

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION and  
FRASER MILNER CASGRAIN LLP

Defendants

**MOTION RECORD OF THE MONITOR  
RE: SETTLEMENT AND CLASS COUNSEL FEE APPROVAL  
(Returnable January 17, 2012)**

January 13, 2012

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Lawyers for Grant Thornton Limited

**TO: THIS HONOURABLE COURT**

**AND TO: THE SERVICE LIST**

**SERVICE LIST**

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43**

**BETWEEN:**

**KATHRYN ROBINSON and RICK ROBINSON**

**Plaintiffs**

**and**

**ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP**

**Defendants**

**THIRD AND FINAL REPORT OF THE MONITOR**

**January 12, 2012**

**Grant Thornton Limited  
Royal Bank Plaza, South Tower  
200 Bay Street, 19<sup>th</sup> Floor  
Toronto, Ontario  
M5J 2P9**

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Appendix 5 – Second Report of Monitor (without Appendices) dated May 20, 2011

Appendix 6 – Order of Mr. Justice Strathy dated May 25, 2011

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43**

BETWEEN:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP

Defendants

**THIRD AND FINAL REPORT OF THE MONITOR**

**January 12, 2012**

**INTRODUCTION**

1. By Order of the Honourable Mr. Justice Strathy dated September 10, 2010, (the "**Appointment Order**"), Grant Thornton Limited was appointed as Monitor of all the assets, undertakings and properties of Promittere Capital Group Inc. ("**Promittere Capital**"), and Promittere Asset Management Inc. ("**Promittere Asset**"), collectively, the "**Promittere**

**Companies**", and against Rochester Financial Limited ("**Rochester**") and Banyan Tree Foundation ("**Banyan Tree**"), collectively, the "**Subject Companies**". The Promittere Companies and the Subject Companies are sometimes jointly referred to as the "**Gift Program Defendants**". A copy of the Appointment Order is attached as **Appendix "1"** hereto. The Appointment Order was entered and issued by the Court on September 17, 2010.

2. The Monitor's appointment arose in the context of an action that was certified as a class proceeding under the Class Proceedings Act, 1992 by Order of the Honourable Justice Lax dated January 19, 2010.
3. By Order of the Honourable Justice Strathy dated February 3, 2010 (the "**February 3, 2010 Order**"), the Promittere Companies and Subject Companies were directed to disclose certain information to the Plaintiffs and the co-defendant Fraser Milner Casgrain ("**FMC**"). Apparently, only limited information was disclosed pursuant to the February 3, 2010 Order. The Monitor understands that the lack of disclosure of information pursuant to the February 3, 2010 Order led, in part, to the motion for the appointment of a Monitor. A copy of the February 3, 2010 Order is attached as **Appendix "2"**.
4. The Monitor's mandate was set out in Paragraph 4 of the Appointment Order ::
  - (a) to conduct an investigation of the affairs of the Subject Companies, including, but not limited to, a source and use of funds analysis of the Gift Program Defendants and determine the existence of any assets of the Subject Companies;
  - (b) to conduct an investigation of the affairs of the Promittere Companies, including, but not limited to, a source and use of funds analysis of the Promittere Companies and determine the

existence of any assets of the Promittere Companies relating to the Banyan Tree Gift Program;

(c) to meet with and discuss with affected Persons as the Monitor deems appropriate on all matters relating to the Property and the Monitor's appointment, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(d) to take any steps reasonable incidental to the exercise of these powers.

5. The Monitor prepared and filed its First Report (the "**First Report**") dated October 20, 2010. A copy of the First Report (without Appendices) is attached hereto as **Appendix "3"**. Therein, the Monitor raised concerns, among other things, that it was not provided with all of the books and records related to the Gift Program Defendants. The Monitor had received eight (8) boxes of books and records but it was apparent that the bulk of the relevant records were missing. The lack of documents compromised the Monitor's ability to fulfill its mandate. In consequence of the First Report, the Court granted the relief sought by the Monitor by Order dated December 8, 2010 (the "December 8, 2010 Order"). A copy of the December 8, 2010 Order is attached as **Appendix "4"**.
6. The Monitor prepared and filed its Second Report (the "**Second Report**") dated May 20, 2011. A copy of the Second Report (without appendices) is attached as **Appendix "5"**. Therein, the Monitor again raised concerns with respect to its inability to obtain all of the relevant books and records of the Gift Program Defendants. Further, the Monitor reported on the results of its independent investigation into the affairs of the Gift Program Defendants, notwithstanding limited books and records in its possession. As a consequence, in part, of the Second Report, the Court issued an

order dated May 25, 2011 (the "**May 25, 2011 Order**"). A copy of the May 25, 2011 Order is attached as **Appendix "6"**.

