Court of Appeal File No. C70114

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant
(Respondent in Appeal)

– and –

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED

Respondents
(Appellants – Moving Party)

APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended

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FACTUM OF THE ONTARIO SECURITIES COMMISSION

December 21, 2021

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Ontario Securities Commission v. Sbaraglia (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported) 16

PART I – OVERVIEW

1. On the application below, Justice Pattillo found that the evidence established that Oscar Furtado (**Furtado**), the founder and directing mind of the Appellant entities: (a) arranged to personally profit from Go-To Spadina Adelaide Square LP's (**Adelaide LP**) purchase of real properties (which were acquired with investor and other funds); (b) misused other limited partnership assets to secure the Adelaide LP's acquisition of the properties; and (c) gave false and/or misleading evidence to Enforcement Staff of the Ontario Securities Commission.

2. In the appeal, the Appellants ask this Court to overturn three discretionary decisions made by Justice Pattillo, namely to: abridge time for service; deny the Appellants' request for an adjournment; and grant a Receiver over the Appellant entities (together, **Go-To**).

3. On this motion, the Appellants ask this Court to stay, on terms, the order appointing KSV Restructuring Inc. (**Receiver**) as receiver and manager of the Go-To entities. The request for a stay should be denied. Furtado comes before this Court with unclean hands. The Receiver's First Report indicates that after Furtado received the application materials and before the Receiver was appointed: (a) Furtado caused the Adelaide LP and its general partner to enter an agreement of purchase and sale for the Adelaide LP's properties; and (b) seven purchase agreements for condominium units of another Go-To LP project, which had been sold to friends and family of Furtado, were terminated. Further, the Appellants do not satisfy the requirements for a stay: no irreparable harm if the stay is not granted has been established; and, most significantly, the balance of convenience clearly favours refusal of a stay because the appointment of the Receiver was sought, and granted, pursuant to the Commission's public interest mandate to protect investors and the capital markets.

PART II – FACTS

a. Application and Decision of Justice Pattillo

4. In the application, the Commission applied for continuation of two freeze directions relating to assets in the hands of Furtado (the **Directions**) and the appointment of the Receiver over the Go-To entities. Justice Pattillo granted the orders sought.

Endorsement of Pattillo J. (**Endorsement**) at paras. 1-2, 32, Motion Record (**MR**) Tab 3 pp. 44, 47.

5. The Commission brought the application to protect investors' best interests and for the sake of the due administration of securities law, because an investigation by Staff uncovered evidence that, among other things:

a) between 2016-2020, Furtado raised almost $80 million from investors for nine real estate projects, by selling limited partnership (**LP**) units of the Go-To LPs;

b) beginning in February 2019, Furtado raised capital from investors to acquire and develop two properties in downtown Toronto by selling LP units in the Adelaide LP;

c) Furtado negotiated the purchase of the properties for the Adelaide LP with Alfredo Malanca (**Malanca**), as a representative of Adelaide Square Developments Inc. (**ASD**). To acquire the properties, the Adelaide LP took assignment from ASD of two purchase and sale agreements with the properties' owners (at purchase prices totaling $53.3 million on closing) and paid an "Assignment Fee" of $20.95 million to ASD;

d) Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP during its property acquisitions, in breach of the applicable LP agreements;

e) Within two weeks of the Adelaide LP's purchase of the properties, namely April 15, 2019, Furtado's holding company (**Furtado Holdings**) received shares and a payment

of $388,087.33 from ASD. Less than six months later, Furtado Holdings received a $6 million "dividend" from ASD;

f) Malanca's spouse's company received the same quantum of shares and payments from ASD that Furtado Holdings did, on the same dates;

g) Furtado used monies from ASD on personal expenses, investments, and in the operation of the Go-To businesses, including to make payments due to investors; and

h) During the investigation, Furtado gave varying and misleading evidence under oath about his dealings with ASD and the payments Furtado Holdings received from ASD.

Endorsement at paras. 8-18 and 24, MR Tab 3 pp. 44-46.

6. The Commission also sought an order abridging time for service of the application, which was granted. Further, the Appellants' request for an adjournment was denied. Justice Pattillo made these orders primarily because of the seriousness of Furtado's misconduct, concluding that "it was necessary having regard to the interests of the investors to deal with the application rather than adjourn it to a future date and leave Furtado in charge."

Endorsement at para. 6, MR Tab 3 p. 44 and Order of Pattillo J. dated December 10, 2021 (**Receivership Order**) at para. 1, MR Tab 2 p. 17.

Notice of Application (**NoA**) at para. 1(c), Responding Motion Record (**RMR**) Tab 1 p. 7.

b. Furtado's Evidence on The Motion

7. Furtado has filed an affidavit in support of this motion. Given the matters in issue on the motion, the Commission does not purport to respond to such evidence in detail. Should the Appellants seek to adduce fresh evidence in the appeal, the Commission will address it at that time.

8. However, the Commission notes that, among other flaws, the Furtado affidavit:

a) Asserts that Furtado has been denied access to the transcripts of Staff's examination of him, even though he has been able, throughout the investigation, to obtain those transcripts at his expense; and

b) Misstates the timing of communications concerning the application. Furtado's counsel requested a telephone call at 2:20 p.m. on December 7th, a call occurred at 4:30 that day, and at 10:09 a.m. on December 8th counsel was advised that the Commission intended to proceed with the application as scheduled.

Affidavit of Oscar Furtado (**Furtado Affidavit**) at, e.g., paras. 13 and 26, MR Tab 4 pp. 57, 60.

