
Fourteenth Report to Court of Duff &
Phelps Canada Restructuring Inc.
as Court-Appointed Receiver of the
Estate of Robert Mander, E.M.B.
Asset Group Inc. and the Related
Entities

July 25, 2012

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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.**

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**

**FOURTEENTH REPORT OF THE RECEIVER
July 25, 2012**

1.0 Introduction

- a) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on 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"), RSM Richter Inc. ("Richter") was appointed receiver ("Receiver") over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and 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. A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".
- b) 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. ("Trafalgar"), Stonebury Inc. and Mander Group Inc. ("MGI") (collectively the "Related Entities") (the Related Entities and the Respondents are collectively referred to as the "Debtors").

- c) 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.
- d) On July 14, 2010, an order was made by the Court authorizing and directing the Receiver to investigate the affairs of C.O. Capital Growth Corp. ("CO Capital"), 91 Days Hygiene Inc., Peter Sbaraglia ("Sbaraglia") and Mandy Sbaraglia (collectively, the "CO Capital Debtors").
- e) On December 23, 2010, an order was made by the Court appointing Richter as receiver over the assets of the CO Capital Debtors, including Sbaraglia.
- f) As a result of the sale of Richter's restructuring practice in Toronto to Duff & Phelps Canada Restructuring Inc. ("D&P"), an order of the Court was made on December 12, 2011 ("Substitution Order"), substituting D&P in place of Richter as Receiver. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Summarize the results of the Claims Procedure (defined in Section 4 below);
- b) Recommend an interim distribution in the amount of \$500,000 to creditors with proven claims ("Interim Distribution");
- c) Recommend a Holdback of approximately \$551,000 ("Holdback");
- d) Summarize the status of the illiquid start-up investments ("Investments") owned by the Debtors;
- e) Provide an update on the status of a motion brought by Sbaraglia seeking an order compelling the Receiver to provide copies of certain materials to Sbaraglia for his use in another proceeding and requiring the Receiver to prepare an index of materials; and
- f) Recommend that this Honourable Court make an order:
 - Authorizing and directing the Receiver to make the Interim Distribution (defined in Section 5 below) and authorizing the Receiver to make further distributions from time to time without further order of this Court pending the outcome of the Sbaraglia Motion (as defined in Section 3b below);
 - Authorizing and directing the Receiver to distribute to Trafalgar creditors with proven claims the portion of the Interim Distribution paid to Trafalgar;
 - Approving the Holdback;

- Approving the fees and disbursements of the Receiver and its counsel, Lax O'Sullivan Scott Lisus LLP ("Lax") for the period March 15, 2010 to June 30, 2012, and March 15, 2010 to June 30, 2012, respectively¹; and
- Approving this Report and the Receiver's activities as set out in this Report.

1.2 Currency

- a) All currency references in this Report are to Canadian dollars.

1.3 Restrictions

- a) 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, 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.
- b) 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.
- c) Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could have provided firsthand information regarding the businesses he conducted. As a result, the Receiver conducted its investigation by reviewing documents and meeting with individuals who had knowledge, or who the Receiver believed had knowledge, of Mander and his businesses.

2.0 Background

- a) Background information concerning these receivership proceedings is included in the initial application materials and in the Receiver's prior reports to Court in these proceedings. These documents are available on D&P's website at www.duffandphelps.com/restructuringcases.

3.0 Sbaraglia Motion

- a) In February, 2011, the Ontario Securities Commission ("OSC") issued a Statement of Allegations that, among other things, alleges that Sbaraglia was engaged in securities fraud and misled the OSC.

¹ The Receiver's lead lawyer, Matthew Gottlieb, moved from Davies Ward Phillips & Vineberg LLP ("Davies") to Lax on October 1, 2011.

- b) On April 23, 2012, Sbaraglia served a motion for an order compelling the Receiver to provide copies of certain materials to Sbaraglia and requiring the Receiver to prepare an index of materials ("Sbaraglia Motion"). Additional background related to the Sbaraglia Motion is included in the Receiver's thirteenth report to Court, dated April 30, 2012 ("Thirteenth Report"). A copy of the Thirteenth Report is attached (without appendices) as Appendix "B".
- c) The Sbaraglia Motion was heard by the Court on May 9, 2012.
- d) On May 23, 2012, Justice L.A. Pattillo issued an order ("May 23rd Order") requiring that certain documents that had been requested by Sbaraglia be provided to Justice Pattillo for his review to determine whether and to what extent production, if any, of the transcripts and documents should be made to Sbaraglia. A copy of Mr. Justice Pattillo's decision and the related order are attached as Appendix "C".
- e) On June 8, 2012, Sbaraglia filed a Notice of Appeal with the Court seeking that the May 23rd Order be set aside and that an order be granted compelling the Receiver to produce all of the documents requested by Sbaraglia in the Motion ("Sbaraglia Appeal").
- f) On June 15, 2012, the Receiver filed a Notice of Cross-Appeal with the Court asking that the May 23rd Order be set aside and that the Motion be dismissed ("Cross-Appeal"). The Sbaraglia Appeal and the Cross-Appeal are jointly referred to as the "Appeals".
- g) The Appeals are scheduled to be heard by the Ontario Court of Appeal on a date to be fixed. The Receiver understands that it is likely that the Appeals will be heard in October, 2012.
- h) The Receiver is proposing the Holdback to satisfy costs that may be incurred by it and Lax to prepare for and appear at the Appeals and to fund the costs of complying with Sbaraglia's requests in the event that the Sbaraglia Appeal is successful. The Receiver is also aware that it may be called as a witness in the OSC proceeding. The amount of time required to be spent by the Receiver preparing for the Appeals and preparing as a witness is unknown. The Holdback will also be used to complete the administration of these proceedings, including any further distributions.

4.0 Claims Procedure²

- a) On March 21, 2011, an order was made by the Court authorizing the Receiver to commence a claims procedure ("Claims Procedure"). Details of the Claims Procedure are provided in the Receiver's eleventh and twelfth reports to Court dated March 15, 2011 and August 17, 2011 (respectively, the "Eleventh Report" and "Twelfth Report"). Copies of the Eleventh and Twelfth Reports are attached as Appendices "D" and "E", respectively, without appendices.

² Capitalized terms in this section have the meanings given to them in the Second Claims Procedure Order.

- b) Pursuant to an order of the Court made on September 7, 2011 ("Second Claims Procedure Order"), the Receiver was authorized and directed to send to each Claimant a Notice of Deemed Claim Amount.
- c) On or before December 23, 2011 the Receiver sent by registered mail 47³ Notices of Deemed Claim Amount, along with a letter setting out the details of the Claims Procedure and the process for disputing the Deemed Claim Amount.

4.1 Summary of Deemed Claimed Amounts

- a) A summary of the Deemed Claim Amounts is provided in the following table:

Type of Claim	\$000s		
	Amount Claimed	Amount Disallowed	Deemed Claim Amount
Super-priority	31	-	31
Investor (unsecured)	37,737	18,153	19,584
Non-investor (unsecured)	502	48	454
	38,270	18,201	20,069

- Super-priority obligations represent claims filed by Canada Revenue Agency for unremitted source deductions and Goods and Services Tax, as well as claims filed by employees for unpaid vacation pay⁴;
 - Investor claims relate to claims filed by individuals or companies who invested with Mander and/or his companies; and
 - Non-investor claims relate to ordinary unsecured claims filed by trade creditors.
- b) The Receiver received one Notice of Dispute, which was subsequently resolved between the Claimant and the Receiver.

³ The 47 Notices of Deemed Claim Amount related to the 67 claims that were filed with the Receiver. In instances where claimants filed more than one claim only one Notice of Deemed Claim Amount was sent, as each notice of Deemed Claim Amount dealt with the outcome of all claims filed by the particular claimant.

⁴ The vacation pay obligations were paid by Service Canada through the Wage Earner Protection Program. Service Canada has filed a claim for the amounts it paid.

4.2 Trafalgar

- c) In the Twelfth Report, the Receiver advised that it would be disallowing the claims filed by creditors of Trafalgar as the records indicated that Trafalgar received approximately \$129,000 more than had been paid to the other Debtors.
- d) Subsequent to the date of the Twelfth Report, the Receiver learned that certain Trafalgar investors had entered into loan agreements and advanced funds totaling \$297,000 to MGI.
- e) Pursuant to loan agreements between Trafalgar and MGI, Trafalgar assumed those loan agreements when the MGI creditors transferred their loans from MGI to Trafalgar.
- f) Prior to the Claims Bar Date, the Receiver filed a claim on behalf of Trafalgar against MGI for an amount to be determined. The Receiver subsequently filed an amended claim on behalf of Trafalgar against MGI for approximately \$168,000⁵. The Receiver intends to distribute any funds received by Trafalgar to Trafalgar's creditors with proven claims.

