Court File No. 10-8619-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

and

RSM RICHTER INC. AND ONTARIO SECURITIES COMMISSION

Responding Parties

FACTUM OF THE RECEIVER, DUFF & PHELPS CANADA RESTRUCTURING INC.

May 7, 2012

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TO: SERVICE LIST

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PART I – THIS MOTION

1. Peter Sbaraglia seeks to compel the court-appointed Receiver to produce to him the Receiver's working papers (including notes) and documents – prepared and obtained in furtherance of its duties under Orders granted in *this* proceeding – so that he can use them in *another* proceeding. The sought after relief is both unprecedented and improper.

2. There is no precedent for an officer of this Court being ordered to produce its own notes or working papers to anyone, nor should there be. Moreover, the case law is clear that Courts will not compel a court officer to produce documents obtained as part of its mandate in one proceeding for use in a separate proceeding. Simply, while in rare cases, a court officer will be required to produce documents to an "interested party" for use in the proceeding in which the documents were obtained (like a receivership or bankruptcy proceeding), the Courts do not require production for other collateral reasons.

3. Specifically, in this motion, Sbaraglia seeks an Order requiring the Receiver to:

(i) produce notes of interviews with individuals (the "Individuals") who met with the Receiver pursuant to the terms of the orders granted in this proceeding (the "Orders");

(ii) produce documents provided to the Receiver by Individuals as required by the Orders;

(iii) produce documents provided to the Receiver, as required by the Orders, by the lawyer and accountant to the Respondents in this proceeding;

(iv) prepare an index of all of the documents in the Receiver's possession (*ie.* thousands of documents); and

(v) produce any other documents in the Receiver's possession that Sbaraglia says are relevant to the OSC proceedings.

4. The Receiver respectfully submits that the relief should not be granted for, at least, the following reasons:

(i) The Receiver is a court officer. Its work in this proceeding was undertaken pursuant to the Orders of this Court for the purpose of this proceeding only. By extension, a receiver is not, and must not be treated like, a regular litigant. Indeed, the law in Ontario is clear that there are significant restrictions on the ability to compel a receiver to testify or produce documents even for use in the proceeding to which it is appointed;

(ii) The case law is also clear that a court officer will not be compelled to produce information obtained as part of its mandate for any purpose outside of the proceeding in which it was obtained. Information sought for collateral purposes is not to be produced;

(iii) The common law Implied Undertaking prohibits the Receiver from producing documents and other evidence (including oral evidence) for any purpose other than for use in the proceeding in which the Receiver obtained the materials;

(iv) This Court does not allow 'fishing expeditions', where litigants request documentary production without providing particulars or establishing relevance. Sbaraglia has not established that any of the documents he seeks are relevant to the OSC proceedings. Moreover, Sbaraglia wishes to obtain the Receiver's notes of interviews of individuals that he has every ability to speak with and call as witnesses during the OSC proceedings. Sbaraglia has

not put forth any evidence to show why he requires the notes, when he has direct access to the individuals themselves;

(v) The Receiver's notes of interviews are the Receiver's own work product. The interviews were conducted by the Receiver in accordance with the Orders and solely for use in these proceedings. The individuals interviewed were not told that the notes would be used for any other purposes. Further, the Receiver's notes are not purported to be an accurate or complete record of everything said by the Individuals, nor were they reviewed or approved by those interviewed. Finally, the Receiver has stated that the information provided was "highly speculative, unsupported and anecdotal" and that therefore, in preparing its Reports to Court, the Receiver did not rely on the interviews but instead relied on financial records, as well as transcripts provided by the OSC, affidavits sworn by Sbaraglia and cross-examinations of Sbaraglia;

(vi) As acknowledged, Sbaraglia's request is not an "*O'Connor* Application" and, therefore, the test set out therein has no application on this motion. In any event, Sbaraglia has failed to adduce cogent evidence that the sought after documents are likely relevant; and

(vii) The Receiver is being asked to create an index, at an estimated expense of up to $25,000, in circumstances where the money spent will not benefit the Estate in any way and will cause a significant depletion of the Estate's remaining cash. The costs associated with dealing with the requests could

be much higher. Sbaraglia's suggestion that the Estate should pay this cost in circumstances where the Estate has already incurred fees of $700,000 as a result of Sbaraglia's conduct, is improper.

5. It is important to consider that the requirement that the Receiver (or any other court officer) be compelled to produce its working papers for purposes outside of the proceeding for which it was appointed will have serious consequences for the way in which a court officer performs its functions. Simply, a court officer is required to fulfill its obligations to the Court in interests of all stakeholders in *the proceeding in which it was appointed*; a court officer should *not* concern itself with matters or considerations *outside* of the proceeding for which it was appointed. If, however, the court officer's working papers and documents obtained may be used for collateral purposes, the court officer will be forced to constantly concern itself with collateral issues and broader implications. The potential of being required to produce its working papers will undoubtedly have a negative impact on how the court officer functions – for instance, it may hinder how thoroughly a court officer fulfils its investigative duty, or it may increase costs if a court officer must prepare its notes, records and files for possible future production. This would be contrary to the efficient and proper running of a court-mandated proceeding.

6. The Receiver respectfully submits that it would be contrary to the role of a court officer, contrary to the case law, contrary to good practice and contrary to policy if the Receiver was required to produce the requested documents and prepare the requested index for Sbaraglia's use in his OSC proceedings. The Receiver respectfully requests that the motion be dismissed, with costs. The investors who have lost millions of dollars at the hands of Mander and Sbaraglia should not be required to incur further fees as a result of this request.

PART II – THE FACTS

This Receivership Proceeding

7. In March 2010, this receivership proceeding was commenced against Robert Mander ("Mander") and his company E.M.B. Asset Group Inc. ("EMB") after it was alleged that Mander was carrying on a "Ponzi" scheme and that he had misappropriated tens of millions of dollars from investors in Ontario, including the Applicant in this proceeding, SA Capital Growth Corp.

8. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made on March 17, 2010, as amended by Orders the Court made thereafter (collectively, the "Fresh As Amended Receivership Order"), RSM Richter Inc. was appointed receiver (the "Receiver") over the assets, property and undertaking of Mander, EMB and certain other related entities (the "Mander Debtors") under section 101 of the *Courts of Justice Act*. RSM Richter Inc. is now, for this and other proceedings, Duff & Phelps Canada Restructuring Inc..

