

RSM Richter

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

RSM Richter Inc.
Toronto, July 2, 2010

Index of Appendices

Fresh as Amended Receivership Order dated March 31, 2010	“A”
Schedule of Life Insurance Premium Payments	“B”
FM Capital Statement of Claim and Other Documents	“C”
Real Estate Investments	“D”
Investments in Illiquid Start-Up Companies	“E”
Stonebury Expenses	“F”
Donations to Soka Gakkai International	“G”
Lexus Documentation	“H”

Table of Contents

1.	INTRODUCTION.....	1
1.1	Purposes of this Report	2
1.2	Restrictions	3
2.	BACKGROUND	4
3.	ASSETS	5
3.1	Real Property	6
3.2	Artwork	7
3.3	Life Insurance Policies	8
4.	INVESTORS.....	10
5.	TRACING.....	11
5.1	Trading Activity	14
5.2	Real Estate Investing Activity	16
6.	CO CAPITAL GROWTH CORP.....	17
6.1	Ontario Securities Commission Investigations	18
6.2	OSC Transcripts	27
6.3	Deleted Emails	27
6.4	Conclusion Re: CO Capital	28
7.	OTHER MATTERS	28
7.1	Tonin & Co. LLP	28
7.2	Stonebury's Lexus	29
7.3	Interactive Brokers	30
7.4	Further Items	31
8.	OTHER ACTIVITIES	32
9.	CONCLUSION AND RECOMMENDATION.....	33

**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.**

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**

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

July 2, 2010

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. 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. ("SA Capital") for the appointment of a receiver over the assets, properties and undertakings of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, properties and undertakings of entities related to EMB or Mander. These entities include but are not limited to Mand Assets Inc. (“Mand Assets”), Dunn Street Gallery Inc. (“Gallery”), Trafalgar Capital Growth Inc. (“Trafalgar”), Stonebury Inc. (“Stonebury”) and Mander Group Inc. (“MGI”) (“Related Entities”) (the Related Entities, EMB and Mander are collectively referred to as the “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) Provide background information concerning the Debtors;
- b) Summarize the interim findings of the Receiver’s investigation in these proceedings;
- c) Summarize for the Court a settlement offer by the Receiver to Ms. Brooks regarding certain death benefits and the cash value of Mander’s life insurance policies;
- d) Summarize other issues in these proceedings for which no relief is presently sought; and
- e) Recommend that this Honourable Court issue an order:
 - Authorizing and directing the Receiver to investigate the affairs of C.O. Capital Growth Corp. (“CO Capital”);
 - Authorizing the Receiver to take possession of, and realize upon, a Lexus purchased in the name of Maria Zurini, with Stonebury monies;
 - Requiring Tonin & Co. LLP (“Tonin”), an accounting firm that acted for certain or all of the Debtors, to, within seven days of the granting of such order, deliver to the Receiver all documents in Tonin’s possession, power

and/or control in any way related to the business or affairs of any of the Debtors;

- Requiring Interactive Brokers Canada Inc. (“Interactive Brokers”) to (i) transfer cash in each of the Debtors’ accounts (the “Accounts”) to the Receiver, and (ii) sell any securities in the Accounts upon receiving such written direction from the Receiver and thereafter forward the net proceeds to the Receiver; and
- Approving this Report and the Receiver’s activities since the date of the Receiver’s first report to Court dated March 29, 2010 (“First Report”).

1.2 Restrictions

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, 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

EMB was incorporated in February, 2008. It and Mander borrowed funds from a number of companies and individuals and guaranteed high rates of return for a fixed term. Some investors also loaned money directly to Mander. The investors believed that Mander was investing in equities (directly or indirectly through entities he controlled or influenced) in order to generate substantial rates of return on their behalf. Certain investors advanced to Mander and his companies, including EMB, money loaned to them by others.

EMB was owned by Mander, who was EMB's sole director and officer. All decision making and investing at EMB was done solely by Mander. There was little distinction between EMB and Mander – Mander frequently moved monies between his personal accounts and the accounts of EMB and other Mander controlled entities so that he could fund his lifestyle and attempt to generate personal net worth, including the purchase of real estate through corporations he owned, such as Stonebury.

Additional background information concerning these receivership proceedings is provided in the initial application materials, the Receiver's First Report¹, its second report to Court dated May 28, 2010 ("Second Report") and its third report to Court dated June 8, 2010. These documents are available on the Receiver's website at www.rsmrichter.com.

¹ Including its supplement to the First Report, dated March 30, 2010.

3. ASSETS

The First Report details that the Debtor's accounts had nominal balances on the date these proceedings commenced.

As of the date of this Report, the majority of the assets recovered include real estate, artwork, jewellery, furniture, a 2010 Jaguar and sundry other assets. Mander also owned a 2010 Land Rover, which was fully encumbered by Bank of Montreal ("BMO"). The Land Rover was returned to BMO on May 4, 2010.

On June 3, 2010 the Court issued an order approving an auction agreement between Asset Engineering Corporation ("AEC") and the Receiver authorizing AEC to conduct an auction for the sale of the majority of the Debtors' personal property ("Auction Assets") ("AEC Transaction"). The auction is scheduled for July 7, 2010.

3.1 Real Property

A summary of the Debtors' real property is provided in the table below.

Address	Listing Price ² (\$000s)	Estimated Mortgage (\$000s)	Mortgagee	Title	Description and Comments
1225 Lawrence Crescent, Oakville ("Lawrence Property")	2,755 ³	2,000	HSBC Bank Canada	Mander	Sold.
17 Stonebury Place, Freelon ("17 Stonebury")	760 ⁴	634	TD Bank	Stonebury	Sold. Five acre lot with 4,600 sq. ft. house. Transaction is expected to close on July 30, 2010.
1506 Highpoint Sideroad, Caledon ("1506 Caledon")	220 ⁵	-	-	Stonebury	Sold. 1½ acre lot, under construction. Transaction closed on June 18, 2010.
1650 Highpoint Sideroad, Caledon ("1650 Caledon")	1,499	-	-	Stonebury	100 acre lot with 1 storey house. Property was listed for sale with Royal LePage Real Estate Services ("Royal LePage") on April 30, 2010.
223 Church Street, Oakville ("223 Church")	1,395	612	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial or residential. Property was listed for sale with Avison Young Commercial Real Estate (Ontario) Inc. on April 26, 2010.
225 Church Street, Oakville ("225 Church")	1,499	630	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial or residential. Property was listed for sale by Mander with Re/Max Del Mar Realty Inc. ("Remax") on February 14, 2010. The original listing price was \$1.68 million.

² Listing prices as at June 30, 2010.

³ Represents selling price.

⁴ Represents selling price.

⁵ Represents selling price.

Additional information concerning the above real estate is as follows:

- **Lawrence Property:** The sale of the Lawrence Property closed on April 26, 2010. The transaction generated net proceeds of \$639,000 after repayment of a mortgage on the property, selling costs and closing adjustments.
- **17 Stonebury:** An agreement of purchase and sale for this property was approved by the Court on June 11, 2010. The transaction proceeds are expected to total approximately \$80,000 after repayment of a mortgage on the property owing to Toronto Dominion Bank, commissions and other amounts payable.
- **1506 Caledon:** An agreement of purchase and sale for this property was approved by the Court on June 11, 2010 and the transaction closed on June 18, 2010. The proceeds are expected to total approximately \$180,000 after repayment of a construction lien filed by Hometek Enterprises,⁶ commissions and other amounts payable on closing.

3.2 Artwork

The majority of the artwork located at the Gallery premises was consigned to the Gallery by a number of artists. The Receiver has returned substantially all of the consigned artwork to the artists. In certain instances, the consignment documentation in the Gallery's files was insufficient to evidence a completed consignment arrangement; however, given the overall intention of the documentation, discussions with the Gallery manager and the nominal value of the artwork in question (less than \$1,500 in virtually all cases), the artwork was returned to the artists.

In addition to the consigned art there are approximately 70 pieces of art⁷ that were purchased by the Gallery or Mander ("Owned Art"). The Owned Art is included in the AEC Transaction.

⁶ Subject to confirmation by the Receiver of its validity.

⁷ Artwork includes paintings, glass sculptures and crystal figurines.

3.3 Life Insurance Policies

Mander maintained four insurance policies with London Life Insurance Company (“London Life”), including three on his own life and one on the life of his son (the “Policies”). The details of the Policies are as follows:

Date of Policy	Life Insured	Beneficiary	(\$000s) Death Benefit ⁸
November 17, 2001	Mander	Mander’s son	120
October 12, 2002	Mander	Mander’s son	70
June 12, 2003	Mander	Mander’s son	167
			357
November 27, 2001	Mander’s son	Mander	20 ⁹
			377

The Receiver’s review of Mander’s bank accounts indicates that he routinely transferred money from his business accounts to his personal accounts, including amounts to fund the insurance premiums. A summary of the premium payments funded by Mander is provided in Appendix “B”.

Mander had no source of income other than monies received from investors. It is believed that Mander used investor monies for personal purposes starting as early as 2003, at which time he and Tasha Fluke, an associate he met while working at Freedom 55 in 2003, formed FM Market Capital Inc. (“FM Capital”). In July, 2007, Ms. Fluke commenced an action against Mander for reasons similar to those detailed in the affidavit of Davide Amato filed in the application materials in these proceedings. A copy of the materials filed in the FM Capital proceedings is provided in Appendix “C”.

⁸ The death benefit proceeds are net of indebtedness (approximately \$24,000) owed by Mander to London Life.

⁹ Current cash value of the policy.

The Receiver has also taken into consideration that Mander had substantially no assets at the time he commenced his investment activities/scheme. During meetings between the Receiver and Ms. Brooks, the mother of Mander's son, Ms. Brooks advised that around July, 2000, she and Mander were evicted from their apartment because they could not pay the rent. Ms. Brooks and Mander's siblings have also advised that Mander's family was not wealthy, contrary to comments attributed to Mander by friends and investors that his father had substantial net worth. Mander's financial success at Freedom 55 is said to have been less than noteworthy.

Because the Receiver's review of the Mander's bank statements indicates that Mander used investor money to fund the insurance premiums, and because Mander had virtually no assets at the commencement of the investment scheme, the Receiver has taken the position that the Policies should be an asset available to the Debtors' creditors. In this regard, the Receiver has been attempting to negotiate a settlement of the Policies with Ms. Brooks. The Receiver's settlement offer weighs the cost of litigating this issue (both to the estate and to Ms. Brooks) and the fact that the beneficiary under the policy is Mander's son. In the absence of a settlement with Ms. Brooks, the Receiver intends to seek full payment of the insurance proceeds to the estate.

In correspondence dated May 27, 2010 among counsel to Ms. Brooks, the Receiver and London Life, London Life agreed to hold the proceeds for three months pending resolution of this issue.

4. INVESTORS

EMB and/or Mander appear/(s) to have had six primary investors (the “Investors”). These are:

- CO Capital;
- SA Capital;
- Black Ink Capital Growth Ltd. (“Black Ink”);
- Trafalgar;
- Pero Assets Inc. (“Pero”) (and Thomas Obradovich); and
- J.S. Bradley Inc. (“JS Bradley”).

The Receiver has also been contacted by other parties who have advised that they invested directly with EMB and/or Mander (“Other Investors”). The number of Other Investors and total amounts invested by the Other Investors remains unknown at this time. Absent a claim process, the Receiver is unable to confirm the total number of creditors and the amounts owing to them. The Receiver believes that a claims process should be deferred until it is determined that there will be funds available for distribution to creditors.

Mander (either directly, or through MGI or EMB) had agreements with the Investors which entitled the Investors to share the profit on the spread between the returns earned by Mander or EMB and the rate of return guaranteed to Investors. For example, if Investors were guaranteed a 25% return but Mander generated 50% (which he did not), Mander and the Investor would share on some basis the 25% profit; commonly the “profit” was to be shared equally.