5.0 Interim Distribution

- a) Attached as Appendix "F" is an interim statement of receipts and disbursements for the period ended July 23, 2012, which reflects a balance of approximately \$441,000 in the Debtors' estate bank account.
- b) Pursuant to an order of the Court made on October 3, 2011, Richter, in its capacity as Court appointed receiver of the CO Capital Debtors, was authorized and directed to transfer up to \$696,000 to the Receiver for the reimbursement of fees paid from the Debtors estate, in respect of investigations of the CO Capital Debtors that were conducted by the Receiver and its counsel, Davies.
- c) The Receiver is in the process of completing the administration of the CO Capital Debtors estate. To enable the Receiver to immediately transfer the funds from the CO Capital Debtors estate to the Mander estate and fund the distribution, the Receiver intends to pay any further fees it incurs related to the CO Capital Debtors receivership from the transferred funds. There is presently a balance of approximately \$610,000 in the CO Capital Debtors estate bank account.
- d) With the exception of the Investments discussed in Section 6 below, all of the Debtors assets have been realized upon. The Receiver believes the net realizable value of the Investments is immaterial.

⁵ The claim was determined by taking the MGI loan obligations assumed by Trafalgar (\$297,000) and subtracting the net amount Trafalgar received from the other Debtors in excess of the amounts it paid to them (\$129,000).

- e) The Interim Distribution would be paid as follows: \$31,000 in respect of super-priority claims; and the balance to unsecured creditors with proven claims.
- f) Pending the outcome of the Sbaraglia Motion, the Receiver is requesting that it be authorized to make further distributions from time-to-time without further order of this Court. The Receiver anticipates that it will be able make a final distribution to creditors once the Appeals have been resolved.

6.0 Unrealized Assets

- a) As described in the Receiver's fourth report to Court dated July 2, 2010 the Debtors invested in the following assets, each of which is generally illiquid or of immaterial value:

Asset	Owner	No. of shares	Average Cost Base (\$)	Estimated Realizable Value
Atlas Global Financial Technology	EMB	1,999,998	1,909,000	Unknown
Manitou Gold Inc.	Mander	200,000	30,000	Unknown
Valt.X Holdings Inc.	Mander	50,000	57,500	Unknown
WIC CDN INC.	EMB	333,333	500,000	Unknown
Carta Solutions SA	EMB	500,000	250,000	Unknown

- b) Additional information regarding these investments as follows:

- Atlas Global Financial Technologies ("Atlas") – Atlas is a company incorporated by Mandy Sbaraglia. EMB owns 8.8% of the shares of Atlas, which owns 26% of the shares of Simplex Consulting Limited, a company located in the UK that provides (or provided) information technology consultancy services. The Receiver has been unable to locate EMB's original share certificates for Atlas. The Receiver has limited information regarding the purpose of this company. Any information received suggests that this investment is worthless.
- Manitou Gold Inc. ("Manitou") – Manitou shares are publicly traded on the TSX Venture Exchange. Manitou engages in the acquisition, exploration, and advancement of mineral properties in Canada. The shares last traded at 14 cents on July 20, 2012. The Receiver has periodically spoken with Manitou's management. The shares are relatively illiquid. The Receiver is considering if, when and how to dispose of these shares.

- Valt.X Holdings Inc. ("Valt.X") – Valt.X develops hardware and software based security products. Management has informed the Receiver that the company is in the commercialization stage and that there is currently no buyer for these shares. The Receiver will consider if, when and how to realize on these shares in due course. There is no timeline for realizing on these shares. Any realizations may be immaterial.
- WIC CDN INC. ("WIC") - WIC develops technology security to combat identity fraud. Despite several attempts, the Receiver has been unable contact a representative from WIC. The last correspondence between the Receiver and the President of WIC took place in August, 2010.
- Carta Solutions SA ("Carta") – Carta provides transaction processing and payment technology, specializing in prepaid, mobile and emerging payments. Carta's Chief Executive Officer has advised that the company is still in its infancy. He further advised that there is not an active market for these shares; however, he will advise the Receiver if he is able to identify a potential purchaser. There is no timeline for realizing on these shares. Any realizations may be immaterial.

7.0 Professional Fees

- a) The Receiver's fees from March 15, 2010 to June 30, 2012 total approximately \$1,716,637⁶ inclusive of disbursements and taxes. The Receiver's counsels' fees from March 15, 2010 to June 30, 2012 total approximately \$1,093,102, including \$992,897⁷, comprised of disbursements and taxes, for Davies and \$100,205 for Lax, inclusive of disbursements and taxes.
- b) The detailed invoices in respect of the fees and disbursements of the Receiver, Davies and Lax are provided in appendices to the affidavits filed by the Receiver, Davies and Lax in the accompanying motion materials. The Receiver's invoices summarize its activities.

⁶ Includes fees totaling approximately \$386,000 (including GST/HST) incurred by the Receiver related to the investigation of the CO Capital Debtors, which took place in the Debtors' receivership proceedings prior to the appointment of a receiver over the CO Capital Debtors.

⁷ Includes fees totaling approximately \$310,000 (including GST/HST) incurred by Davies related to the investigation of the CO Capital Debtors, which took place in the Debtors' receivership proceedings prior to the appointment of a receiver over the CO Capital Debtors.

c) A summary of the invoices is as follows:

Duff & Phelps Canada Restructuring Inc.

Period	Fees	Disbursements	GST/HST	Total
March 15 to October 31, 2010	\$ 1,193,069.50	\$ 12,415.09	\$ 94,045.68	\$1,299,530.27
November 1 to November 30, 2010	93,227.50	177.99	12,142.71	105,548.20
December 1 to December 31, 2010	27,921.25	32.19	3,633.95	31,587.39
January 1 to January 31, 2011	15,055.00	0.00	1,957.15	17,012.15
February 1 to February 28, 2011	7,262.50	13.90	945.93	8,222.33
March 1 to March 31, 2011	26,967.50	735.82	3,601.44	31,304.76
April 1 to April 30, 2011	20,126.25	1,865.45	2,858.92	24,850.62
May 1 to May 31, 2011	11,362.50	0.59	1,477.21	12,840.30
June 1 to June 30, 2011	27,773.75	20.42	3,613.24	31,407.41
July 1 to July 31, 2011	28,631.25	25.21	3,725.34	32,381.80
August 1 to August 31, 2011	23,510.00	22.40	3,059.21	26,591.61
September 1 to October 31, 2011	15,045.00	8.40	1,956.94	17,010.34
November 1, 2011 to January 31, 2012	30,657.50	0.00	3,985.48	34,642.98
February 1 to April 30, 2012	22,518.75	0.00	2,384.39	24,903.14
May 1 to May 31, 2012	25,037.50	143.51	3,273.53	28,454.54
June 1 to June 30, 2012	6,512.50	0.00	846.63	7,359.13
Total	\$1,574,678.25	\$15,460.97	\$143,501.25	\$1,716,636.63

d) The Receiver's average hourly rate for the referenced billing period was \$388.21

Davies Ward Phillips & Vineberg

Period ⁸	Fees	Disbursements	GST/HST	Total
March 15 to June 8, 2010	\$ 233,278.50	\$ 6,208.37	\$ 11,961.64	\$ 251,448.51
April 13 to June 30, 2010	9,468.50	455.17	498.79	10,422.46
May 7 to June 30, 2010	42,226.00	1,394.18	2,174.66	45,794.84
May 31 to September 22, 2010	10,005.50	476.12	528.48	11,010.10
October 4, 2010 to March 9, 2011	7,193.00	221.50	963.89	8,378.39
June 9 to June 30, 2010	7,853.00	342.27	969.59	9,164.86
July 1 to August 31, 2010	172,427.00	4,460.22	22,995.34	199,882.56
August 17, 2010 to June 13, 2011	342,566.50	11,192.37	45,889.59	399,648.46
July 8 to August 26, 2010	11,863.00	249.57	1,574.63	13,687.20
September 30, 2010 to March 9, 2011	11,571.50	579.47	1,579.63	13,730.60
June 1 to September 20, 2011	24,339.00	1,984.45	3,405.54	29,728.99
Total	\$ 872,791.50	\$ 27,563.69	\$ 92,541.78	\$ 992,896.97

e) Davies' average hourly rate for the referenced billing period was \$596.70.

⁸ Separate invoices were generated by Davies' insolvency and real estate departments; accordingly, certain periods overlap.

- f) The Receiver has reviewed the accounts of Davies and believes them to be reasonable.
- g) The Receiver is of the view that the hourly rates charged by Davies are consistent with the rates charged by other major law firms in Toronto providing insolvency and restructuring advice. The Receiver notes that Davies has used only a limited number of lawyers on the matter.

Lax O'Sullivan Scott Lisus LLP

Period	Fees	Disbursements	HST	Total
November 2, 2011 to April 10, 2012	\$ 1,292.00	\$ 124.50	\$ 184.15	\$ 1,600.65
April 11 to May 31, 2012	64,754.00	1,755.56	8,646.24	75,155.80
June 1 to June 30, 2012	19,718.00	1,063.09	2,667.87	23,448.96
Total	\$ 85,764.00	\$ 2,943.15	\$ 11,498.26	\$ 100,205.41

- h) Lax's average hourly rate for the referenced billing period was \$537.03.
- i) The Receiver has reviewed the accounts of Lax and believes them to be reasonable.
- j) The Receiver is of the view that the hourly rates charged by Lax are consistent with the rates charged by other major law firms in Toronto providing insolvency and restructuring advice. The Receiver notes that Lax has used only a limited number of lawyers on the matter.

8.0 Recommendation

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

* * *

All of which is respectfully submitted,

Duff & Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING 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**

Appendix "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 31 ST 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.

