver's charge is clear and broad. Security is provided "for such fees and disbursements, both before and after the making of this order in respect of these proceedings,...".

[12] In my view, it is clear that the CO Receivership costs are properly subject to the Receiver's charge.

[13] I do not see that there is any principal basis on which to allow the creditors of the CO Debtors the benefit of the CO Assets without paying for the process needed to collect and preserve those assets.


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[14] In making this determination, I have also been persuaded by the argument set out in the factum of counsel for S. A. Capital Growth Inc. to the effect that the Mander Debtors' estates should be subrogated to the rights of the Receiver under the Receiver's charge.

[15] Furthermore, certain creditors, notably Pcro, have filed claims in both the CO Receivership and the Mander Receivership. I am also mindful that no party has, as of yet, applied for consolidation of these two proceedings. The determination of this motion is not intended to preclude the possibility that creditors of the CO Debtors might also file claims in the Mander Receivership or to preclude the possibility of any type of consolidation proceedings in the future.

[16] In the result, an order shall issue authorizing and directing the Receiver to transfer the proceeds realized in the CO Debtors' Receivership proceeding to reimburse the estate of the Mander Debtors in the receivership proceeding (Court File No. 10-8619-00CL) for fees paid by those estates.

[17] The nature of this motion is such that there is no award as to costs.

  
MORAWETZ J.

**Date:** October 28, 2011