9. On March 17 2010, the day the receivership application was returnable, Mander committed suicide. On the return of the application, Justice Morawetz granted the Receivership Order.

10. After its appointment, in accordance with the Orders, the Receiver compelled production of documents from certain parties who appeared to have a relationship with Mander, including their lawyers (Peter Welsh and Aylesworth LLP) and accountant (Tonin & Co. LLP). Also in accordance with the Orders, the Receiver requested and held meetings with several individuals with knowledge of the Mander Debtors.

11. In its Fourth Report, the Receiver advised the Court that numerous issues identified by the Receiver as part of its investigation of the Mander Debtors suggested that an investigation should

be undertaken of Peter Sbaraglia, his wife, Mandy Sbaraglia, and their companies, CO Capital Growth Corp and 91 Days Hygiene Inc. (collectively, the "CO Capital Debtors").

12. Based on the evidence provided in the Fourth Report, the Court issued an order on July 14, 2010 authorizing and directing the Receiver to commence an investigation into the affairs of the CO Capital Debtors.

13. On September 8, 2010, the OSC filed an application on the Commercial List seeking the appointment of a receiver over the business, assets and undertakings of the CO Capital Debtors.

14. On September 9, 2010, the Receiver filed its Seventh Report to Court summarizing its findings from its investigation of the CO Capital Debtors. In its report, the Receiver recommended that a receiver be appointed over the CO Capital Debtors, and 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 evidence suggested improper conduct on behalf of the CO Capital Debtors, including Sbaraglia, and that contested proceedings would most certainly result in the appointment of a receiver and would be very expensive and to the detriment of the investors and creditors.

15. Notwithstanding the Receiver's advice, the CO Capital Debtors strenuously opposed the appointment of a receiver and took the position that they had done nothing wrong and were victims of Mander's fraud. As a result, there were extensive materials filed in opposition of the motion and many cross-examinations were conducted.

16. The Receiver also filed its Ninth Report to Court dated November 12, 2010, which set out the results of the Receiver's further investigations and cross-examinations. All of the costs of the

Receiver's work regarding the CO Capital Debtors, including the work of its counsel, were funded by the estate of the Mander Debtors. The cost to the estate was approximately $700,000.

17. By Order of Justice Morawetz dated December 23, 2010, the Receiver was appointed as receiver over the CO Capital Debtors. In His Honour's Decision, several critical findings were made, including 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.

18. In February 2011, the OSC issued a Statement of Allegations against Sbaraglia alleging that, among other things, Sbaraglia was engaged in securities fraud and had misled the OSC.

Receiver's Reports

19. In accordance with its duties under the Orders, the Receiver prepared 12 Reports to Court in respect of this proceeding. As evidenced by its various reports, in coming to the determination that an investigation of the CO Capital Debtors should be performed, and ultimately, that the CO

Capital Debtors should be placed in receivership, the Receiver placed essentially no reliance on its discussions and interviews with any of the Individuals with whom it met or corresponded.

20. Indeed, the overwhelming majority of the information provided by the Individuals was of no utility, was highly speculative, unsupported and anecdotal.

21. In the context of its investigation of the CO Capital Debtors, the Receiver's findings and recommendations were based on:

(a) the financial analysis it performed of bank statements, cancelled cheques, credit card statements and investment account statements; and

(b) interviews performed by the OSC, including transcripts from the OSC's interviews of Sbaraglia and Mander in July, 2009, the cross-examinations conducted by the OSC, examinations performed by the Receiver and Sbaraglia's counsel prior to the commencement of the CO Capital receivership proceedings, and the various affidavits filed by Sbaraglia in these proceedings.

Distribution to Stakeholders

22. There is presently approximately $1.2 million[1] being held by the Receiver for distribution to stakeholders, net of future costs.

23. Prior to receiving the motion materials served by Sbaraglia on April 23, 2012, the Receiver was in the process of finalizing motion materials seeking approval of a distribution to stakeholders of the Mander Debtors.

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[1] Prior to additional costs related to finalizing the administration of the Mander Debtors' and the CO Capital Debtors' estates.

24. The Receiver has postponed the distribution motion as the breadth of Sbaraglia's request, including the information production, may be exceedingly costly and time consuming.

25. Sbaraglia's requests will significantly reduce the amounts available for distribution to stakeholders.

Sbaraglia's Specific Requests

(a) Interviews

26. Sbaraglia has requested transcripts and/or notes of interviews between the Receiver and the 16 Individuals.

27. In accordance with the Orders, the Receiver met with, interviewed and/or corresponded with all but two of the Individuals. The Receiver conducted these interviews for the sole purpose of assisting it in connection with its obligations and authority under the Orders. It did not tell any individual it interviewed that the information obtained would be used for any other purpose.

28. The Receiver did not interview or correspond with Grant Walton or Tascha Fluke. Early in the proceedings, the Receiver met with Mehran Shahviri of the OSC in order to obtain background information regarding these proceedings. The Receiver did not interview Mr. Shahviri. With respect to the remaining Individuals, the Receiver interviewed, had discussions with and communicated periodically with them, to varying degrees.

29. The primary purpose of the interviews was to gather background information regarding the Mander Debtors. However, as previously discussed, a majority of the information obtained from the Individuals was not useful; much of it related to the stories woven by Mander to justify his

investment techniques and the whereabouts of investor monies. Accordingly, in preparing its reports to Court, the Receiver relied on the financial information that it analyzed.

30. Over the course of carrying out its mandate, the Receiver generated various notes and memoranda, all of which were created solely for its internal purposes and were not intended to be relied upon by other parties. The notes were not reviewed by the Individuals. The notes prepared were not intended to be a verbatim transcript of what was said by the Individuals and the Receiver cannot confirm that the notes are an accurate or complete review of all that was discussed. The Receiver cannot confirm that its notes summarize all of the discussions had with the Individuals. The notes were only meant to be used by the Receiver, and only in *this* proceeding.

31. With the exception of interviews with Julia Dublin and Michael Miller, none of the interviews was recorded nor transcribed. The interviews of Dublin and Miller were recorded (but not transcribed).