5. TRACING

Since the commencement of the receivership proceedings the Receiver has obtained financial information and documentation which it has been reviewing, including, *inter alia*, bank statements, support for receipts and disbursements between the Debtors and the Investors, and other financial information provided by the Investors related to the Debtors.

Based on its review for the period September, 2005 to March 17, 2010, the Receiver traced the majority of the receipts and disbursements between EMB, Mander and MGI¹⁰ accounts, on the one hand, and the Investor accounts, on the other. The results of this review are provided in the following table¹¹.

Investor	\$000s		
	Received from Investor	Paid to Investor ¹²	Net Received from Investor/(Net Paid to Investor)
CO Capital	15,440	(18,446) ¹³	(3,006)
SA Capital	15,823	(1,824)	13,999
Pero/Thomas Obradovich ¹⁴	4,627	(1,513)	3,114
Trafalgar	860	(990)	(130)
Black Ink	887	(1,065)	(178)
JS Bradley	1,942	(1,505)	437
Other Investors	3,775	(1,307)	2,468
Total	43,354	(26,650)	16,704

Represents the net amount retained by Mander.

¹⁰ Mander appears to have operated MGI from September, 2005 to December, 2007. The operations of MGI were similar to those of Mander's other investment companies.

¹¹ The Receiver only reviewed transactions greater than \$5,000. Transactions between Mander, EMB or MGI and the Investors or Other Investors that were less than \$5,000 are not captured in the table.

¹² Where applicable, receipts from Investors and payments to Investors include amounts received from and amounts paid to their principals, i.e. transactions with CO Capital include transactions with Peter and Mandy Sbaraglia.

¹³ Excludes approximately \$1.9 million paid by Mander to CO Capital for the purchase of shares in 2197204 Ontario Inc o/a Atlas Global Financial Technologies, a company owned by Mandy Sbaraglia.

¹⁴ Includes amounts invested by Mr. Obradovich and companies owned by him. Includes certain amounts invested by Mr. Obradovich directly with EMB.

The table reflects that Mander retained approximately \$16.7 million of the approximately \$43 million that he received. The table also reflects that CO Capital received approximately \$3 million more than it funded, including approximately \$1 million paid by Mander and his companies to its principals, Peter and Mandy Sbaraglia. SA Capital appears to have suffered the most significant losses, totalling approximately \$14 million.

The above table excludes amounts paid to Investors which were not transferred to any of EMB, Mander or MGI, i.e. it excludes amounts that were maintained by the Investors in their accounts. Accordingly, to the extent that costs were funded or items purchased by Mander in an Investor account, these amounts would be over and above the \$16.7 million he retained.

The table below provides a summary on an annual basis of the net amounts received from or paid to Mander and certain of his companies; it reflects net payments of almost \$8.9 million to CO Capital during 2009.

	\$000s					
	2006	2007	2008	2009	2010	Net from/ (to Investor)
CO Capital	687	4,150	1,071	(8,894)	(20)	(3,006)
SA Capital	-	-	8,626	5,373	-	13,999
Pero/Obradovich	-	(550)	3,121	543	-	3,114
Trafalgar	-	99	(102)	(78)	(49)	(130)
Black Ink	49	(146)	226	(307)	-	(178)
JS Bradley	-	1,048	(59)	(536)	(16)	437
Other Investors	25	1,104	(57)	1,381	15	2,468
Total	761	5,705	12,826	(2,518)	(70)	16,704

Represents majority of activity in 2009

Represents largest apparent claims

The table below illustrates that Mander, directly and through his related companies, used the monies from Investors and Other Investors to fund his lifestyle and personal affairs.

	\$000s		Net (Paid) Received
	Receipts	Disbursements	
Net amount received from Investors	43,354	(26,650)	16,704
Real estate	1,078	(8,778)	(7,700)
Investments in illiquid start-up companies	-	(2,496)	(2,496)
Stonebury expenses	-	(717)	(717)
Soka Gakkai International	-	(321)	(321)
Mortgage payments	1,876	(44)	1,832
Gallery operating costs	-	(563)	(563)
Jewellery	-	(470)	(470)
Personal vehicles	164	(504)	(340)
Trading losses – Interactive Brokers accounts	-	(569)	(569)
Other identified transactions	145	(2,894)	(2,749)
Unidentified transactions	2,873	(5,451)	(2,578)
Cash Remaining ¹⁵	49,490	(49,457)	33

Net funds
retained by
Mander

Mander spent the monies he retained on the following:

- The purchase of real estate in his own name, EMB, Stonebury, a venture in Barrie, Ontario with Thomas Obradovich and for a family member (see Appendix “D” for details of each transaction);
- Investments in illiquid start-up companies (see Appendix “E” for details);
- “Business” expenses, such as those related to the construction and maintenance of the Gallery;
- Stonebury¹⁶ expenses, including a \$78,000 Lexus purchased by Stonebury for Ms. Zurini, a Stonebury employee. Details of the Stonebury expenses are provided in Appendix “F”;
- Donations to Soka Gakkai International (“SGI”), a Buddhist organization to which Mander belonged (see Appendix “G” for details);
- Investments in securities – he incurred significant trading losses (see Section 5.1 below); and

¹⁵ Represents the approximate cash remaining in all of Mander’s combined bank accounts and trading accounts at the commencement of the receivership proceedings.

¹⁶ Stonebury owns the real estate at the following municipal addresses: 17 Stonebury, 1506 Caledon and 1650 Caledon.

- Personal assets for himself, including jewellery, vehicles, artwork and expensive clothing¹⁷ and gifts for those close to him, including a vehicle for a sibling.

5.1 Trading Activity

Questrade Inc.

Mander and certain of the Investors maintained accounts at Questrade Inc. (“Questrade”) and Interactive Brokers. The majority of the Questrade accounts were closed or inactive by March, 2008. The total amount invested in Questrade accounts through CO Capital, MGI and Mander was approximately \$1.2 million, of which approximately \$1 million was through CO Capital. The losses in these accounts totalled approximately \$564,000¹⁸, being 47% of the total invested.

Interactive Brokers

Mander and/or Peter Sbaraglia opened investment accounts at Interactive Brokers accounts for CO Capital, Mand Assets and Pero. Mander also maintained accounts at Interactive Brokers for EMB and Trafalgar¹⁹.

A summary of the trading activity in the Interactive Brokers accounts for the period from May 2, 2007 to February 28, 2010 is provided in the table below. The table indicates that the entities in the table incurred losses approximating 44% of their original amount invested and that the balance was withdrawn to fund various items, including Investor loan repayments.

¹⁷ Mander had an account at Marcello Tarantino, a high end men’s clothing store located in Yorkville, Toronto, where he would periodically leave substantial deposits and would purchase against the deposits.

¹⁸ Includes foreign exchange gains and losses and fees and commissions paid on transactions.

¹⁹ The EMB account was opened by Mander. The Receiver is unsure who opened the Trafalgar account.

\$000s					
Account	Deposits	Withdrawals	Losses ²⁰	Losses	Account Balance
EMB	1,100	(530)	(569)	(52%)	1
Trafalgar	238	(182)	(56)	(24%)	-
Pero	3,720	(1,767)	(1,899)	(51%)	54
Mand Assets ²¹	910	(535)	(358)	(39%)	17
CO Capital ²²	4,924	(2,917)	(1,944)	(39%)	63
Total	10,892	(5,931)	(4,826)	(44%)	135

With the exception of Mand Assets²³, Mander's position and/or capacity in respect of each of the entities listed in the table above is as follows:

- Trafalgar was 50% owned by Mander. The other 50% was owned by Heather Shantora. According to Shantora, Mander traded extensively the Trafalgar account;
- Pero was originally owned equally by Peter Sbaraglia and Mander; however, it now appears to be owned by Mr. Obradovich. Peter Sbaraglia and Mander were responsible for Pero's investment activity through November, 2008; and
- Mander owned 50% of CO Capital from early 2007 to November, 2008. Mander was also a Director of that entity and its Chief Portfolio Strategist until approximately that date. As detailed in Section 6 below, the activities of CO Capital and EMB/Mander remained highly intertwined even after Mander resigned.

²⁰ Includes unrealized gains and losses, foreign exchange gains and losses and fees and commissions paid on transactions.

²¹ Funded primarily by CO Capital prior to November 30, 2008, during which time Mander was part owner of CO Capital.

²² Information is for the period from May 2, 2007 to November 30, 2008, after which Mander's role at CO Capital is said to have discontinued.

²³ The Receiver is still trying to confirm what, if any, role Mander had with this entity.

5.2 Real Estate Investing Activity

In addition to his trading activities, Mander is said to have looked for opportunities to purchase real estate at distressed prices. However, a review of his real estate purchases reveals that he overpaid in most, if not all, instances. For example:

- Mander purchased 1650 Caledon for \$2 million in June, 2008. Comparable properties have recently sold for approximately half of that amount;
- Mander purchased 17 Stonebury for \$939,000 in June, 2008. The Receiver has been advised that there are currently two properties listed for sale for \$899,000 on Stonebury, each of which has been on the market for approximately one year. The Receiver understands that the two properties are comparable, but superior to 17 Stonebury. 17 Stonebury is subject to a sale by the Receiver for \$760,000, which is less than the price paid by Mander²⁴; and
- Mander purchased the Lawrence Property for \$2.9 million in October, 2009. This property was recently sold by the Receiver for \$2.755 million.

The Receiver has spoken with real estate agents familiar with the properties that Mander purchased and the prices he paid. The agents have advised that Mander overpaid for the majority of the real estate he acquired based on comparable transactions.

²⁴ The two listed properties may be a better comparable then the Receiver's sale as that was Mander's residence at the time of his death.

Mander also used his real estate as a source of liquidity, when necessary. The table below provides a summary of properties mortgaged by Mander (through Stonebury and EMB) well after the dates that he acquired the properties.

				(\$000s)	
Property	Purchase Date	Mortgage Date	Mortgagee	Mortgage Amount	Purchase Price
17 Stonebury	June 20, 2008	September 1, 2009	TD Bank	634	939
223 Church	June 20, 2008	October 7, 2009	Home Trust Company	612	1,200
225 Church	October 10, 2008	October 7, 2009	Home Trust Company	630	1,460
				1,876	3,599

Mander closed on the purchase of the Lawrence Property on October 7, 2009, the date the mortgages were taken on 223 Church and 225 Church (“Church Mortgages”). Mander’s agent for the Lawrence Property transaction has advised that Mander had to delay closing repeatedly. The Lawrence Property was purchased for \$2.9 million, of which \$2 million was funded with a mortgage from HSBC Bank Canada. The remainder of the purchase price was funded from the proceeds received by Mander from the Church Mortgages. The remaining funds sourced from the Church Mortgages were deposited by Mander in his main EMB bank account, from which various items were funded, including loan repayments.

6. CO CAPITAL GROWTH CORP.

CO Capital was established in 2006 by Peter Sbaraglia and his wife Mandy Sbaraglia. CO Capital obtained funds from investors in return for a guaranteed rate of return. It appears that Mander was involved in the business of CO Capital and played an integral role in that business from its inception. Between January, 2006 and November, 2008, Mander was a director and officer of CO Capital. In early 2007 Mander became a shareholder of CO Capital, an interest he

owned until November, 2008. During the period January, 2006 to November, 2008, it appears that Mander was in charge of CO Capital's investing and, as noted, held the title of Chief Portfolio Strategist.