Affidavit of Paul Baik at paras. 3-5 and Ex. B, RMR Tab 6 pp. 164, 172, 174, 177.

c. First Report of the Receiver

9. In its First Report dated December 20, 2021, the Receiver reports, among other things:

a) on December 9th, three days after Furtado received notice of the application, seven purchasers of pre-sold condominium units "terminated their agreements of purchase and sale for units in the Glendale Project". All presales were to "friends and family" of Furtado (section 3.5(b));

b) on December 10th, while Justice Pattillo's decision was under reserve, the Adelaide LP and its general partner entered an agreement to sell the Adelaide LP's properties. The Receiver also noted: the agreement contains "an insignificant deposit", which has not even been paid; the properties were apparently offered to only a small number of persons; and, the opportunity to purchase was presented to the proposed purchaser "at a price suggested by Mr. Furtado" (section 3.1(2)-(3));

c) Torkin Manes continues to act as counsel for Appellants, at least in certain respects (section 3.5); and

d) on December 17th, the Receiver spoke to counsel for Anthony Marek, who is a secured lender to and the Adelaide LP's largest investor, and Marek supports continuation of the Receivership (section 3.1(6)-(7)).

First Report of the Receiver dated December 20, 2021, RMR Tab 7 pp. 183-184, 186.

PART III – ISSUE ON THE MOTION

10. The issue on the motion is whether the Receivership Order ought to be stayed, on terms, pending the disposition of the appeal. The Commission submits the stay should be denied.

PART IV – LAW AND ARGUMENT

a. Furtado Has Unclean Hands

11. The stay should be denied as Furtado comes to this Court with unclean hands. The Receiver's First Report indicates that while Furtado had notice of the application for a Receiver he: (a) attempted to sell the Adelaide LP's properties; and (b) appears to have alerted his friends and family to cancel purchase contracts for pre-sold condominium units in the Glendale project.

Morguard Residential v. Mandel, 2017 ONCA 177 at paras. 18, 27-28; see para.9 above.

b. The Appellants Do Not Meet the Test for a Stay

12. The stay should also be denied as the Appellants do not meet the test for a stay. The three-part test to determine whether a stay of proceedings should be granted is well-established. It requires the moving party to demonstrate:

1) There is a serious issue to be tried;
2) It would suffer irreparable harm if the stay was not granted; and
3) The balance of convenience favours granting the stay.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 SCR 311 [**RJR**] at p. 334.

13. The elements of the test are to be weighed as a whole, not as individual components. The key question is whether the interests of justice favour a stay.

Reynolds v. Alcohol and Gaming (Registrar), 2019 ONCA 788 [**Reynolds**] at para. 18.

i. Serious Issue: Appellants' Argument is Weak at Best

14. The first element considered is whether there is a serious issue to be tried on appeal. While this is a low threshold, the Appellants' position on this element is weak at best.

RJR at pp. 335, 337.

15. The Appellants challenge three decisions made by Justice Pattillo, all of which are discretionary in nature. In particular:

a) a decision to deny an adjournment is discretionary;

Zachariadis Estate v. Giannopoulos Estate, 2021 ONCA 158 [**Zachariadis**] at para. 16.

b) a decision to abridge the time for service is discretionary; and

Bottan v. Vroom, 2001 CarswellOnt 1172 (Div Ct) at para. 17. See also: Rule 3.02 of the *Rules of Civil Procedure*, Schedule B.

c) a decision appointing a receiver under s. 129 of the *Securities Act* is discretionary.

Endorsement at para. 20, MR Tab 3 p. 46; *Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported) at p. 26, Schedule A.

16. Discretionary decisions are reviewed on a deferential standard and will only be set aside where the judge below "misdirected themselves or their decision was so clearly wrong as to amount to an injustice."

Penner v. Niagara Regional Police Services Board, 2013 SCC 19 at para. 27.

Visic v. Elia Associates Professional Corporation, 2020 ONCA 690 at para. 8(5).

17. The Endorsement demonstrates that Justice Pattillo weighed and considered the relevant factors and arguments of the parties in exercising his discretion to grant an abridgement of the time for service and deny the adjournment request. He concluded it was necessary to proceed with the application given the nature of Furtado's misconduct and, more particularly, to ensure investors were protected. That conclusion was plainly justified given the evidence before Justice Pattillo which raised serious concerns that Furtado had committed fraud and given misleading evidence under oath. Given Furtado's attempt to sell the Adelaide LP properties while Justice Pattillo's decision was under reserve, that conclusion was also arguably prescient.

Endorsement at paras. 3-7, MR Tab 3 p. 44.

Zachariadis at para 18.

ii. No Irreparable Harm

18. The second part of the test considers whether refusal of a stay could so adversely affect the Appellants' interests that such harm would be irremediable if they are ultimately successful in the appeal. Irreparability refers to the nature of the harm, not its magnitude. Generally, it is harm which is not quantifiable in money or is unrecoverable. Any evidence demonstrating harm must be clear and not speculative.

RJR at p. 341; *Sazant v College of Physicians & Surgeons (Ontario)*, 2011 CarswellOnt 15914 (CA) [**Sazant**] at para. 11.

19. The Appellants have not demonstrated that they will suffer irreparable harm if a stay is not granted. They argue, essentially, that they will suffer four categories of harm if a stay of the Receivership Order is not granted:

a) risk to the Go-To entities as going concerns, and to their pending transactions;

b) costs of the Receivership;

c) reputational damage to the Appellants; and

d) economic harm to Furtado personally.

Appellants' Factum at para. 36.

20. The Receivership Order does not pose a threat to the continuation of the Go-To entities or any proper pending transactions. Indeed, as Justice Pattillo held in rejecting the Appellants' argument that a receivership would be a "death knell" to the Go-To entities: "[t]he receivership is not in respect of an insolvency. There is no reason that the various projects can not continue under the control of a receiver." The powers granted to the Receiver permit it to run the businesses. No evidence is offered by the Appellants as to why any pending transactions cannot be undertaken by the Receiver. Further, as Justice Pattillo noted, the Receivership Order also includes stay provisions which provide that "none of the loan agreements can be placed in default".

Receivership Order at paras. 4, 11-12, Endorsement at para. 28, MR Tabs 2-3 pp. 18-21, 23, 46-47.

21. The Receivership Order *protects* the viability of the Go-To entities, such as they are, it does not undermine them. The fact that the Receiver can market and, subject to Court approval, sell properties belonging to the Go-To entities does not alter this conclusion.

