

RSM Richter

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

RSM Richter Inc.
Toronto, August 17, 2011

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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, AS AMENDED**

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

August 17, 2011

1. INTRODUCTION

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

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

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

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

1.1 Purposes of this Report

The purposes of this Report are to:

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

1.2 Currency

All currency references in this Report are to Canadian dollars.

1.3 Restrictions

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

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

2. BACKGROUND

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

3. REIMBURSEMENT OF FEES TO THE MANDER DEBTORS' ESTATE

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

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

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

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

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

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

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

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

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

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

4. CLAIMS PROCEDURE

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

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

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

4.1 Summary of the Claims Received

4.1.1 CO Capital Debtors' Estate

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

Type	\$000s			
	Principal	Interest	Payments	Net Claim
Super-priority ²	3	-	-	3
Investor (unsecured)	37,093	11,991	(3,805)	45,279
Non-investor (unsecured)	284	-	-	284
	<u>37,380</u>	<u>11,991</u>	<u>(3,805)</u>	<u>45,566</u>

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

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

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

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

4.1.2 Mander Debtors' Estate

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

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

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

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

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

4.1.3 Proposed Method for Determination of Claims

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

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

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

4.1.4 Claims Review

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

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

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

4.2 Remaining Funds

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

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

4.3 Next Steps

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

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

⁴ These procedures only relate to the Mander Debtors.

⁵ The names of the Claimants have been redacted. An unredacted version is provided in Confidential Appendix "1".

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

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

5. BARRIE PROPERTY

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

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

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

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

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

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

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

6. RECOMMENDATION

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

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink, appearing to read "RSM Richter Inc.", is written over the typed name.

**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**