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October 22, 2012

Registrar
Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N5

Via Fax: 416.327.6256

Dear Registrar:

Re: SA Capital Growth Corp. v. Christine Brooks, et al.
Court File No. C55588

Please find attached the Appellant's costs submissions in the above noted matter.

Yours truly,

BRAUTI THORNING ZIBARRAS LLP

Kevin D. Toyne
KDT/sdeg
Encl.

c.c. Matthew Gottlieb

Court File No. 55588

COURT OF APPEAL FOR ONTARIO

BETWEEN:

SA CAPITAL GROWTH CORP.

Applicant

and

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondents

and

PETER SBARAGLIA

Moving Party

(Appellant, Respondent in Cross-Appeal)

and

RSM RICHTER INC. AND ONTARIO SECURITIES COMMISSION

Responding Parties

(Respondent, Appellant in Cross-Appeal)

**RESPONDING COSTS SUBMISSIONS
OF THE APPELLANT**

October 22, 2012

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Lawyers for **SA CAPITAL GROWTH CORP.**

RESPONDING COSTS SUBMISSIONS OF THE APPELLANT

1. For the reasons set out herein, the Appellant respectfully submits that this Honourable Court should decline to award costs to the Receiver. In the alternative, the Appellant respectfully submits that the amount claimed by the Receiver is excessive and disproportionate and only a nominal amount is warranted in all of the circumstances of this case.

No Costs

2. While the Appellant acknowledges that costs typically follow the event, it is respectfully submitted that this Honourable Court should exercise its discretion and decline to award costs in favour of the Receiver because:

- (a) This Honourable Court set aside Justice Pattillo's Order on grounds never advanced by the Receiver and that could have been raised by the Receiver and/or the OSC in the Court below; and
- (b) The Appellant is unable to satisfy any costs award made by this Honourable Court because the Receiver took all of the Appellant's assets in late December, 2010 and used them to pay for an investigation the OSC refused to contribute to (instead of satisfying his creditors' claims), and an award of costs will jeopardize his ability to defend himself before the OSC (risking not only the Appellant's ability to practice his profession but also any potential recovery for his creditors).

3. While this Honourable Court agreed with the Receiver's arguments that Justice Pattillo incorrectly held that the Appellant was an "interested person" (Reasons for Decision, paragraphs 6 – 10), that finding was not dispositive. The basis upon which this Honourable Court set aside

Justice Pattillo's Order (Reasons for Decision, paragraphs 11 – 20) was not raised by the Receiver or the OSC in the Court below or in the materials submitted to this Honourable Court.

4. Awarding costs to a party that has failed to raise dispositive arguments rewards parties for such failures and it is respectfully submitted that such an undeserved windfall is contrary to the purpose and intent of the costs regime.

5. On December 23, 2010, Justice Morawetz granted the OSC's application to appoint a receiver over the Appellant and others (Appeal Book, Tab 18). The OSC refused to contribute funds to the Receiver's investigation. The Receiver was subsequently granted an Order permitting it to transfer the net proceeds realized in the Sbaraglia receivership to the Mander receivership as "reimbursement" for the costs of the Receiver's investigation. As the Receiver noted in the 12th Report:

... Should this Honourable Court authorize and direct the receiver of the CO Capital Debtors to reimburse the Mander Debtors' estate, there would be no funds available for distribution to the creditors of the CO Capital Debtors. ...

Twelfth Report of the Receiver dated August 17, 2011, pp. 4 – 8

Order dated October 3, 2011

6. On August 3, 2012, Justice Morawetz approved fees in the amount of \$1,716,636.63 and \$1,093,102.38 to the Receiver and the Receiver's lawyers, respectively for the period March 15, 2010 to June 30, 2012.

Fourteenth Report of the Receiver dated July 25, 2012, pp. 8 – 10

Order dated August 3, 2012

7. In stark contrast, the Appellant relied on family and friends to fund his efforts to obtain the requested information from the Receiver (Appeal Book, Tab 8, paragraphs 16 and 26) and he

is currently unable to satisfy a costs award. He has been authorized by Justice Morawetz to use his after-acquired property to satisfy a joint consumer proposal:

The consumer debtors shall pay \$1,875 a month for a period of 24 months for a total of \$45,000.

In addition, the Consumer Debtors believe that they have a valid claim (the "Litigation") against Michael Miller, Julia Dublin, Peter Welsh and the law firm Aylesworth LLP (now Dickinson Wright LLP) (collectively, the "Defendants"). The Consumer Debtors have commenced a claim against the Defendants seeking recovery of approximately \$15,000,000. Said Litigation was commenced for the benefit of the Sbaraglias and the creditors of CO Capital Growth Corp. The Consumer Debtors are presently unable to fund the Litigation and, as such, funding for same is to be undertaken by the CO creditors upon terms.

Accordingly, the proceeds, if any, of the Litigation, will be applied firstly to pay legal fees, disbursements and taxes in connection with the Litigation and then secondly to the creditors of CO Capital Growth Corp. whom are estimated by the Consumer Debtors to be owed approximately \$7,538,000 net of any interest payments received during the currency of the investment. Such monies will be paid to RSM Richter Inc. in its capacity as court appointed receiver (the "Receiver") of the Consumer Debtors and CO Capital Growth Corp. for distribution by it to the creditors of CO Capital Growth Corp. pursuant to an Order of the court. Any remaining proceeds will accrue to the Consumer Debtors personally. ...

Appendix "C" to the Second Supplement of the Second Report of the Receiver dated May 30, 2011 (Court File No. CV-10-8883-00CL)

Order dated June 1, 2011

8. In addition to the Appellant's current financial situation, an award of costs will jeopardize the Appellant's ability to defend himself before the OSC. His ability to earn income in his profession will come to an end and the Appellant's ability to compensate his creditors through the lawsuit against his former lawyers is significantly diminished if the OSC's allegation of fraud is made out against him.

9. In these circumstances, it is respectfully submitted that this Honourable Court should decline to award costs to the Receiver.

Costs Sought Are Excessive and Disproportionate

10. The Receiver did not seek costs of the stay motion in the Notice of Motion. The stay motion and the Appellant's motion to expedite were granted on consent. It is respectfully submitted that the Receiver's claim for costs in the amount of approximately \$5,000 for the stay motion should be denied. The Receiver's remaining claim for approximately \$71,000 in costs for approximately 2.5 hours of Court time is excessive and disproportionate in the circumstances of this case.

11. If this Honourable Court is inclined to award costs to the Receiver, it is respectfully submitted that only a nominal amount should be awarded to reflect the Receiver's failure to raise the arguments which resulted in the Order of Justice Pattillo being set aside, the Appellant's current financial circumstance and the impact that an award of costs will have on the Appellant's ability to defend himself before the OSC (and subsequent impact on him and his creditors).

Dated: October 22, 2012

**ALL OF WHICH IS RESPECTFULLY
SUBMITTED**



Kevin B. Toyne

RSM Richter

**Twelfth Report to Court of
RSM Richter Inc. as Court-Appointed
Receiver of the Estate of Robert Mander,
E.M.B. Asset Group Inc. and the Related
Entities**

RSM Richter Inc.
Toronto, August 17, 2011

RSM Richter

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF 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**

**TWELFTH REPORT OF RSM RICHTER INC.,
AS RECEIVER**

August 17, 2011

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010 (the March 31, 2010 order being the "Fresh as Amended Receivership Order"). A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. for the appointment of a receiver over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") (jointly, EMB and Mander are defined as the "Respondents") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

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As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, property and undertaking of entities related to EMB or Mander. These entities include, but are not limited to, Mand Asset Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc. ("Related Entities") (the Related Entities and the Respondents are collectively referred to as the "Mander Debtors").