22. In *Romspen*, the Superior Court rejected an argument that the prospect that the receiver would sell the debtor's assets before a pending appeal constituted irreparable harm, and thus declined to grant a stay. In so finding, the Court noted the receiver's duties as an independent officer of the Court, including to represent the best interests of all interested parties, that any sale would necessarily take time, and the fact that any sale required Court approval.

> *Romspen Investment Corp. v. 1514904 Ontario Ltd.*, 2010 ONSC 1339 [**Romspen**] at paras. 19-22, 32.

23. As to the costs of the Receivership:

a) there is no evidence of the costs of the Receivership, as it has just begun;

b) in any event, each of the Go-To limited partnerships incur fees and costs payable to GTDH for, among other things, administrative, management and/or development services, and expenses. Proceeding as the Appellants request – i.e. allowing Furtado to continue to control the Go-To entities and incur these fees and costs, while adding a monitor and its attendant costs – would only increase total expense;

c) a complaint about costs is an assertion of economic harm which, as above, generally does not constitute irreparable harm; and

d) while receiverships can be costly, such costs generally do not constitute irreparable harm.

> Romspen at paras. 23, 32-33.
>
> See, e.g.: LP Agreement for Eagle Valley LP at s. 4.2; LP Agreement for Adelaide LP at s. 4.1; and, Draft 2020 Financial Statements for Adelaide LP; Exs. 15, 23, 96 to the Affidavit of Stephanie Collins sworn December 6, 2021, RMR Tabs 2-4 pp. 33-34, 76, 118-119.

24. The Appellants offer no particulars of the reputational damage they allege, so that assertion should be given no weight. In any event, there is no reason to believe that the appointment of a

monitor would cause any less damage to reputation than that of a receiver. Any harm to the reputations of Furtado and/or the Go-To entities arises from the misconduct justifying the Receiver's appointment, rather than from the appointment itself.

25. As to the alleged prejudice to Furtado personally, he provides no details of his financial situation, outstanding expenses purportedly owed to him by the Go-To entities, or asserted medical expenses. These assertions also should be given no weight. Further, if Furtado has personally incurred legitimate business expenses on behalf of the Go-To entities, he can seek payment in the Receivership like any other creditor.

26. Notably, Furtado asserts he has "no other access to funds" because of the Directions. The Directions freeze a specified investment account and any other assets "that constitute or are derived from the proceeds of" sales of Go-To limited partnership units. If Furtado's evidence is that he has no assets other than those derived from investor funds, that is alarming.

> Furtado Affidavit at para. 76, MR Tab 4 p. 73.
>
> Directions, Sch. C to the Receivership Order, MR Tab 2 pp. 35-38.

27. Regardless, this Court has observed that where an individual is prevented from continuing in their chosen occupation, this can result in emotional and psychological harm and financial loss. However, as those types of harms will almost always exist in such cases, something more will be required to establish irreparable harm.

> Sazant at paras. 11-13.

28. The Appellants have not demonstrated, with evidence, any of the harms they allege. Further, the harms they allege are not irreparable in nature.

iii. Balance of Convenience Favours Protecting the Public Interest

29. At the third stage, the Court assesses which party will suffer greater harm from the granting or refusal of the stay. Where, as here, the responding party is a public authority, the public interest is weighed at this stage. The Commission sought the Receivership Order in pursuit of its public interest mandate. The balance of convenience favours refusing a stay.

> RJR at pp. 342-344 citing, among others, *Ainsley Financial Corp. v. Ontario (Securities Commission)*, (1993) 14 OR (3d) 280, 1993 CanLII 5552 (Gen Div) at p. 34.
>
> Endorsement at paras. 22, 26-27, MR Tab 3 p. 46.
>
> *Securities Act* ss. 1.1, 2.1, Schedule B.

30. As the Supreme Court held in *RJR*, in a case involving a public authority, the public interest is a "special factor" that is given extra weight. The balancing test is almost always satisfied in favour of a public authority where: (a) it is charged with protecting the public interest; and (b) there is some indication that the impugned activity was undertaken pursuant to that responsibility. Moreover, the Court will consider the ramifications of the order sought for others with legitimate interests in the matter who are not before the Court.

> RJR at pp. 342-344, 346.
>
> *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council*, (2006) 82 OR (3d) 338, 2006 CanLII 29083 (CA), at para. 21; Reynolds at paras. 15-16, 18.

31. The goal of securities legislation is to protect the investing public and the integrity of capital markets. The Commission's public interest mandate is animated by the purposes of the *Securities Act*, which include protecting investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets.

> *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 at pp. 592-593; *Securities Act* ss. 1.1 and 2.1(2), Schedule B.

32. The Commission sought the appointment of the Receiver in pursuit of its public interest mandate. Justice Pattillo properly concluded that appointing the Receiver was in the best interests of investors, and that there are "significant concerns" about Furtado's ability to act in compliance with securities laws. Investors and other Go-To stakeholders have a shared interest in seeing the Go-To entities properly administered. Although they are not before the Court, their interests ought to be considered, and also weigh against granting a stay. As the Receiver has reported, at least one major investor and creditor of the Adelaide LP favours continuation of the Receivership.

Endorsement at paras. 22, 26-27, MR Tab 3 p. 46.

