

RSM Richter

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

RSM Richter Inc.
Toronto, July 30, 2010

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**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**

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

July 30, 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.

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

As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, property and undertaking of entities related to EMB or

Mander. These entities include, but are not limited to, Mand Asset Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc. (“Related Entities”) (the Related Entities and the Respondents are collectively referred to as the “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) Detail issues related to the sale of 239 Church Street, Oakville, Ontario (“239 Church”) by 91 Days Hygiene Inc. (“91 Days”) to Randvest Inc.; and
- b) Seek an order requiring that the proceeds generated from the sale of the Property be held in trust pending the outcome of the Receiver’s investigation into the business and affairs of the CO Group (as defined below) or further order of this Court.

2. BACKGROUND

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

2.1 239 Church

On July 14, 2010, the Receiver presented its Fourth Report to Court dated July 2, 2010 (“Fourth Report”) seeking various relief, including authority to conduct an examination into the business, assets and affairs of C.O. Capital Growth Corp. (“CO”), Peter Sbaraglia and Mandy Sbaraglia (the “Sbaraglias”) and any corporation or entities associated with, related to or controlled by the Sbaraglias or CO (the “CO Group”). The Court issued an order (“Order”) granting the Receiver the

relief it was seeking and also requiring the CO Group to provide seven days written notice to counsel to the Receiver, Davies Ward Phillips & Vineberg LLP (“Davies”), before any sale or encumbrance of any Property¹. A copy of the Order is attached as Appendix “A”.

During the motion on July 14, 2010, the Court was advised by Milton Davis (“Davis”), counsel to the CO Group, that the CO Group was in negotiations to sell 239 Church. On July 23, 2010, Davis advised counsel to the Receiver that an agreement for the sale of 239 Church had been finalized and that the transaction was set to close on July 31, 2010. The owner of 239 Church is 91 Days, an entity which falls within the definition of the CO Group. A copy of the email notification from Davis to Davies is attached as Appendix “B”. A copy of the Agreement of Purchase and Sale (and related documents) is attached as Appendix “C”. The Agreement of Purchase and Sale is dated July 15, 2010 and the closing date reflected therein is July 30, 2010. The purchase price is \$1.25 million.

Davis has since informed counsel to the Receiver that the completion date for the sale of 239 Church has been postponed to August 13, 2010, which is after the return date of this motion.

3. THE ISSUE

Since the date of the motion to consider the Fourth Report, the Receiver has commenced its investigation into the CO Group. The Receiver has written to a number of the CO Group’s banks and financial institutions requesting details of activity. On July 27, 2010, the Receiver sent a letter to Peter and Mandy Sbaraglia seeking full and complete details of their assets, liabilities and/or information related to their personal and business affairs. A copy of this letter is attached as Appendix “D”. On July 27, 2010, Davis responded by email that his clients are on vacation until August 9, 2010 and will respond “as soon as they can”. In a subsequent email on the same date he

¹ Pursuant to the Order, Property includes any assets, undertakings and properties of the CO Group.

advised that “he can’t predict when they will be able to get everything done...it will likely require more than the three days you have suggested”. A copy of Davis’ emails of July 27, 2010 is attached as Appendix “E”.

The Receiver has not been able to determine at this time whether or not the CO Group was involved in the Mander schemes. Rather, the Receiver has advised the Court of issues that it has identified vis-à-vis the CO Group that require further investigation and that, pending its findings, it will make further recommendations to the Court. In the event that the Receiver has a claim or claims against the CO Group, the Receiver is concerned that the CO Group’s assets not be distributed to any creditor(s) at this time, except for Royal Bank of Canada (“RBC”), which has a mortgage on 239 Church. The Receiver understands that the outstanding mortgage is in the amount of approximately \$200,000.

Davis has advised the Receiver that 239 Church was purchased well prior to the commencement of the relationship between the CO Group and Mander and thus 239 Church could not have been purchased with money flowing from or related to the Mander scheme. The Receiver is of the view that if it (or another party) has a claim against the CO Group for their participation, if any, in the scheme, such a claim would not be limited to a tracing claim, but could also include a claim or claims related to conduct and execution of the scheme.

The Receiver is concerned that if there are valid claims against the CO Group, a distribution before completion of the Receiver’s investigation may constitute a presumed preference and would: a) make it difficult for the Receiver (or others) to recover from the recipients of the distributions (wherever located and whomever they are); and b) cause the Receiver to incur substantial time and cost recovering from these parties.

The Receiver also understands that Peter Sbaraglia and/or CO entered into an arrangement (the “Undertaking”) with the OSC pursuant to which Peter Sbaraglia and CO are required to pay CO’s investors. Peter Sbaraglia and/or CO funded certain payments in accordance with the Undertaking, but the Receiver understands that obligations remain. The Receiver is not aware of the amount of the remaining obligations. The Receiver has been advised that CO has approached the OSC to have its obligations under the Undertaking terminated.

The Receiver is not presently able to confirm the date by which its investigation of the CO Group will be completed. The Receiver proposes to provide the Court with an update by September 15, 2010, at which time the Receiver will advise the Court of its progress and if it believes that the sale proceeds should continue to be held in trust.

4. ROYAL BANK OF CANADA

Davies has reviewed the mortgage held by RBC on the Property. Davies is of the view that the mortgage has been validly registered on title to the relevant lands on April 20, 2005 as Instrument No. HR371027 and would be enforceable against such lands. No prior mortgages appear to be registered on title. Accordingly, the Receiver consents to the repayment of the RBC mortgage from the sale proceeds generated from the Property.

5. CONCLUSION AND RECOMMENDATION

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

* * *

All of which is respectfully submitted,

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