On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of proceedings was changed to reflect the continuance.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Summarize the results of the Claims Procedure (defined in Section 4 below);
- b) Update the Court regarding an issue between the Receiver and Thomas Obradovich, concerning an investment by Mander in a property owned by 1198677 Ontario Limited ("1198 Ontario") located at PIN 74053-0246 being approximately 24.68 acres zoned and 14.907 acres Horseshoe Medium Density Residential and 9.773 acres Horseshoe Valley Resort Facility (the "Barrie Property"); and
- c) Recommend that this Honourable Court make an order:
 - Authorizing and directing the Receiver to transfer the proceeds realized in the receivership of Peter Sbaraglia, Mandy Sbaraglia, C.O. Capital Growth Corp. ("CO Capital") and 91 Days Hygiene Services Inc. (collectively, the "CO Capital Debtors") in order to reimburse the Mander Debtors' estate for costs incurred by the Receiver in carrying out its investigation of the CO Capital Debtors, as discussed in Section 3 below;
 - Authorizing and directing the Receiver to continue the Claims Procedure on the basis detailed in Section 4.3 below; and
 - Approving this Report and the Receiver's activities as set out in this Report.

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1.2 Currency

All currency references in this Report are to Canadian dollars.

1.3 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Mander Debtors, as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various individuals and financial institutions. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could have provided first-hand information regarding the businesses he conducted. As a result, the Receiver has been required to conduct its investigation by reviewing documents and meeting with individuals with knowledge of Mander and his businesses.

2. BACKGROUND

Background information concerning these receivership proceedings is included in the initial application materials and in the Receiver's eleven reports to Court in these proceedings. These documents are available on the Receiver's website at www.rsmrichter.com.

3. REIMBURSEMENT OF FEES TO THE MANDER DEBTORS' ESTATE

In the Receiver's fourth report to Court dated July 2, 2010 filed in the Mander proceedings (the "Fourth Mander Report"), it advised the Court that numerous questions and issues identified during its investigation of the Mander Debtors suggested that an investigation should be undertaken of the CO Capital Debtors. Based on the evidence provided to the Court in the Fourth Mander Report, the Court issued an order on July 14, 2010 ("July 14th Order") authorizing and directing the Receiver to commence an investigation into the affairs of the CO Capital Debtors. A copy of the July 14th Order is attached as Appendix "B".

On or about September 8, 2010, the Ontario Securities Commission ("OSC") filed an application seeking the appointment of a receiver over the business, assets and undertakings of the CO Capital Debtors.

On September 9, 2010 the Receiver filed its seventh report to Court ("Seventh Mander Report") summarizing its findings from its investigation of the CO Capital Debtors and recommending that a receiver be appointed over the CO Capital Debtors. Based on the evidence it obtained, the Receiver strongly suggested that the CO Capital Debtors should not oppose the appointment of a receiver as the outcome of the proceedings would almost certainly give rise to the appointment of a receiver and a contested hearing would be very expensive to the detriment of various investors and creditors.

Notwithstanding the viewpoint of the Receiver, the CO Capital Debtors strenuously opposed the appointment of a receiver and took the position that they were victims of Mander's fraud and that they had done nothing wrong. As a result, the Receiver and the OSC were required to undertake further steps in their investigations and to conduct extensive and time consuming cross-examinations of Mandy Sbaraglia, Peter Sbaraglia, Thomas Obradovich and Kathy Reid.

RSM Richter

The Receiver also drafted and filed with the Court its ninth report ("Ninth Mander Report") dated November 12, 2010, which summarized the outcome of the cross-examinations and the further investigation conducted by the Receiver. Conducting the investigation, participating in the cross-examinations and preparing the Seventh and Ninth Mander Reports resulted in significant cost; these costs were funded by the Mander estate. The fees incurred by the Receiver and its counsel, Davies Ward Phillips & Vineberg LLP ("Davies"), related to the investigation of the CO Capital Debtors in the period July 14, 2010 to December 23, 2010 (the date the receivership order was made) total approximately \$386,000 (including HST) and approximately \$310,000 (including HST), respectively.

Based on, *inter alia*, the evidence in the Seventh and Ninth Mander Reports, the Court appointed Richter as the Receiver of the CO Capital Debtors.

The critical findings against the CO Capital Debtors include, *inter alia*, that: (i) Peter Sbaraglia and his counsel misled the OSC during the OSC's investigation in 2009, including statements by Peter Sbaraglia under oath; (ii) CO Capital used funds received from one investor to repay amounts owing to other investors (i.e. conducted a "Ponzi" scheme); (iii) the Sbaraglias used investor monies to fund their lifestyle and the business expenses of CO Capital; and (iv) of the \$21 million received by the CO Capital Debtors from investors, \$6 million was retained by the CO Capital Debtors to fund personal expenses, business expenses and trading losses.

Additional details regarding the Receiver's findings are provided in the Receiver's Seventh and Ninth Mander Reports attached as Appendices "C" and "D", respectively, and the Honourable Justice Morawetz's "reasons for judgement", which are attached as Appendix "E" to this Report.

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In light of the overwhelming information supporting the need for the appointment of a receiver over the CO Capital Debtors, the Receiver is of the view that the CO Capital Debtors' opposition resulted in considerable costs being unnecessarily incurred by the Receiver and its counsel. All of the costs related to the investigation of the CO Capital Debtors were paid for by the Mander Debtors' estate. Accordingly, the Receiver is of the view that the Mander Debtors' estate should be reimbursed, to the extent possible, from the proceeds generated from the CO Capital Debtors' estates for the fees incurred related to the investigation of the CO Capital Debtors. Accordingly, the Receiver requests that this Honourable Court make an order authorizing and directing the CO Capital Debtors' estate to reimburse the Mander Debtors' estate for the costs referenced above.

The Receiver has spoken with the OSC to determine whether the OSC would contribute to the funding of the investigation of the CO Capital Debtors. The OSC considered the Receiver's request but advised that funding would not be made available for this purpose.

4. CLAIMS PROCEDURE

On March 21, 2011 the Court made an order authorizing the Receiver to commence a claims procedure ("Claims Procedure"). Details related to the Claims Procedure are provided in the Receiver's eleventh report to Court dated March 15, 2011 ("Eleventh Mander Report"). A copy of the Eleventh Mander Report is attached as Appendix "F", without appendices. (Capitalized terms in this Section have the meanings given to them in the Claims Procedure Order.)

An overview of the Receiver's activities related to the Claims Procedure is as follows:

- By March 23, 2011, the Receiver sent, by registered mail, a copy of the Proof of Claim Document Package to each known potential claimant of the Mander Debtors. Subsequent to March 23, 2011, Proof of Claim Document Packages were sent to additional potential claimants that came to the Receiver's attention after the date of the initial mailing.
- A copy of the Proof of Claim Document Package was posted on the Receiver's website; and
- On March 24, 2011, the Receiver placed a notice of the Claims Procedure in *The Globe and Mail Newspaper* (National Edition).