In late 2006, Peter Sbaraglia, the President of CO Capital at the time (and at a time when Mander is said to have been an officer and director of CO Capital), retained legal counsel to provide advice regarding the business that CO Capital was engaging in, in terms of compliance with the *Securities Act (Ontario)*. Specifically, CO Capital borrowed funds pursuant to loan agreements, which guaranteed high fixed rates of return to its investors. Accordingly, Peter Sbaraglia appears to have been involved in the development of a structure which was used to borrow funds from investors.

In November 2008, Mander apparently resigned from his positions at CO Capital and relinquished his ownership interest for no consideration. Thereafter Mander carried on his investment business through EMB; however, CO Capital and EMB continued to have an intertwined business relationship. Whereas prior to November, 2008 Mander traded some CO Capital investor funds in CO Capital's investment accounts and some CO Capital funds in accounts he controlled exclusively, after November 2008 CO Capital advanced to Mander and EMB the funds it sourced from its investors. Mander discontinued trading the CO Capital accounts after November, 2008.

6.1 Ontario Securities Commission Investigations

In July, 2008, an order was issued under section 11(1) of the *Securities Act* appointing certain staff members of the Ontario Securities Commission ("OSC") to investigate and inquire into businesses carried on by Mander, Peter Sbaraglia, CO Capital and Pero (the "OSC Investigation"). Pursuant to the OSC Investigation, Peter Sbaraglia was examined under oath

on July 9, 2009 (“Sbaraglia Examination”) and Mander was examined under oath on July 15, 2009 (“Mander Examination”) (jointly, the “Examinations”). Both Peter Sbaraglia and Mander were represented by the same counsel from Aylesworth LLP (“Counsel”) at their respective examinations.

During the course of the OSC Investigation, it became clear that a significant concern of the OSC was the lack of assets in CO Capital to support the loans made by the investors to CO Capital. It is important to note that during the Mander Examination, Counsel stated that EMB owed money only to CO Capital and Mander personally. The OSC was not told that EMB in fact owed money to SA Capital, Black Ink, J.S. Bradley and others. Specifically, during the Mander Examination, Counsel advised that²⁵:

“There are only two entities that have any money with EMB, which is not part of this order but is the company that is operated by Mr. Mander, and that is the money that has been lent to EMB by CO Capital and Mr. Mander's personal funds. **So there are not other people out there, other entities, other investors, other lenders.** There's no one else involved in Mr. Mander's EMB corporations or an associated and related company called Stonebury, which we'll get to and is in the information, **but the only two entities that have – that any money that EMB is looking after is his personal money and a loan that was made to him by CO Capital paid to EMB so he is not dealing with the public or other people or other – it's just those two entities themselves in the company”.**

During the course of the Examinations, information provided explained how the businesses operated by Mander and Peter Sbaraglia were intertwined. Peter Sbaraglia, Mander and Counsel advised the OSC that all of the assets held by Mander, EMB, the Sbaraglias and CO Capital were held as security for loans owing to CO Capital's investors. For example, at the

²⁵ Emphasis in this quote and various other quotes below was added by the Receiver.

commencement of the Sbaraglia Examination, Counsel provided the OSC with an “Introductory Note” that stated, under the heading “Sufficient Assets”:

“The CO assets and the personal assets of Peter and Mandy Sbaraglia and Robert Mander are collectively adequate and available to *insure* [sic] that the notes will be honoured as they come due.”

A summary of all of the assets of Peter and Mandy Sbaraglia, Mander and their various corporations (including EMB) were attached to the Introductory Note.

Further, when explaining where CO Capital's investor's money was invested during the Sbaraglia Examination, Counsel responded as follows:

“MR. MILLER²⁶: Most of the money is not in brokerage accounts. Most of it is in real estate.

MS. DUBLIN²⁷: That's rights.

THE WITNESS²⁸: And Venture.

MR. SHAHVIRI²⁹: And Venture. Okay. So what sorts of objective third party documents would exist to support?

MS. DUBLIN: Well, what we have accumulated so far – just to clarify, because of this notion that this is your money and perhaps a lack of specifics in terms of how to deal with those sums, some of these assets are in a variety of names.

They're personal assets of the Sbaraglia's. They're in various corporate names with Robert Mander. But the notion is these are held or traded to sustain the obligations to the [CO Capital's] lenders.”

²⁶ Michael Miller is a lawyer at Aylesworth LLP.

²⁷ Julia Dublin is a lawyer at Aylesworth LLP.

²⁸ The “Witness” and Mr. Sbaraglia are used interchangeably in the OSC documentation of the Sbaraglia Examination.

²⁹ Mehran Shahviri is an investigator with the OSC.

After discussing certain smaller venture holdings, Counsel (Ms. Dublin) goes on to say:

“And you will see the brokerage accounts and the bank accounts are at tab 8. They’re not significant sums, though. The largest bank account is \$400,000. Because the sums aren’t being held in cash. They’re being transformed mostly into real estate – or were.

And you will see the real estate holdings are at tab 10. And that’s where really the bulk of the value is. It’s in these properties that Robert Mander acquired for the venture. And these are the current ones. Of course, they have been buying and selling on an ongoing basis.³⁰

So when you add up the anticipated value or the estimated market value of these properties and the other assets, you have a figure that is in excess of the \$10-million that’s owed. And a lot of it is real estate.”

With respect to the assets being held by CO Capital to support its loans, the following exchange takes place:

“MR. SHAHVIRI: But if I have understood you correctly, the list of properties at tab 10 constitute the bulk of the assets of C.O.?”

MR. MILLER: Yes, vast majority.

MR. SHAHVIRI: Plus there’s about maybe half a million in cash?

THE WITNESS: In cash. And then some ventures.

MS. DUBLIN: And there’s some real estate as well that’s sort of in the Sbaraglia’s bailiwick too. Some of it is held by them and some of it by Mander.”

Further, regarding CO Capital's investor's money being invested in real estate assets, the following exchange took place during the Sbaraglia Examination:

³⁰ The Receiver has not seen any evidence to support the statement that Mander and/or CO Capital was “trading” real estate. Mander, directly or through Stonebury and EMB did purchase real estate, most of which he subsequently mortgaged.

BY MR. PANCHUK³¹:

"18. Q. ...So you have \$4-million to pay back from January to December '09. And I'm just doing it – let's call it a hypothetical problem. So it's approximately \$4-million, January 1st, '09, to December 31st, '09. So you have to be liquid for that amount –

A.³² Right.

19. Q. -- at various points though the year. How do you manage that?

A. Well, in the worst case scenario, you can get lines of credit and mortgages. If you own them outright, there's a value to them, and you absolutely can access liquid cash because of the value of the assets."

BY MR. SHAHVIRI:

20. Q. And is that the case with the properties? They're all owned outright?

A. Yes. All on that page there, they're all owned outright, every one of them.

21. Q. When did you make the transition to real estate, or is it staggered?

A. Staggered. Understand that that page there does not belong – those aren't my properties.

22. Q. They are not your properties?

A. No.

MR. MILLER: You are talking about the list of properties that Robert Mander has done?

THE WITNESS: Yes.

MR. MILLER: Yes. They're in the name of Mander's company. But Mander will tell you that they're all held supporting these investments.

MR. HORGAN³³: Those are the properties at tab 10?

MS. DUBLIN: Yes. You see --

MR. MILLER: That's why these two are interconnected. They're not two strangers here.

³¹ Don Panchuck is an investigator with the OSC.

³² "A." indicates answers provided by Peter Sbaraglia.

³³ Sean Horgan is counsel for OSC.

MR. PANCHUK: So does C.O. own these properties or have title to these properties?

MR. MILLER: No.

MS. DUBLIN: No. **See, there's this synergy between Robert Mander and C.O.** Again, within the structure of C.O. Capital, this idea of once the money is lent, it's yours. You can do whatever you want with it. And the promissory note is basically an IOU. There's no commitment. So this was the premise.

So the two of them invested the money in various ways, whatever. And as I understand it, whoever was the convenient purchaser was the purchaser on title. But between them, notionally, all of these investments were being made with the borrowed money and were being made in order to create the growth needed to pay back the borrowed money."

BY MR. SHAHVIRI:

23. Q. Let me just see if I can follow. Tell me if I have got this right. I thought I had it, and then I realized, as you were speaking, I didn't. So the money came from your friends and family?

A. Yes.

24. Q. Went to C.O.?

A. Yes.

25. Q. Then it went to Mander?

A. Eventually, yes.

26. Q. And Mander bought these properties?

A. Yes.

27. Q. So is there any contractual agreement in place between you and Mr. Mander that gives you any kind of right to these assets?

A. Did you get the --

MS. DUBLIN: I haven't got it yet. Because we're both pulling together documents for Robert Mander--

THE WITNESS: The answer is yes. Is it in there?

MR. MILLER: I want to clarify. I don't know if there's a written document dated three years ago that says, EMB holds this in trust for C.O. I'm not sure whether there is. They're not sure whether there is.

But as a result of whatever we come out with – of whatever process we end up coming out with, we're going to be correcting all of that stuff. So we will be getting that.

And you're going to be meeting with Mr. Mander next week, I think, and he's going to tell you the same thing, so I understand.

MS. DUBLIN: That he holds these properties, in his own mind, anyway, in trust for C.O. Capital.

MR. SHAHVIRI: But not to be overly cynical or skeptical, but as of today, we don't know whether Mr. Mander owns these properties. Do we have any assurance that these properties are still within the umbrella of Sbaraglia/Mander?

MS. DUBLIN: Well, we know that Mr. Mander sent us this list yesterday or the day before. And he is working on the backup information for his information. So we're expecting he will have that when he comes in.

MR. MILLER: If your question is if we search title for 223 Church Street, would we see EMB Asset Group Inc. as the owners? Is that your question?

MR. SHAHVIRI: And secondarily, would we see any charges against the property?

MR. MILLER: We understand not, but we're in the process of getting those documents. We will certainly have those documents when we meet with Mr. Mander next week. It was just a matter of time.

MR. PANCHUK: So on C.O.'s balance sheet --

MR. MILLER: It would show money lent to – I think it's EMB."

BY MR. SHAHVIRI:

28. Q. **So C.O. would have liabilities in the \$400,000, and Mander companies, whether they're EMB or whatever, would have the assets; is that right? So we would have to consolidate these two to get the total picture is what you're saying?**

A. **Yes.**

MR. MILLER: Mander's sheet -- financial statement, in theory, would show owing to C.O., just wouldn't have assets without debt.

MR. SHAHVIRI: Again, notionally or backed up some kind of contract?

MR. MILLER: **I think its backed up by two people who trust each other. And that's the understanding, and that's the way they've been doing it.**

MR. SHAHVIRI: Right. So notionally, basically.

MR. MILLER: I don't know. I don't want to say here that there's something in writing. We --

29. Q. Well, maybe Mr. Sbaraglia can address that. Is it a notional --

A. It's a notional --

MS. DUBLIN: But it can certainly be reduced to writing in order to supply greater assurances for the next three years to those that have lent money.

THE WITNESS: That won't be a problem at all.

MR. MILLER: Keeping in mind they went into this business thinking this was C.O.'s money to do whatever they wanted. They didn't have to report back to anybody else. What they wanted was to do business with Robert Mander **and he's good at finding real estate**. And go find real estate.

BY MR. SHAHVIRI:

30. Q. Sorry. Not to be slow about this, but for the monies that came in from your friends and family that went to C.O., you, in turn effectively lent that money to Mr. Mander?

A. Effectively, yeah.

31. Q. Is there paper that supports that lending?

A. No. There's bank drafts that I have that I sent to him. See, when you meet him, you will understand. Do you know when you see somebody, and you know they're good? Do you know when it just shines out of somebody? When I met him a few years ago --"

Mr. Miller later goes on to say:

"But in this particular case, friends gave him money, loaned him the money and said do whatever you want and pay me back on this date. And he and Robert Mander have the same arrangement. Now, either we're in never-never land, or these are two exceptional guys.