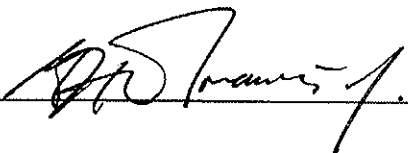
29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors or Related Entities.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature, appearing to be "J. Francis", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 01 2010

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, Freelon, 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 CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT
Applicant 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

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

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Appendix "B"

Thirteenth Report to Court of Duff &
Phelps Canada Restructuring Inc.
as Court-Appointed Receiver of the
Estate of Robert Mander, E.M.B.
Asset Group Inc. and the Related
Entities

April 30, 2012

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

-and-

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

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**

**THIRTEENTH REPORT OF THE RECEIVER
April 30, 2012**

1.0 Introduction

- a) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on 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"), RSM Richter Inc. ("Richter") was appointed receiver ("Receiver") over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and 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. A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".
- b) 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. (collectively the "Related Entities") (the Related Entities and the Respondents are collectively referred to as the "Mander Debtors").

- c) 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.
- d) On July 14, 2010, an order was made by the Court authorizing and directing the Receiver to investigate the affairs of C.O. Capital Growth Corp. ("CO Capital"), 91 Days Hygiene Inc., Peter Sbaraglia ("Sbaraglia") and Mandy Sbaraglia (collectively the "CO Capital Debtors").
- e) On December 23, 2010, an order was made by the Court appointing Richter as receiver over the assets of the CO Capital Debtors, including Sbaraglia.
- f) Pursuant to an order of the Court made on December 12, 2011 ("Substitution Order"), as a result of the sale of Richter's restructuring practice in Toronto to Duff & Phelps Canada Restructuring Inc. ("D&P"), D&P was substituted in place of Richter as Receiver. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

1.1 Purposes of this Report

- a) In February, 2011 the Ontario Securities Commission ("OSC") issued a Statement of Allegations that, among other things, alleges that Sbaraglia was engaged in securities fraud and misled the OSC.
- b) In his motion materials served on the Receiver on April 23, 2012 Sbaraglia requests an order compelling the Receiver to provide copies of certain materials to Sbaraglia and requiring the Receiver to prepare an index of materials. Specifically, the items requested are as follows:
 - Transcripts, recordings and/or notes of interviews conducted with sixteen (16) individuals;
 - Documents provided by the individuals interviewed to the Receiver in connection with their interviews;
 - The "deleted e-mails" referred to in the Receiver's fourth report to Court dated July 2, 2010 ("Fourth Report");
 - Documents produced by Peter Tonin and Peter Welsh to the Receiver pursuant to Court orders;
 - An index of the materials in the Receiver's power, possession and/or control; and
 - Copies of additional documents in the Receiver's power, possession and/or control relevant to the allegations made by the OSC against Sbaraglia that he may request once he has been provided with an index.

- c) The purpose of this report ("Report") is to respond to the above requests made by Sbaraglia.

1.2 Restrictions

- a) 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.
- b) 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.

2.0 Background Information

- a) Background information concerning the Mander Debtors' receivership proceedings ("Mander Receivership Proceedings") and the CO Capital Debtors' receivership Proceedings ("CO Capital Receivership Proceedings") is included in the initial application materials and in the Receiver's twelve reports and related supplemental reports to Court filed in the Mander Receivership Proceedings and in the two reports and related supplemental reports to Court filed in the CO Capital Receivership Proceedings. These documents are available on D&P's website at www.duffandphelps.com/restructuringcases.
- b) As referred to in Section 1 of this Report, in March, 2010 these receivership proceedings were commenced against Mander and his company EMB. It was alleged that Mander was carrying on a Ponzi scheme and that he had misappropriated tens of millions of dollars from investors in Ontario.
- c) On March 17, 2010, the date the receivership application was returnable, Mander committed suicide and on the return of the application Justice Morawetz granted the Receivership Order.
- d) After its appointment, in accordance with the Receivership Order, the Receiver compelled production of documents from certain parties with knowledge of the affairs of the Mander Debtors, including their lawyers (Peter Welsh and Aylesworth LLP) and accountant (Tonin & Co. LLP). Also in accordance with the Receivership Order, the Receiver requested and held meetings with several individuals with knowledge of the Mander Debtors.

- e) In its Fourth Report the Receiver advised the Court that numerous questions and issues identified by the Receiver as part of its investigation of the Mander Debtors suggested that an investigation should be undertaken of the CO Capital Debtors, including Sbaraglia.
- f) Based on the evidence provided in the Fourth Report the Court issued an order on July 14, 2010 authorizing and directing the Receiver to commence an investigation into the affairs of the CO Capital Debtors.
- g) On September 8, 2010 the OSC filed an application seeking the appointment of a receiver over the business, assets and undertakings of the CO Capital Debtors.
- h) On September 9, 2010 the Receiver filed its seventh report to Court summarizing its findings from its investigation of the CO Capital Debtors. In its report the Receiver recommended that a receiver be appointed over the CO Capital Debtors, and based on the evidence it obtained, the Receiver strongly suggested that the CO Capital Debtors should not oppose the appointment of a receiver as the evidence suggested improper conduct on behalf of the CO Capital Debtors, including Sbaraglia, and that contested proceedings would most certainly result in the appointment of a receiver and would be very expensive and to the detriment of the investors and creditors.
- i) Notwithstanding the Receiver's advice, the CO Capital Debtors' strenuously opposed the appointment of a receiver and took the position that they had done nothing wrong and were victims of Mander's fraud. As a result, there were extensive materials filed in opposition of the motion and many cross-examinations.
- j) The Receiver also filed its ninth report to Court dated November 12, 2010, which set out the results of the Receiver's further investigations and the result of the cross-examinations. All of the costs of the Receiver's work regarding the CO Capital Debtors, including the work of its counsel, were funded by the estate of the Mander Debtors. The cost to the estate was approximately \$700,000.
- k) By Order of Justice Morawetz dated December 23, 2010, the Receiver was appointed as receiver over the CO Capital Debtors. In His Honour's Decision, several critical findings were made, including that: (i) Peter Sbaraglia and his counsel misled the OSC during the OSC's investigation in 2009, including statements by Peter Sbaraglia under oath; (ii) CO Capital used funds received from one investor to repay amounts owing to other investors (i.e. conducted a "Ponzi" scheme); (iii) the Sbaraglias used investor monies to fund their lifestyle and the business expenses of CO Capital; and (iv) of the \$21 million received by the CO Capital Debtors from investors, \$6 million was retained by the CO Capital Debtors to fund personal expenses, business expenses and trading losses. The Honourable Justice Morawetz's "reasons for judgement" are attached as Appendix "B" to this Report.

3.0 Sbaraglia's Requests

3.1 Interviews

- a) Sbaraglia has requested transcripts and/or notes of interviews between the Receiver and 16 individuals.
- b) In accordance with the Receivership Order, the Receiver met with, interviewed and/or corresponded with all but two of the individuals. The Receiver conducted these interviews for the sole purpose of assisting it in connection with its obligations and authority under the Receivership Order. It did not tell any individual it interviewed that the information obtained would be used for any other purpose.
- c) The Receiver did not interview or correspond with Grant Walton or Tascha Fluke. Early in the proceedings, the Receiver met with Mehran Shahviri of the OSC in order to obtain background information regarding these proceedings. The Receiver did not interview Mr. Shahviri. With respect to the remaining individuals (the "Individuals"), the Receiver interviewed, had discussions with and communicated periodically with them, to varying degrees.
- d) The primary purpose of the interviews was to gather background information regarding the Mander Debtors. However, a majority of the information obtained from the Individuals was highly speculative, unsupported and anecdotal; much of it related to the stories woven by Mander to justify his investment techniques and the whereabouts of investor monies. Accordingly, in preparing its reports to Court, the Receiver relied on the financial information that it analyzed.
- e) Over the course of carrying out its mandate, the Receiver generated various notes and internal memoranda regarding the interviews, which were created solely for its internal purposes and were not intended to be relied upon by other parties. The notes were not reviewed by the Individuals. The notes prepared were not intended to be a verbatim transcript of what was said by the Individuals and the Receiver cannot confirm that the notes are an accurate or complete review of all that was discussed. The Receiver cannot confirm that its notes summarize all of the discussions that the Receiver had with the Individuals. The notes were only meant to be used by the Receiver for its purposes in the context of the discussions that were had with the respective Individuals.
- f) With the exception of interviews with Julia Dublin and Michael Miller, none of the interviews was recorded nor transcribed. The interviews of Dublin and Miller were recorded.
- g) The Receiver did not keep a schedule of documents received from the Individuals. The Receiver is concerned that assembling all of its notes, as well as any documents

provided, from all parties with whom it met would be time consuming and costly. Since the commencement of the Mander Receivership Proceedings over two years ago there were numerous conversations with certain of the Individuals; therefore, the notes that were taken are in a number of notebooks and files. The Receiver would have to review numerous files and/or notebooks to assemble the information requested.

3.2 Index of Documents

- a) Sbaraglia is also seeking an order compelling the Receiver to provide an index of materials in the Receiver's power, possession and/or control. The request is extremely broad - it does not seem to be limited to the CO Capital matter.
- b) In paragraph 89 of his affidavit, Sbaraglia advises that his counsel, Brauti Thorning Zibarras LLP ("BTZ"), had previously requested that the Receiver provide an index of the documents in its power, possession and/or control. At that time, the Receiver's counsel advised that an index does not exist.
- c) These receivership proceedings commenced over two years ago. The Receiver has obtained thousands of documents from a variety of sources. It also has various data and information in its possession in electronic form, including data on computers and mobile devices. The Receiver does not presently have an index of all of these documents. To create such an index would also be time consuming and costly. The Receiver believes it could take in excess of one month and would cost approximately \$25,000 to assemble.