PART V – CONCLUSION

33. The Commission requests the motion for a stay of the Receivership Order be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of December, 2021

Erin Hoult
Senior Litigation Counsel, Enforcement

Braden Stapleton
Litigation Counsel, Enforcement

Lawyers for the Ontario Securities Commission

Schedule "A" – Cases and Authorities Cited

1. *Ainsley Financial Corp. v. Ontario (Securities Commission)*, (1993) 14 OR (3d) 280, 1993 CanLII 5552 (Gen Div).
2. *Bottan v. Vroom*, (2001) 104 ACWS (3d) 439, 2001 CarswellOnt 1172 (Div Ct).
3. *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council*, (2006) 82 OR (3d) 338, 2006 CanLII 29083 (CA).
4. *Morguard Residential v. Mandel*, 2017 ONCA 177.
5. *Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported).
6. *Penner v. Niagara Regional Police Services Board*, 2013 SCC 19, [2013] SCR 125.
7. *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557.
8. *Reynolds v. Alcohol and Gaming (Registrar)*, 2019 ONCA 788.
9. *Romspen Investment Corp. v. 1514904 Ontario Ltd.*, 2010 ONSC 1339.
10. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311.
11. *Sazant v College of Physicians & Surgeons (Ontario)*, (2011) 219 ACWS (3d) 19, 2011 CarswellOnt 15914 (CA).
12. *Visic v. Elia Associates Professional Corporation*, 2020 ONCA 690.
13. *Zachariadis Estate v. Giannopoulos Estate*, 2021 ONCA 158.

Schedule "B" – Statutory Provisions

Rules of Civil Procedure, RRO 1990, Reg. 194, c. C.43.

Extension or Abridgment
General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Securities Act, RSO 1990, c. S.5

Purposes of the Act
1.1 The purposes of this Act are,

(a) to provide protection to investors from unfair, improper or fraudulent practices;

(b) to foster fair, efficient and competitive capital markets and confidence in capital markets;

(b.1) to foster capital formation; and

(c) to contribute to the stability of the financial system and the reduction of systemic risk.

Principles to consider

2.1 In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

…

2. The primary means for achieving the purposes of this Act are,

i. requirements for timely, accurate and efficient disclosure of information,

ii. restrictions on fraudulent and unfair market practices and procedures, and

iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

Appointment of receiver, etc.

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

Grounds

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Ontario securities law.

Application without notice

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

Motion to continue order

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate.

Powers of receiver, etc.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority.

Directors' powers cease

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court.

Fees and expenses

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court.

Variation or discharge of order

(8) An order made under this section may be varied or discharged by the court on motion.

Court File No. CV-10-883-00CL

SUPERIOR COURT OF JUSTICE

B E T W E E N :

ONTARIO SECURITIES COMMISSION

v.

Applicant

PETER ABARAGLIA, MANDY SBARAGLIA, CO CAPITAL GROWTH INC. and 91 DAYS HYGIENE SERVICES INC.

----Before THE HONOURABLE MR. JUSTICE MORAWETZ, held at The Courthouse, 330 University, on December 23, 2010 commencing at 10:00 a.m.

REASONS FOR JUDGMENT

A P P E A R A N C E S :

Pamela Foy	- for the Applicant
M. P. Gottlieb	- for RSN Richter Inc. Receiver of and Robert Mander
Milton Davis	- for the Respondents
Kelli Preston	- for the Respondents
Paul-Erik Veel	- for Creditors the Respondent CO Capital Growth Inc.

THURSDAY, DECEMBER 23, 2010

The Ontario Securities Commission ("OSC") brings this application for an order appointing RSM Richter Inc. as receiver of the assets, undertaking and property of Dr. Peter Sbaraglia, Ms. Mandy Sbaraglia, CO Capital Growth Inc. and 91 Days Hygiene Services Inc.

This matter has a long history. In July 2008, staff of the OSC obtained an order from the Commission pursuant to s. 11(1) of the Securities Act to investigate an inquiry into the business and affairs of Dr. Sbaraglia, Mr. Robert Mander, CO and Pero Assets Inc. with respect to trading in securities and potential breaches of Ontario securities law.

Based on the information that OSC staff received, it appeared that CO was obtaining funds from investors and investing those funds in securities.

The primary concern of the Commission was the use of investor funds by CO and Mr. Mander and Dr. Sbaraglia and whether funds and assets were available do as to ensure that the investors would be repaid.

During its investigation, the staff learned that a significant amount of funds obtained from investors had been transferred to Mr. Mander and his companies.

Mr. Mander operated and owned EMB Asset Group Inc. Through EMB, Mr. Mander operated a fraudulent Ponzi scheme involving in excess of $40 million of investors funds. In certain instances, investors, such as CO Capital, invested money with Mr. Mander or EMB which had been loaned to them from third-party investors.

CO was run by Dr. Sbaraglia and Mr. Mander. The record also establishes that Ms. Sbaraglia was integrally involved in the business of CO.

Throughout the period under review, CO was used by Dr. and Ms. Sbaraglia as an investment vehicle to solicit third-party investors to invest with Mr. Mander through CO.

Neither Dr. or Ms. Sbaraglia were registered with the OSC. CO raised approximately $21.2 million from investors, who Dr. Sbaraglia described as both friends and family. There were approximately 25 to 30 CO investors.

It has been determined that a significant portion of investor funds were not invested at all. Rather, the funds were used by Mr. Mander, and by CO to repay other investors.

The OSC takes the position that the Sbaraglias, through their role in CO and their close involvement with Mr. Mander, participated in the Ponzi scheme in a manner which they knew or ought reasonably

to have known, perpetrated a fraud on investors contrary to s. 126(1)(e) of the Securities Act.

This is disputed by the Sbaraglias who take the position that they were victims of the fraud and not perpetrators of the fraud as they did not know about the fraud until the summer of 2009.

CO was incoprorated on January 5, 2006. The first Investor Agreement is dated January 9, 2006 and CO continued to enter into loan agreements with investors until August 2009.

The OSC takes the position that CO's purported business model provided that CO would solicit investors to loan money; funds would then be loaned to CO for a fixed term, generally 1 to 3 years at a fixed high rate of interest ranging from 20% to 30%. CO would issue a loan agreement to each investor; funds from CO were transferred to Mr. Mander personally or through EMB or other Mander controlled companies for investment purposes and the profits generated from these investments above the fixed interest rate promised to investors were to be split equally between CO and Mr. Mander.

The record established that CO's actual business varied from the above model in a number of ways. First, CO did not transfer all of the funds of CO investors to Mr. Mander as approximately

$6 - 7 million was not transferred directly to Mr. Mander or EMB. These funds were used in a number of way by Dr. Sbaraglia, acting on behalf of CO, by making payments to CO investors with newly received funds from other CO investors, or in making investments in securities either directly in trading accounts in the names of other companies, which resulted in significant losses.