4.1 Summary of the Claims Received

4.1.1 CO Capital Debtors' Estate

A total of 43 claims totalling approximately \$45.6 million¹ were filed against the CO Capital Debtors. A summary of the claims filed against the CO Capital Debtors is provided in the following table:

Type	\$000s			
	Principal	Interest	Payments	Net Claim
Super-priority ²	3	-	-	3
Investor (unsecured)	37,993	11,991	(3,805)	45,279
Non-investor (unsecured)	284	-	-	284
	<u>37,380</u>	<u>11,991</u>	<u>(3,805)</u>	<u>45,566</u>

As at July 19, 2011 there was approximately \$670,000 in the CO Capital Debtors' receivership estate bank account. A schedule of receipts and disbursements for the period ending July 19, 2011 is attached as Appendix "G".

¹ Excludes secured claims filed by Royal Bank of Canada in respect of mortgages registered against 63 Second Street, Oakville and 383 Ellis Park Road, unit 608, Toronto, as the two properties were sold and the outstanding mortgages were repaid in full.

² Relates to claims filed by Canada Revenue Agency for unremitted Goods and Services Tax.

All of the assets in the CO Capital Debtors' estate have been realized upon, with the exception of investments in certain illiquid companies. Should this Honourable Court authorize and direct the receiver of the CO Capital Debtors to reimburse the Mander Debtors' estate, there would be no funds available for distribution to the creditors of the CO Capital Debtors. Accordingly, the receiver of the CO Capital Debtors did not undertake a detailed review of the claims filed against the CO Capital Debtors as it is of the view that it would not be an appropriate use of estate funds unless the Court determines that the Receiver's recommendation should not be approved.

4.1.2 Mander Debtors' Estate

A total of 67 claims totalling approximately \$45 million were filed against the Mander Debtors.

A summary of the claims filed against the Mander Debtors is provided in the following table:

Type	\$000s			
	Principal	Interest	Payments	Net Claim
Super-priority ³	37	-	-	37
Investor (unsecured)	28,259	19,695	(3,668)	44,286
Non-investor (unsecured)	479	9	-	488
	28,775	19,704	(3,668)	44,811

The majority of the claims received were filed by individuals who had invested with Mander and/or his companies. As reflected in the table above, approximately \$19.7 million of the claims filed relate to accrued and unpaid interest.

³ Relates to claims filed by Canada Revenue Agency for unremitted source deductions and Goods and Services Tax, and for employee claims filed for unpaid vacation pay.

4.1.3 Proposed Method for Determination of Claims

Mander's investors advanced funds to Mander or his companies and were promised returns in the range of 20% to 50% annually. Over the years many investors chose not to withdraw funds from Mander and instead "rolled" their principal and interest into new loans. Most of the claims filed by investors include the amount of their original principal investment, plus amounts for accrued and unpaid interest.

Based on discussions with Davies, and Davies' review of the treatment of claims in other Ponzi scheme cases, the Receiver is of the view that investor claims should be determined on a "cash-in/cash-out" basis. This means that an investor's claim would be determined based on the principal amount invested (actual cash paid by the investor) and would be reduced by any payments received by the investor, whether or not the payments were in respect of interest or principal. Creditors would not be entitled to any claim for interest.

The purpose of using the cash-in/cash-out methodology is to attempt to limit the advantage that certain investors have over other investors based on the timing of their investment (i.e. earlier investors would benefit over later investors), the decision of certain investors to receive interest payments as opposed to rolling their interest, and/or the arbitrary interest rates assigned to the loans. Mander never generated returns close to the assigned interest rates; accordingly, the rates assigned to individual investors were baseless and should not be considered. Allowing investors to file claims inclusive of interest would allow investors with higher interest rates and/or earlier investors in the scheme to continue to benefit over other investors based solely on the structure of the fraudulent scheme.

4.1.4 Claims Review

Many of the investor claims filed against the Mander Debtors were complex. Because there are limited funds available for distribution to creditors, the Receiver used the following considerations to determine whether claims should be admitted:

- All claims were considered on a cash-in/cash-out basis;
- In accordance with the cash-in/cash-out methodology, any payments made to an investor, for interest or principal, reduce the claim/claims;
- In cases where a claimant did not provide any financial supporting documentation for funds advanced to the Mander Debtors (e.g. copies of cheques, bank drafts, etc.) the claim would be disallowed;
- In circumstances where loan documents were not provided with a claim, the claim would be disallowed, unless it could be determined based on the payment evidence that the advances to the Mander Debtors were from a specific creditor;
- Amounts paid to shareholders of an investor company were treated as a repayment of amounts owing to the investor company. For example, payments made to Davide Amato personally were treated as the repayment of amounts owing to S.A. Capital;
- In circumstances where advances were made to Mander through FM Market Capital Inc. ("FM Capital"), one of Mander's predecessor companies, and there is proper documentation supporting the loan with FM Capital, and proper documentation to support Mander's assumption of the FM Capital obligation, the claim would be allowed; and
- Claims against Trafalgar Capital Growth Corp. ("Trafalgar") would be disallowed, as the records indicate that Trafalgar either owes amounts to Mander or the cost of dealing with the claims that Trafalgar may have against Mander would exceed any distribution. (Analyzing these claims and Trafalgar's business would require the Receiver to incur significant professional fees and would substantially delay any distribution.)

The Receiver has reviewed the claims filed in the Mander Debtors' estate in accordance with the assumptions set out above. Using the assumptions above, the unsecured claims in the Mander Debtors' estates total approximately \$16.6 million.

4.2 Remaining Funds

As at July 19, 2011 there was approximately \$734,000 in the Mander Debtors' receivership estate bank account (prior to any reimbursement of costs from the CO Capital Debtors). A schedule of receipts and disbursements for the period ending July 19, 2011 is attached as Appendix "H".

All of the assets in the Mander Debtors' estate have been realized upon with the exception of the investments in illiquid companies and the Barrie Property. Should this Honourable Court authorize and direct the CO Capital Debtors to reimburse the Mander Debtors' estate, the amount available for distribution to creditors would increase by the amount of the funds remaining in the CO Capital Debtors' estate, net of all costs.

4.3 Next Steps

The following is an overview of the proposed next steps in the Claims Procedure⁴:

- The Receiver has attached as Appendix "I" a summary of the Claims it is prepared to admit in the amounts listed (the "Deemed Claim Amount")⁵;
- The Receiver will send a letter to each Claimant setting out the details of the Claims Procedure, their Deemed Claim Amount and the process for disputing that amount, as detailed above.
- A Claim will be deemed to be accepted by the Claimant if within 20 days of from the Deemed Receipt Date (as defined in the Second Claims Procedure Order) of the Deemed Claim Amount the Claimant has not filed a Notice of Dispute;

⁴ These procedures only relate to the Mander Debtors.

⁵ The names of the Claimants have been redacted. An unredacted version is provided in Confidential Appendix "I".

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- If a Claimant wishes to dispute the Deemed Claim Amount, the Claimant must file a Notice of Dispute with the Receiver within 20 days from the Deemed Receipt Date;
- In the event that the dispute cannot be consensually resolved between the Claimant and the Receiver within two weeks of receipt by the Receiver of the Notice of Dispute, the Receiver shall set a date for a motion to have the Claim resolved by the Court; and
- Upon receipt of the Notice of Dispute, the Receiver will advise the Claimant by email of the date by which the Claim is to be resolved, after which the Receiver will book a date to have the matter resolved by the Court.

The proposed forms to be used in the next steps of the Claims Procedure are attached as schedules to the draft Second Claims Procedure Order.