We do know they do have assets. They're not flakes. But they will and are properly papering it, in the process of getting it. Now as we're pulling in this information now for today -- and we'll probably have some more for next week -- we hope to find out what is missing and what has to be corrected."

Later on in the Sbaraglia Examination the following exchange took place:

BY MR. SHAHVIRI:

“38. Q. We might have covered a whole bunch of these already. Bear with me a second. In the terms of the day-to-day running of C.O., is it you and Mr. Mander primarily that head up the investment strategy?

A. Used to be. Mr. Mander is not part of C.O. Capital anymore as of November last year³⁴.

39. Q. Why was that? Why did he resign?

A. I will tell you from my end of it. As we wanted to go –

MR. MILLER: Because he set up EMB, and he said, you’re C.O. and I’m EMB. That’s the real –

BY MR. SHAHVIRI:

40. Q. Is that it?

A. Basically.

41. Q. There wasn’t a falling out or anything like that?

A. Gosh, no. No, not at all.

MR. MILLER: Their offices are right beside each other.

BY MR. SHAHVIRI:

42. Q. To this day?

A. Yes.

43. Q. Does anyone else have any input into the running of C.O.?

A. No. I have people that work for me.

44. Q. I mean third party advisors.

A. No, none.

³⁴ November, 2008.

45. Q. *So you and Mr. Mander really were the brains? You were the directing minds of C.O.?*

A. *Yes."*

6.2 OSC Transcripts

The full OSC transcripts of the Examinations are available from the Receiver upon request by this Honourable Court.

6.3 Deleted Emails

On March 25, 2010, with the consent of Peter Sbaraglia, the Receiver attended at the offices of CO Capital and was provided access to the CO Capital computers and servers. The Receiver took images of the computers and servers located at the premises and on review identified that there was limited email correspondence to and from Peter Sbaraglia.

Concerned that there may be missing emails, the Receiver contacted the IT consultant who had provided services to Mander, the Sbaraglias and other Investors³⁵, and requested that all CO Capital email information maintained on the host email server be backed up and stored.

On or about May 13, 2010, the Receiver's counsel advised CO Capital's counsel that the Receiver had preserved certain email information and requested CO Capital's permission to access the stored information. CO Capital consented. The Receiver identified email correspondence from and to Peter Sbaraglia that was not previously available on the imaged computers, including emails that were sent to Peter Sbaraglia on March 24, 2010, one day prior to the Receiver's attendance at CO Capital.

³⁵ Mander arranged to have the IT consultant and other professionals, such as Tonin and Peter Welsh, a lawyer who has a professional affiliation with Aylesworth LLP, provide services to the Investors in order to assist them to establish and setup their businesses.

6.4 Conclusion Re: CO Capital

Given the testimony of Peter Sbaraglia and Mander at the OSC examinations, potentially deleted correspondence, the relationship between CO Capital and Mander and the significant amounts paid to CO Capital – amounts apparently sufficient to repay all principal loaned by CO Capital to EMB/Mander - the Receiver believes that it is appropriate for it to investigate the business and affairs of CO Capital to determine whether any relief should be sought against CO Capital, including the scope of that relief.

7. OTHER MATTERS

7.1 Tonin & Co. LLP

Tonin was, during all relevant times, the accounting firm used by Mander and some or all of the Debtors. Immediately after the Receivership Order was granted, the Receiver contacted Tonin and provided a copy of the Receivership Order. At that time, the Receiver asked Tonin to provide the Receiver with documents in Tonin's possession that relate to the business and affairs of the Debtors. Shortly thereafter, Tonin provided the Receiver with limited documentation.

As a result of the Receiver's investigation, it appeared that Tonin possessed further documentation with respect to the Debtors. The Receiver's counsel engaged counsel to Tonin in discussions regarding that issue and Tonin's counsel advised the Receiver that Tonin had additional documentation but expressed that Tonin was concerned about providing, without a Court order, all documentation in its possession regarding the Debtors. Specifically, counsel expressed a concern that some of the Debtors were not solely owned by Mander and that, therefore, there may be confidentiality issues. Counsel to Tonin advised that the documents in Tonin's possession could be categorized as follows:

- (a) Documents in Tonin's possession for corporations for which Mander had complete ownership and control;
- (b) Documents in Tonin's possession for corporations for which Mander had joint ownership and control; and
- (c) Documents in Tonin's possession for corporations that Mander may have been associated with.

On June 2, 2010, Tonin purported to provide the Receiver with all documents in its possession with respect to category (a) above. However, it appears to the Receiver that the production is incomplete. Specifically, none of the following types of documents were produced:

- Tax returns;
- Financial statements;
- Engagement letters;
- Financial statement checklists of work performed;
- Tax working papers; and
- Invoices issued to Mander and his companies.

As a result of the failure to provide complete production (as outlined above) and Tonin's raised concerns regarding confidentiality (which the Receiver does not accept as a valid concern), the Receiver seeks an order requiring Tonin to produce all documents in its possession, power and/or control relating to the Debtors.

7.2 Stonebury's Lexus

As noted in Section 5 above, Stonebury purchased a Lexus for Ms. Zurini. The Receiver understands that Ms. Zurini continues to own the vehicle. As with virtually all other assets purchased by the Debtors, including assets purchased by Stonebury, the car was purchased with

Investor monies – Stonebury’s only source of capital. The Receiver is of the view that the car should be returned to Stonebury and realized upon for the benefit of creditors.

On June 30, 2010, the Receiver contacted Ms. Zurini and requested the return of the vehicle. Ms. Zurini advised that she was unwilling to comply with the Receiver’s request.

Appendix “H” provides a copy of the purchase agreement for the Lexus, which is in Ms. Zurini’s name, and a copy of Stonebury’s bank statement, which provides evidence of the payment from Stonebury’s bank account.

7.3 Interactive Brokers

As detailed in the Receiver’s Second Report, Interactive Brokers was the primary brokerage used by the Debtors, particularly during the period mid-2007 to March, 2010. All of the Debtors’ known active trading accounts were with Interactive Brokers. In accordance with the Receivership Order, the Receiver asked Interactive Brokers to transfer all cash amounts held in the Accounts to the Receiver and to sell all securities in the Accounts and provide the resulting funds to the Receiver. A dispute arose between the Receiver and Interactive Brokers and a motion was brought by the Receiver, returnable June 3, 2010, for relief against Interactive Brokers. On June 3, 2010, the Receiver and Interactive Brokers (through their respective counsel) continued discussions and negotiations in an attempt to resolve the dispute. As a result, with the approval of the Court, the motion regarding Interactive Brokers was adjourned.

The Receiver and Interactive Brokers have agreed to the terms of an order and endorsement, subject to the Court's approval. The requested endorsement is as follows:

“All parties with an interest in the Accounts have been served with the Receiver's motion regarding the relief sought in respect of the Accounts, no party with any interest in the Accounts objects to the relief sought, and all parties with an interest in the Accounts consent to allowing the Receiver to make the directions regarding the Accounts to Interactive Brokers referenced in the order.”

The agreed upon terms of the order will be set out in the draft order with respect to this motion. As a result of the agreement, the Receiver requests that the order regarding Interactive Brokers and the endorsement be granted.

7.4 Further Items

The Receiver's approach in these proceedings has been to monetize assets in a commercially reasonable manner on a timely basis so that the Receiver has the funding it requires to investigate the Debtors' affairs. In receiverships with limited assets and complex issues, a receiver is required to use discretion to determine which avenues may generate recoveries for creditors. It is not possible, given the limited resources of this estate, to target all possible sources of recovery, in particular, those areas where the costs could exceed or approximate the recoveries.

The Receiver notes in particular that it is not seeking any relief at this time in respect of a house apparently purchased by Mander for a sibling and significant donations by Mander to SGI; however, the Receiver does intend to meet with SGI to attempt to resolve this matter. There are also potential issues between the Receiver and Mr. Obradovich concerning the ownership of Pero and a piece of real estate in Barrie, Ontario which Mr. Obradovich and Mander invested in (the details of which has not been discussed in this Report). These matters are being considered

by the Receiver and the Receiver may take steps in the future in respect of all of these (and other) sources of recovery.

The Receiver is not satisfied that all parties have cooperated with the Receiver to the extent required pursuant to the various Court orders issued in these proceedings. To the extent that this persists, the Receiver will bring it to the Court's attention at a later date.

8. OTHER ACTIVITIES

In addition to the activities detailed above, the Receiver's activities have included:

- Retrieving and storing at the Receiver's office documentation and computer equipment from 225 Church, 223 Church and 17 Stonebury;
- Corresponding with authorities and regulators;
- Meeting with the Police to obtain the items removed from Mander's residence;
- Contacting and interviewing various parties whom the Receiver was advised may have information regarding the Debtors;
- Dealing with the Debtors' utility providers;
- Following up with Interactive Brokers and Questrade;
- Corresponding with HSBC Bank Canada and various financial institutions;
- Changing locks and alarm codes at 1650 Caledon;
- Reviewing insurance documentation;
- Dealing with matters related to the closing of the sale of the Lawrence Property;
- Reviewing and negotiating listing agreements with various real estate brokers;
- Negotiating the sale of 1506 Caledon and 17 Stonebury;
- Dealing with matters related to the closing of the sale of 1506 Caledon;
- Corresponding with real estate brokers on a frequent basis regarding the marketing of the real estate;

- Drafting and finalizing the Notices and Statements of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- Meeting with two liquidators regarding the sale of the Auction Assets;
- Negotiating the auction agreement for the AEC Transaction;
- Corresponding with Service Canada regarding matters related to the Wage Earner Protection Program (“WEPP”);
- Corresponding with ADP Canada to obtain information required to deal with matters related to WEPP;
- Administering the WEPP process, including providing the required information to Service Canada and to the former employees of the Debtors;
- Reviewing documentation and corresponding with artists regarding the return of consignment artwork at the Gallery;
- Dealing with the return of the consignment artwork and responding to inquiries from the artists;
- Returning to Mander’s son certain immaterial personal items, including children’s clothing and toys;
- Responding to calls from the Debtors’ creditors;
- Dealing with issues related to Mander’s estate; and
- Drafting this Report.

9. CONCLUSION AND RECOMMENDATION

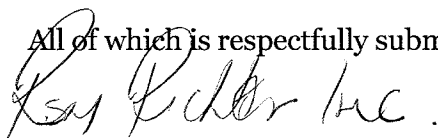
It is evident to the Receiver that Mander was operating a “Ponzi” scheme. Mander did repay some amounts to some Investors – but this is central to any Ponzi scheme. It is a game of confidence that is sure to be broken once the Ponzi-schemer fails to meet an obligation. Ultimately, Mander was unable to repay his Investors because of the magnitude of his personal expenditures, his trading abilities and the illiquidity of his investments (real estate, shares in start-up companies and personal property).

Based on (i) the business relationship between Mander and Peter Sbaraglia as evidenced by testimony provided by Mander, Peter Sbaraglia and Counsel during the Examinations, (ii) the history of the transactions between CO Capital and Mander, and (iii) various other factors including potentially missing correspondence, the Receiver believes that it is appropriate to investigate the business and affairs of CO Capital and to report back to Court with its findings and recommendations.

The Receiver also requests that this Honourable Court issue an order granting the balance of the relief sought in Section 1.1 (e), including the immediate realization on the Lexus, the delivery to the Receiver of all records in Tonin's possession and control, the cooperation of Interactive Brokers and the approval of the Receiver's activities and this Report.