Further, it became clear thatthe funds that Mr. Mander did receive from CO were not invested, but were used to pay the returns to other investors that he was dealing with independently from CO.

RSM Richter as receiver of the EMB Asset Group, Mr. Mander and related entities obtained an order on July 14, 2010 in the receivership proceedings of EMB, which authorized the receiver to conduct ivnestigations into the business and affairs of Dr. Sbaraglia and Ms. Sbaraglia and the CO group.

According to the receiver's reports, $15.4 million of the $21.2 million raised by CO from its investors was transferred to Mr. Mander/EMB.

The balance of what CO raised, estimated to be between $6 and 7 million can be accounted for as follows. $2.1 million was recieved personally by Dr. and Ms. Sbaraglia at the direction of Mr. Mander, purportedly for profits earned by them from the actions of Mr. Mander.

Approximately $2.4 million was lost through trading accounts. Approximately $985,000 in general expenses of CO were paid from the CO bank accounts. Approximtely $585,000 was used by CO to purchase open ventures securities, which securities have very little value today. Approximately $213,000 in rent payments in respect of a property located at 239 Church Street, Oakville, Ontario were made by CO to 91 Days Hygiene, a company wholly owned by Ms. Sbaraglia. Approximately $383,000 in charges were incurred on a corporte visa in the name of CO, a significant number of which were not for the benefit of CO investors, but rather, were for the personal benefit of the Sbaraglias including significant payments for restaurants, renovations of 239 Church Street and numerous other personal expenses,

Dr. Sbaraglia, on behalf of CO, opened bank accounts over which he had sighning authority. The accounts were used to pool investor funds. At no time were the funds aggregated in any manner.

Dr. Sbaraglia acknowledged that throughout the review period CO used funds raised from one investor to pay amounts owing to other investor. This issue was specifically referenced in cross-examiantion, the transcript of which reads, commencing at Question 954 as follows:

Q. And Ms. Burton was an investor?

A. Yes.

Q. And this payment of $63,250 was paid to her in connection with her investment?

A. Yes.

Q. And tht payment was made just using other investors funds also? Correct?

A. Yes.

Q. And I can keep going through this book, but what we will see is throughout this entire piece payments are being made by CO Capital directly from funds paid into CO Capital from other investors?

A. Right.

Q. And you are aware of that?

A. Yes.

Q. And you were aware that this was going on throughout the piece?

A. Yes.

The payments to investors from the CO bank accounts were made with cheques signed by Mr. Sbaraglia. Ms. Sbaraglia undertook the bank statement and loan reconciliations, for the payments.

In July 2009, as part ot its investigtion, OSC staff conducted examinations of Mr. Mander and Dr. Sbaraglia. They were represented by the same legal counsel, who attended with each of them at their respective examinations/

Dr. Sbaraglia had retained legal counsel in or around June 2009 and it is apparent that Dr. Sbaraglia knew that the OSC's primary concern was whether investors funds were at risk and whether CO could properly account for the funds. Dr. Sbaraglia understood that the OSC staff would be seeking verification from CO that the assets as between CO and Mr. Mander and EMB were in excess of what was owed to CO investors.

Dr. Sbaraglia specifically acknowledged that he was under oath and he swore to tell the truth at this OSC examination.

During the examination, OSC staff were advised by counsel to Dr. Sbaraglia, of the following. CO investors consisted of only friends and family and that each of the investors had approached Dr. Sbaraglia about investing. CO had relied on legal advice obtained from another law firm with respect to CO's compliance with Ontario securities law in raising funds from third parties. CO investor funds were not at risk. The amount owing by CO to the CO investors was approximately $8.5 million, but the bulk of

the value of CO investors funds were invested in real estate assets purchased by Mr. Mander and Dr. Sbaraglia. Dr. Sbaraglia and Mr. Mander had a verbal arrangement whereby all assets held by the Sbaraglias were used by Mr. Mander for the benefit of CO investors and that the assets held by Dr. Sbaraglia and Mr. Mander were valued at approximately $12 million, and therefore well in excess of all amounts owing to CO investors.

At no time during the examination did Dr. Sbaraglia correct his legal counsel. Further, it is clear that Dr. Sbaraglia was aware that his legal counsel was speaking on his behalf during the examination.

OSC takes the position that the statements made by Dr. Sbaraglia were materially misleading and that among other things, Dr. Sbaraglia did not advise that CO had raised almost $1 million in 2006 prior to obtaining any legal advice as to whether CO was in compliance with Ontario securities law. Dr. Sbaraglia did not disclose a $6 million obligation to CO to Pero pursaunt to a loan agreement dated March 1, 2009. Dr. Sbaraglia does take the position that the obligation is not one of CO and that it was transferred to Mr. Mander. Documentation was produced that evidences a transfer to EMB/Mander, but there is no documented release from Pero in favour of CO or Dr. Sbaraglia. Further,

Dr. Sbaraglia now claims that he feels only morally obligated to CO investors. Dr. and Ms. Sbaraglia wish to use the proceeds from the sale of their assets to pay certain of the CO investors in priority to others based on their assessment of the relative needs of the CO investors. It is also apparent that all the assets of the Sbaraglias and Mr. Mander and CO were not, in fact, available to satisfy the amounts owing to CO investors as Mander had loans outstanding with many additional investors, other than the CO investors, all of which has been documented in the Mander receivership.

On August 7, 2009, following the examination, Dr. Sbaraglia's counsel provided OSC staff with a loan agreement between EMB and CO and an undertaking to the OSC in respect of loans made by CO investors to the real assets, which are being held for the benefit of those investors.

The undertaking provided that: (a) CO would not enter into any further loan agreements with third-party investors; (b) CO would cause outstanding loans to CO investors to be paid as they became due; (c) CO had used the loans from CO investors to acquire the assets listed in the schedule to the undertaking.