5. BARRIE PROPERTY

In the Fourth Mander Report, the Receiver advised that there is a potential issue between it and Mr. Obradovich over Mander's interest in the Barrie Property.

On June 23, 2011, Davies wrote to Steven Turk, Mr. Obradovich's lawyer, advising that the Receiver is considering seeking an order against Mr. Obradovich and/or 1198 Ontario, the owner of the Barrie Property, that would require Mr. Obradovich and/or 1198 Ontario to pay to the Receiver approximately \$925,115, being the amount paid by Mander to Mr. Obradovich and/or 1198 Ontario between December, 2008 and October, 2009, in respect of Mander's interest in the Barrie Property.

As detailed in Davies' letter, during an examination on October 27, 2010, Mr. Obradovich confirmed that Mander paid about \$650,000 to Mr. Obradovich to assist in the purchase of the Barrie Property. He also confirmed that he and Mander were "partners" with respect to that property. Further, certain documents signed by Mander confirmed that he was "the beneficial owner of a 50% interest acquired by 1198677 Ontario Limited".

RSM Richter

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It appears that Mr. Obradovich does not dispute that the money was advanced by Mander, nor does he dispute that Mander had an ownership interest. However, based on our review of the records, it would appear that Mander was not delivered possession of the shares of 1198 Ontario nor was legal title in the Barrie Property put in his name notwithstanding what appears to be an agreement that Mander was entitled to a 50% interest in the Barrie Property.

Based on the cross-examination, it appears that Mr. Obradovich's position is that Mander's interest in the land was held by him as "collateral until he repaid my private money company"⁶. Mr. Obradovich confirmed that there was no documentary evidence supporting such an arrangement. No security of any type was registered by Mr. Obradovich against Mander's interest in the Barrie Property. It would appear that, notwithstanding Mr. Obradovich may have an unsecured claim against Mander's estate, Mr. Obradovich is attempting to gain an advantage over all other creditors through set-off against Mander's interest in the Barrie Property.

Given the above, it is the Receiver's view that it may be entitled to obtain the benefit of Mander's interest in the Barrie Property. At Mr. Turk's request, the Receiver has provided Mr. Turk with documentation in its possession regarding the Barrie Property and is awaiting a response.

⁶ Paragraphs 7 to 30-41 of the October 27, 2010 cross-examination.

6. RECOMMENDATION

Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (c) of this Report.

* * *

All of which is respectfully submitted,



**RSM RICHTER INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF THE ESTATE OF ROBERT MANDER,
E.M.B. ASSET GROUP INC. AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**



Court File No. CV-10-8883-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

HONOURABLE

MR. JUSTICE MORAWETZ

) WEDNESDAY, THE 3rd
)
) DAY OF OCTOBER, 2011

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

PETER SBARAGLIA, MANDY SBARAGLIA, C.O. CAPITAL GROWTH CORP.,
AND 91 DAYS HYGIENE SERVICES INC.

Respondents

APPLICATION UNDER Section 129 of the *Securities Act*

ORDER

THIS MOTION made by RSM Richter Inc., in its capacity as Receiver in these proceedings (the "Receiver"), for the relief set out in the Notice of Motion dated August 18, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, the Motion Record, filed, the Supplement to the Twelfth Report dated September 2, 2011, the Second Supplement to the Twelfth Report and Third Report to the Court dated September 6, 2011, filed, and on hearing submissions from counsel for the Receiver, and others:

1. THIS COURT ORDERS that the Receiver is hereby authorized and directed to transfer the net proceeds realized in this proceeding to reimburse the estates of the debtors in the receivership proceedings of the estate of Robert Mander, E.M.B. Asset Group Inc. and the Related Entities (Court File No. 10-8619-00CL) for fees paid by those estates.



G. Argyropoulos, Registrar
Superior Court of Justice

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

MAR 07 2012

NB

Case File No. CV 10-8883-0001

PETER SBARAGLIA et al
Respondents

ONTARIO SECURITIES COMMISSION
Applicant

APPLICATION UNDER Section 129 of the Securities Act

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

LAX O'SULLIVAN SCOTT LISJUS LLP
145 King Street West
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Toronto, ON M5X 1B1

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Lawyers for the Receiver, RSM Richter Inc.

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DUFF & PHELPS

**Fourteenth Report to Court of Duff &
Phelps Canada Restructuring Inc.
as Court-Appointed Receiver of the
Estate of Robert Mander, E.M.B.
Asset Group Inc. and the Related
Entities.**

July 25, 2012

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DUFF & PHELPS

Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:**SA CAPITAL GROWTH CORP.**

Applicant

-and-

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF 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**

**FOURTEENTH REPORT OF THE RECEIVER
July 25, 2012**

1.0 Introduction:

- a) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010 (the March 31, 2010 order being the "Fresh as Amended Receivership Order"), RSM Richter Inc. ("Richter") was appointed receiver ("Receiver") over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and Robert Mander ("Mander") (jointly, EMB and Mander are defined as the "Respondents") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c.43, as amended. A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".
- b) As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, property and undertaking of entities related to EMB or Mander. These entities include, but are not limited to, Mander Asset Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc. ("Trafalgar"), Stonedury Inc. and Mander Group Inc. ("MGI") (collectively the "Related Entities") (the Related Entities and the Respondents are collectively referred to as the "Debtors").

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- c) On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of proceedings was changed to reflect the continuance.
 - d) On July 14, 2010, an order was made by the Court authorizing and directing the Receiver to investigate the affairs of C.O. Capital Growth Corp. ("CO Capital"), 91 Days Hygiene Inc., Peter Sbaraglia ("Sbaraglia") and Mandy Sbaraglia (collectively, the "CO Capital Debtors").
 - e) On December 23, 2010, an order was made by the Court appointing Richter as receiver over the assets of the CO Capital Debtors, including Sbaraglia.
 - f) As a result of the sale of Richter's restructuring practice in Toronto to Duff & Phelps Canada Restructuring Inc. ("D&P"), an order of the Court was made on December 12, 2011 ("Substitution Order"), substituting D&P in place of Richter as Receiver. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Summarize the results of the Claims Procedure (defined in Section 4 below);
- b) Recommend an interim distribution in the amount of \$500,000 to creditors with proven claims ("Interim Distribution");
- c) Recommend a Holdback of approximately \$551,000 ("Holdback");
- d) Summarize the status of the illiquid start-up investments ("Investments") owned by the Debtors;
- e) Provide an update on the status of a motion brought by Sbaraglia seeking an order compelling the Receiver to provide copies of certain materials to Sbaraglia for his use in another proceeding and requiring the Receiver to prepare an index of materials; and
- f) Recommend that this Honourable Court make an order:
 - Authorizing and directing the Receiver to make the Interim Distribution (defined in Section 5 below) and authorizing the Receiver to make further distributions from time to time without further order of this Court pending the outcome of the Sbaraglia Motion (as defined in Section 3b below);
 - Authorizing and directing the Receiver to distribute to Trafalgar creditors with proven claims the portion of the Interim Distribution paid to Trafalgar;
 - Approving the Holdback;

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- Approving the fees and disbursements of the Receiver and its counsel, Lax O'Sullivan Scott Lisus LLP ("Lax") for the period March 15, 2010 to June 30, 2012, and March 15, 2010 to June 30, 2012, respectively¹; and
- Approving this Report and the Receiver's activities as set out in this Report.

1.2 Currency

- a) All currency references in this Report are to Canadian dollars.