#### **UPDATE SINCE SECOND REPORT**

7. On May 25, 2011, the Monitor, together with its counsel, interviewed Mr. Thiessen on the nature of the Gift Program Defendants' business, and the books and records of the Gift Program Defendants.
8. In or around June 2011, another twenty-five (25) boxes of books and records (in addition to the 8 received earlier) related to the Gift Program Defendants were delivered to the Monitor by Mr. Thiessen, care of Iron Mountain document management services. The Monitor conducted a preliminary brief overview of the documents contained in the 25 boxes. It was apparent that many of the books and records of the Gift Program Defendants were still missing. The Monitor did not invest significant resources to perform a detailed review of the documents because none of the stakeholders in the proceedings were willing to commit to payment of the Monitor's fees and expenses to do so and none of the stakeholders asked the Monitor to perform such review. In the ensuing several months, the Monitor made arrangements with several stakeholders for the review of the records in accordance with the terms of the May 25, 2011 Order.
9. In addition, during this time period, the Monitor and its counsel had significant correspondence with Mr. Thiessen and counsel for the Plaintiffs and FMC.
10. In early December 2011, the Monitor learned that the Plaintiffs and Defendants had entered into a settlement agreement (the "Settlement Agreement"), subject to Court approval, to be heard in January 2012.
11. As a result of the Settlement Agreement, there appears to be no material purpose for the Monitor's appointment to continue.

12. Throughout the course of its mandate, the Monitor and its counsel, Thornton Grout Finnigan ("TGF") have been paid by counsel for FMC. However, one invoices remain outstanding as at the date of this report, being TGF's invoice dated September 13, 2011 in the amount of \$2,983.20.
13. In addition to the outstanding TGF invoice, the Monitor and TGF estimate that they will have costs of \$7,500 and \$3,500 plus HST, respectively, in order to complete its administration, including preparation of this Third and Final report.
14. On the basis that the Court grants an Order terminating the Monitor's mandate, and discharging the Monitor, the Monitor respectfully asks for the Court's direction with respect to the books and records of the Gift Program Defendants in the Monitor's possession. The Monitor will deliver the books and records in accordance with the Court's direction.

## **RELIEF REQUESTED**

15. The Monitor seeks the following relief:
  - (a) An Order directing the parties represented by the Lenczner Slaughter firm to pay the fees and expenses of the Monitor and TGF as set out above in Paragraphs 12 and 13 above;
  - (b) An Order approving the conduct of the Monitor, discharging the Monitor, barring any further actions or claims against the Monitor and its employees and agents, and forever releasing the Monitor from further claims or actions related to this mandate; and,

- (c) An Order directing the Monitor to deliver, within 30 days, the books and records of the Gift Program Defendants in accordance with this Court's direction.

Respectfully submitted,

GRANT THORNTON LIMITED,  
In its capacity as Court-appointed  
Monitor of Promittere Capital Group Inc.,  
Promittere Asset Management Inc.  
Rochester Financial Limited and Banyan  
Tree Foundation

Per:



Jonathan Krieger, CA●CIRP

# **APPENDIX 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 10TH DAY  
JUSTICE GEORGE STRATHY ) OF SEPTEMBER, 2010

B E T W E E N:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP  
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE  
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

**ORDER**

THIS MOTION made by the Defendant, Fraser Milner Casgrain LLP ("FMC"), for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Grant Thornton Limited as monitor (in such capacities, the "Monitor") of all of the assets, undertakings and properties of, Promittere Capital Group Inc. ("Promittere Capital") and Promittere Asset Management Ltd. ("Promittere Asset") collectively the "Promittere Companies" and against Rochester Financial Limited ("Rochester") and Banyan Tree Foundation ("Banyan Tree"), collectively: the "Subject Companies" and both the Subject Companies and the Promittere Companies collectively as the "Gift Program Defendants" acquired for or used in relation to a business carried on by the Subject Companies, was heard this day at Osgoode Hall at 130 Queen Street, Toronto, Ontario.