OSC takes the position that the undertaking constitutes an obligation and commitment in favour of OSC.

OSC also takes the position that immediately after entering into the undertaking, CO breached the terms of the undertaking by entering into a new loan agreement on August 21, 2009 in the amount of approximately $54,000. Dr. Sbaraglia takes the position that this was not a new loan agreement, but a rollover of an existing agreement.

OSC also takes the position that Dr. Sbaraglia failed to identify material obligations in its schedule of outstanding loans. The undertaking failed to list nine loan agreements for a total of approximately $9.4 million, which includes the Pero investment of $6 million. Even taking into account the position put forth by Dr. Sbaraglia that the $6 million position put forth by Dr. Sbaraglia that the $6 million Pero investment was an obligation transferred to Mr. Mander, there remains $3.4 million in loans which were not listed.

Counsel for Dr. Sbaraglia and Ms. Sbaraglia and the CO Group paints a very different picture of events. Counsel suggests that the proper narrative should be that a well-intentioned family was caught in the middle of a Ponzi scheme, that they were

led into error by a career fraudster and ill-advising lawyers. Counsel portrays his clients as victims of Mr. Mander, a predator fraudster. Counsel puts forth that his clients are guilty of no wrong-doing and that no investor has sued or made any claim against them. In fact, all investors without exception, support them. Mr. Davis does acknowledge that Mr. Obradovich is one investor who raises the specter of a claim against Ms. Sbaraglia through Pero, on the basis that notwithstanding the transfer of the obligstion to Mr. Mander there is still no obligation fron CO.

Counsel for the Sbragalias takes the position that his clients are not to blame, but rather, others were involved. These include the lawyers who acted for both the Sbaraglias and also Mr. Mander. Mr. Davis also contends that these lawyers breached their fiduciary duty, hid informationf from the Sbaraglias in their representation before the OSC and despite a grave conflict of interest, counsel advised the Sbaraglia and misinformed the OSC.

Mr. Davis also puts forth that Dr. Sbagalia and Ms. Sbaraglia have been and remain committed to helping repair the damage to repay those who invested with them and to co-operate with the OSC. The Sbaralias are also suing their lawyers to pay for the repairs.

The Sbaraglias also takes the position that the OSC has been

deficient in its investigation insofar as it had in its possession evidence of Mr. Mander's fraud for the better part of the year before examining Dr. Sbaraglia. Further, it takes the position that the receivership is not necessary for a number of reasons including: (a) the creditors - who also victims of Mr. Mander - oppose the receivership; (b) the receivership would strip the Sbaraglias of their assests without any action or proceeding having been commenced, in effect denying them due process; (c) the receivership would be destructive, and it would diminish the Sbaraglias efforts to make the creditors whole; (d) it would punish the Sbaraglias for Mr. Mander's wrong-doing and would ignore their innocence; and (e) it would ignore the Sbaraglias diligence in trying to avoid this current predicament as it would reduce the prospects of recovery in the litigation against the lawyers. In all respects the Sbaraglias remain transparent in which to co-operate with the OSC.

The Sbaraglias also take the position that the receivership will benefit no one and will be costly and consequently the OCS's application, they take the position, should be dismissed, and they should be relieved of their undertaking and allowed to continue with their work.

From their standpoint the matter began to unravel in the spring

of 2009 when CO Capital stopped making money for new investments. As noted previously, the OSC served Dr. Sbaraglia and Ms. Sbaraglia with a summons under the Securities Act and they were required to attend examinations. The Sbaraglias had no reasons, they say, to have known about Mr. Mander's fraud at that point. There was also no reason to think that they were caught in a fraudulent scheme, as Mr. Mander had paid all investors to that date.

Dr. Sbaraglia acknowledges that his OSC examination and the participation of his counsel at this examination resulted in statements that may not have been accurate. Certain aspects were not true. He now says that he knew that some of the statements been made by his counsel were not true at the time, but he did not correct these statements. He now states that he was surprised by the disclosure. He also felt that he was under duress at the time. He acknowledges that he knew the information was inaccurate, but he did not speak up. Dr. Sbaraglia is of the view that he had paid dearly for his legal counsel's trangressions and having already been victimized by the fraud he now find himself victimized by his own lawyer. He has sued that lawyer.

Dr. Sbaraglia also referenced the undertaking to the OSC. It is described in his counsel's factum as being an ill-advised undertaking. It is also referenced that the undertaking was a

misrepresentation in certain respects. The undertaking states that the property had been bought with CO's Capital money; this was false. It was also false insofar as certain properties had been bought before CO Capital's incorporation.

Dr. Sbaraglia takes the position his legal counsel had prepared the statutory declaration which he had signed and swore that assets that he owned or controlled would be held in trust as security for the repayment of loans. He also took the position that it was his legal consel who provided assurances to him which misled him into signing the undertaking. Dr. Sbaraglia also takes the position that he should be relieved of the undertaking as it was not freely given or independently given and that it was not accurate.

It is apparent that the Sbaraglias have also acknowledged that they have suffered financial and personal devastation at Mr. Mander's hands and that they are now working to repay investors fully, but they are struggling to meet their expenses. Their insolvency has been acknowledged.

Mr. Sbaraglia also takes the position that the OSC and the receiver are trying to access their personal assets, i.e., the proceeds or potential proceeds from the sale of their home or corporate assets,

i.e., the proceeds through the sale of 239 Church Street to repay investors, most of whom are unrelated to the Sbaraglias.

The Sbaraglias also take the position that both the OSC and the receiver ignored the fact that the three properties in question were bought before the Sbaraglias met Mr. Mander and that there is no basis in law for stripping them of their personal assets.

The Sbaraglias also place certain responsibility on the OSC. The OSC was investigating Mr. Mander as early as 2008 and by August 2008 the OSC obtained bank records showing millions of dollars flowing to EMB, yet the Sbaraglias contend the OSC stood back and did nothing.