3.3 Tonin and Welsh Records

- a) The documents that were provided by Tonin and Welsh were provided pursuant to the Fresh as Amended Receivership Order.
- b) As at the date of this Report the Receiver has not heard back from Gowling Lafleur Henderson LLP, Tonin's counsel, regarding its position on this matter.
- c) Lerner's LLP, Welsh's counsel, has advised the he takes no position on this matter.
- d) The Receiver will follow the Court's direction as it relates to providing this information to Sbaraglia.

3.4 Deleted E-mails

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

- b) The Receiver identified the missing e-mails by comparing an image of Sbaraglia's computer to the e-mails on CO Capital's host email server.
- c) Copies of the e-mails obtained from the image of Sbaraglia's computer and those obtained from CO Capital's host e-mail server are available to be provided to Sbaraglia should this Court so order.

4.0 Receiver's Reports

- a) As evidenced by its various reports to Court, in coming to the determination that an investigation of the CO Capital Debtors should be performed, and ultimately, that the CO Capital Debtors should be placed in receivership, the Receiver placed essentially no reliance on its discussions and interviews with any of the Individuals with whom it met or corresponded.
- b) As mentioned in Section 3.1 above, the overwhelming majority of the information provided by the Individuals was of no utility, was highly speculative, unsupported and anecdotal.
- c) In the context of its investigation of the CO Capital Debtors, the Receiver's findings and recommendations were based on:
 - the financial analysis it performed of bank statements, cancelled cheques, credit card statements and investment account statements; and
 - interviews performed by the OSC, including transcripts from the OSC's interviews of Sbaraglia and Mander in July, 2009, the cross-examinations conducted by the OSC, examinations performed by the Receiver and Sbaraglia's counsel prior to the commencement of the CO Capital Receivership Proceedings, and the various affidavits filed by Sbaraglia in these proceedings.

5.0 Distributions to Stakeholders

- a) There is presently approximately \$1.2 million¹ being held by the Receiver for distribution to stakeholders, net of future costs.
- b) Prior to receiving the motion materials served by BTZ on April 23, 2012, the Receiver was in the process of finalizing motion materials seeking approval of a distribution to stakeholders of CO Capital and Mander.

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

- c) The Receiver has postponed the distribution motion as the breadth of Sbaraglia's request, including the information production, may be exceedingly costly and time consuming. Sbaraglia has also suggested that the Receiver may be called as a witness in his trial. The cost of preparing to testify would add additional significant cost.
- d) Sbaraglia's requests will substantially reduce the amounts available for distribution to stakeholders.

6.0 Conclusions and Recommendation

- a) The Receiver is of the view that the cost related to providing the information requested by Sbaraglia will be very significant. It will take considerable time to accumulate and index all of the information in its possession.
- b) The information requested by Sbaraglia will not result in further recoveries for stakeholders – it will greatly reduce recoveries. The Receiver does not believe that the costs of these activities should be funded by the estate.
- c) As evidenced by its Reports, the Receiver's findings were based on its financial investigation, as well as transcripts of interviews of Mander and Sbaraglia, and affidavits of Sbaraglia himself.
- d) The Receiver will provide third party documents in its possession, including those provided by Tonin and Welsh, should the Court so order.

* * *

All of which is respectfully submitted,

Duff & Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING 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**

Appendix “C”

CITATION: SA Capital Growth Corp. v. Christine Brooks, 2012 ONSC 2800

DATE: 20120523

DOCKET: 10-8619-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:)	
)	
SA CAPITAL CORP.	)	<i>Kevin D. Toyne and Richard Niman for the</i>
	)	<i>Peter Sbaraglia, Moving Party</i>
Applicant)	
)	
- and -)	
)	
CHRISTINE BROOKS as Executor of	)	<i>Matthew P. Gottlieb and Shannon Beddoe,</i>
the Estate of Robert Mander, Deceased	)	<i>for the Receiver, Duff & Phelps Canada</i>
and E.M.B. ASSET GROUP INC.	)	<i>Restructuring Inc.</i>
)	
Respondents	)	<i>Jennifer M. Lynch, for the Ontario Securities</i>
	)	<i>Commission</i>
- and -)	
)	
PETER SBARAGLIA	)	<i>Evan Cobb, for the Applicant, SA Capital</i>
	)	<i>Growth Corp.</i>
)	
Moving Party	)	<i>Frank Lamie, for Tonin & Co. LLO and</i>
	)	<i>Peter Tonin</i>
)	
RSM RICHTER INC. and ONTARIO)	
SECURITIES COMMISSION)	
)	
	)	HEARD: May 9, 2012
Responding Parties)	

L. A. PATTILLO J.:

Introduction

[1] This motion raises the question of whether a court-appointed receiver should be required to disclose documents and information obtained by it pursuant to a court ordered

investigation to one of the subjects of the investigation who is facing serious allegations by the Ontario Securities Commission's ("OSC").

[2] The Moving Party, Dr. Peter Sbaraglia ("Sbaraglia"), seeks an order compelling the Court-appointed Receiver, Duff & Phelps Canada Restructuring Inc., (formerly RSM Richter Inc.) (the "Receiver") to provide him with requested documents and information obtained by the Receiver during a court ordered investigation of Sbaraglia and others in order to assist him in responding to the OSC's allegations of securities fraud and misleading staff.

Background

[3] On March 17, 2010, the Receiver was appointed receiver over the assets, property and undertaking of E.M.B. Asset Group Inc., and Robert Mander (the "Mander Debtors"). It was alleged that Mander and his company EMB were carrying on a Ponzi scheme and that Mander had misappropriated tens of millions of dollars. Mander committed suicide on the same day and the receivership was subsequently continued against his Estate.

[4] Following its appointment and pursuant to orders issued by the court, the Receiver compelled production of documents from certain parties with knowledge of the affairs of Mander and his companies, including their lawyers and accountants. It also met with several individuals who had knowledge of or were involved with Mander and his companies.

[5] In its Fourth Report to the Court dated July 4, 2010, the Receiver advised that, as part of its investigation of Mander and his companies, it identified numerous issues which suggested that an investigation should be undertaken of Sbaraglia, his wife, Mandy Sbaraglia, and their companies, CO Capital Growth Corp ("CO Capital") and 91 Days Hygiene Inc. (collectively the "CO Group").

[6] Based on the evidence contained in the Fourth Report, the court issued an order on July 14, 2010, authorizing and directing the Receiver to commence an investigation into the business and affairs of the CO Group. The order granted broad powers to the Receiver to carry out the investigation including meeting with the CO Group, their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders and all other persons acting on their instructions and behalf and to obtain books and records relating to the business or affairs of the CO Group. The order specifically provided that Peter Welsh, the former solicitor for Mander and his companies and Tonin & Co. LLP, the accountants for Mander and his companies and CO Capital, deliver up their books and records in respect of those companies.

[7] On September 9, 2010, the Receiver filed its Seventh Report to the Court summarizing its findings of its investigation of the CO Group. The Receiver stated that in preparing the Report, it relied upon, among other things, ".... documents, records and information provided by various parties, including several financial institutions, the CO Group, Tonin & Co. LLP, the former accountant to Mander and the CO Group, and Aylesworth LLP and Peter R. Welsh, former legal counsel to the CO Group." The Receiver disclaimed any opinion on the accuracy of the information obtained.

[8] The Report indicated the investigation was ongoing and highlighted major issues identified by the Receiver to date, including, that Sbaraglia's testimony before the OSC in July 2009 was misleading and incomplete; that the CO Group knew or ought to have known that they were not generating returns sufficient to repay their obligations to investors; that the CO Group were insolvent based on an admission by Sbaraglia in an affidavit filed; and that the CO Group had advised they may make payments to family members in preference to other creditors. The Receiver recommended that a receiver be appointed over the CO Group.

[9] The Receiver has continued to provide periodic Reports to the court concerning both the Mander Debtors receivership and the CO Capital Debtors receivership.

The OSC Proceedings

[10] On September 8, 2010, following an investigation pursuant to s. 11(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended, (the "*Securities Act*") which began in July 2008, the OSC commenced an application to the Superior Court (Commercial List) pursuant to s. 129(1) of the *Securities Act*, for the appointment of a receiver over the business, assets and undertakings of the CO Group.

[11] The CO Group strenuously opposed the OSC's application. They took the position they had done nothing wrong and were victims of Mander's fraud. Extensive materials were filed in opposition and numerous cross-examinations were conducted.

[12] The OSC's application was heard by Justice Morawetz in December 2010. In lengthy oral reasons on December 23, 2010, Justice Morawetz granted the OSC's application and appointed the Receiver as receiver over the CO Group.

[13] On February 24, 2011, the OSC issued a Notice of Hearing and Statement of Allegations naming Sbaraglia as the Respondent and alleging that Sbaraglia had breached the *Securities Act* by committing fraud and misleading the OSC staff.