1.3 Restrictions

- a) In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Debtors, as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, and documents, records and information provided by various individuals and financial institutions. The Receiver has not performed an audit or other verification of the documents and information it has accumulated.
- b) The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.
- c) Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could have provided firsthand information regarding the businesses he conducted. As a result, the Receiver conducted its investigation by reviewing documents and meeting with individuals who had knowledge, or who the Receiver believed had knowledge, of Mander and his businesses.

2.0 Background

- a) Background information concerning these receivership proceedings is included in the initial application materials and in the Receiver's prior reports to Court in these proceedings. These documents are available on D&P's website at www.duffandphelps.com/restructuringcases.

3.0 Sbaraglia Motion

- a) In February, 2011, the Ontario Securities Commission ("OSC") issued a Statement of Allegations that, among other things, alleges that Sbaraglia was engaged in securities fraud and misled the OSC.

¹ The Receiver's lead lawyer, Matthew Gottlieb, moved from Davies Ward Phillips & Vineberg LLP ("Davies") to Lax on October 1, 2011.

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- b) On April 23, 2012, Sbaraglia served a motion for an order compelling the Receiver to provide copies of certain materials to Sbaraglia and requiring the Receiver to prepare an Index of materials ("Sbaraglia Motion"). Additional background related to the Sbaraglia Motion is included in the Receiver's thirteenth report to Court, dated April 30, 2012 ("Thirteenth Report"). A copy of the Thirteenth Report is attached (without appendices) as Appendix "B".
 - c) The Sbaraglia Motion was heard by the Court on May 9, 2012.
 - d) On May 23, 2012, Justice L.A. Pattillo issued an order ("May 23rd Order") requiring that certain documents that had been requested by Sbaraglia be provided to Justice Pattillo for his review to determine whether and to what extent production, if any, of the transcripts and documents should be made to Sbaraglia. A copy of Mr. Justice Pattillo's decision and the related order are attached as Appendix "C".
 - e) On June 8, 2012, Sbaraglia filed a Notice of Appeal with the Court seeking that the May 23rd Order be set aside and that an order be granted compelling the Receiver to produce all of the documents requested by Sbaraglia in the Motion ("Sbaraglia Appeal").
 - f) On June 15, 2012, the Receiver filed a Notice of Cross-Appeal with the Court asking that the May 23rd Order be set aside and that the Motion be dismissed ("Cross-Appeal"). The Sbaraglia Appeal and the Cross-Appeal are jointly referred to as the "Appeals".
 - g) The Appeals are scheduled to be heard by the Ontario Court of Appeal on a date to be fixed. The Receiver understands that it is likely that the Appeals will be heard in October, 2012.
 - h) The Receiver is proposing the Holdback to satisfy costs that may be incurred by it and Lax to prepare for and appear at the Appeals and to fund the costs of complying with Sbaraglia's requests in the event that the Sbaraglia Appeal is successful. The Receiver is also aware that it may be called as a witness in the OSC proceeding. The amount of time required to be spent by the Receiver preparing for the Appeals and preparing as a witness is unknown. The Holdback will also be used to complete the administration of these proceedings, including any further distributions.

4.0 Claims Procedure²

- a) On March 21, 2011, an order was made by the Court authorizing the Receiver to commence a claims procedure ("Claims Procedure"). Details of the Claims Procedure are provided in the Receiver's eleventh and twelfth reports to Court dated March 15, 2011 and August 17, 2011 (respectively, the "Eleventh Report" and "Twelfth Report"). Copies of the Eleventh and Twelfth Reports are attached as Appendices "D" and "E", respectively, without appendices.

² Capitalized terms in this section have the meanings given to them in the Second Claims Procedure Order.

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- b) Pursuant to an order of the Court made on September 7, 2011 ("Second Claims Procedure Order"), the Receiver was authorized and directed to send to each Claimant a Notice of Deemed Claim Amount.
- c) On or before December 23, 2011 the Receiver sent by registered mail 47³ Notices of Deemed Claim Amount, along with a letter setting out the details of the Claims Procedure and the process for disputing the Deemed Claim Amount.

4.1 Summary of Deemed Claimed Amounts

- a) A summary of the Deemed Claim Amounts is provided in the following table:

Type of Claim	\$000s		Deemed Claim Amount
	Amount Claimed	Amount Disallowed	
Super-priority	31	-	31
Investor (unsecured)	37,737	18,153	19,584
Non-Investor (unsecured)	502	48	454
	38,270	18,201	20,069

- Super-priority obligations represent claims filed by Canada Revenue Agency for unremitted source deductions and Goods and Services Tax, as well as claims filed by employees for unpaid vacation pay⁴;
 - Investor claims relate to claims filed by individuals or companies who invested with Mander and/or his companies; and
 - Non-Investor claims relate to ordinary unsecured claims filed by trade creditors.
- b) The Receiver received one Notice of Dispute, which was subsequently resolved between the Claimant and the Receiver.

³ The 47 Notices of Deemed Claim Amount related to the 67 claims that were filed with the Receiver. In instances where claimants filed more than one claim only one Notice of Deemed Claim Amount was sent, as each notice of Deemed Claim Amount dealt with the outcome of all claims filed by the particular claimant.

⁴ The vacation pay obligations were paid by Service Canada through the Wage Earner Protection Program. Service Canada has filed a claim for the amounts it paid.

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4.2 Trafalgar

- c) In the Twelfth Report, the Receiver advised that it would be disallowing the claims filed by creditors of Trafalgar as the records indicated that Trafalgar received approximately \$129,000 more than had been paid to the other Debtors.
- d) Subsequent to the date of the Twelfth Report, the Receiver learned that certain Trafalgar investors had entered into loan agreements and advanced funds totaling \$297,000 to MGI.
- e) Pursuant to loan agreements between Trafalgar and MGI, Trafalgar assumed those loan agreements when the MGI creditors transferred their loans from MGI to Trafalgar.
- f) Prior to the Claims Bar Date, the Receiver filed a claim on behalf of Trafalgar against MGI for an amount to be determined. The Receiver subsequently filed an amended claim on behalf of Trafalgar against MGI for approximately \$168,000⁵. The Receiver intends to distribute any funds received by Trafalgar to Trafalgar's creditors with proven claims.

5.0 Interim Distribution

- a) Attached as Appendix "F" is an interim statement of receipts and disbursements for the period ended July 23, 2012, which reflects a balance of approximately \$441,000 in the Debtors' estate bank account.
- b) Pursuant to an order of the Court made on October 3, 2011, Richter, in its capacity as Court appointed receiver of the CO Capital Debtors, was authorized and directed to transfer up to \$696,000 to the Receiver for the reimbursement of fees paid from the Debtors estate, in respect of investigations of the CO Capital Debtors that were conducted by the Receiver and its counsel, Davies.
- c) The Receiver is in the process of completing the administration of the CO Capital Debtors estate. To enable the Receiver to immediately transfer the funds from the CO Capital Debtors estate to the Mander estate and fund the distribution, the Receiver intends to pay any further fees it incurs related to the CO Capital Debtors receivership from the transferred funds. There is presently a balance of approximately \$610,000 in the CO Capital Debtors estate bank account.
- d) With the exception of the investments discussed in Section 6 below, all of the Debtors assets have been realized upon. The Receiver believes the net realizable value of the investments is immaterial.