* * *

All of which is respectfully submitted,



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

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 31ST DAY
)
JUSTICE MORAWETZ) OF MARCH, 2010

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



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

FRESH AS AMENDED RECEIVERSHIP ORDER

THIS MOTION made by RSM Richter Inc. (the "Receiver"), in its capacity as Receiver of all of the assets, undertakings and properties of the estate of Robert Mander and E.M.B. Asset Group Inc. (the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated March 29, 2010 (the "First Report"), the Supplement to the First Report date March 30, 2010 (the "Supplement") and on hearing the submissions of counsel for the Receiver and others,

SERVICE

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.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the *Courts of Justice Act*, R.S.O., c. 43, as amended, RSM Richter Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors and any corporations or other entities associated with, related to or controlled by the Debtors (the "Related Entities") (the "Property").

3. **THIS COURT ORDERS** that "Related Entities" includes, in particular, but is not limited to the following corporations: Mand Asset Inc.; Dunn Street Gallery Inc.; Trafalgar Capital Growth Inc. and Mander Group Inc. and Stonebury Inc.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of

independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to prevent any disbursement, withdrawal or transfer of funds by the Debtors or Related Entities or the sale, encumbrance or transfer of personal or real property of the Debtors or Related Entities, including the real property listed in Schedule B hereto (collectively, "Dispositions"), pending further order of this Court;
- (d) to direct any financial institution, wherever located and including those listed on Schedule A hereto to cease to allow any withdrawals or transfers from any account that the Debtors or Related Entities hold with such institution, including those listed on Schedule A hereto, unless otherwise directed by the Receiver in writing or by order of this Court;
- (e) to monitor and investigate the affairs of the Debtors and Related Entities;
- (f) to conduct examinations of any Person (as defined below), if deemed necessary or desirable in the Receiver's discretion;
- (g) to manage, operate, and carry on the business of the Debtors or Related Entities, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors or Related Entities;
- (h) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (i) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or Related Entities or any part or parts thereof;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors or Related Entities and to exercise all remedies of the Debtors or Related Entities in collecting such monies, including, without limitation, to enforce any security held by the Debtors or Related Entities;
- (k) to settle, extend or compromise any indebtedness owing to the Debtors or Related Entities;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors or Related Entities, for any purpose pursuant to this Order;
- (m) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors or Related Entities, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors or Related Entities;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors or Related Entities, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors or Related Entities;

- (u) to exercise any shareholder, partnership, joint venture or other rights which the Debtors or Related Entities may have;
- (v) to make or cause to be made an assignment in bankruptcy of any of the Debtors or Related Entities and to act as trustee in bankruptcy thereof; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

5. **THIS COURT ORDERS** that the Receiver shall file with the Court a report outlining its preliminary findings and recommendations with respect to the Debtors and Related Entities within 14 calendar days from March 17, 2010.

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

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

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

9. **THIS COURT ORDERS** that any transfer, disposition, encumbrance or other dealing with the real property legally or beneficially owned by the Debtors or Related Entities, including that real property specified in Schedule B, following registration of the Order of this Honourable Court made March 17, 2010 granted in this proceeding on title to such real property shall be invalid.

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

13. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors or Related Entities, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 13 or in paragraph 14 of this

Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

16. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or Related Entities or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or Related Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors or Related Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' or Related Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges

for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or Related Entities or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

20. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

21. **THIS COURT ORDERS** that all employees of the Debtors or Related Entities shall remain the employees of the Debtors or Related Entities until such time as the Receiver, on the Debtors' or Related Entities' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management

(separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

24. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements in respect of either Respondent, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for all such fees and disbursements in respect of either Respondent, both before and after the making of this Order in respect of these

proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and also subject to any security interest perfected in accordance with the *Personal Property Security Act* (Ontario) as of March 17, 2010 or any security interest in real property of the Debtors or Related Entities, including the real property listed in Schedule B, which has been properly registered on title to such real property prior to March 17, 2010.

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

26. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

APPROVAL OF REPORTS AND ACTIVITIES

27. **THIS COURT ORDERS** that the First Report and the Supplement and the activities of the Receiver referred to therein be and are hereby approved.

GENERAL

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

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

2

Schedule A

Banking Institutions

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

Account # : 930289 010

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

Account # : 003747 150

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

Account Number: 30742 00840 18

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

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

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

Account number: 342-013734-001

Schedule B

Real Property

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

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

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

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

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

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

SA CAPITAL GROWTH CORP. and
Applicant

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

Court File No: 10-8619-00CL

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FRESH AS AMENDED
RECEIVERSHIP ORDER
(RETURNABLE March 31, 2010)**

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Matthew Gottlieb (LSUC #32268B)
Tel: 416.863.5516
Fax: 416.863.0971

Lawyers for the Receiver

Appendix “B”

Estate of Robert Mander, EMB Asset Group Inc. and Related Entities

London Life Insurance Premium Payments From Mander's Bank of Nova Scotia Account No. 60186-00733-26

(Unaudited; \$C)

Date	Amount	Note	Date	Amount	Note	Date	Amount	Note
12-Sep-03	500		27-Feb-06	1,500		29-Sep-08	1,500	
10-Oct-03	200		27-Mar-06	1,500		27-Oct-08	1,500	
27-Oct-03	2,300		27-Apr-06	1,500		27-Nov-08	1,500	
27-Nov-03	1,500		29-May-06	1,500		29-Dec-08	1,500	
29-Dec-03	1,500		27-Jun-06	1,500		27-Jan-09	1,500	
27-Jan-04	1,500		27-Jul-06	1,500		27-Feb-09	1,500	
27-Feb-04	1,500		28-Aug-06	1,500		27-Mar-09	1,500	
29-Mar-04	1,500		27-Sep-06	1,500		27-Apr-09	1,500	
27-Apr-04	1,500		27-Oct-06	1,500		27-May-09	1,500	
27-May-04	1,500		27-Nov-06	1,500		29-Jun-09	1,500	
28-Jun-04	1,500		08-Dec-06	(10,000)	2	27-Jul-09	1,500	
27-Jul-04	1,500		08-Dec-06	(10,000)	2	05-Aug-09	1,500	
27-Jul-04	(1,500)	1	08-Dec-06	(5,000)	2	27-Aug-09	1,500	
05-Aug-04	1,500		27-Dec-06	1,500		28-Sep-09	1,500	
27-Aug-04	1,500		29-Jan-07	1,500		27-Oct-09	1,500	
27-Sep-04	1,500		27-Feb-07	1,500		27-Nov-09	1,500	
27-Sep-04	(1,500)	1	27-Mar-07	1,500		29-Dec-09	1,500	
05-Oct-04	1,500		27-Apr-07	1,500		27-Jan-10	1,500	
27-Oct-04	1,500		28-May-07	1,500		01-Mar-10	1,500	
29-Nov-04	1,500		27-Jun-07	1,500		Total	93,500	
29-Dec-04	1,500		27-Jul-07	1,500				
27-Jan-05	1,500		27-Aug-07	1,500				
28-Feb-05	1,500		27-Sep-07	1,500				
28-Mar-05	1,500		29-Oct-07	1,500				
27-Apr-05	1,500		27-Nov-07	1,500				
27-May-05	1,500		27-Dec-07	1,500				
27-Jun-05	1,500		28-Jan-08	1,500				
27-Jun-05	1,500		27-Feb-08	1,500				
29-Aug-05	1,500		27-Mar-08	1,500				
27-Sep-05	1,500		28-Apr-08	1,500				
27-Oct-05	1,500		27-May-08	1,500				
28-Nov-05	1,500		27-Jun-08	1,500				
28-Dec-05	1,500		28-Jul-08	1,500				
27-Jan-06	1,500		28-Aug-08	1,500	3			

Notes:

1. Cheque returned due to non-sufficient funds in the bank account.
2. Relates to loans made to Mander by London Life against Mander's life insurance policies.
3. The Receiver did not have a copy of the August, 2008 bank statement. Accordingly, the payment on August 28, 2008 was assumed to have been made, which is consistent with payments made before and after August, 2008.

Appendix “C”

BELLMORE & MOORE

Barristers and Solicitors
393 University Avenue
Suite 1600
Toronto, Ontario
M5G 1E6
tel: 581-1818 fax: 581-1279

fax:

to: Matthew P. Gottlieb
Davies Ward Philips & Vineberg LLP

fax #: 416-863-0871

from: Brian P. Bellmore
Bellmore & Moore

date: March 19 2010

subject: Robert Mander

pages: 27

Bellmore & Moore

393 University Avenue
Suite 1600
Toronto, Ontario
M5G 1E6

Brian P. Bellmore, B.Sc., LL.B., LL.M.

Tel: (416) 581-1818 ext. 221
Fax: (416) 581-1279

brian@bellmore.ca

March 18, 2010

Via fax: 416-863-0871

Matthew P. Gottlieb
Davies Ward Philips & Vineberg LLP
1 First Canadian Place
Toronto, Ontario
M5X 1B1

Dear Gottlieb:

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

The Order made by Mr. Justice Morowetz appointing a Receiver on March 17, 2010 has come to our attention. I understand you act for the Receiver, RSM Richter.

We act for a plaintiff in a pending action against Mr. Mander and others with respect to sums of money that he procured from her through false and misleading misrepresentations.

We enclose for your information a copy of the following pleadings:

Statement of Claim
Statement of Defence and Counterclaim
Reply and Defence to Counterclaim
Reply to the Defence to the Counterclaim

The action has not yet come to trial.

We wish to put the Receiver on notice of our client's claims and to offer any assistance we are able to provide in his investigation.

Yours sincerely,

BELLMORE & MOORE

Brian P. Bellmore
per: mg
Brian P. Bellmore

BPB:mg
encls.

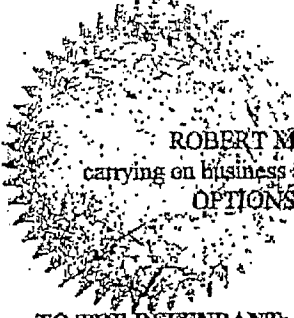
Court File No. *07cv-336612-10***ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

TASHA FLUXE

Plaintiff

- and -



ROBERT MANDER, MANDER GROUP INC., ROBERT MANDER
carrying on business as MANDER CAPITAL, TRADE FREEDOM SECURITIES INC.,
OPTIONS EXPRESS INC. and QUESTTRADE INC. TORONTO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

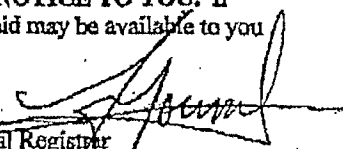
Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

DATE: *July 16/2007*

Issued by:

Address of Court office:



Local Registrar
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

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TO: ROBERT MANDER
2511 Boros Road
Suite 39
Burlington, ON L7M 5B2

MANDER GROUP INC.
2511 Boros Road
Suite 39
Burlington, ON L7M 5B2

ROBERT MANDER ccb as MANDER CAPITAL
2511 Boros Road
Suite 39
Burlington, ON L7M 5B2

TRADE FREEDOM SECURITIES INC.
2001 McGill College, Suite 1310
Montreal, QC
H3A 1G1

OPTIONSXPRESS INC.
P.O. Box 2197
Chicago, IL 60690-2197

QUESTTRADE INC. TORONTO
North American Centre
5650 Yonge Street, Suite 1700
Toronto, ON M2M 4G3

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CLAIM

1. The Plaintiff claims against Robert Mander, Mander Group Inc., Mander Capital:
 - (a) general damages in the amount of \$1,500,000.00;
 - (b) a Declaration that all monies being held in accounts in the name Robert Mander, being held in favour of the Plaintiff;
 - (c) an accounting of all monies taken and invested on behalf of the Plaintiff;
 - (d) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, as amended;
2. The Plaintiff claims as against Questrade, TradeFreedom Securities, OptionsXpress Inc.:
 - (a) an Order declaring that all monies in the accounts held at the above-mentioned firms in the name of Robert Mander, Mander Capital, Mander Group Inc., are trust monies of the Plaintiff.
 - (b) a declaration and tracing Order that the Plaintiff is entitled to those funds and an interim and a permanent injunction freezing those monies pending an accounting to be completed by the Court.
 - (c) such further and other relief as this Honourable Court may deem just.
2. The Plaintiff is an individual residing in the Town of Oakville in the Province of Ontario.
3. The Defendant Robert Mander is an individual residing in the Town of Burlington.
4. The Defendant Mander Group is both an incorporated and unincorporated entity. Robert Mander is the sole officer and director of Mander Group Inc. and was at all times the principal and driving force behind Mander Capital.
5. The Defendant Robert Mander also carries on business under the name Mander Capital.