They do not accept the receiver's report as being accurate. They also stress that the receiver has not reviewed monies paid by CO Capital to its investors and, as a result, the accounting and subsequent allegations against Dr. Sbaraglia and Ms. Sbaraglia have been skewed.

Counsel for the Sbaraglias does acknowledge that mistakes were made and that misrepresentations were made. However, he submits that there is nothing to be gained from a receivership; there are no hidden assets, the investigations have been complete and the most viable assets that the Sbaraglias have, mainly litigation

against former counsel, can only be optimized in the absence of a receivership.

He also stressed that a number of CO Capital investors are in dire dire straits, that they are losing homes or businesses and that his clients are trying to arrange for these investors to receive some monies now so as to avoid disaster. Further, counsel contends that the Sbaraglias themselves are in dire need and that while they seek to re-establish themselves professionally they need money for basic living expenses.

The two positions are diametrically opposed. The position put forward by the OSC is supported by the receiver and by counsel to Mr. Obradovich who claims he is a creditor for some $6 million. The position of Dr. Sbaraglia is supported by all of the remaining creditors, most of whom are family and friends.

Turning now to an analysis of the law. Section 129 of the Securities Act permits the commission to apply to the court for an order appointing a receiver for all the property, assets and undertakings of a person or company. Such an order can be made where the court is satisfied that such an appointment is in the best interest of the company's creditors of the security holders or if it is appropriate for the due administration of Ontario securities law.

A threshold question was raised by counsel on behalf of certain creditors of CO Capital, contending that the court has no jurisdiction to appoint a receiver under s. 129 of the Act because constitutional principles impose a limitation on the power of the court to appoint a receiver under a provincial statute in situations where the entity over whose assets the receiver is sought to be appointed as insolvent

This position is based on the Constitution Act 1867, which gives exclusive jurisdiction over bankruptcy and insolvency to the federal parliament. On this basis, counsel contends that the Supreme Court has repeatedly held that a provincial statute which purports to impact creditors priorities or to otherwise substantially regulate the affairs of an insolvent person or company vis-a-vis its debtors is unconstitutional.

Counsel goes on to submit that in the present case there is no challenge to the validity of s. 129 itself. It is not a necessary condition for the appointment of a receiver under s. 129 that the person or company over whose assets the receiver is being appointed be insolvent. Section 129, therefore, does not in pith and substance relate to bankruptcy and insolvency.

The constitutional challenge was raised on behalf of creditors of CO Capital and not by counsel on behalf of Dr. Sbaraglia

and Ms. Sbaraglia of CO Capital, who declined to take a position.

No notice of a constitutional question was served on the Attorney General of Canada and the Attorney General of Ontario as provided for in s. 109 of the Courts of Justice Act. Counsel for the creditos who put forth this argument relies on his statement that there is no direct challenge to the validity of s. 129 itself.

Counsel to the receiver submits that this submission is belied by the statements contained at paragraph 25 of the factum of counsel for the CO Capital creditors, which takes direct aim on the constitutional validity or constitutional applicability of the Act in this context, and further, that the notice provision s. 109 Courts of Justice is mandatory. In the absence of such notice s. 109(2) of the Courts of Justice Act provides that the Act, Regulation and Bylaw, a rule of common law shall not be adjudged to be invalid or inapplicable.

In my view, the position put forth by the creditors of CO Capital calls into question the constitutional validity of the Securities Act in this context. No case law was put forward to support this position. This seems unusual because as was pointed out to counsel in argument, if this position is correct with respect to the Securities Act, it would also call into question the

thousands and thousands of receivership orders granted over the years under s. 101 of the Courts of Justice Act. Counsel was unable to reference any case law under where such a challenge had been successfully made to receiverships granted under the Courts of Justice Act.

I am satisfied that if counsel wished to raise this issue, the same should have been done after providing the required Notice of of Constitutional Question.

A number of disputes have been raised by the Sbaraglias with respect to the factual background. However, putting their position at its highest, there are still a number of facts that are most troubling.

1. Neither Dr. Sbaraglia or Ms. Sbaraglia were registered with the Commission. CO raised approximately $21.2 million from CO investors.

2. CO did not transfer all the funds of CO investors to Mr. Mander and EMB. Approximately one-third of the funds raised, namely $6 - 7 million were not transferred. These funds were used in part to make payments to CO investors with newly received

funds from other CO investors. This activity took place over a number of months. It cannot be characterized as a mistake.

3. $213,000 in payments were made in respect to property located at 239 Church Street. These payments were made by CO to 91 Days Hygiene Services Inc.

4. $383,000 in charges were incurred on corporate visa in the name of CO with a significant number of payments being made not for the benefit of CO investors, but rather, for the personal benefit of the Sbaraglias.

5. It is also clear that the OSC was misled in its investigation. The Sbaraglias did not advise OSC that they raised almost $1 million prior to receiving any legal advice as to whether they were in compliance with securities law. They did not disclose the $6 million obligation to Pero, regardless of whether the matter had been transferred to Mander. They did not fully disclose their remaining creditors.

> 6. With respect to the undertaking it seems to me clear that the Sbaraglias knew counsel's strategy was to convince the OSC that there were sufficient assets to repay all CO investors and accordingly proceedings should not be taken against them. Throughout the investigation the Sbaraglias sat by and let legal counsel make representtions to the OSC that they knew were false. In this respect, the Sbaraglias did have options. They could have taken steps to ensure that the truth came out. They chose to remain silent.

The Sbaraglias take the position that the receivership will achieve nothing. They insist that the litigation can only be maximized under their direction. They insist that they are the ones who should be able to direct the payment of funds to creditors in dire straits.

Counsel to the Sbaraglias and also to the CD creditors submit that if there are any issues that require a resolution they can be brought forth to the court. In this respect I take it from their submissions that there is a tacit acknowledgement that there are several loose ends in this matter that will require further direction.

