

Court File No.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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)

NOTICE OF CROSS-APPEAL

THE CROSS-APPELLANT, Duff & Phelps Canada Restructuring Inc. (the "Receiver")
(formerly, RSM Richter Inc.), CROSS-APPEALS to the Court of Appeal from the Order of Justice
Pattillo dated May 23, 2012, made at Toronto.

THE CROSS-APPELLANT ASKS that the Order be set aside and an Order be granted as
follows:

1. Dismissing the underlying motion brought by the Appellant, Peter Sbaraglia ("Sbaraglia"), for an Order compelling the Receiver in this proceeding to produce portions of its file and working papers prepared and obtained in furtherance of its duties and court orders (the "Receivership Orders") in another proceeding (the "Motion"); and
2. That the Cross-Appellant shall have its costs of the Appeal, this Cross-Appeal and of the Motion.

THE GROUNDS OF APPEAL are as follows:

- (a) The Motions Judge erred in law by ordering the court-appointed Receiver, an officer of the Court, to produce transcripts of interviews conducted by the Receiver and documents obtained by the Receiver while carrying out its obligations under the Receivership Orders for use by Sbaraglia in a separate proceeding;
- (b) The Motions Judge erred in law by failing to apply a large body of case law, including a decision of this Court, and several decisions of the Ontario Superior Court of Justice that uniformly hold that a Court officer will not be compelled to produce documents obtained or created as part of its mandate in one proceeding for use in another proceeding;
- (c) There is no authority for the proposition that a Court officer may be compelled to produce documents or transcripts of its investigations to a party for a purpose outside of the proceeding;
- (d) There are strong policy reasons that support the consistent case law that holds that the fruits of a Court officer's investigation are not producible for use in another proceeding;

- (e) The Motions Judge erred in law by holding that the Supreme Court of Canada criminal law decisions, *R. v. O'Connor* and *R. v. McNeil*, concerning the production of third party records to enable an “accused” to “make full answer and defence” to charges under the *Criminal Code*, are of general application to non-criminal proceedings;
- (f) The Motions Judge erred in law by holding that the Supreme Court of Canada criminal law decisions, *R. v. O'Connor* and *R. v. McNeil*, concerning the production of third party records to enable an “accused” to “make full answer and defence” to charges under the *Criminal Code*, are of general application to records held by all non-parties even if such non-parties are Court officers;
- (g) The Motions Judge erred in applying the procedure set forth in *O'Connor* to the circumstances of this case to determine whether or not the Receiver should be required to produce transcripts of interviews conducted and disclose documents obtained pursuant to a court ordered receivership proceeding for use by Sbaraglia for private purposes;
- (h) The Motions Judge erred in holding that the transcripts of the meetings with certain individuals and certain documents obtained by the Receiver are "likely relevant" to the Ontario Securities Commission hearing involving Sbaraglia;
- (i) The Motions Judge erred in determining that the cost of producing the requested information should be borne by the Estate as opposed to Sbaraglia; and
- (j) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (i) The Order appealed from is a final order of a Judge of the Superior Court;
- (ii) Leave to appeal is not required;
- (iii) *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1)(b); and
- (iv) Such further and other bases of appellate jurisdiction as counsel may advise.

June 15, 2012

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SA CAPITAL GROWTH CORP.

-and-

CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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