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6. The Defendant Questtrade Inc. is a company incorporated pursuant to the Laws of Canada and carries on business as a broker of securities.
7. The Plaintiff states that in or about 2003 after completing a financial advisor course, the Plaintiff was employed by Freedom 55 Financial ("Freedom 55") owned by London Life. The Plaintiff worked with the Defendant Mander. During that time the Plaintiff and Defendant developed a strong working relationship whereby Mander who was substantially more senior than the Plaintiff convinced the Plaintiff that he was an expert in trading securities and the two of them could set up a business whereby Mander would trade securities on the parties behalf and the Plaintiff would solicit investors in a new company to be formed. Thus formed the genesis of F.M. Markets Capital Inc.
8. In or about August 2003 the Plaintiff and Defendant incorporated FM Market Capital Inc. whereby the Plaintiff and Defendant Robert Mander each held a 50% interest. The parties rented office space and opened an office at 239 Church Street, Suite 300, Oakville, Ontario.
9. The Plaintiff subsequently solicited her family and friends to invest in the company. Mander met most, if not all of the Plaintiff's family and friends and convinced them that he was an expert trader in options and warrants and had consistently achieved returns on an annualized basis at close to 100% per annum. He advised that he and his father before him were members of a special group of traders who held their own Nasdaq and NYSE seat and they were capable of writing their own options. He further advised that he was close with Dr. Alexander Elder, a well-known author on trading securities in capital markets. This, the Plaintiff later found out to be false.
10. Clients of FM were asked to loan monies to the company and were given written loan documents promising returns of anywhere from 25% to 50% per annum. Mander would invest the monies in his developed trading strategy. Mander was also supposed to be looking after the bookkeeping and accounting for the business.

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11. After the initial investments (loans) from many of F.M. customers, the Plaintiff soon learned that Mander was slowly directing these clients to a company solely controlled by him. This company was called Mander Capital Inc. or Mander Group Inc.
12. The parties carried on business through FM and continued to provide returns to their customers. Eventually in 2003, as a result of her relationship as a business partner was also convinced by Mander of his substantial success and provided her own personal capital to the Defendant Mander. Particulars of the investments are as follows:
 - a) January 10, 2006 - \$24,500.00 cdn bank draft to Robert J. Mander, for initial warrants investment.
 - b) January 10, 2006 - receipt created and issued by Robert J. Mander for \$24,500.00 cdn from Jan 10/06 - Feb 10/06.
 - c) February 9, 2006 - \$31,605.00 cdn, bank transfer of these warrants principle plus the return of 29% from January 2006 from Robert Mander's personal chequing account into the Plaintiff's chequing account.
 - d) February 22, 2006 - the Plaintiff provided Mander with \$36,500.00 and received a receipt created and issued by Robert Mander for \$36,500.00 cdn
 - e) February 2006 to March 20 2006 the Plaintiff was advised by Robert Mander that her rate of return earned for month of February 2006 was 28.5%. The Plaintiff and Mander agreed to a more thorough revised February receipt to include the rate of return earned (28.5%) and any monies withdrawn on March 20, 2006 being \$6,902.50. Mander also asked that the Plaintiff include in the revised February 2006 receipt to be dated an accurate 31 days (1 month) prior to March 20, 2006 and that all further receipts would use this date time line.
 - f) In March 2006 the Plaintiff received \$6,902.50 from the Warrants Investment, from Mander, and then roll over with Mander an even amount of \$40,000.00 cdn into March 20, 2006 Warrant Investment. On March 20, 2006 a receipt was created and issued by Robert J. Mander for \$40,000.00 cdn in favour of the Plaintiff.
 - g) On April 20, 2006 the Plaintiff again rolled over her investment \$45,000.00 cdn and received a receipt from Mander with a return earned for March 2006 of 28.5% and a withdrawal of \$6,400.00 cdn.

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- h) On April 24, 2006 \$65,000.00 cdn, a revised receipt was provided to the Plaintiff for April 20, 2006 with an additional \$20,000.00 CDN added from the Plaintiff's Options Investment with Mander.
- i) On May 20, 2006 the Plaintiff again rolled over her investment in the amount of \$72,550.00 cdn, the Plaintiff received a receipt with a return earned for April 2006 of 27% and a withdrawal of \$10,000.00 cdn.
- j) On June 20, 2006 \$79,962.00 cdn, the Plaintiff again reinvested and received a receipt with for returns earned in May 2006 of 24% and a withdrawal of \$10,000.00 cdn
- k) On July 20, 2006 \$84,153.00 cdn, the Plaintiff again reinvested and received a receipt with interest earned June 2006 of 24% and a withdrawal of \$15,000.00 cdn.
- l) On August 20, 2006 the Plaintiff was owed a \$104,350.00 cdn the Plaintiff received a receipt.
- m) The Plaintiff claims she is owed \$104,350.00 which funds are in the Mander accounts.

13. In addition, the Plaintiff made what Mander called as "option investments" commencing in May of 2003 which investments were as follows:

May 27, 2003	\$15,640.12
September 7, 2003	7,000.00
October 6, 2003	6,400.00
November 2, 2003	11,500.00
December 3, 2003	17,193.00
January 6, 2004	22,752.00
February 6, 2004	57,700.00
March 3, 2004	36,000.00
March 7, 2004	43,586.00
April 3, 2004	43,200.00
April 8, 2004	59,765.00
May 5, 2004	51,840.00
May 11, 2004	100,724.00

.. /7

August 8, 2005 20,000.00

February 22, 2006 6,500.00

14. Mander confirmed that the Plaintiff's investments through options as of August 2006 had a value of \$1,043,452.00. These monies were in the Mander trading accounts and Mander made a practice of soliciting public funds and trading client's accounts contrary to the *Securities Act* as he has no license to do so.
15. On August 23, 2006 the Defendant confirmed to the Plaintiff by email that "your warrant money has been sitting with me since the beginning of August.
16. In addition to the above the Plaintiff had options invested with Mander which amounts were confirmed by email in excess of \$1,000,000.00 which are in securities in Mander's accounts.
17. Despite continued requests, the Defendant have refused to repay the Plaintiff's sums he claims to be holding on her behalf.
18. The Plaintiff further pleads and relies upon Rules 17.02 (f), (g) (h) and (n) in support of the service of this Claim outside of the Province of Ontario.

The Plaintiff requests that this action be tried at Toronto.

LEVINE, SHERKIN, BOUSSIDAN
A Professional Corporation of Barristers
4211 Yonge Street, Suite 200
Toronto, ON M2P 2A9

Kevin D. Sherkin
Tel: (416) 224-2400
Fax: (416) 224-2408
Solicitors for the Plaintiff

Court File No. 07-CV-336612 PD2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:**TASHA FLUKE****PLAINTIFF****and**

**ROBERT MANDER, MANDER GROUP INC., ROBERT MANDER
carrying on business as MANDER CAPITAL, TRADE FREEDOM
SECURITIES INC., OPTIONS EXPRESS INC.
and QUESTTRADE INC. TORONTO**

DEFENDANTS

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendants Robert Mander, Mander Group Inc. and Robert Mander carrying on business as Mander Capital (collectively referred to as the "Mander Defendants") admit the allegations contained in Paragraph 8 of the Statement of Claim to the extent that the Plaintiff Tasha Fluke ("Fluke") and the Mander Defendants incorporated FM Market Capital Inc. ("FM") and that each hold a 50% interest in FM. The Mander Defendants specifically deny the second sentence of Paragraph 8 of the Statement of Claim.
2. The Mander Defendants deny the allegations contained in Paragraphs 1, 2 (the first of two paragraphs designated as paragraph "2"), 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim.
3. The Mander Defendants have no knowledge in respect of the allegations contained in Paragraphs 2 (the second of two paragraphs designated as paragraph "2") and 6 of the Statement of Claim.

4. The Mander Defendants have no knowledge as to the first sentence of Paragraph 7 of the Statement of Claim. The Mander Defendants specifically deny the second and third sentences of Paragraph 7 of the Statement of Claim.

THE PARTIES

5. The Defendant Robert Mander ("Mander") is an individual who resides in Burlington, in the Province of Ontario. Mander is an entrepreneur and was at all material times carrying on the business of investing in small companies.

6. The Mander Defendants specifically deny that Mander at any time represented himself to the Plaintiff or anyone else to be a trader of securities, of being an "expert in trading securities" or any of the other allegations set out more particularly in paragraphs 7 and 9 of the Statement of Claim. Moreover, the Mander Defendants deny that Mander at any time acted in contravention of any applicable securities law, including but not limited to the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

7. Mander Group Inc. ("MGI") is a corporation duly incorporated pursuant to the laws of the Province of Ontario and carries on the business of managing the portfolio of FM.

8. The Mander Defendants state that to their knowledge, the Defendant Mander Capital does not exist.

CREATION OF FM

9. In or around 2001 to 2003, Mander and Fluke were both employed by London Life. Mander and Fluke did not work together but were located in adjacent offices.

10. On or around September 16th, 2003, Mander determined that he was leaving London Life to start his own business of managing an investment portfolio. He mentioned his plans to Fluke.

11. Shortly thereafter, Fluke proposed that Mander and Fluke partner in a new venture as Fluke thought that her close friends and family would likely be interested in investing in Mander's venture. Fluke further suggested that Mander provide the investment strategy and Fluke would identify potential clients from among her family and close friends.

12. Mander agreed to the proposition and Fluke and Mander caused to be incorporated FM on or around August 25th, 2003. Mander and Fluke were equal shareholders in FM.

13. Mander rented office space for FM in October, 2003. Fluke had no funds to put into FM and, as a result, all initial outlays of capital to start-up FM were contributed by Mander, including but not limited to office equipment, stationery and letterhead, computing equipment, lease payments and related utilities expenses. Mander estimates the start-up costs of FM to be \$60,000.00.

PROMISSORY NOTES

14. Following the incorporation of FM, Fluke proceeded to contact her close friends and family. In the event that the friends and family were interested in the venture, they would lend FM money guaranteed by a promissory note. FM would then utilise the borrowed funds to trade securities and options through trading accounts set up in the name of FM via a licensed investment dealer.

15. Except for Fluke's mother, Fluke's brother Sean Fluke and Fluke's boyfriends, Mander did not initially meet any of the individuals Fluke approached or the individuals who lent FM money.

16. Fluke drafted and signed all promissory notes on behalf of FM. Mander at no time contributed to the drafting of the promissory notes. Fluke frequently would determine the rate of interest of the promissory notes independent of Mander but on some limited occasions, she would determine the rate of interest in co-operation with Mander.

17. The promissory notes bore varying rates of interest, of anywhere between 20% to 50% interest and had a one year term.

18. The monies loaned to FM were initially deposited directly into FM's bank account. Eventually, Fluke deposited the loaned monies directly into her account and in turn, would write a check to FM. Mander does not know if 100% of the funds provided to Fluke were transferred to FM or if any were retained by Fluke in whole or in part.