[14] As particularized in the Statement of Allegations, the OSC alleges that Sbaraglia committed fraud by:

a) failing to do any due diligence with respect to Mander and his investment scheme and obtaining any objective evidence from Mander about the alleged investment profits;

b) misleading and deceiving investors by operating CO Capital's business in a way which deviated from its purported business model by keeping approximately \$6-7 million of \$21 million raised from investors in CO Capital and using the funds

for: (i) making payments to CO Capital investors with newly received funds from other CO Capital investors; (ii) making investments in securities, either directly in trading accounts of CO Capital or indirectly in trading accounts in the names of other companies, that resulted in significant losses; and (iii) making payments for personal expenses of the Sbaraglias; and

c) using CO Capital investor monies to fund his lifestyle.

[15] In respect of the allegation of materially misleading the OSC staff, the OSC alleges that during his July 9, 2009 examination by the OSC staff that was conducted under oath with counsel present, Sbaraglia failed to disclose liabilities of approximately \$9.4 million owing to CO Capital investors and misled the staff about the assets that were allegedly available to satisfy CO Capital's obligations. It is also alleged that an undertaking given to the OSC by Sbaraglia on August 7, 2009 was materially misleading because it failed to identify material obligations of CO Capital in its schedule of outstanding loans.

[16] The hearing in respect of the OSC's allegations against Sbaraglia, which was originally scheduled to begin on June 4, 2012, has been adjourned at Sbaraglia's request and is currently scheduled to take place beginning October 22, 2012.

[17] The OSC has provided Sbaraglia with full disclosure (subject to its ongoing disclosure obligations) of all relevant documents in its possession and custody. Included in this disclosure are some of the Receiver's Reports to the court and the entire record in the OSC's application for the appointment of a receiver over the CO Group.

[18] The Receiver is not a party to the OSC's proceedings against Sbaraglia.

Sbaraglia's Motion

[19] On this motion, Sbaraglia requests an order requiring the Receiver to:

- (i) produce transcripts, recordings and/or notes of interviews with 16 named individuals who met with the Receiver as part of its investigation;
- (ii) produce documents provided to the Receiver by the individuals;
- (iii) produce documents provided to the Receiver by the lawyer and accountant to both the Mander Debtors and the CO Group pursuant to Court order;
- (iv) produce copies of emails to and from Sbaraglia which had been deleted but subsequently recovered by the Receiver from CO Capital's computers and servers and which are referred to in the Receiver's Fourth Report to the Court;
- (v) prepare an index of all the documents in the Receiver's power, possession and control; and
- (vi) produce any additional documents that may be requested by Sbaraglia once he has had an opportunity to review the index.

The Position of the Parties

(a) Sbaraglia

[20] Sbaraglia submits, given the serious allegations alleged against him by the OSC and the potential sanctions that could be levied against him if the allegations are established, he is entitled to production of the requested documentation and information in order to make full answer and defence. The documents and information sought are relevant to the matters at issue before the OSC and will assist Sbaraglia in defending himself. It is submitted that the motion is analogous to an *O'Connor* application for third party production as dealt with by the Supreme Court of Canada in *R. v. O'Connor*, [1995] 4 S.C.R. 411. Sbaraglia further submits that the Receiver has an obligation to provide relevant documents to "interested parties" such as himself.

(b) The Receiver

[21] The Receiver opposes Sbaraglia's motion on a number of grounds. It submits that the documents and information requested arose as a result of work done by it as an officer of the court pursuant to a court order. It cannot and should not be compelled to produce documents, including its working papers, either in the proceeding for which it was appointed or for purposes outside of it which is what Sbaraglia's request amounts to. The Receiver further submits that it is prohibited from producing documents and other evidence obtained by it from third parties for any purpose other than for use in the proceeding in which the Receiver obtained the materials based on the common law implied undertaking rule. The Receiver further submits that the test in *O'Connor* has no application on this motion and, in any event, Sbaraglia has failed to adduce cogent evidence that the sought after documents are likely relevant. Finally, the Receiver points to the estimated expense of complying with Sbaraglia's request and submits that the cost will result in a significant depletion of the Estate's remaining cash which is otherwise available to distribute to creditors.

(c) The OSC

[22] The OSC appeared on the motion and filed a factum setting out some background information regarding its proceedings involving Sbaraglia and some of the OSC's rules of procedure. The OSC took no position on the motion.

(d) SA Capital Growth Corp.

[23] SA Capital Growth Corp., the applicant in the Mander Debtor receivership, opposed the motion on the grounds that compliance with the request will result in the depletion of the Estate's funds which should be distributed to the creditors.

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(e) Tonin & Co. and Peter Tonin

[24] Tonin & Co. and Peter Tonin filed no material on the motion but adopted the positions of the Receiver and SA Capital against production.

Discussion

[25] The issues raised on this motion intersect principles from both insolvency law and criminal law.

[26] The Receiver submits that a court appointed receiver cannot be compelled to produce documents obtained as part of its mandate in one proceeding for use in a separate proceeding.

[27] There is no question that receivers, as court-appointed officers are afforded certain protections by the court in order to enable them to carry out their duties in an efficient and cost effective manner. Court-appointed receivers file reports with the court for the purpose of providing information regarding the proceeding to the court and interested parties. Beyond the information contained in the reports, a receiver is not generally required to produce the details of its investigations, either within the receivership or for a purpose outside it. Receivers are not generally subject to cross-examination on their reports except in "exceptional or unusual" circumstances. See: *Bell Canada International Inc. (Re)*, [2003] O.J. No. 4738 (S.C.J. [Commercial List]); *Impact Tool & Mould (Re)*, (2007), 41 C.B.R. (5th) 112 (Ont. S.C.J.); and *Anvil Range Mining Corporation (Re)*, (2001), O.J. No. 1125 (S.C.J. [Commercial List]). A receiver is required only to respond to parties' reasonable requests for information regarding the receivership but is not required to produce all documents in its possession: *Battery Plus Inc. (Re)*, (2002), 31 C.B.R. (4th) 196 (Ont. S.C.J. [Commercial List]).

[28] The Receiver submits that, given the strict limits placed on the ability to compel the receiver to testify in respect of its own report in its own proceeding and the limit on the receiver to produce documents to parties relevant only to the receivership proceeding, the court ought not compel the Receiver to produce its preparatory notes and working papers in respect of a report for the purposes of a proceeding outside the receivership.

[29] Based on the above, therefore, and even though Sbaraglia is an interested party in both the Mander Debtors and the CO Capital Group receiverships, he is not entitled to production of the information he seeks from the Receiver given the law relating to receiverships.

[30] That however, does not end the issue. Sbaraglia submits that based on s. 7 of the Charter of Rights and Freedoms, he is entitled to production of the information requested in order to enable him to make full answer and defence in respect of the serious allegations that he is facing from the OSC.

[31] In *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (S.C.C.), the Supreme Court of Canada held that in a criminal prosecution, the Crown has a duty to disclose to the accused all information in its possession or control unless it is clearly irrelevant or protected by a recognized form of privilege. The duty arises from the Crown's position and the accused's constitutional right as contained in s. 7 of the *Charter of Rights and Freedoms* to make full answer and defence.

[32] The duty of the Crown to disclose all information in its possession and control (and its corollary, the right of an accused to make full answer and defence) applies equally to the OSC and its prosecutors in respect of proceedings under s. 127 of the Act. See: *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713 (S.C.C.).

[33] Not long after *Stinchcombe*, the Supreme Court of Canada held in *O'Connor*, supra, that production of documents in the hands of third parties not involved in the prosecution may also be required to be produced to enable an accused to make full answer and defence. The court recognized, however, that because third parties have no duty to disclose to an accused, are not involved in the proceedings and have potential privacy issues in the information sought to be disclosed, that different rules for production of third party documents should apply.

[34] *O'Connor* dealt with the production of medical and therapeutic records of a complainant in a case involving numerous sexual offences. Subsequent to the decision, Parliament amended the *Criminal Code* to provide a procedure for disclosure of third party records containing complainants' personal information in sexual assault cases. Nevertheless, the principals and procedure set out by L'Heureux-Dube J., writing for the majority in *O'Connor*, have been recognized and adopted as applying to all requests by accused for production of documents in the hands of a third party who is not involved in the proceedings against the accused.

[35] The procedure established by *O'Connor* essentially involves an application to the court by the accused, supported by affidavit evidence, showing that the documents or information sought are likely to be relevant in the proceeding. Notice of the application is given to the prosecutor, the person who has control of the records, the person who is the subject of the records and anyone else who might have a privacy interest in the information sought. On the return of the application, the judge is required to engage in a two-step procedure. First, he or she must determine from the evidence whether the information sought is "likely relevant" to the proceedings the applicant is facing. If the judge is satisfied the information is "likely relevant", the next step is for the court to review the documents. In that regard, the court may order

production of the record for inspection by the court. Following review of the document or documents, the judge must then determine whether and to what extent, if any, production should be ordered to the applicant.