⁵ The claim was determined by taking the MGI loan obligations assumed by Trafalgar (\$297,000) and subtracting the net amount Trafalgar received from the other Debtors in excess of the amounts it paid to them (\$129,000).

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- e) The Interim Distribution would be paid as follows: \$31,000 in respect of super-priority claims; and the balance to unsecured creditors with proven claims.
- f) Pending the outcome of the Sbaraglia Motion, the Receiver is requesting that it be authorized to make further distributions from time-to-time without further order of this Court. The Receiver anticipates that it will be able make a final distribution to creditors once the Appeals have been resolved.

6.0 Unrealized Assets

- a) As described in the Receiver's fourth report to Court dated July 2, 2010 the Debtors invested in the following assets, each of which is generally illiquid or of immaterial value:

Asset	Owner	No. of shares	Average Cost Base (\$)	Estimated Realizable Value
Atlas Global Financial Technology	EMB	1,999,998	1,909,000	Unknown
Manitou Gold Inc.	Mander	200,000	30,000	Unknown
Valt.X Holdings Inc.	Mander	50,000	57,500	Unknown
WIC CDN INC.	EMB	333,333	500,000	Unknown
Carta Solutions SA	EMB	500,000	250,000	Unknown

- b) Additional information regarding these investments as follows:

- Atlas Global Financial Technologies ("Atlas") – Atlas is a company incorporated by Mandy Sbaraglia. EMB owns 8.8% of the shares of Atlas, which owns 26% of the shares of Simplex Consulting Limited, a company located in the UK that provides (or provided) information technology consultancy services. The Receiver has been unable to locate EMB's original share certificates for Atlas. The Receiver has limited information regarding the purpose of this company. Any information received suggests that this investment is worthless.
- Manitou Gold Inc. ("Manitou") – Manitou shares are publicly traded on the TSX Venture Exchange. Manitou engages in the acquisition, exploration, and advancement of mineral properties in Canada. The shares last traded at 14 cents on July 20, 2012. The Receiver has periodically spoken with Manitou's management. The shares are relatively illiquid. The Receiver is considering if, when and how to dispose of these shares.

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- Valt.X Holdings Inc. ("Valt.X") – Valt.X develops hardware and software based security products. Management has informed the Receiver that the company is in the commercialization stage and that there is currently no buyer for these shares. The Receiver will consider if, when and how to realize on these shares in due course. There is no timeline for realizing on these shares. Any realizations may be immaterial.
- WIC CDN INC. ("WIC") - WIC develops technology security to combat Identity fraud. Despite several attempts, the Receiver has been unable to contact a representative from WIC. The last correspondence between the Receiver and the President of WIC took place in August, 2010.
- Carta Solutions SA ("Carta") – Carta provides transaction processing and payment technology, specializing in prepaid, mobile and emerging payments. Carta's Chief Executive Officer has advised that the company is still in its infancy. He further advised that there is not an active market for these shares; however, he will advise the Receiver if he is able to identify a potential purchaser. There is no timeline for realizing on these shares. Any realizations may be immaterial.

7.0 Professional Fees

- a) The Receiver's fees from March 15, 2010 to June 30, 2012 total approximately \$1,716,637⁶ inclusive of disbursements and taxes. The Receiver's counsels' fees from March 15, 2010 to June 30, 2012 total approximately \$1,093,102, including \$992,897⁷, comprised of disbursements and taxes, for Davies and \$100,205 for Lax, inclusive of disbursements and taxes.
- b) The detailed invoices in respect of the fees and disbursements of the Receiver, Davies and Lax are provided in appendices to the affidavits filed by the Receiver, Davies and Lax in the accompanying motion materials. The Receiver's invoices summarize its activities.

⁶ Includes fees totaling approximately \$386,000 (including GST/HST) incurred by the Receiver related to the investigation of the CO Capital Debtors, which took place in the Debtors' receivership proceedings prior to the appointment of a receiver over the CO Capital Debtors.

⁷ Includes fees totaling approximately \$310,000 (including GST/HST) incurred by Davies related to the investigation of the CO Capital Debtors, which took place in the Debtors' receivership proceedings prior to the appointment of a receiver over the CO Capital Debtors.

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c) A summary of the invoices is as follows:

Duff & Phelps Canada Restructuring Inc.

Period	Fees	Disbursements	GST/HST	Total
March 15 to October 31, 2010	\$ 1,193,089.50	\$ 12,415.09	\$ 94,045.68	\$1,299,530.27
November 1 to November 30, 2010	93,227.50	177.99	12,142.71	105,548.20
December 1 to December 31, 2010	27,921.25	32.19	3,633.95	31,587.39
January 1 to January 31, 2011	15,055.00	0.00	1,957.15	17,012.15
February 1 to February 28, 2011	7,262.50	13.90	945.93	8,222.33
March 1 to March 31, 2011	26,987.50	735.82	3,601.44	31,304.76
April 1 to April 30, 2011	20,126.25	1,865.45	2,858.92	24,850.62
May 1 to May 31, 2011	11,362.50	0.59	1,477.21	12,840.30
June 1 to June 30, 2011	27,773.75	20.42	3,613.24	31,407.41
July 1 to July 31, 2011	28,631.25	25.21	3,725.34	32,381.80
August 1 to August 31, 2011	23,510.00	22.40	3,059.21	26,591.61
September 1 to October 31, 2011	15,045.00	8.40	1,956.94	17,010.34
November 1, 2011 to January 31, 2012	30,657.50	0.00	3,985.48	34,642.98
February 1 to April 30, 2012	22,518.75	0.00	2,384.39	24,903.14
May 1 to May 31, 2012	25,037.50	143.51	3,273.63	28,454.54
June 1 to June 30, 2012	6,512.50	0.00	846.63	7,359.13
Total	\$1,574,878.25	\$15,460.97	\$143,501.25	\$1,716,636.63

d) The Receiver's average hourly rate for the referenced billing period was \$388.21

Davies Ward Phillips & Vineberg

Period ^a	Fees	Disbursements	GST/HST	Total
March 15 to June 8, 2010	\$ 233,278.50	\$ 6,208.37	\$ 11,961.64	\$ 251,448.51
April 13 to June 30, 2010	9,468.50	455.17	498.79	10,422.46
May 7 to June 30, 2010	42,226.00	1,394.18	2,174.66	45,794.84
May 31 to September 22, 2010	10,005.50	476.12	528.48	11,010.10
October 4, 2010 to March 9, 2011	7,193.00	221.50	963.89	8,378.39
June 9 to June 30, 2010	7,853.00	342.27	969.59	9,164.86
July 1 to August 31, 2010	172,427.00	4,460.22	22,995.34	199,882.56
August 17, 2010 to June 13, 2011	342,566.50	11,192.37	45,889.59	399,648.46
July 8 to August 26, 2010	11,863.00	249.57	1,574.63	13,687.20
September 30, 2010 to March 9, 2011	11,571.50	579.47	1,579.63	13,730.60
June 1 to September 20, 2011	24,339.00	1,984.45	3,405.54	29,728.99
Total	\$ 872,791.50	\$ 27,563.89	\$ 92,541.78	\$ 992,896.97

e) Davies' average hourly rate for the referenced billing period was \$596.70.

^a Separate invoices were generated by Davies' insolvency and real estate departments; accordingly, certain periods overlap.

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- f) The Receiver has reviewed the accounts of Davies and believes them to be reasonable.
- g) The Receiver is of the view that the hourly rates charged by Davies are consistent with the rates charged by other major law firms in Toronto providing insolvency and restructuring advice. The Receiver notes that Davies has used only a limited number of lawyers on the matter.