19. Given FM's success in investing the borrowed funds and meeting all interest commitments thereon, at the end of the first year, most investors opted to roll-over their loan along with the interest accrued into a new promissory note for an additional one-year term. However, at least three lenders approached Mander personally and stated that they no longer wanted to deal with Fluke but wanted to deal directly with Mander as they thought Fluke was not dealing with them fairly.

20. Over one and a half years, the relationship between Mander and Fluke deteriorated. Based on Fluke's behaviour, Mander became concerned that Fluke was refusing to disclose to

him what, if any, work she was doing for the company and copies of any financial dealings she was negotiating on behalf of FM. As a result, in or around July, 2006, Mander determined that FM should be disbanded and advised Fluke in or around July, 2006 of his decision.

PAYMENT OF ALL PROMISSORY NOTES

21. Upon the demise of FM, FM's trading accounts held a total balance of approximately \$600,000.00.

22. In total, FM had \$1,800,000.00 in outstanding promissory notes.

23. All lenders holding promissory notes were paid in full with Mander personally paying the shortfall of \$1,200,000.00. Fluke at no time contributed to the debts of FM in spite of being an equal shareholder.

24. To date, Fluke is the only alleged debtor of FM.

RECORDS AND BOOKKEEPING OF FM

25. The Mander Defendants specifically deny the allegation at paragraph 10 of the Statement of Claim and state that at all material times, Fluke was solely responsible for maintaining the bank accounts, financial records and for dealing with all administrative needs of FM.

26. Initially, Fluke worked out of FM's offices. Eventually, Fluke conducted most of her work from home and maintained some files at home and some at FM's offices.

27. Immediately after advising Fluke that FM was to be disbanded, Mander discovered that Fluke had attended at FM's offices and removed all financial and administrative files.

REMOVAL OF FUNDS FROM FM BY FLUKE

28. The Mander Defendants state that Fluke, without authorization and/or the knowledge and/or acquiesce of Mander, removed funds from FM for her personal use.

THREATS

29. Mander states that in or about June, 2006, Sean Fluke, Fluke's brother, left a threatening message on his voicemail at work that made threats against Mander's personal safety and that of his family.

30. In or about June, 2006, a former information technology employee of FM also received a threatening telephone call from Sean Fluke.

31. The Mander Defendants state that the above-mentioned threats were made at the instigation of Fluke who provided information to Sean Fluke as to the location and contact details of Mander and the employee.

32. In the alternative, the Mander Defendants state that Fluke knew of and co-operated in the delivery of the above-referenced threats.

33. The police have been contacted and have acted in due course.

DAMAGES

34. The Mander Defendants specifically deny that they are in law responsible for the damages as alleged by the Plaintiff.

35. The Mander Defendants state that at no time did Fluke personally loan money to FM as alleged in the Statement of Claim because she had no money to lend. The Mander Defendants state that instead, Fluke had significant personal debts. Ultimately, Fluke withdrew approximately \$200,000.00 from FM, some of which was used to meet her financial commitments including credit card debts and student loans.

36. The Mander Defendants specifically deny that the monies set out more particularly at paragraph 12 of the Statement of Claim are Fluke's personal monies and that such monies were advanced by Fluke. The Mander Defendants state that the advancement of these monies to FM, such advancement not admitted but specifically denied, are in fact monies advanced to Fluke by her friends and family to loan to FM and that Fluke is attempting to claim these loans as personal loans to FM. All claims by investors for money loaned to FM through Fluke's personal account have been paid by Mander personally. The money claimed by Fluke was investors' money, not hers, and have already been repaid.

37. The Mander Defendants further state that the monies claimed at paragraph 13 of the Statement of Claim were never advanced to FM or any of the Mander Defendants by Fluke. The Mander Defendants state that Fluke at no time invested in any "option investments" as alleged and puts the Plaintiff to the strict proof thereof.

38. The Mander Defendants specifically deny that the Plaintiff has suffered damages as alleged and puts the Plaintiff to the strict proof thereof.

39. In the alternative, to the extent that the Plaintiff has suffered any damages, which is not admitted but denied, the Mander Defendants state that;

- (a) they were not caused or contributed to by any conduct of the Mander Defendants, its agents or employees;
- (b) they are excessive and/or remote;
- (c) the Mander Defendants are not at law responsible for them; and/or
- (d) the Plaintiff has failed to take all reasonable and sufficient steps to mitigate said damages.

40. The Defendants therefore request that this action as against them be dismissed with costs.

COUNTERCLAIM

1. The Mander Defendants, Plaintiffs by Counterclaim, claim:

- (a) the sum of \$200,000.00 representing monies removed from FM unlawfully by Thuko;
- (b) the sum of \$600,000.00 representing 50% of the monies paid by Mander to meet the debts of FM;
- (c) special damages, the particulars of which to be provided prior to trial;
- (d) aggravated, exemplary and punitive damages in the amount of \$50,000.00;
- (e) pre and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended; and

(f) costs of this Counterclaim on a full indemnity basis together with any Goods and Services Tax which may be payable on any amount pursuant to the *Excise Tax Act*, R.S.C. 1985, as amended; and

(g) Such other relief as this Honourable Court may deem just.

2. The Mander Defendants, Plaintiffs by Counterclaim, repeat and rely upon the allegations in the Statement of Defence in support of the counterclaim.

3. The Plaintiffs by Counterclaim ask that this action be tried at the same time and place as the main action.

September 17th, 2007

AYLESWORTH LLP
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Darcy Davison-Roberts (48496V)
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Solicitors for the Mander Defendants,
Plaintiffs by Counterclaim

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Solicitors for the Plaintiff

AND TO:

TRADE FREEDOM SECURITIES INC.
2001 McGill College, Suite 1310
Montreal, QC H3A 1G1

Defendant

OPTIONS EXPRESS INC.
P.O. Box 2197
Chicago, IL 60690-2197
U.S.A.

Defendant

AND TO

QUESTTRADE INC. TORONTO
North American Centre
5650 Yonge Street
Suite 1700
Toronto, ON M2M 4G3

Defendant

Court file No: 07-CV-336612 PD2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TASHA FLUKE

Plaintiff

-and-

ROBERT MANDER, MANDER GROUP INC., ROBERT MANDER
carrying on business as MANDER CAPITAL, TRADE FREEDOM
SECURITIES INC., OPTIONS EXPRESS INC.
and QUESTRAD INC. TORONTO

Defendants

REPLY AND DEFENCE TO COUNTERCLAIM

1. By way of reply to the Statement of Defence and Counterclaim, the Plaintiff repeats and relies on the allegations in the Statement of Claim.
2. The Plaintiff admits the allegations contained in paragraphs 5, 7 and 9 of the Statement of Defence.
3. The Plaintiff denies the allegations contained in the last sentence of paragraph 1 and paragraphs 2, 4, 6, 8 and 10-40 of the Statement of Defence.
4. The Plaintiff specifically denies the allegations in paragraph 35 of the Statement of Defence and states that she personally advanced the funds referred to in the amounts and on the dates described in paragraph 12 of the

Statement of Claim to Robert J. Mander ("Mander") in his personal capacity.

Mander stated that the funds would be invested by him in what he called warrants and agreed in writing that the advance together with a stipulated return would fall due and be paid by him in one month. The amounts due were rolled over at the end of each month, in whole or in part, and similar written agreements were entered for the succeeding month between the Plaintiff and Mander which were signed by Mander. The amount due to the Plaintiff in respect of the warrant advances as of August 20, 2006 was \$104,350.00. The Plaintiff has demanded payment of the balance due and payable by Mander but has failed to make payment of same.

5. The Plaintiff specifically denies the allegations contained in paragraph 36 of the Statement of Defence. The Plaintiff states that she personally advanced funds in the amounts and on the dates referred to in paragraph 13 of the Statement of Claim to Mander in his personal capacity. Mander stated the funds would be invested by him in what he called options. He further agreed in writing that the advance together with a stipulated return would fall due and be paid by him in one month. The amounts due were rolled over, in whole or in part at the end of each month and new agreements in writing were entered each month between the Plaintiff and Mander which were acknowledged in writing by Mander. The amount due to the Plaintiff in respect of the option loans as of August 2006 was \$1,043,452.00. The Plaintiff has demanded payment of the balance due and payable by Mander but he has failed to make payment of same.

6. The Plaintiff will rely on the above written agreements and acknowledgments of indebtedness by Mander at the trial of this action.

DEFENCE TO COUNTERCLAIM

7. The Defendant by Counterclaim denies the allegations in the Counterclaim.

8. The Defendant by Counterclaim specifically denies the allegation in paragraph 1(a) of the counterclaim that she unlawfully removed the sum of \$200,000 from FM. The Defendant by Counterclaim puts the Plaintiff to the strictest proof of this allegation.

9. With reference to the allegations in paragraph 1(b) of the Counterclaim, the Plaintiff states and the fact is that there is no agreement or other legal obligation for the Plaintiff to pay Mander 50% of the monies paid by him to meet the debts of FM. There were funds on deposit in the accounts of FM at the time of the termination of the business relationship between the Plaintiff and Mander in July 2006 in excess of the \$1,616,685 owing to FM's clients. Mander had sole control over these funds as Treasurer of FM and has failed or refused to provide any accounting or financial statements for FM to the Plaintiff notwithstanding that the Plaintiff owns 50% of the shares of FM.

10. The Defendant by Counterclaim requests that this action be dismissed with costs on a substantial indemnity basis.

March 13, 2008

BELLMORE & MOORE

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M5G 1E6

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Solicitor for the Plaintiff

TO:

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Solicitors for the Defendants, Robert Mander,
Mander Group Inc. and Robert Mander carrying
on business as Mander Capital

AND TO: **BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors
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Scotia Plaza
Toronto, Ontario
M5H 3Y4

James D.G. Douglas (20569H)
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Solicitors for the Defendant
Trade Freedom Securities Inc.

AND TO: **MINDEN GROSS LLP**

Barristers and Solicitors
2200 - 145 King Street West
Toronto, Ontario
M5H 4G2

A. Irvin Schein (20055K)
Tel: 416-369-4135
Fax: 416-864-9223

Solicitors for the Defendant, Questtrade Inc. Toronto

Court File No. 07-CV-336612 PD2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TASHA FLUKE

Plaintiff

and

ROBERT MANDER, MANDER GROUP INC., ROBERT MANDER
CARRYING ON BUSINESS AS MANDER CAPITAL, TRADE FREEDOM
SECURITIES INC., OPTIONS EXPRESS INC. and QUESTTRADE INC.
TORONTO

Defendants

AND BETWEEN:

ROBERT MANDER, MANDER GROUP INC. and ROBERT MANDER
CARRYING ON BUSINESS AS MANDER CAPITAL

Plaintiffs by Counterclaim

and

TASHA FLUKE

Defendant to the Counterclaim

**REPLY
TO THE DEFENCE TO THE COUNTERCLAIM**

1. The Defendants, Robert Mander and Mander Group Inc. (collectively referred to as the "Mander Defendants") deny Paragraphs 7, 8, 9 and 10 of Tasha Fluke's Defence to Counterclaim. The Mander Defendants plead and rely on the pleadings set out in their Statement of Defence and Counterclaim.

-2-

2. The Mander Defendants specifically deny the allegations in paragraph 9 of the Defence to Counterclaim and state that Tasha Fluke was a signatory on FM Market Capital Inc.'s bank accounts and, as such, Robert J. Mander did not have sole control of FM Market Capital Inc.'s funds.

3. The Defendant Robert Mander states that at no time did he carry on business as Mander Capital, nor does any such organization exist to his knowledge.

April 28, 2008

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Counterclaim Robert Mander and Mander
Group Inc.