32. Since the commencement of the Mander receivership proceedings over two years ago, there have been numerous conversations with certain of the Individuals; therefore, the notes that have been taken could now be found in any number of notebooks or files. Further, the Receiver did not keep a schedule of documents received from the Individuals. The Receiver is concerned that assembling all of its notes, as well as any documents provided from all parties with whom it met, would be time consuming and costly. The Receiver would have to review the entire corpus of files and/or notebooks in order to even attempt to assemble the information requested.

(b) Index of Documents

33. Sbaraglia is also seeking an order compelling the Receiver to provide an index of materials in the Receiver's power, possession and/or control. The request is extremely broad.

34. In paragraph 89 of his affidavit, Sbaraglia advises that his counsel had previously requested that the Receiver provide an index of the documents in its power, possession and/or control. At that time, the Receiver's counsel advised that an index does not exist.

35. These receivership proceedings commenced over two years ago. The Receiver has obtained thousands of documents from a variety of sources. It also has various data and information in its possession in electronic form, including data on computers and mobile devices. The Receiver does not presently have an index of all of these documents. To create such an index would also be time consuming and costly. The Receiver believes it could take in excess of one month and would cost approximately $25,000 to assemble.

(c) Tonin and Welsh Records

36. The documents that were provided by Tonin and Welsh were provided pursuant to the Orders.

37. As at the date of this Report the Receiver has not heard back from Gowling Lafleur Henderson LLP, Tonin's counsel, regarding its position on this matter.

38. Lerners LLP, Welsh's counsel, has advised the he takes no position on this matter.

39. It is important to note that the lawyers and accountant provided copies of the documents requested and therefore have the originals. There is no reason that Sbaraglia cannot and should not seek production from these parties directly. The Receiver will follow the Court's direction as it relates to providing this information to Sbaraglia.

(d) Deleted E-mails

40. Sbaraglia has requested copies of the e-mails that were identified by the Receiver as having been deleted.

41. The Receiver identified the missing e-mails by comparing an image of Sbaraglia's computer to the e-mails on CO Capital's host email server.

42. Copies of the e-mails obtained from the image of Sbaraglia's computer and those obtained from CO Capital's host e-mail server are available to be provided to Sbaraglia should this Court so order.

PART III - LAW AND ARGUMENT

Issues

43. The issue on this motion is whether the Receiver should be compelled to produce to Sbaraglia its working papers created and documents obtained while carrying out its obligations under Orders of this Court, so that Sbaraglia can use them in another proceeding.

44. As is referred to above, it is respectfully submitted that the Receiver should not be so compelled.

A Receiver is a Court Officer

45. When determining Sbaraglia's request, it is important to consider that the Receiver is a court-appointed officer of the Court, appointed to discharge specific duties prescribed by a specific appointment order.[2] A receiver's duties and obligations, as referred to in Orders of the Court, deal

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[2] *Ravelston Corp. (Re)*, (2007), 29 C.B.R. (5th) 1, [2007] O.J. No. 414 (Ont. S.C.J. [Commercial List]) ("*Re Ravelston*") at para. 60; *Anvil Range Mining Corporation (Re)*, (2001), 21 C.B.R. (4th) 194, [2001] O.J. No. 1125 (Ont. S.C.J. [Commercial List]) ("*Re Anvil Range*") at paras. 3-4; *Bell Canada International Inc. (Re)*, [2003] O.J. No. 4738

only with the receivership proceeding in which the Orders were made. The receivership Orders do not give the receiver any authority to act nor do they impress any obligations on the receiver with respect to matters outside the receivership proceeding.

46. Court officers, including receivers, file reports with the Court for the purpose of providing information regarding the proceeding to the Court and interested parties. The reports, as filed, stand as the officer's "evidence" or results of the officer's investigations. While the officer can be asked to clarify or expand on information in its report, it is not required to produce the fruits of its investigation.[3] Its report – an official statement made under official authority – is to be accepted.[4]

47. A court-appointed receiver is not a "litigant" and is not to be treated as such. A court-appointed receiver is an independent party. For example, as a result of its status as a court officer, pursuant to that designation, court-appointed receivers are not generally subject to cross-examination of their reports in their own receivership proceedings, save for in "exceptional or unusual" circumstances. The case law is clear that "exceptional or unusual" circumstances include situations where a Receiver refuses to cooperate in clarifying a part of his report, for example by failing to expand upon some element in the report as may reasonably be requested.[5]

48. The rule that a Receiver may be cross-examined on a report *only* in exceptional or unusual circumstances indicates that a receiver's obligation, as court officer, is to clarify information to all receivership stakeholders fairly. Its duty is to be impartial, objective, and detailed in its report, and

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(Ont. S.C.J. [Commercial List]) ("*Re Bell Canada*") at paras. 6-8; *Confectionately Yours Inc. (Re),* (2001), 25 C.B.R. (4th) 24 (Ont. S.C.J. [Commercial List]) ("*Re Confectionately Yours*") at paras. 2-3.

[3] *Battery Plus Inc. (Re)*, (2002), 31 C.B.R. (4th) 196 (Ont. S.C.J. [Commercial List]) ("*Re Battery Plus*").

[4] *Impact Tool & Mould (Re)*, (2007), 41 C.B.R. (5th) 112 (Ont. S.C.J.) ("*Re Impact Tool*") at para. 15; *Re Bell Canada* at para. 6.

[5] *Re Impact Tool* at para 15; *Re Bell Canada* at para. 8; *Re Anvil Range* at paras. 3-4; *Mortgage Insurance Co. of Canada v. Innisfil Landfill Corporation.*, (1995), 30 C.B.R. (3d) 100, [1995] O.J. No. 32 (Ont. Gen. Div.) ("*Innisfil Landfill*") at para. 5; *Re Confectionately Yours Inc.* at paras 2-3.

the Court's deference depends on the court officer's fulfilment of that duty. Where that duty is fulfilled, there is no basis to 'go behind' the report by way of examination of the receiver.