The criteria for determining what is in the best interest of creditors, security holders or subscribers for the purposes of the appointment of a receiver pursuant to securities legislation is broader than the solvency test. The criteria should take into consideration all the circumstances and whether in the context of the circumstances it is in the best interest of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders with references being made to OSC v. Factorcorp 2007 OJ 4496 OSC v. Sextant 2009 OJ 3063 and BOSC 138 DR 4th 263.

Further, where there is a history mismanagement, no evidence of a tangible alternative resolution, evidence that investors interest will not be served by maintaining the status quo and evidence that the company is not in a better position than a receiver to protect investors' interest, it is appropriate to appoint a receiver.

Further, where there is evidence of regulatory breaches and evidence that the value and integrity of the assets purchase with investor funds has been compromised, it is in the investor's best interest that a receiver be appointed such that the investors are provided with an independent and verifiable review and analysis. Investors deserve treatment they can rely on (see Factorcorp., Sextant and OSC and ASL Direct).

The second part of the test, the alternate test, is that the securities legislation has as its primary goal, the protection of the investing public and the protection of the integrity of the capital markets. Section 1.1 of the Act provides that the purposes of the Act are to provide protection to investors from unfair or improper or fraudulent practices and to foster fair and efficient capital markets and confidence in the capital market.

It seems to me that an assessment of whether the appointment of a receiver is appropriate for the due administration of Ontario Securities Law must therefore take into consideration the purposes of the Act to be undertaken with a view to determining whether such an appointment is consistnet with the goals of protecting investors and protecting the integrity of the capital markets.

In this respect, it is noteworthy that, pursuant to s. 122 of the Act, it is an offence to mislead staff for the commission during the course of an examination taken as part of an investigation.

The failure to advise staff of complete information about the flow of investor funds in the operation and business of the entity in question amounts to a contravention of s. 122 of the Act. The offence of misleading staff can occur by making affirmative statements and can equally occur by omission references to

Northshield Asset Management Canada Limited 2010, 33 OSCB 7171.

In addition, s. 216 of the Act prohibits conduct which perpetrates a fraud on investors. The use of investor funds to repay other investors for personal benefit constitute security fraud pursuant to s. 126.1(b) of the Act.

Having considered the uncontradicted facts noted above, it is clear to me that this is a situation that cries out for the appointment of a receiver. I am satisfied that by using investor funds to repay other investors, by using investor funds for personal use, by being untruthful to the OSC by not fully disclosing to creditors of CO to the OSC, it cannot be in the best interest of creditors of CO Capital that the continued administration of creditor affairs be administered by the Sbaraglias. This is a situation that requires an independent court officer to oversee.

I make this finding notwithstanding the level of support provided by the family and friends who are creditors of the Sbaraglias. It could very well be that there are other creditors, most notably Mr. Obradovich. It is essential, in my view, that a claims process be established which can be verified as being accurate. I am not satisfied that this can be accomplished without an independent court officer overseeing the process.

In making this determination I cannot overlook that CO, Dr. Sbaraglia and Ms. Sbaraglia retained and had access to funds in excess of $6 million. I also cannot overlook that they improperly used some of these funds for personal use or for related corporate use. I also cannot overlook that some of the new money was used to pay interest payments to old investors. To use the words of counsel of the receiver, "This is the hallmark of a Ponzi scheme where you keep the dollars rolling."

I have no doubt that Mr. Mander contributed significantly to the problems that the Sbaraglias currently face. I also have to take into account that there may be issues with respect to deficiencies in the legal advice that can be pursued in due course. With respect to the litigation against former counsel, I have not been persuaded that the Sbaraglias are the best party to direct such litigation. Rather, it seems to me that the insertion of an independent court officer is essential to ensure the best outcome for creditors.

The Sbaraglias have also blamed the OSC for not taking more prompt action. It could very well be that the OSC could have acted more promptly. However, the timing of the OSC's involvement does not excuse or explain the activities of the Sbaraglias that led to determination being made today.

The Sbaraglias also take the position that breaches of securities legislation have not been clearly proven. I do note that under s. 129 there is a broad discretion that the courts can make such an order which does not require evidence of a breach. Having said that, there are certain very serious concerns that have been raised by the OSC with respect to possible breaches of the statute.

With respect to the second part of the test which provides a receiver can be appointed if it is appropriate for the due administration of Ontario securities laws, I am satisfied that this is the type of case that calls for such an appointment. The factors that had led to my decision to appoint a receiver as being in the best interest of the company's creditors and the potential Sbaraglia creditors is also applicable for the appointment under the second part of the test. This was a Ponzi scheme. Although Mr. Mander may have been the head of the Ponzi scheme, it is clearly apparent that by using investor's money to repay other investors, steps were taken by the Sbaraglias that were improper. The use of investors money to pay personal and related company expenses is also improper, It also cannot be overlooked that the Sbaraglias misled the OSC in the course of its investigation. This type of activity cannot and should not be overlooked and I am satisfied that the appointment of the receiver is also justified

under the second part of the test.

As Mr. Gottlieb summed up in his reply, the remedy of the appointment of a receiver goes beyond certain principles. it also takes into account the importance of a neutral court officer to oversee the claims process, the evaluation process and to provide appropriate recommendations as to the administration of the estate.

A considerable amount of investigation has already been done. Most assets have been identified. However, issues remain outstanding with respect to the identification of proper creditors, maximizing asset realization through litigation and the necessity to demonstrate that transparency exists in all respects in the resolution of all outstanding matters.

For the foregoing reasons, the application of the OSC is granted. I would be grateful if counsel could prepare an appropriate order for my review.

CERTIFIED:

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Helen P. Sinclair, C.S.R.
Official Court Reporter
SUPERIOR COURT OF JUSTICE

Court of Appeal File No. C70114

ONTARIO SECURITIES COMMISSION Applicant (Respondent in Appeal)	- AND -	GO-TO DEVELOPMENTS HOLDINGS INC., *et al.* Respondents (Appellants – Moving Party)

COURT OF APPEAL FOR ONTARIO
Proceeding Commenced at Toronto

FACTUM OF THE ONTARIO SECURITIES COMMISSION

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