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Solicitors for the Plaintiff (Defendant to the Counterclaim)
Tasha Fluke

-3-

AND TO: **OPTIONS EXPRESS INC.**

P.O. Box 2197

Chicago, IL 60690-2197

U.S.A.

Defendant

Appendix “D”

Robert Mander, EMB Asset Group Inc. and Related Entities

Summary of Real Estate Transactions

(Unaudited; \$C)

Address	Date Purchased	Note	Total Purchase	Funds paid by	
			Price	Mander	Sale Proceeds ⁵
18 Stonebury Place, Freelton, ON	30-Aug-07		745,000	745,000	785,000
1650 Highpoint Sideroad, Caledon ON	4-Jun-08		2,000,000	2,000,000	-
17 Stonebury Place, Freelton, ON	20-Jun-08	1	939,000	939,000	-
223 Church Street, Oakville, ON	20-Jun-08	2	1,200,000	1,200,000	-
1506 Highpoint Sideroad, Caledon, ON	23-Jun-08		190,000	190,000	-
1056 Wilno Rd, South, Wilno, ON	8-Jul-08		120,000	120,000	-
388 Prince of Wales, Mississauga, ON	1-Oct-08		298,400	298,400	293,000
225 Church Street, Oakville, ON	10-Oct-08	2	1,460,000	1,460,000	-
1225 Lawrence Crescent, Oakville, ON	7-Oct-09	3	2,900,000	900,000	-
S/W corner Horseshoe Valley Rd & Line 4, Oro-Medonte, ON		4	1,750,000	925,115	-
			<u>11,602,400</u>	<u>8,777,515</u>	<u>1,078,000</u>

Notes:

1. On September 1, 2009, The Toronto-Dominion Bank provided a mortgage on this property in the amount of \$633,750.
2. On October 7, 2009, Home Trust Company provided mortgages on 223 and 225 Church Street in the amounts of \$612,000 and \$630,000, respectively.
3. \$2 million of the purchase price was satisfied by a mortgage provided by HSBC Bank Canada, with the balance paid from the Church Street mortgages.
4. Mander's contribution to the purchase of a property owned by 1198677 Ontario Limited.
5. Proceeds realized by Mander on the sale of the properties.

Appendix “E”

Robert Mander, EMB Asset Group Inc. and Related Entities

Investments in Illiquid Start-Up Companies

(Unaudited; \$C)

Company Name	Amount
2197204 Ontario Inc o/a Atlas Global Financial Technologies	1,909,000
Manitou Gold Inc	30,000
Valt.x Holdings Inc.	57,500
WIC CDN INC	500,000
	<u>2,496,500</u>

Appendix “F”

Robert Mander, EMB Asset Group Inc. and Related Entities

Stonebury Expenses

(Unaudited; \$C)

Description	Amount
Home construction and improvements	219,053
Custom home design	98,219
Lexus for Ms. Zurini	74,732
Labour	70,038
Roofing	56,222
Window coverings	39,148
Security	28,100
Property taxes	21,196
Rugs	11,403
Other	99,049
	<u>717,160</u>

Appendix “G”

Robert Mander, EMB Asset Group Inc. and Related Entities
Donations to Soka Gakkai International
(Unaudited; \$C)

Date	Donated by	Note	Donation
30-Apr-07	Mander Group Inc.		100,000
2-Nov-07	Stonebury Inc.		100,000
30-Jan-09	Robert Mander		100,000
Various	Robert Mander	1	20,500
			<u>320,500</u>

Note:

1. During the period September 1, 2005 to January 31, 2009 Mander donated \$500 per month to Soka Gakkai International.

Appendix “H”



LEXUS OF GAINVILLE
A DIVISION OF ARVIN MOTOR SALES LTD. INC.
2075 WYECROFT ROAD, GAINVILLE, ONTARIO L6L 6R7
TEL: (905) 847-8400 FAX: (905) 946-1512
TOLL FREE: 1-866-LEXUS-36

8812882200010001
DEALER REG. NO.
4785712

DEAL 14204 DATE 10/08/2008

PURCHASER MARIA A ZURINI		HOME PHONE NO. (905) 637-2910		BUSINESS PHONE NO. (905) 510-0914		E-MAIL MZURINI@STONEBURY.COM	
ADDRESS 72-680 REGENCY CRT		APT. NO.	CITY BURLINGTON	PROVINCE ON	POSTAL CODE L7M 3L9	OCCUPATION	
DRIVER'S LIC. NO. Z9367-51916-35317		INSURANCE CO. CO OPERATORS		POLICY NO. 304053810		EXPIRY DATE	INS. AGENT

PLEASE PRINT NAME, PHONE NO. AND ADDRESS OF THE PERSON WHO IS PROVIDING THE DEALER, ON THE TERMS SET OUT ON THE FRONT AND BACK OF THIS PAGE.

VEHICLE DESCRIPTION

<input type="checkbox"/> NEW <input type="checkbox"/> USED	<input type="checkbox"/> POLICE VEHICLE <input type="checkbox"/> TAXICAB	<input type="checkbox"/> DAILY RENTAL <input type="checkbox"/> OTHER	YEAR 2008	MAKE LEXUS	MODEL RX400H	COLOUR TGO	LIC. NO.	
V.I.N.					STOCK NO. HW31UPUM	SAFETY STANDARDS CERTIFICATE NO.		
IF MANUFACTURER WARRANTY APPLICABLE TIME IS MEASURED FROM			OCT 08	20	08	DISTANCE TRAVELLED	KM <input type="checkbox"/> MI <input type="checkbox"/>	PURCHASER'S INITIAL

BASIC VEHICLE AND OPTIONS

BASIC VEHICLE (MSRP)	62100.00
OPTIONAL EXTRAS	
DVD BASED NAVIGATION SYST	
9-INCH LIQUID CRYSTAL DIS	
2 SETS OF WIRELESS HEADPH	
REAR AUDIO JOYSTICK CONTR	
AUDIO AND DVD REMOTE CONT	
11 SPEAKERS	
REAR SEAT DVD ENTERTAINME	
MARK LEVINSON AUDIO	
AM/FM STEREO CASSETTE, CO	
T.B.D	
ADD 17 INCH SNOW TIRE PACKAGE	3200.00
TOTAL BASIC VEHICLE AND OPTIONAL EXTRAS PRICE	65300.00

PURCHASE PRICE AND PAYMENT

TOTAL SALE PRICE			▶	65300.00
FREIGHT		ONVIC FEE		1900.00
FEDERAL AIR CONDITIONER TAX				100.00
TAX FOR FUEL CONSUMPTION				75.00
ADMINISTRATION FEE				
REGISTRATION PROGRAM				399.00
PRODUCT NAME AND DESCRIPTION		WARRANTY PERIOD		DATE OF COMMENCEMENT
		NO. OF MONTHS	NO. OF KMS	
EXT. WARR.				DECLINED
PAINT PROTECTION				299.00
LEATHER/FABRIC				398.00
STONEGUARD				399.00
PKG DISCOUNT				98.00

TOTAL

PRE-DELIVERY EXPENSE	N/A
TOTAL SALE PRICE	65300.00

TOTAL VEHICLE PRICE

TRADE-IN ALLOWANCE	N/A
TOTAL VEHICLE PRICE LESS TRADE-IN ALLOWANCE	68772.00
PROVINCIAL SALES TAX ON TOTAL VEHICLE PRICE LESS TRADE-IN ALLOWANCE	5501.76
G.S.T. ON TOTAL VEHICLE PRICE LESS TRADE-IN ALLOWANCE (\$ 68772.00)	3438.60

TRADE-IN DESCRIPTION AND LIEN DISCLOSURE

<input type="checkbox"/> DAILY RENTAL <input type="checkbox"/> POLICE VEHICLE <input type="checkbox"/> TAXICAB	V.I.N.	
YEAR	MAKE	MODEL
COLOUR	G.S.T. REGISTRANT NO.	G.S.T. ON TRADE IN \$
DISTANCE TRAVELLED N/A KM MI	LIENHOLDER	AMT OF OUTSTANDING LIENS \$

LICENSE FEE	<input type="checkbox"/> TRANSFER <input type="checkbox"/> NEW PLATES	20.00
FUEL (INCLUDES G.S.T.)		N/A
PAYOUT ON LIENS AGAINST TRADE-IN		N/A

G.S.T. REGISTRANT NO. ()	N/A
FUEL TAX CONSERVATION REBATE	N/A
TOTAL PURCHASE PRICE	77732.36
DEPOSIT <input type="checkbox"/> CASH <input type="checkbox"/> CHEQUE <input type="checkbox"/> C. CARD	3000.00

AMOUNT FINANCED (SUBJECT TO LENDER'S APPROVAL)	N/A
AMOUNT DUE ON DELIVERY	74732.36

FINANCING TERMS

PRINCIPAL AMOUNT	N/A	
LIFE INSURANCE (IF REQUESTED)		
ACCIDENT AND HEALTH INSURANCE (IF REQUESTED)		
P.S.T. ON TOTAL INSURANCE		
REGISTRATION FEE		
TOTAL TO BE FINANCED (SUBJECT TO LENDER'S APPROVAL)		
COST OF BORROWING	%	
AMOUNT OF PAYMENTS \$ 74732.36	NO. OF PAYMENTS 1	PAYMENT START DATE 11/07/2008

ACCEPTANCE OF TERMS

I HAVE READ THE TERMS ON THE FRONT AND BACK OF THIS PAGE AND AGREE THAT YOU HAVE NOT/MADE ANY PROMISES TO ME, NOR ARE THERE ANY OTHER TERMS RELATING TO THIS AGREEMENT, EXCEPT AS WRITTEN ON THE FRONT AND BACK OF THIS PAGE AND THAT THIS AGREEMENT WILL ONLY BE EFFECTIVE WHEN SIGNED BY YOUR AUTHORIZED REPRESENTATIVE.	
X	CO-SIGNER (IF ANY)
NAME AND POSITION OF AUTHORIZED REPRESENTATIVE CAROL BOLARESKI-ZURINI	
SIGNATURE OF AUTHORIZED REPRESENTATIVE	REG. NO. 4692182
SALESPERSON'S NAME MARIE BALMAUTH	
X	REG. NO. 4347373

HSBC BANK CANADA
2500 APPLEBY LINE
BURLINGTON, ONTARIO, L7L 0A2

342

31OCT2008

2

STONEBURY INC.

225 CHURCH STREET
OAKVILLE ON L6J 1N4

342-010174-001

CUI

CAD

16OCT *DR MEMO			
CALEDON TAXES, TOWN OF			
HIB- 83822X37684	211.69		
16OCT *DR MEMO			
CALEDON TAXES, TOWN OF			
HIB- 83822X37686	593.96		
16OCT *DR MEMO			
TELUS MOBILITY			
HIB- 83813X148066	317.81		
16OCT *DR MEMO			
ADT SECURITY SERVICES CA			
HIB- 83813X148067	296.04		133,854.98
17OCT *POS PURCHASE			
STAPLES #4			
#0001001708	307.13		
17OCT TRANSFER			
DFT 302327			
LEXUS OF OAKVILLE			
182 HSBC OAKVILLE	74,732.36		58,815.49
20OCT DEPOSIT			
182 HSBC OAKVILLE		197.64	59,013.13
22OCT CHEQUE 000000000198	1,417.50		57,595.63
23OCT *POS PURCHASE			
STAPLES #4			
#0001001401	69.30		57,526.33
24OCT *CHARGES			
Bank charges			
03SEP2008 TO 30SEP2008			
Invoice No 51957	84.06		57,442.27
27OCT *DR MEMO			
HSBC MASTERCARD			
HIB- 84297X360412	1,169.17		
27OCT DEPOSIT			
182 HSBC OAKVILLE		199.11	56,472.21