49. The Court's rationale for protecting court-appointed receivers from examination on their reports rests in its wariness to expose receivers to "harassment" for fulfilling their duties. Receivers would generally be far less effective if they were subject the risk of being compelled to be cross-examined on each of their reports: "To permit either party to use [a court officer's] conclusions on the very question the Court must decide…offends the principle that he must remain entirely neutral as between competing claims of the various stakeholders."[6]

50. In *Battery Plus Inc. (Re)*, Madame Justice Greer confirmed that although a receiver should respond to parties' reasonable requests for information *regarding the receivership*, parties are not entitled to *all* of the documents in the receiver's possession. Further, Her Honour confirmed that the receiver does not need to respond to a "fishing expedition".[7]

51. Given the strict limits placed on the ability to compel receiver testimony in respect of its *own* report in its *own* proceeding, and the limit on the receiver's obligation to produce documents to parties relevant only to the receivership proceeding, it would be highly surprising for a Court to expose a receiver's preparatory notes and working papers in respect of such report for the purposes an altogether *separate* proceeding.

Court Officer's Obligation to Produce – Limited and Regarding the Proceeding Only

52. As referred to above, there is literally no authority for the proposition that a court-appointed officer must (or even should) produce documents to a party for use in another

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[6] *Pine Valley Mining Corp. (Re)*, (2008), 41 C.B.R. (5th) 49 (B.C.S.C.) ("*Re Pine Valley*") at para. 17.
[7] *Re Battery Plus* at para. 21.

proceeding. There is also no authority for the proposition that a court officer will ever be required to produce its own working papers.

53. The sole case relied on by Sbaraglia to seek such relief is *Battery Plus Inc (Re)*, a 2002 decision of Madam Justice Greer (as referred to above). In this case, the Court *did not* compel a court officer to (i) produce documents for use outside of the receivership proceeding, or (ii) produce its working papers.

54. In *Battery Plus*, the shareholder of the company in receivership sought extremely broad production from the interim receivership for the purpose of allowing him to file affidavits in respect of motions to be brought by him in the proceeding. When considering the request for production, Madam Justice Greer considered whether the shareholder was an "interested person" in the context of the receivership and with respect to the operation of the company under receivership. Ultimately, the Court confirmed that a receiver should respond to "reasonable request for information" from parties interested in the prospective sale of the business pursuant to the Order of the Court in the receivership proceeding. However, the Court was clear that the receiver was not obliged to provide documents requested if such request would amount to a "fishing expedition".

55. The *Battery Plus* decision does not, in any way, support Sbaraglia's request here and, in fact, supports why the request is improper.

56. That a court officer ought not be compelled to produce its working papers and documents obtained as part of its duties finds significant support in the case law.

57. Like a court-appointed receiver, a trustee in bankruptcy is a court officer. However, by section 163(2) of the *BIA*, the Court may order the examination of the trustee (or other listed persons) for the purpose of investigating the administration of the bankrupt estate.[8]

58. The test for an order under the *BIA*, as set out by this Court, is whether the moving party can demonstrate: (i) that something is amiss with the estate or its administration, and that the party to be examined can shed some light on such matters; (ii) that the examination is for the general interest and for the demonstrable benefit of the creditors, and not for the purpose of pursuing a private remedy; and (iii) that a clear connection exists between the information or documentation sought and some aspect of the administration of the estate.[9]

59. Thus while section 163(2) provides a means for the examination of the trustee by those interested in the *administration of the bankrupt estate*, it may *not* be used for the private purposes of any person, whether a creditor or otherwise.[10] Where the Court concludes that a party is seeking to examine a trustee or obtain documentary production for impermissible collateral reasons connected with other litigation, it will not be allowed.[11]

60. The law on this is clear. For example, the Ontario Court of Appeal, in the 2006 decision in *Impact Tool & Mould Inc. (Trustee of) v. Impact Tool & Mould Inc. (Interim Receiver of)*, considered whether the Court could and should restrict the ability of a trustee in bankruptcy to provide the inspectors and creditors of the bankrupt with access to or information from the bankrupt's documents when there was a concern that the information may be used for purposes collateral to the administration of the bankrupt estate. A unanimous Court of Appeal held that the

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[8] Bankruptcy and Insolvency Act, RSC 1985, c B-3.
[9] *Re Boozary Estate,* (2005), 18 C.B.R. (5th) 205, O.J. No. 5539 (Ont. S.C.J.) ("*Re Boozary*") at para. 4.
[10] *Re Assaf*, (1976), 23 C.B.R. (N.S.) 14 (Ont. S.C.J.).
[11] *Thomson Kernaghan & Co. (Re)*, (2003), 50 C.B.R. (4th) 287, O.J. No. 5300 (Ont. S.C.J. [Commercial List]) ("*Re Thomson Kernaghan*") at para. 9.

trustee should provide the documents to the inspectors and creditors but that the inspectors and creditors would be prohibited from using the documents obtained for any purpose other than in connection with the administration of the estate. As a result, the Court of Appeal granted an order that restrained the use of the debtor's documents for purposes "other than those relating to the administration of the bankrupt estate and the affairs of the Bankrupt".[12]

61. Further, in *GMAC Commercial Credit Corp. Canada v. TCT Logistics Inc.*[13], Justice Farley considered whether a trustee/interim receiver could obtain documents from Deloitte & Touch ("D&T") to consider potential litigation, on behalf of the estate against D&T. D&T argued that it should not be required to produce such documents to the trustee as the documents could be used by others to commence an action against D&T. Justice Farley ordered production to the trustee because the documents were relevant to the administration of the estate but explicitly confirmed that the documents could be used only for the bankruptcy proceeding by the trustee and could not be used for any purpose outside of the bankruptcy. His Honour stated:

> In any event in my view the inspection of those 'estate books, records and documents' relating to the administration of the estate is to be done by creditors in their capacity as creditors of a bankrupt and not with a view as to advancing their claims outside of bankruptcy.
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> . . .
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> Indeed to my mind it would be a dereliction of duty by a trustee in bankruptcy to provide material which it has obtained pursuant to a s. 164 order with others (including creditors in their individual personal capacity) so that in effect the trustee in bankruptcy would be assisting other litigants in competition with the trustee in bankruptcy (which is charged with the responsibility of maximizing

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[12] *Impact Tool & Mould Inc. (Trustee of) v. Impact Tool & Mould Inc. (Interim Receiver of)*, [2006] O.J. No. 958 (C.A.) at paras. 34-45, 51.

[13] *GMAC Commercial Credit Corporation. – Canada v. TCT Logistics Inc.*, (2002), 37 C.B.R. (4th) 267, [2002] O.J. No. 4210 (Ont. S.C.J. [Commercial List]) ("*GMAC*").

