

**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

and

RSM RICHTER INC. AND ONTARIO SECURITIES COMMISSION

Responding Parties

NOTICE OF MOTION

(Motion to Obtain Documents from Receiver)

THE MOVING PARTY, Peter Sbaraglia (“Sbaraglia”), will make a Motion to a Commercial List Judge on Wednesday, May 9, 2012 at 10:00 a.m., or soon after that time as the motion can be heard, at 330 University Avenue, in Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. If necessary, an Order abridging the time for service and filing of the within Notice of Motion and supporting materials;

2. An Order compelling the Responding Party, RSM Richter Inc. (the “Receiver”), to provide copies of the following documents in its power, possession and/or control that are relevant to the allegations made by the Responding Party, the Ontario Securities Commission (the “OSC”) against Sbaraglia:
 - (a) Transcripts, recordings and/or notes of interviews conducted of the following individuals:
 - (i) Maria Zurini;
 - (ii) Grant Walton;
 - (iii) Colleen Auriemma;
 - (iv) Tascha Fluke;
 - (v) Deryl Ward;
 - (vi) Julia Dublin;
 - (vii) Michael Miller;
 - (viii) Peter Welsh;
 - (ix) Peter Tonin;
 - (x) Terri Oldfield;
 - (xi) Heather Shantora;
 - (xii) Davide Amato;
 - (xiii) Bradley Ivanchuk;
 - (xiv) Thomas J. Obradovich;
 - (xv) Christine Brooks; and

- (xvi) Mehran Shahviri;
 - (b) Documents provided by these individuals to the Receiver in connection with their interviews;
 - (c) The “deleted e-mails” found on the computers of C.O. Capital Growth Corp. (“CO Capital”) computers as referred to on page 41, subsection 6.3 of the Receiver’s fourth report dated July 2, 2010;
 - (d) Documents produced by Peter Tonin and Peter Welsh pursuant to Court order;
3. An Order compelling the Receiver to provide Sbaraglia with an index of the materials in the Receiver’s power, possession and/or control (the “Index”);
 4. An Order compelling the Receiver to provide Sbaraglia with copies of additional documents in its 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 the Index;
 5. An Order compelling the Receiver to provide the specific documents referred to above and Index within five (5) business days, and any additional documents within five (5) days of Sbaraglia’s request;
 6. If opposed, costs of this motion; and
 7. Such further and other relief as counsel may request and this Honourable Court deem just.

THE GROUNDS FOR THE MOTION ARE:

1. In March, 2010, the Receiver was appointed and began an investigation into the affairs of the Respondents;
2. In July, 2010, the Receiver was authorized to also investigate the affairs of CO Capital and Sbaraglia (among others);

3. During the course of the Receiver's investigation, interviews were conducted and documents obtained that were relied upon by the Receiver in preparing and delivering reports to this Honourable Court;
4. On February 24, 2011, the OSC issued a Statement of Allegations that, among other things, alleges that Sbaraglia was engaged in securities fraud and misled the OSC;
5. In issuing the Statement of Allegations, the OSC relied on the reports of the Receiver;
6. Disclosure provided to Sbaraglia by the OSC contains multiple reports of the Receiver;
7. Documents in the power, possession and/or control of the Receiver are relevant to the allegations made against Sbaraglia by the OSC;
8. On January 24, 2012, Sbaraglia brought a motion before the OSC seeking the disclosure of certain documents obtained by the Receiver so that he can respond to the allegations made against him (among other relief). In responding to Sbaraglia's motion, the OSC did not take the position that any of the requested documents were irrelevant;
9. Commissioner Portner denied Sbaraglia's motion on jurisdictional grounds;
10. The OSC hearing is currently scheduled to commence on June 4, 2012;
11. Hearsay evidence is admissible before the OSC;
12. The OSC will rely on the Receiver's reports at Sbaraglia's hearing, and the Receiver and some of the persons referred to above may be witnesses at the OSC hearing;
13. If the documents sought by Sbaraglia were in the power, possession and/or control of the OSC, the OSC would be required to produce them to Sbaraglia;
14. Sbaraglia has the right to make full answer and defence against the allegations made by the OSC and depriving him of the requested documents would result in an injustice;

15. There is no prejudice to the Receiver or the OSC if the requested relief is granted;
16. This Honourable Court's inherent jurisdiction;
17. *Rules of Civil Procedure*, and in particular Rules 1.04, 1.05, 2.03, 3.02, 30.10, 37, 38, 39, 41 and 57;
18. *Courts of Justice Act*, and in particular section 101;
19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The pleadings and proceedings herein;
2. The Affidavit of Peter Sbaraglia sworn on April 23, 2012, and the Exhibits thereto; and
3. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

April 23, 2012

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Proceeding commenced at Toronto

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