[36] In establishing the procedure to be followed in permitting production to an accused of third party records in criminal cases, L'Heureux-Dube J. set out the considerations that must be borne in mind at paragraph 132 of *O'Connor*:

132 The use of state power to compel production of private records will be justified in a free and democratic society when the following criteria are applied. First, production should only be granted when it is shown that the accused cannot obtain the information sought by any other reasonably available and effective alternative means. Second, production which infringes upon a right to privacy must be as limited as reasonably possible to fulfill the right to make full answer and defence. Third, arguments urging production must rest upon permissible chains of reasoning, rather than upon discriminatory assumptions and stereotypes. Finally, there must be a proportionality between the salutary effects of production on the accused's right to make full answer and defence as compared with the deleterious effects on the party whose private records are being produced. The measure of proportionality must reflect the extent to which a reasonable expectation of privacy vests in the particular records, on the one hand, and the importance of the issue to which the evidence relates, on the other. Moreover, courts must remain alive to the fact that, in certain cases, the deleterious effects of production may demonstrably include negative effects on the complainant's course of therapy, threatening psychological harm to the individual concerned and thereby resulting in a concomitant deprivation of the individual's security of the person.

[37] The procedure set out in *O'Connor* was considered and confirmed by the Supreme Court of Canada in *R. v. McNeil*, [2009] 1 S.C.R. 66 (S.C.C.). At paragraph 33, Charron J., on behalf of the Court, set out the meaning of "likely relevant" as referred to in *O'Connor*:

33 "Likely relevant" under the common law *O'Connor* regime means that there is "a reasonable possibility that the information is logically probative to an issue at trial or the competence of a witness to testify" (*O'Connor*, at para. 22 (emphasis deleted)). An "issue at trial" here includes not only material issues concerning the unfolding of the events which form the subject matter of the proceedings, but also "evidence relating to the credibility of witnesses and to the reliability of other evidence in the case" (*O'Connor*, at para. 22). At this stage of the proceedings, the court cannot insist on a demonstration of the precise manner in which the targeted documents could be used at trial. The imposition of such a stringent threshold burden would put the accused, who has not seen the documents, in an impossible Catch-22 position.

[38] In discussing the second stage of the *O'Connor* procedure, the review and determination by the court of whether or not to order production, Charron J. stated at paragraph 35 of *McNeil*:

35 In *O'Connor*, this Court provided the following list of factors for consideration in determining whether or not to order production to the accused (at para. 31):

... "(1) the extent to which the record is necessary for the accused to make full answer and defence; (2) the probative value of the record in question; (3) the nature and extent of the reasonable expectation of privacy vested in that record; (4) whether production of the record would be premised upon any discriminatory belief or bias" and "(5) the potential prejudice to the complainant's dignity, privacy or security of the person that would be occasioned by production of the record in question"

The factors set out in *O'Connor* should not be applied mechanically. It should be kept in mind that *O'Connor* involved the production of the complainant's private records in proceedings for a sexual offence, an area of law subsequently overtaken by Parliament's enactment of the *Mills* regime. Some of the factors listed in *O'Connor*, in particular items 4 and 5 above, were obviously tailored to meet the exigencies in sexual assault proceedings and, consequently, are unlikely to be of assistance in other contexts. Ultimately, what is required at this second stage of the common law regime is a balancing of the competing interests at stake in the particular circumstances of the case. No exhaustive

list can be crafted to suit every situation; however, I will elaborate somewhat on the balancing process.

[39] In my view, the principles set forth in *O'Connor* and *McNeil* concerning the production of third party records to enable an accused to make full answer and defence are of general application to records held by all third parties, regardless of whether they are private citizens, government agencies or court officers. The protections granted to a court-appointed receiver in a receivership to not have to generally provide information or documents regarding the receivership to others beyond what is contained in its reports cannot operate, in my view, to interfere with or defeat an accused's right to production in order to make full answer and defence. It follows that a court-appointed receiver is not prevented from having to produce its records to enable an accused to make full answer and defence where such documents are "likely relevant" and the balancing of the competing interests at stake favours the disclosing of the record.

[40] The procedure and safeguards set forth in *O'Connor* and elaborated on in *McNeil* are more than sufficient, in my view, to meet any concerns about production that the Receiver has raised in this case, including privacy and costs, while at the same time giving effect to Sbaraglia's right to make full answer and defence to the allegations he is facing before the OSC.

[41] Having said that, however, in order to obtain production, it is incumbent on Sbaraglia to follow the procedure set out in *O'Connor* and establish the necessary requirements. The onus is on Sbaraglia.

Likely Relevant

[42] Sbaraglia seeks the records of the Receiver arising from interviews and documents obtained by it from 16 individuals during the Mander Debtors' receivership which he

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submits will assist him in demonstrating that he did not know nor could he have known that Mander was engaged in fraudulent activities. Of the 16 individuals, 11 are former partners, associates, employees or clients of Mander, three are lawyers who acted for both Mander and CO Capital, one is an accountant and one is the OSC staff investigator who conducted the investigation of Sbaraglia for the OSC.

[43] Sbaraglia also seeks production of certain deleted emails the Receiver has recovered as well as an index of all documents in the Receiver's possession and control from the Mander Debtors receivership and the right to request production of further documents once the index has been produced.

(a) Former partners, associates, employees or clients of Mander

[44] The Receiver, in the course of its mandate in the Mander Debtors receivership, interviewed, had discussions with and communicated periodically with nine of the 11 individuals. Two of the individuals, Grant Walton and Tascha Fluke, were never interviewed or corresponded with. None of the interviews or discussions were recorded or transcribed. What exists in the Receiver's files are notes and internal memoranda concerning the discussions.

[45] In addition, two of the individuals, David Amato and Thomas Obradovich, are former lenders to CO Capital and filed affidavits in the OSC's application for the CO Group receivership. They were cross-examined at length by the CO Groups' counsel during the application. They have also been examined by the OSC and the transcripts of those proceedings have been produced to Sbaraglia as part of the OSC's disclosure obligations.

[46] The Receiver further indicates that it did not keep any schedule of documents received from the individuals.

[47] In my view, Sbaraglia has not established, based on the allegations in the OSC's Notice of Hearing and the evidence or lack thereof before me, that the information or documents provided to the Receiver by the 11 individuals who were former partners, associates, employees or clients of Mander is likely relevant to his defence to the OSC allegations. Sbaraglia has not established that the information requested is either logically probative to an issue before the OSC or relates to the credibility of a witness or the reliability of other evidence in the case. I have reached this conclusion for a number of reasons.

[48] First, and given that the Receiver has had no communication with either of Walton and Fluke, there is no evidence that there is any record in the hands of the Receiver concerning them that is likely relevant to Sbaraglia's due diligence defence.

[49] Of the nine individuals remaining, there is no evidence that any of them have refused to speak to Sbaraglia or his counsel about their dealings with the Receiver or to provide copies of the documents they provided to the Receiver, if any. In fact, Sbaraglia affidavit indicates that in the case of three of the individuals, Zurini, Auriemma and Ward, either he or his wife spoke with them after they met with the Receiver. Sbaraglia has listed the nine individuals specifically and the Receiver has confirmed that it had discussions with them. Any information or documents given to the Receiver that Sbaraglia now seeks to obtain came from the individuals and one would have thought they would be the first persons to speak to about it. It is no answer, in my view, to say that the discussions with the Receiver took place a long time ago and the Receiver's record is therefore the best evidence when no attempt whatsoever has been made to speak with these individuals in the first instance.

[50] Further, some of the individuals have been cross-examined at length by Sbaraglia's counsel in the CO Group receivership application. No explanation has been provided

by Sbaraglia as to why the information obtained from that proceeding about the individuals' relationship with Mander and Sbaraglia is not sufficient. In fact it was not mentioned at all by Sbaraglia in his affidavit.

[51] I am mindful that in both *O'Connor* and *McNeil*, the Court noted that the onus on the applicant in an application for third party production to establish likely relevant is not high given that the applicant has no information about what's in the documentation being sought. In my view, however, where an applicant seeks records of information given by specific individuals and has not first established that the information is unavailable from the individuals, the applicant has failed to meet his or her onus.

[52] The nine individuals who the Receiver spoke with and received documents from were associated with Mander, worked with him or dealt with him. To simply say, as Sbaraglia does many times in his affidavit that information concerning what the person said or gave to the Receiver is necessary to assist him in his due diligence defence is, without more, speculative and without substance. The OSC's allegation of failure to exercise due diligence is that Sbaraglia failed to do any due diligence with respect to Mander and his investment scheme and obtain any objective evidence from Mander about the alleged investment profits. I am unable to conclude, in the absence of some specific information from Sbaraglia that the relationships between the nine individuals and Mander and their dealings with him are in any way likely relevant to Sbaraglia's due diligence defence.

[53] Nor has Sbaraglia established that the information sought is necessary for the credibility of witnesses or the reliability of other evidence in the case. The OSC has indicated that it intends to call two staff investigators and a number of Sbaraglia's former clients as witnesses at the hearing. There is no indication any of the nine individuals will be witnesses at

the hearing. Further, the OSC staff has advised Sbaraglia on at least two occasions that it does not intend to call the Receiver as a witness at the hearing against Sbaraglia.

[54] As a result, I find that Sbaraglia has failed to establish that the Receiver's records relating to its discussions with the nine individuals as part of the Mander Debtor receivership which he seeks production of are likely relevant to the OSC's allegations against him. In my view, his request for such records is nothing more than a fishing expedition which is clearly not permissible.

(b) The Lawyers

[55] Julia Dublin and Michael Miller from Alysworth LLP, acted for Sbaraglia and Mander from approximately May 2009 to early 2010. The Receiver interviewed them with Sbaraglia's consent and recorded the interviews. No transcript of those interviews has been prepared.