> the estate of the bankrupt for appropriate distribution to the creditors pursuant to the hierarchy of s. 136 of the BIA). In my view it would be inappropriate to allow these creditors here in their individual personal capacities to piggyback upon the Trustee's s. 164 examination to get a leg up in non-bankruptcy litigation. This would be indirectly an improper compulsory order which would be contrary to the right to privacy as discussed in *Goodman v. Ross, VitaPharm* and *Lac d'Amiante*. The fact that there is compulsion takes it out of the 'as found exception' as discussed in *VitaPharm*.[14] (emphasis added)

62. Also, in *Thomson Kernaghan & Co. (Re)*, Justice Farley held a request to examine a trustee to obtain information for use in purposes outside of the proceeding to be impermissible:

> ...[I]t would appear to me that the U.S. Plaintiffs may be wishing to examine the Trustee for impermissible collateral reasons connected with their lawsuits in the United States. [...] In these circumstances, I do not see that it [sic] necessary or desirable that I exercise my discretion pursuant to s. 163(2) to have the Trustee examined under oath. In my view, nothing of substance in the circumstances would be added by such examination. The Trustee has responded in writing to the various concerns of the U.S. Plaintiffs via Trustee's counsel.[15]

63. In *Hickman Equipment (1985) Ltd. (Re)*, the Newfoundland and Labrador Supreme Court (In Bankruptcy and Insolvency) considered whether it should restrict documents that were obtained by the trustee/interim receiver from being used by people for purposes outside of the bankruptcy proceeding. The Court ordered that the trustee would be entitled to obtain the requested documents but that it was not to release any of the documents or information contained therein to anyone other than a specific group of individuals for use in the bankruptcy proceeding only.[16]

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[14] *GMAC* at paras. 8; 13.

[15] *Re Thomson Kernaghan* at para. 12.

[16] *Hickman Equipment (1985) Ltd. (Re)*, (2003), 44 C.B.R. (4th) 82 (S.C.T.D.) ("*Re Hickman Equipment*") at paras. 8-9.

64. In *Taylor Ventures Ltd. (Re)*, the British Columbia Supreme Court considered an application by a trustee for directions as to whether the trustee was entitled to provide the Inspectors unrestricted access to the bankrupt's files so that certain documents could be used by the Inspectors to pursue personal claims against the bankrupt's solicitors. The Court held that the Inspectors would not be given access to the materials to allow them or others to commence proceedings against the solicitors. Specifically, the Court ruled that the Trustee and Inspectors would only be given access to the documents and records obtained from the former solicitors for the purpose of the "affairs of the bankrupt" and "*not in relation to any other purposes*".[17]

65. In *Re Raven*, the Registrar in Bankruptcy refused to allow an application to examine the trustee when it became clear that the moving party's application was driven, not by a desire to investigate the administration of the estate by the trustee, but by a need to gather information for her defence in the criminal Court:[18]

> The subject matter of a Section 163(2) examination is not the bankrupt's pre-bankruptcy dispositions but the trustee's administration. It is clear then that the examination is for a collateral purpose and not for one authorized by *The Bankruptcy Act* and since the bankrupt is not shown cause, the examination cannot be allowed.

66. Similarly, in *Re Worlidge*, the Court denied an application for examination when it found that the purpose of the examination was "directed solely at the reason for and the circumstances surrounding an investigation being conducted by the superintendent,"[19] not for the purpose of investigating the administration of the estate of the bankrupt.

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[17] *Taylor Ventures Ltd. (Re)*, (1999), 9 C.B.R. (4th) 136 (B.C.S.C.) at paras. 24-34.
[18] (1997), 50 C.B.R. (3d) 56 (Ont. Gen. Div.) at para. 11.
[19] (1983), 46 C.B.R. (N.S.) 60 (S.C.O.) at para. 20.

67. Also by section 163(2), if an examination is ordered, the Court can order the trustee being examined to produce any books, records, documents, correspondence or papers in his or her possession or power relating to the bankrupt or any creditor, or relating to the issue on which they are to be examined. Notably however, the scope of such documentary production is limited: the Court will *not* order the trustee to produce its correspondence file[20], and parties will not be permitted to inspect records with a view to advancing claims outside of the bankruptcy.[21] Finally, the Court will not tolerate "frivolous or oppressive" inquiries, nor will it permit the moving party to engage in a "fishing expedition".[22]

68. As referred to above, there is simply not a single case where a court-appointed officer, including a receiver, interim receiver or trustee, has been required to produce its working papers or any documents whatsoever to a party for the purposes outside of the proceeding. It is respectfully submitted that this makes perfect sense and is completely appropriate. The court officer is appointed for a specific function and is to carry out its duties and obligations in connection with that function and that function only. As an officer of the court, it is not a regular litigant that is subject to disclosure obligations or examinations.

69. Moreover, the court officer provides Reports to the Court which contain the officer's findings and recommendations. While parties to the proceeding may seek clarification of the Reports, they are not entitled to go behind the Reports.[23]

70. It is respectfully submitted that it would not be proper to compel a court officer, the Receiver, to produce its working papers and documents obtained in this proceeding to Sbaraglia

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[20] *Re Chua* (1995), 34 C.B.R. (3d) 226, (B.C. Master).
[21] *Re Hickman Equipment* at para. 8.
[22] *Re Boozary* at para. 6.
[23] *Re Bell Canada* at paras. 6-8.

for purposes unrelated to this proceeding. A court officer, when fulfilling its duties under orders of the Court, should not be concerned that its efforts will be used for any other purpose. If it were otherwise, a court officer will be forced to perform its functions not just with the view to the proceeding in which it was appointed but with a view to how its working papers may be used in the future in other proceedings.

71. Further, requiring a Court officer to produce its notes and documents obtained to parties for purposes outside of the proceeding could and likely will have a serious detrimental effect on the ability of a court officer to obtain the relevant information necessary to perform its function as a court officer in a proceeding. Simply, individuals and companies do not challenge a Receiver's ability to compel their attendance or their production of documents as it appears clear that the information will be used for the purpose of the proceeding and the proceeding only. If court officers are required to hand over the documents and information they receive for the use in other proceedings, it is likely that parties will not be as cooperative.