Lax O'Sullivan Scott Liusa LLP

Period	Fees	Disbursements	HST	Total
November 2, 2011 to April 10, 2012	\$ 1,292.00	\$ 124.50	\$ 164.16	\$ 1,580.66
April 11 to May 31, 2012	64,764.00	1,755.60	8,649.24	75,168.84
June 1 to June 30, 2012	10,718.00	1,088.00	2,667.87	23,448.98
Total	\$ 66,774.00	\$ 2,948.10	\$ 11,498.26	\$ 81,220.36

- h) Lax's average hourly rate for the referenced billing period was \$537.03.
- i) The Receiver has reviewed the accounts of Lax and believes them to be reasonable.
- j) The Receiver is of the view that the hourly rates charged by Lax are consistent with the rates charged by other major law firms in Toronto providing insolvency and restructuring advice. The Receiver notes that Lax has used only a limited number of lawyers on the matter.

8.0 Recommendation

Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (f) of this Report.

* * *

All of which is respectfully submitted,

Duff & Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF THE ESTATE OF ROBERT MANDER,
E.M.B. ASSET GROUP INC. AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Court File No. CV-10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE MORAWETZ
BETWEEN

FRIDAY, THE 3RD DAY
OF AUGUST, 2012

SA CAPITAL GROWTH CORP.

Applicant

and



CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF
ROBERT MANDER, DECEASED 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

**ORDER
(INTERIM DISTRIBUTION AND FEE APPROVAL ORDER)**

THIS MOTION, made by Duff & Phelps Canada Restructuring Inc., in its capacity as Receiver of all of the assets, undertakings and properties of the Estate of Robert Mander, E.M.B. Asset Group Inc and the Related Entities (collectively, the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Fourteenth Report of the Receiver dated July 25, 2012 (the "Report"), the affidavits of Robert Kofman, Natasha MacParland and Tracy Wynne, each sworn July 25, 2012 (the "Affidavits"), and on hearing the submissions of counsel to the Receiver,

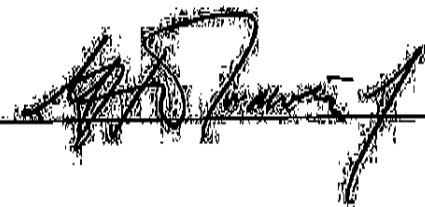
-2-

1. THIS COURT ORDERS that the time for service of the Notice of Motion dated July 26, 2012 and the Motion record herein be and are hereby abridged if necessary so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. THIS COURT ORDERS that the Receiver is hereby authorized and directed to make an interim distribution as set out in the Report.
3. THIS COURT ORDERS that the Receiver is hereby authorized and directed to hold back approximately \$551,000 for various costs and expenses (as described in the Report) in connection with the completion of this proceeding.
4. THIS COURT ORDERS that the Receiver is to distribute to creditors of Trafalgar Capital Growth Inc. ("Trafalgar") with proven claims, the portion of the interim distribution paid to Trafalgar.
5. THIS COURT ORDERS that the fees of the Receiver and its counsel (as set out in the Report and the Affidavits) be and are hereby approved.
6. THIS COURT ORDERS that the Report and the Receiver's conduct set out therein be and are hereby approved.

ENTERED AT / ILA AT A TROUBLE
ON / BOOK NO.
LE / DANS LE REGISTRE NO.:

AUG 07 2012

FEN/PARS



SA CAPITAL GROWTH CORP.,

Applicant

-and-

CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF
ROBERT MANDER, et al.
Respondents

Court File No. 10-8619-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

**ORDER
(INTERIM DISTRIBUTION
AND FEE APPROVAL ORDER)**

LAX O'SULLIVAN SCOTT LISUS LLP

Counsel

Suite 1920, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B

Tel: (416) 598-1744

Fax: (416) 598-3730

**Lawyers for the Receiver,
Duff & Phelps Canada Restructuring Inc.**

District of: Ontario
 Division No. 07 - Hamilton
 Court No. 32-1483688, 32-1483689
 Estate No. 32-1483688
 32-1483689

FORM 47
 Consumer Proposal
 (Paragraph 66.13(2)(c) of the Act)

In the matter of the consumer proposal of
 Peter Gordon Sbaraglia and Mandy Sbaraglia
 of the Town of Oakville, in the Region of Halton, in the Province of Ontario

We, Peter Gordon Sbaraglia and Mandy Sbaraglia, consumer debtors, hereby make the following consumer proposal under the Act:

1. That payment of the claims of secured creditors be made in the following manner:

The secured creditors shall be paid in accordance with the present arrangements existing between the consumer debtors and the holders of secured claims or as may be otherwise arranged with the secured creditors.

2. That payment of all claims directed by the Act to be paid in priority to other claims in the distribution of my property be made in the following manner:

Preferred claims, if any, are to be paid in priority to all claims of ordinary creditors and are to be paid out of the funds in the possession of the administrator of the consumer proposal.

3. That payment of the fees and expenses of the Administrator of the consumer proposal and payment of the fees and expenses of any person in respect of counselling given by this person pursuant to the Act be made in the following manner:

The fees and expenses shall be paid in priority to all claims from the funds in the possession of the Administrator and in accordance with rule 129(1) of the Act.

4. That the following payments be made to BDO Canada Limited / BDO Canada Limitée, the Administrator of the consumer proposal, for the benefit of the unsecured creditors:

The consumer debtors shall pay \$1,875 a month for a period of 24 months for a total of \$45,000.

In addition, the Consumer Debtors believe that they have a valid claim (the "Litigation") against Michael Miller, Julie Dublin, Peter Welch and the law firm of Aylesworth LLP (now Dickinson Wright LLP) (collectively, the "Defendants"). The Consumer Debtors have commenced a claim against the Defendants seeking recovery of approximately \$15,000,000. Said Litigation was commenced for the benefit of the Sbaraglias and the creditors of CO Capital Growth Corp. The Consumer Debtors are presently unable to fund the Litigation and, as such, funding for same is to be undertaken by the CO creditors upon terms.

Accordingly, the proceeds, if any, of the Litigation, will be applied firstly to pay legal fees, disbursements and taxes in connection with the Litigation and then secondly to the creditors of CO Capital Growth Corp. whom are estimated by the Consumers Debtors to be owed approximately \$7,538,000 net of any interest payments received during the currency of the Investment. Such monies will be paid to RSM Richter Inc. in its capacity as court appointed receiver ("Receiver") of the Consumer Debtors and CO Capital Growth Corp. for distribution by it to the creditors of CO Capital Growth Corp. pursuant to an Order of the court. Any remaining proceeds will accrue to the Consumer Debtors personally. From said funds paid to the Consumer Debtors, the Consumer Debtors shall pay or cause to be paid 25% of same for the benefit of the unsecured creditors under the consumer proposal, said amount not to exceed the total of any outstanding proven claims, (net of any proposal payments received by the proposal creditors), Trustee's fees and legal fees of the Trustee.

5. That the Administrator of the consumer proposal distribute the moneys received to the unsecured creditors in accordance with the following schedule:

That subject to the availability of sufficient funds, the administrator will pay a dividend to the unsecured creditors every six months. The first dividend payment will be made within thirty days of the 6th month anniversary of the Court's approval of the consumer proposal. Subsequent dividends will be paid every six months.