[56] Peter Welsh acted for both Mander and his companies and CO Capital. As noted, the July 14, 2010 order required Mr. Welsh to produce documents relating to the Mander Debtors and CO Capital to the Receiver. The Receiver met with Mr. Welsh.

[57] I view Sbaraglia's request for production of information received by the Receiver from the lawyers to be different from the records requested concerning the nine individuals. The record indicates that Sbaraglia is suing the lawyers from which I infer that speaking to them about what they said or gave in the way of documents to the Receiver or what they may say to support his due diligence defence is not realistic. Accordingly I am not troubled by the fact that there is no evidence of any attempt by Sbaraglia or his lawyers to speak with the lawyers.

[58] Dublin and Miller were present when Sbaraglia was interviewed by the OSC. It is that interview and some of the answers provided by the lawyers (with Sbaraglia present) that is

part of the OSC's allegation that Sbaraglia misled the OSC. What Dublin and Miller told the Receiver during their interviews could likely be relevant to the allegations Sbaraglia is facing. Similarly, any documents that they provided to the Receiver concerning their representation of CO Capital may also be likely relevant.

[59] I am of the same mind in respect of any documents provided by Welsh to the Receiver concerning his representation of CO Capital.

[60] With respect to any discussions with Welsh, there is no transcript. I do not regard the Receiver's notes of any discussions to be likely relevant. They are the note taker's impression of the discussion and do not necessarily reflect what was said by the interviewee. Nor can they be used to impeach credibility.

(c) The Accountant

[61] Also as noted, the July 14, 2010 order required Tonin & Co. LLP who acted for Mander's companies and CO Capital to produce all related documents to the Receiver. In addition, the Receiver met with Peter Tonin, the partner who was in charge of the clients.

[62] There is no indication on the record why Sbaraglia or his counsel cannot speak with Tonin concerning his discussions with the Receiver. I infer, however, from the position taken by Tonin's counsel before me that any such request may not have had much success.

[63] For the same reason as noted concerning Welsh, it is my view that any documents which Tonin provided to the Receiver concerning CO Capital may be likely relevant to the OSC's allegations and Sbaraglia's defence. I do not, however, consider the Receiver's notes, if any, of any discussions with Tonin to be likely relevant for the reasons sated in respect of Welsh.

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(d) The OSC Staff Investigator

[64] Pursuant to paragraph 30 of the Fresh as Amended Receivership Order in the Mander Debtors receivership dated March 31, 2010 which requested, among other things that any regulatory or administrative body in Canada assist the Receiver in carrying out the Order, the OSC staff investigator and other OSC staff members met with the Receiver and provided information concerning the OSC's investigation of, among others, Mander and Sbaraglia. All of the material provided to the Receiver by the OSC has been disclosed to Sbaraglia by the OSC as part of its disclosure obligations.

[65] Further, the investigator filed an affidavit in the OSC's receivership application against the CO Group and was cross-examined at some length by the CO Group's counsel.

[66] In my view, Sbaraglia has not established that any records the Receiver has with respect to its meeting with the OSC investigator are likely relevant to the issues raised by the OSC. The investigator was not interviewed by the Receiver. The OSC and the Receiver to some extent conducted parallel investigations. Sbaraglia has obtained full disclosure from the OSC concerning its investigation which is all of the information provided by the OSC to the Receiver. In addition, Sbaraglia has cross examined the investigator at length in the OSC receivership application.

(e) Deleted Emails

[67] As a result of the consent of CO Capital, the Receiver had access to CO Capital's computers and servers and identified email correspondence from and to Sbaraglia that had been previously deleted, including emails sent to Sbaraglia on March 24, 2010, one day prior to the Receiver attending at CO Capital's office.

[68] Sbaraglia states in his affidavit that although he does not know what the deleted emails contain or whether he has copies, the Receiver's Fourth Report which refers to them gives the impression they contain relevant information and accordingly he believes that they will assist him in defending the OSC's allegations.

[69] While I consider the reference to the deleted emails in the Receiver's Report was simply to note a concern that emails had been deleted, particularly in and around the time when it was appointed receiver of the Mander Debtors and is not a comment concerning their specific relevance, unlike the information requested from the nine individuals, because the deleted emails are to and from Sbaraglia, I am unable to conclude based on the information before me that they are not likely relevant to his defence of the OSC's allegations.

(f) Index of Documents and Information in the Receiver's Possession and Control

[70] As noted, Sbaraglia requests that the Receiver produce an index of all documents and information in its power, possession and control. Sbaraglia believes that it will assist him in defending the OSC's allegations. He further seeks the right to request production of any document which may appear in the index.

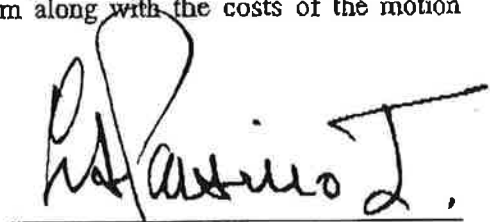
[71] There is no basis in the evidence for establishing that the Receiver should produce an index of all documents and information received by it during the two-year period of the Mander Debtors receivership. I am not prepared to find, in the absence of some specific information that such an index is likely relevant to any of the issues raised in the OSC's allegations. The Receiver indicates that no such inventory has been prepared. The documents number in the hundreds. The request in my view, is simply too bald and general to meet the test of likely relevant. In my view, it amounts to nothing more than a fishing expedition and not something the court can or will permit.

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Conclusion

[72] Accordingly, for the above reasons and with the procedure set forth in *O'Connor* in mind, I direct that the Receiver have a transcript made of its interviews with Dublin and Miller for my review. The Receiver should also prepare and produce for my review the documents provided by Welsh and Tonin pursuant to court order concerning CO Capital only along with the deleted emails it recovered from CO Capital's computers and servers. I request that this be done as soon as possible and in any event by June 10, 2012 in order that I can review the transcript and documents to determine whether and to what extent production, if any, of the transcripts and documents should be ordered to Sbaraglia having regard to the factors set out in *O'Connor* and *McNeil* and the issues raised by the Receiver and Sbaraglia on the motion. If there is an issue concerning the timing I have set out, I may be spoken to.

[73] I am mindful of the costs to the Mander Debtors receivership of these additional requests placed upon the Receiver. I do not think, however, that the costs of producing the requested information should be significant. They must, however, be borne by the Receiver at this stage. The Receiver should keep track of its costs in preparing and providing the requested transcripts and documentation and I will deal with them along with the costs of the motion generally upon completion of the motion.

A handwritten signature in black ink, appearing to read "L. A. Pattillo J.", written over a horizontal line.

L. A. Pattillo J.

Received
May. 23. 2012 3:05PM

May 23 2012 03:06pm

No. 6508 P. 23/23

298

CITATION: SA Capital Growth Corp. v. Christine Brooks, 2012 ONSC 2800

DATE: 20120523

DOCKET: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

- and -

PETER SBARAGLIA

Moving Party

**RSM RICHTER INC. and ONTARIO SECURITIES
COMMISSION**

Responding Parties

REASONS FOR JUDGMENT

L. A. PATTILLO J.

Released: May 23, 2012

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **WEDNESDAY THE 23rd DAY OF**
JUSTICE L.A. PATTILLO)
) **MAY, 2012**

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

ORDER

THIS MOTION, made with notice by Peter Sbaraglia (“Sbaraglia”), for an Order requiring Duff & Phelps Canada Restructuring Inc. (formerly RSM Richter Inc.), in its capacity as receiver of the Respondents (the “Receiver”) to produce certain documents, was heard on May 9, 2012 at 330 University, Toronto, Ontario.

ON READING the Notice of Motion, Affidavit of Peter Sbaraglia sworn April, 23, 2012 and the exhibits thereto, Thirteenth Report of the Receiver dated April 30, 2012 and the appendices thereto, Affidavit of Mehran Shahviri sworn May 1, 2012 and the exhibits thereto, Sbaraglia’s Factum dated May 4, 2012, Receiver’s Factum dated May 7, 2012, Factum of the Ontario Securities Commission (the “OSC”) dated May 7, 2012, and the Factum of SA Capital Growth

Corp., dated May 8, 2012 and upon hearing the submissions of counsel for Sbaraglia, the Receiver, the OSC, SA Capital Growth Corp., Tonin & Co. LLP and Peter Tonin ("Tonin"),

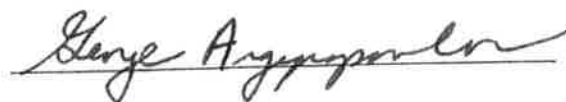
1. **THIS COURT ORDERS THAT** the Receiver shall have transcripts made (the "Transcripts") of the recordings, if any, of its interviews with Julia Dublin ("Dublin") and Michael Miller ("Miller").
2. **THIS COURT FURTHER ORDERS THAT** the Receiver shall, as soon as possible and in any event by no later than June 10, 2012, produce to the Court for its review, in order to determine whether and to what extent production, if any, should be ordered, the following documents:
 - (a) The Transcripts;
 - (b) The documents provided to the Receiver by Dublin and Miller, concerning CO Capital Growth Corp, Peter Sbaraglia, Mandy Sbaraglia and 91 Days Hygiene Services Inc. (the "CO Group");
 - (c) The documents provided to the Receiver by Peter Welsh and Tonin pursuant to Court order concerning the CO Group only; and
 - (d) The deleted emails recovered by the Receiver from CO Capital Growth Corp.'s computers and servers.