The Documents Sought By Sbaraglia Are Not Relevant

72. Sbaraglia claims that the interviews and notes of the Receiver are "relevant" to his defence in his OSC proceeding. He provides little material support for this assertion. The relevance of the materials sought is speculative at best.

73. First, Sbaraglia has failed to identify any material in the Receiver's possession and relate it to the matters at issue in his OSC proceeding. Aside from simply asserting relevance, Sbaraglia has not explained how the interviews and/or notes are logically probative to any matter at issue in his OSC proceeding, or to the competency of a particular witness to testify. Indeed, while he refers to the Receiver's Reports, he does not point to a single instance in any Report where evidence of an

individual is referred to which is relevant to the OSC proceeding. In such circumstances, it must be presumed that Sbaraglia is engaging in a speculative, disruptive, unmeritorious and time-consuming request for production – a fishing expedition.

74. In any event, even if Sbaraglia *had* asserted a basis for his relevance claim, the Receiver maintains that these documents are irrelevant. As noted in the Receiver's Thirteenth Report,

(a) a majority of the information obtained from the individuals interviewed was "highly speculative, unsupported and anecdotal";

(b) the notes do not purport to be a reliable record of everything said by an individual that was interviewed; and

(c) in preparing its reports, the Receiver relied primarily on the financial information that had been analyzed and relied very little on information obtained from the Individuals.

75. In its Thirteenth Report, the Receiver explains that although it produced various notes and internal memoranda regarding the interviews, it did so solely for its own use for the purposes of this proceeding. The interviews and notes were never intended to be relied upon by other parties in other contexts. With regards to the notes specifically, they were never intended to be a verbatim transcript of what was said by the individuals and the Receiver cannot confirm that its notes accurately summarize all of the discussions the Receiver had with those individuals.

76. For these reasons, the Receiver's notes and working papers are both irrelevant to Sbaraglia's defence in the OSC Proceedings and unreliable in respect thereof, just as they are and

would be unreliable to anyone other than the Receiver itself. The very context in which they were made necessarily confines their ability to be relied upon to the Receiver alone.

77. Moreover, Sbaraglia has failed to show how the notes would be used in the OSC proceeding. He has access to those interviewed and has the ability to call them as witnesses at the OSC proceeding. Sbaraglia has not even put forward evidence why he "needs" the notes.

78. Sbaraglia's reliance on the *Xanthoudakis v. OSC* decision does not assist him. In that case, the issue of the Receiver producing its working papers and other documents was not raised nor did it occur. Moreover, in that OSC proceeding, the Receiver was called as a witness and testified for *three days and was cross-examined.*

Compelled Evidence is Protected by the Implied Undertaking Rule

79. As discussed above, the notes of the Receiver were based on evidence and disclosure made by compulsion of law for the purpose of the receivership. Further, the documents were obtained under the Orders. Not only does the status of the Receiver as court officer prohibit the production of these documents for use in an outside proceeding (as previously discussed), the fact that the evidence obtained was compelled means that it cannot be used in external proceedings.

80. The OSC proceeding for which Sbaraglia wants production is unrelated to the receivership. The Receiver is not a party to the OSC proceedings and has no knowledge of them other than as set out in Mr. Sbaraglia's affidavit.

81. In these circumstances, the Implied Undertaking Rule protects the notes and working papers and other documents sought by Sbaraglia. The Implied Undertaking Rule is defined as follows in *Goodman v. Rossi*, the leading case on the rule:

> Where a party has obtained information by means of court compelled production of documents or discovery, which information could not otherwise have been obtained by legitimate means independent of the litigation process, the receiving party impliedly undertakes to the court that the private information so obtained will not be used, via-à-vis the producing party, for a purpose outside the scope of the litigation for which the disclosure was made, absent consent of the producing party or with leave of the court; any failure to comply with this undertaking shall be a contempt of court.[24]

82. In *Goodman v. Rossi*, Justice Morden dealt only with the applicability of the implied undertaking rule to documents obtained on discovery but he added that it would be difficult to see why, as a matter of principle, the rule would not apply as well to oral evidence given on discovery:[25] He also confirmed that the rule would only cover information that the receiving party could not otherwise have obtained by legitimate means "independent of the litigation process":

> As far as the scope of the rule is concerned there is also the question of what range of pre-trial disclosures should be covered. Within the area of discovery itself, there is the question whether the rule should cover oral evidence given on examination for discovery. This question does not arise in this case and need not, therefore, be decided. Having said this, I must acknowledge that, having regard to the compulsory nature of oral discovery and its impingement on the right of privacy of a party, it is difficult to see why, as a matter of principle, the rule would not apply to this form of discovery. It has been held that the rule does apply to oral discovery evidence: *Reichmann v. Toronto Life Publishing Co.*, supra. In the English text Matthews and Malek, Discovery (1992) at p. 312 the opinion is expressed that "[a]lthough there is no reported authority as to whether the implied undertaking on discovery in relation to documents applies to interrogatories, it is submitted that in principle the implied undertaking does extend to interrogatories, as they are a form of discovery, to which answers are given under compulsion and not being provided voluntarily". (emphasis added)

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[24] *Goodman v. Rossi,* [1995] 24 O.R. (3d) 359, (C.A.) at para. 42.

[25] In *Duffy v. Great Central Publishing Co. Ltd.,* [1995] O.J. No. 4057 (Ont. Gen. Div.), the Court held that for the purposes of that motion, "that the rule does apply to oral evidence as well."

83. There are two rationales for imposition of an implied undertaking, as described by Justice Binnie in *Juman v. Doucette*.[26] First, the compelling of information from a litigant is a breach of privacy, which privacy rights are trumped by the public interest in getting at the truth. The invasion of privacy is thus legally limited to the level of disclosure necessary to satisfy that purpose and that purpose alone. Secondly, litigants will provide more complete discovery if given the assurance that disclosure will not be used for collateral purposes.[27]

84. The general idea, as expressed by the Supreme Court of Canada, is that "...whatever is disclosed in the discovery room stays in the discovery room unless eventually revealed in the courtroom or disclosed by judicial order."[28]

85. In *GMAC v. TCT* (referred to above), Justice Farley applied the implied undertaking to documents obtained by a trustee under the BIA. The same rationale applies to a receiver who obtains evidence under Court orders.