6. That the proposal includes the following additional terms:

That pursuant to section 88.31 (1) of the Act, and subject to statutory amendments to the Act, the Consumer Debtors acknowledge that the consumer proposal will be deemed annulled where:

- a) Payments under the consumer proposal are to be made monthly or more frequently and the consumer proposal is in default by an amount equal to or more than the amount of three payments, or
- b) Payments under the consumer proposal are to be made less frequently than monthly and the consumer proposal is in default for more than three months on any payment.

That in the event that either or both of the Consumer Debtors obtain a payment out of the ordinary course of their employment or businesses, (for example, lottery winnings, gifts, insurance proceeds as a beneficiary) (a "Windfall"), the Consumer Debtors shall notify the Receiver in Court File No. CV-10-8883-00CL and shall remit such Windfall payment to the Receiver for distribution in accordance with an Order of the court. The obligations under the Proposal in connection with Windfalls shall continue pending further Order of the court.

7. In the event that the Proposal is approved by the required majority of unsecured creditors, the Trustee shall apply to the Court to obtain sanction and approval of the Proposal. The Proposal shall not be effective unless and until sanctioned by the Court.

Upon all of the terms of the Proposal being satisfied in accordance with its terms, the payment, compromise, extinguishment or other satisfaction of any claim under the Proposal, if sanctioned and approved by the Court, will be binding upon each unsecured creditor, their heirs, executors, administrators, successors and assigns, for all purposes, and as and from the effective date of the Proposal, all claims shall be forever discharged and released, excepting only the obligations to make distributions and payment under the Proposal.

Upon all of the terms of the Proposal being satisfied in accordance with its terms, the Consumer Debtors will be released and discharged or deemed to be released and discharged by all unsecured creditors and all other persons from any and all demands, claims, actions, causes of action, grievances, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any such person may be entitled to assert including, without limitation, any and all claims for accounting, reconciliation, contribution or indemnity, restitution or otherwise, whether known or unknown, matured or un-matured, direct or indirect, foreseen or unforeseen, existing or hereafter existing, based in whole or in part on any act or omission, transaction, dealing, termination, disclaimer or repudiation of any contract, lease or other agreement, whether written or oral or other occurrence existing or taking place on or prior to the date the Proposal is effective, provided, however, that nothing herein shall release or discharge the Consumer Debtors from any of their obligations under the Proposal. The operation of this Release does not extend to proceedings commenced by the Ontario Securities Commission.

For greater certainty, the released claims include any claims for any debt or liability of any person arising in respect of matters referred to in Section 178 of the BIA.

Dated at the City of Hamilton in the Province of Ontario, this 27th day of May 2011.

Witness

Mandy Sbaraglia
Joint Debtor

Peter Gordon Sbaraglia
Consumer Debtor

Schedule "A"

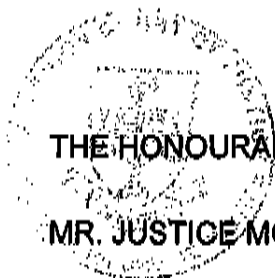
Administrator's fees and expenses in a consumer proposal

129. (1) For the purpose of paragraph 66.12(6) (b) of the act, the fees and expenses of the administrator of a consumer proposal are as follows:

- (a) \$750.00, payable on filing a copy of the consumer proposal with the official receiver;
- (b) \$750.00, payable on the approval or deemed approval of the consumer proposal by the court;
- (c) 20 percent of the moneys distributed to creditors under the consumer proposal, payable on the distribution of the moneys;
- (d) the costs of counselling referred to in subsection 131(1);
- (e) the fee for filing a consumer proposal referred to in paragraph 132 (c);
- (f) the fee payable to the registrar under paragraph 3 (b) of part II of the schedule; and
- (g) the amount of applicable federal and provincial taxes for goods and services.

(2) Subsection (1) applies to consumer proposals in respect of which proceedings are commenced on or after April 30, 1998.

Court File No. CV-10-8883-00CL



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

MR. JUSTICE MORAWETZ

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)
)

WEDNESDAY, THE 1st DAY

OF JUNE, 2011

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

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

Respondents

APPLICATION UNDER Section 129 of the *Securities Act*

**ORDER
(Sbaraglias Joint Proposal)**

THIS MOTION, made by RSM Richter Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, properties and assets of Peter Gordon Sbaraglia and Mandy Sbaraglia (the "Sbaraglias"), CO Capital Growth Corp. and 91 Days Hygiene Services Inc. was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Supplement to the Second Report of the Receiver dated May 30, 2011 (the "Second Supplement") and on hearing the

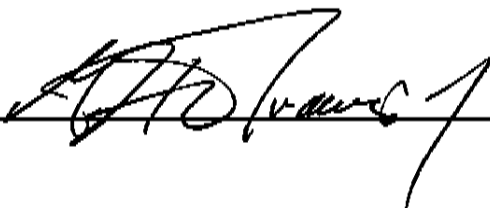
- 2 -

submissions of counsel for the Receiver and BDO Canada Limited, and upon being advised that no party on the Service List advised that it objected to the requested Order:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Sbaraglias are authorized to utilize their after-acquired property, excluding windfalls, to satisfy the terms of a joint consumer proposal to be filed by them (as referred to in the Second Supplement) (the "New Proposal") pursuant to the provisions of the *Bankruptcy and Insolvency Act*.
3. THIS COURT ORDERS that upon Court approval of the New Proposal, the Receivership Order in this proceeding dated December 23, 2010 shall be amended so as to exclude the Sbaraglias and their after-acquired property, excluding windfalls, from these Receivership proceedings.
4. THIS COURT ORDERS that the Sbaraglias advise the Receiver and BDO Canada Limited, forthwith, of any windfalls they receive or that they may receive and, upon receipt, to pay any such windfalls to the Receiver to be held by it subject to further Order of the Court.
5. THIS COURT ORDERS that BDO Canada Limited provide notice of the New Proposal to Thomas Obradovich, the Ontario Securities Commission and any other party that the Sbaraglias or the Receiver may reasonably believe may wish to assert a claim against the Sbaraglias personally.
6. THIS COURT ORDERS that BDO Canada Limited place a notice of the New Proposal in the national edition of the *Globe and Mail* newspaper.
7. THIS COURT ORDERS that the Receiver be authorized and directed to assign to the Sbaraglias all of the Receiver's right and interest in the action (Court File No. CV-10-402481) commenced by the Sbaraglias against Aylesworth LLP et al.

- 3 -

8. THIS COURT ORDERS that the First Supplement to the Second Report of the Receiver dated May 13, 2011 and the Second Supplement and the activities of the Receiver set out in those reports be and are hereby approved.



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

JUN 03 2011

PER/PARI

NB

Court File No: CV-10-8883-00CL

PETER SBARAGLIA et al.
Respondents

and

ONTARIO SECURITIES COMMISSION
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(SBARAGLIA JOINT PROPOSAL)

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ONTARIO SECURITIES COMMISSION
Applicant

and

PETER SBARAGLIA et al.
Respondents

Court File No: CV-10-8883-00CL

APPLICATION UNDER Section 129 of the Securities Act

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE RECEIVER
(Returnable June 1, 2011)**

DAVIES WARD PHILLIPS & VINEBERG LLP
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Inc.

SA CAPITAL GROWTH CORP.
Applicant

and

CHRISTINE BROOKS, et al
Respondents

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**RESPONDING COSTS SUBMISSIONS
OF THE APPELLANT**

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