3. **THIS COURT FURTHER ORDERS THAT** the remainder of Sbaraglia's motion be and hereby is dismissed.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



JUL 10 2012



G. Argyropoulos, Registrar
Superior Court of Justice

SA CAPITAL GROWTH CORP.

Applicant

and

**CHRISTINE BROOKS AS EXECUTOR OF THE
ESTATE OF ROBERT MANDER, DECEASED, et al.**
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

BRAUTI THORNING ZIBARRAS LLP
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**Lawyers for the Moving Party,
PETER SBRAGLIA**

Appendix “D”

RSM Richter

**Eleventh 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, March 15, 2011

RSM Richter

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Fresh as Amended Receivership Order

"A"

Schedule of Receipts and Disbursements as at March 14, 2011

"B"

Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

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

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**

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

March 15, 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 a claims procedure (the "Claims Procedure") to be carried out in accordance with a "Claims Procedure Order";
- b) Seek the approval of this Honourable Court to appoint Harvey Chaiton of Chaitons LLP ("Chaitons") as the claims officer ("Claims Officer") under the Claims Procedure;
- c) Recommend that this Honourable Court issue an order approving the Claims Procedure and authorizing the Receiver to administer the Claims Procedure in accordance with the Claims Procedure Order; and
- d) Recommend that this Honourable Court issue an order authorizing the Receiver to distribute to Pero Assets Inc. ("Pero") funds paid to it from accounts maintained by Pero at Interactive Brokers Canada Inc. ("Interactive Brokers"), as detailed in Section 5 below.

1.2 Currency

All currency references are in 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 various reports to Court regarding these proceedings. These documents are available on the Receiver's website at www.rsmrichter.com.

3. REALIZATION PROCESS

The majority of the Mander Debtors' assets, which consisted primarily of real estate and certain other personal property assets, have been realized upon by the Receiver. The various transactions related to the realization process were approved by this Honourable Court throughout these proceedings. The remaining assets to be realized upon consist primarily of shares purchased by Mander and his companies in certain illiquid start-up companies. The

balance in the receivership account as at March 14, 2011 was approximately \$1.2 million. A schedule of receipts and disbursements is attached as Appendix "B."

4. CLAIMS PROCESS

Until recently, the Receiver believed that it was premature to commence a claims process, particularly due to the uncertainty regarding the status and outcome of its investigation of C.O. Capital Growth Corp., 91 Days Hygiene Services Inc., Peter Sbaraglia and Mandy Sbaraglia (the "CO Capital Debtors"). Based in part on the Receiver's findings as detailed in its ninth report to Court dated November 12, 2010, the Court issued an order appointing Richter as the Receiver of the CO Capital Debtors. As a result, the Receiver is now of the view that a Claims Procedure should be advanced with respect to both the Mander Debtors and the CO Capital Debtors.

The following is an overview of the proposed Claims Procedure regarding the Mander Debtors. The Receiver will be seeking an identical order in the CO Capital Debtors' proceedings. (Capitalized terms have the meanings given to them in the draft Claims Procedure Order.) If the Claims Procedure Order is made as proposed:

- The Receiver will, within five days of the Court making the proposed Claims Procedure Order, send by ordinary mail a copy of the Proof of Claim Document Package (which includes an Instruction Letter and Proof of Claim) to each known potential claimant of the Mander Debtors;
- The Receiver will post a copy of the Proof of Claim Document package on its website from the date of the Claims Procedure Order until ten business days after the Claims Bar Date;
- The Receiver will place an advertisement in *The Globe and Mail* (National Edition) on or before March 28, 2011. The advertisement, the form of which is attached to the draft Claims Procedure Order, is to advise of the Claims Procedure, call for Claims and provide notice of the proposed Claims Bar Date, being April 20, 2011; and
- Any and all Claims not filed by 5:00 p.m. (Toronto time) on April 20, 2011 (the Claims Bar Date) will be extinguished and forever barred.

The proposed forms to be used in the Claims Procedure (including the Proof of Claim form) are appended as Schedules to the draft Claims Procedure Order.

The intended purpose of the current Claims Procedure is to call for claims against the Mander Debtors. The Claims Procedure as set out does not contemplate the allowance or disallowance of claims at this stage in the process. After receipt of the claims the Receiver will undertake a review of the claims and will report back to this Honourable Court regarding its findings and the proposed next steps in the claims process.

Although at this time the Claims Procedure does not contemplate the allowance or disallowance of claims, the Receiver requests that this Honourable Court approve the retention by the Receiver of Harvey Chaiton of Chaitons as Claims Officer. During the next stage of the claims process, claims that cannot be resolved between the claimant and the Receiver may be turned over to the Claims Officer for resolution. Accordingly, the Receiver is of the view that it is appropriate to engage the Claims Officer at this time to participate in the initial stages of the Claims Procedure.

It is proposed that a claims process for creditors of the CO Capital Debtors will be carried out simultaneously with the claims process for creditors of the Mander Debtors.

5. PERO ASSETS INC.

Pero was originally owned equally by Mander and Peter Sbaraglia. During the time that Mander and Peter Sbaraglia owned Pero they maintained a bank account at Royal Bank of Canada, being the account into which parties invested with Pero. Monies would then be transferred from that bank account to trading accounts which Pero maintained at Interactive Brokers Canada Inc. ("Interactive Brokers"). During the Mander receivership, the equities in the Interactive Brokers'

account were liquidated and their proceeds (approximately \$21,000) were remitted by Interactive Brokers to the Receiver. The Receiver is holding these funds in a separate trust account ("Trust Account").

As a result of a transaction that was effective as of March 1, 2008, Pero's ownership was transferred from Mander and Peter Sbaraglia to Thomas Obradovich and his wife Katherine Reid. Prior to the transfer of the shares to Obradovich and Reid, two parties, Obradovich and a third party, invested approximately \$3.72 million, being substantially all of the investments in Pero (CO Capital invested approximately \$29,000). Based on the Receiver's review of the records, the third party has been fully repaid the amount she invested, including interest. Obradovich has requested that the Receiver remit to Pero the cash held by the Receiver in the Trust Account. Based on the Receiver's review of the available records, it is of the view that Pero should receive the funds held in the Trust Account in respect of this issue. The monies that arguably are due to CO Capital are exceedingly immaterial¹.

6. BLACK INK CAPITAL GROWTH LTD.

Due to concerns arising from statements in the Receiver's fourth report to Court dated July 2, 2010 ("Fourth Report"), the principals ("Principals") of Black Ink Capital Growth Ltd. ("Black Ink") requested that the Receiver provide an update concerning any findings it may have concerning Black Ink. In particular, the Principals expressed concern with the statement in the Fourth Report which indicated that Black Ink may have received more monies from Mander (and related parties) than Black Ink invested with those parties.

¹ Assuming a pro rata sharing of amounts deposited into Pero, CO Capital would be entitled to \$210.

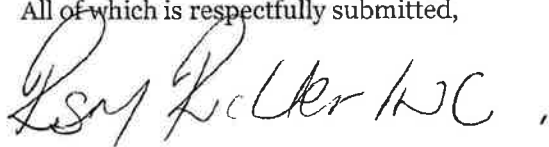
Based on information and documentation provided by the Principals subsequent to the date of the Fourth Report, it appears that Black Ink received at least approximately \$563,000² less from Mander and his companies than Black Ink paid to Mander and his companies. Based on this new information, Black Ink appears to have suffered losses as a result of the Mander scheme.

7. RECOMMENDATION

Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 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**

² The documentation provided to the Receiver indicates that Black Ink received approximately \$738,000 less than it invested with Mander and his companies; however, based on the source documents available to the Receiver, the Receiver was only able to verify that Black Ink received approximately \$563,000 less from Mander and his companies than it invested with Mander and his companies.

Appendix “E”

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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Confidential Appendices

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

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

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
	28,775	19,704	(3,668)	44,811

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,



**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**

Appendix “F”

Robert Mander, E.M.B. Asset Group Inc. and Related Entities

Schedule of Receipts and Disbursements

For the period March 19, 2010 to July 23, 2012

(Unaudited; \$C)

Receipts

Proceeds from sale of real estate	3,083,792
Soka Gakkai International (Canada)	320,500
Asset Engineering Corporation	252,038
Life insurance policies	181,551
HST collected	126,923
Sale of Lexus	25,000
HST refund	23,623
Transfers from Debtors' bank accounts	12,617
GST collected	11,000
Other miscellaneous refunds	10,292
Interactive Brokers	8,165
Interest	11,193
Inter-bank transfer	21,425
<i>Total Receipts</i>	<u>4,088,118</u>

Disbursements

Receiver's fees and disbursements	1,590,139
Legal fees and disbursements, Receiver's counsel	989,062
TD Bank re: mortgage on 17 Stonebury Place	634,753
HST paid	216,163
Other miscellaneous expenses	61,573
GST paid	53,405
Legal fees, SA Capital Growth Corp.	46,146
Interbank transfer	21,425
Hometek Enterprises re: construction lien	14,905
Insurance	11,544
Utilities and telephone	6,023
Bank charges	1,121
PST paid	806
<i>Total Disbursements</i>	<u>3,647,065</u>
<i>Balance in the Receiver's Account</i>	<u>441,053</u>