86. The notes and interviews at issue in this case were created in the course of the Receiver conducting an investigation pursuant to orders. As such, the evidence contained in those documents is based on oral disclosure that was provided under compulsion of law. The Receiver is the recipient of the compelled documents and "testimony". As such, the Receiver, and his notes, are subject to the obligations under the Implied Undertaking Rule.

87. Sbaraglia is seeking to obtain production of these documents for an ulterior purpose, unrelated to the receivership. In such circumstances, Sbaraglia's request is prohibited by the undertaking.

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[26] [2008] 1 S.C.R. 157 ("*Juman*").
[27] *Juman* at paras. 23-28.
[28] *Juman* at para. 25.

88. Although the implied undertaking rule is not absolute, it will only be set aside in "exceptional circumstances", which require an applicant to demonstrate to the Court on a balance of probabilities the existence of a public interest of greater weight than the values the implied undertaking is designed to protect, namely privacy and the efficient conduct of civil litigation: "What is important in each case is to recognize that unless an examinee is satisfied that the undertaking will only be modified or varied by the Court in exceptional circumstances, the undertaking will not achieve its intended purpose."[29]

89. In sum, the implied undertaking should only be set aside in "exceptional circumstances", and that those circumstances must be *particularly* compelling if a stranger to the undertaking seeks to use material protected by the undertaking.[30]

90. In this case, Sbaraglia is a stranger to the undertaking, seeking to use the material protected by the undertaking. He has not demonstrated that any "particularly compelling" or "exceptional" circumstances warrant a setting aside of the undertaking. Given the importance of ensuring interviewees may speak freely to a court-appointed receiver when compelled to do so, an order should not be made, in these circumstances, to overturn the implied undertaking and compel production of the Receiver's notes and interviews

Sbaraglia's Request is Not Analogous to an *O'Connor* Application

91. Sbaraglia seeks to compare his motion to an *O'Connor* application, a criminal concept that is foreign to the civil law context. This analogy is inappropriate and the test has no application here. In any event, the basic principles underlying the *O'Connor* regime support the conclusion that the Receiver should not be compelled to produce the requested documents.

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[29] *Juman* at para. 32.
[30] *Juman* at para. 36.

92. The *O'Connor* application process provides the accused, in a criminal proceeding, with a mechanism for accessing third party records that fall beyond the reach of the *Stinchcombe* first party disclosure regime.[31] The initial onus rests on the accused to show that the third party records sought are "likely relevant" to his or her trial. "The accused must establish a basis which could enable the presiding judge to conclude that there is actually in existence further material which may be useful to the accused in making full answer and defence, in the sense that it is logically probative."[32]

93. The onus, as described by Justice Charron in *R. v. McNeil*[33], is a "significant but not onerous" burden, designed to screen out speculative, fanciful and unmeritorious production requests while acknowledging that the accused is considering the relevance of documents he has never seen. Nonetheless, this is not to be taken to mean that the accused can always satisfy the likely relevance requirement by means of the oral submissions of counsel.[34] Rather, Courts have held that "a bald assertion that material is relevant" is insufficient to establish likely relevance.[35]

94. If, at the first stage, the accused's claim for "likely relevance" is demonstrated, then the judge may order production of the record for the Court's inspection. The Court then looks at the records to determine whether the records are truly relevant. At this second stage, with the records

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[31] *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.
[32] *R. v. O'Connor*, [1995] 4 S.C.R. 411.
[33] [2009] 1 S.C.R. 66 ("*McNeil*") at para. 29.
[34] *Her Majesty the Queen v. Thompson*, (2009), 85 O.R. (3d) 469 (C.A.) at para. 15.
[35] *R v. Rowley,* [2005] O.J. No. 4382 (Ont. S.C.J.) at para. 8. In *R. v. Watson* (1996), 30 O.R. (3d) 161 (C.A.), Justice Doherty stated that relevant: "requires a determination of whether as a matter of human experience and logic the existence of "Fact A" makes the existence or non-existence of "Fact B" more probable than it would be without the existence of "Fact A.""

in hand, the judge determines whether, and to what extent, production should be ordered to the accused.[36]

95. For instance, the Court will consider whether there is any expectation of privacy in the targeted records, a process that "... requires a contextual assessment having regard to numerous factors, including but not limited to: how the record was created; who created the record; the purpose of the record; [and] the context of the case in which the record would be used..."[37]. Where privacy interests are found to be at stake, the Court may find it necessary to make a production order subject to redactions or other conditions, or may impose restrictions on the dissemination of the information produced.[38]

96. The case law is clear that the concept of relevance in the context of an *O'Connor* application does have practical limits; where the alleged connection between the charges before the Court and the additional disclosure turn out to be weak, the application will be dismissed.

97. Importantly, the Supreme Court has confirmed that "fishing expeditions" for irrelevant evidence are not permitted.[39] Accused persons may not misuse the *O'Connor* application process to delay a criminal matter from proceeding:

> Ascertaining the true relevancy of records targeted for production may become particularly important when the information on the production application concerns police disciplinary records. The contentious nature of police work often leads to public complaints, some legitimate and others spurious. Police disciplinary proceedings may also relate to employment issues or other matters that have no bearing on the case against the accused. The risk in this context is that disclosure, and by extension trial proceedings, may be sidetracked by irrelevant allegations or findings of police

[36] *McNeil* at paras. 34-35.
[37] *McNeil* at para. 39.
[38] *McNeil* at para. 46.
[39] *McNeil* at para. 28.

> misconduct. Disclosure is intended to assist an accused in making full answer and defence or in prosecuting an appeal, not turn criminal trials into a conglomeration of satellite hearings on collateral matters.[40]

98. In *R. v. Murphy*[41], this Court considered an *O'Connor* application regarding the accused's request for production of documents from the *Children's Aid Society*. The Court noted that the application for disclosure was "overly broad and laden with boilerplate statements".[42] It was not supported by an affidavit. The Court noted that the broad nature of the request was "so general that it amounts to asking for a review of the entire Society file. It is clear that the applicant has no knowledge of what might be in the Society's records and simply wants a review of them to see whether this might reveal information that is helpful to the defence." The Court noted that there was no evidentiary basis for thinking that the records may contain information that would be of likely relevance. The Court held that the overly broad nature of the request and the "simple assertion" that the records would likely contain some discussion were not satisfactory.[43] The Court dismissed the application for lack of a clear tie between what was being sought and the charges against the accused.[44]

99. Simply, while Sbaraglia sets out in an affidavit that the Receiver met with certain individuals, he does not, in any way, set out how the information that they *may* have provided to the Receiver has any relevance whatsoever to his OSC proceeding. Specifically, nowhere in his affidavit does he attempt to tie the charges against him to the "evidence" that may have been provided to the Receiver. Simply, Sbaraglia is charged with securities fraud and misleading the OSC. There is no evidence whatsoever to support that anything said to the Receiver by any of the

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[40] *McNeil* at para. 45.
[41] [2004] O.J. No. 3078 (O.C.J.) ("*Murphy*").
[42] *Murphy* at para. 11.
[43] *Murphy* at para. 22.
[44] *Murphy* at paras. 23-24.

Individuals is in any way relevant to those charges. Sbaraglia is engaged in a fishing expedition and nothing more. For the reasons stated above, such fishing expeditions offend the principles of the *O'Connor* regime and the common law with respect to a request that may be made of this court officer (if it were properly made regarding this proceeding).

100. Moreover, even if Sbaraglia had established some legitimate basis for this relevance claim (which has not been done), the *O'Connor* application analogy would imply that the Receiver's notes should first go to the Court, and the Court should determine, on examination of the documents, whether the relevance claim is actually borne out.

Cost of Production and Preparing Index

101. In its Thirteenth Report, the Receiver explains that complying with the requested relief would be time consuming and expensive. The Receiver states that the preparation of the requested Index alone may cost up to $25,000 given the number of documents and the time period that this receivership proceeding has been going on. The Receiver's costs (and therefore the cost to the estate) of complying with the requests could be much higher. Sbaraglia's suggestion that these costs should not be borne by him but should, instead, be borne by the Receiver, and therefore the investors, is without foundation.

102. As is referred to above, by opposing the receivership order sought against him, contrary to the strong recommendation of the Receiver, Sbaraglia's conduct has already cost the investors approximately $700,000. Moreover, it is completely improper to suggest that the creditors/investors of the Mander Debtors should incur fees for purposes entirely outside of the receivership proceeding.

103. In the event that the Court considers it appropriate to order the Receiver to take any of the steps requested by Sbaraglia, it should only be required to do so if Sbaraglia posts the funds necessary for the cost of the Estate that will be incurred by performing such tasks.[45]

PART IV - ORDER REQUESTED

104. The Receiver respectfully requests that the motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of May, 2012.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ravelston Corp. (Re)*, (2007), 29 C.B.R. (5th) 1, [2007] O.J. No. 414 (Ont. S.C.J. [Commercial List])

2. *Anvil Range Mining Corporation (Re),* (2001), 21 C.B.R. (4th) 194, [2001] O.J. No. 1125 (Ont. S.C.J. [Commercial List])

3. *Bell Canada International Inc. (Re)*, [2003] O.J. No. 4738 (Ont. S.C.J. [Commercial List])

4. *Confectionately Yours Inc. (Re),* (2001), 25 C.B.R. (4th) 24 (Ont. S.C.J. [Commercial List])

5. *Battery Plus Inc. (Re)*, (2002), 31 C.B.R. (4th) 196 (Ont. S.C.J. [Commercial List])

6. *Impact Tool & Mould (Re*), (2007), 41 C.B.R. (5th) 112 (Ont. S.C.J.)

7. *Mortgage Insurance Co. of Canada v. Innisfil Landfill Corporation.*, (1995), 30 C.B.R. (3d) 100, [1995] O.J. No. 32 (Ont. Gen. Div.)

8. *Pine Valley Mining Corp. (Re)*, (2008), 41 C.B.R. (5th) 49 (B.C.S.C.)

9. *Re Boozary Estate,* (2005), 18 C.B.R. (5th) 205, O.J. No. 5539 (Ont. S.C.J.)

10. *Re Assaf*, (1976), 23 C.B.R. (N.S.) 14 (Ont. S.C.J.).

11. *Thomson Kernaghan & Co. (Re)*, (2003), 50 C.B.R. (4th) 287, O.J. No. 5300 (Ont. S.C.J. [Commercial List])

12. *Impact Tool & Mould Inc. (Trustee of) v. Impact Tool & Mould Inc. (Interim Receiver of)*, [2006] O.J. No. 958 (C.A.)

13. *GMAC Commercial Credit Corporation. – Canada v. TCT Logistics Inc.*, (2002), 37 C.B.R. (4th) 267, [2002] O.J. No. 4210 (Ont. S.C.J. [Commercial List])

14. *Hickman Equipment (1985) Ltd. (Re)*, (2003), 44 C.B.R. (4th) 82 (S.C.T.D.)

15. *Taylor Ventures Ltd. (Re)*, (1999), 9 C.B.R. (4th) 136 (B.C.S.C.)

16. *Re Raven* (1997), 50 C.B.R. (3d) 56 (Ont. Gen. Div.)

17. *Re Worlidge* (1983), 46 C.B.R. (N.S.) 60 (S.C.O.)

18. *Re Chua* (1995), 34 C.B.R. (3d) 226, (B.C. Master).

19. *Goodman v. Rossi,* [1995] 24 O.R. (3d) 359, (C.A.)

20. *Duffy v. Great Central Publishing Co. Ltd.,* [1995] O.J. No. 4057 (Ont. Gen. Div.)

21. *Juman v. Doucette* [2008] 1 S.C.R. 157

22. *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

23. *R. v. O'Connor*, [1995] 4 S.C.R. 411.

24. *R. v. McNeil* [2009] 1 S.C.R. 66

25. *Her Majesty the Queen v. Thompson*, (2009), 85 O.R. (3d) 469

26. *R v. Rowley,* [2005] O.J. No. 4382 (Ont. S.C.J.)

27. *R. v. Watson* (1996), 30 O.R. (3d) 161 (C.A.)

28. *R. v. Murphy* [2004] O.J. No. 3078 (O.C.J.)

SA CAPITAL GROWTH CORP.	-and-	CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER DECEASED et al.
Applicant		Respondents
PETER SBARAGLIA	-and-	RSM RICHTER INC. et al.

Court File No. 10-8619-00CL

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