ON READING the affidavit of Julia Lefebvre sworn September 2, 2010 and the Exhibits thereto and on hearing the submissions of counsel for FMC, and hearing the submissions of counsel for the Subject Companies, and the Promittere Companies and on reading the consent of Grant Thornton Limited to act as the Monitor,

### **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 CJA, Grant Thornton Limited is hereby appointed Monitor, without security, of all of the assets, undertakings and properties of the Subject Companies acquired for, or used in relation to a business carried on by the Subject Companies, including all proceeds thereof (the "Property").

3. THIS COURT ORDERS that pursuant to section 101 of the CJA, Grant Thornton Limited is hereby appointed Monitor, without security, of all of the assets, undertakings and properties of the Promittere Companies acquired for, or used in relation to the Banyan Tree Gift Program, a business carried on by the Subject Companies, including all proceeds thereof (the "Property").

### **MONITOR'S POWERS**

4. THIS COURT ORDERS that the Monitor 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 Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to conduct an investigation of the affairs of the Subject Companies, to include but is not limited to a source and use of funds analysis of the Gift Program Defendants and determine the existence of any assets of the Subject Companies;

- (b) to conduct an investigation of the affairs of the Promittere Companies, to include but is not limited to a source and use of funds analysis of the Promittere Companies and determine the existence of any assets of the Promittere Companies relating to the Banyan Tree Gift Program;
- (c) to meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the Monitor's appointment, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (d) to take any steps reasonable incidental to the exercise of these powers.

and in each case where the Monitor 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 Gift Program Defendants, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR**

5. THIS COURT ORDERS that (i) the Subject Companies, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, banks or financial institutions or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall deliver to the Monitor, and shall deliver all such Property to the Monitor including all bank statements, cheques, ledgers, Minute books, corporate filings, tax returns and filings of this order within 5 business days of this order.

6. THIS COURT ORDERS that (i) the Promittere Companies, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, banks or financial institutions or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall deliver to the Monitor, and shall deliver all such Property to the

Monitor including all bank statements, cheques, ledgers, Minute books, corporate filings, tax returns and filings pertaining to the Banyan Tree Gift Program within 5 business days of this order.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Monitor 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 Subject Companies 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 Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 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 Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Monitor 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 Promittere Companies relating to the Banyan Tree Gift Program, 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 Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 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 Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure

9. 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 Monitor for the purpose of allowing the Monitor 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 Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor 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 MONITOR**

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE SUBJECT COMPANIES OR THE PROPERTY**

11. THIS COURT ORDERS that no Proceeding against or in respect of the Subject Companies Gift Program Defendants or the Property shall be commenced or continued except with the written consent of the Monitor or with leave of this Court and any and all Proceedings currently under way against or in respect of the Gift Program Defendants or the Property (with the exception of this action), are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that all rights and remedies against the Gift Program Defendants, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor 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 Monitor or the Gift

Program Defendants to carry on any business which the Gift Program Defendants is not lawfully entitled to carry on, (ii) exempt the Monitor or the Gift Program Defendants 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 MONITOR**

13. 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 Gift Program Defendants, without written consent of the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Gift Program Defendants 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 Gift Program Defendants 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 Gift Program Defendants, and that the Gift Program Defendants shall be entitled to the continued use of the Gift Program Defendants' 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 Gift Program Defendants in accordance with normal payment practices of the Gift Program Defendants or such other practices as may be agreed upon by the supplier or service provider and the Gift Program Defendants, or as may be ordered by this Court.

#### **EMPLOYEES**

15. THIS COURT ORDERS that all employees of the Gift Program Defendants shall remain the employees of the Gift Program Defendants until such time as the Gift Program Defendants

may terminate the employment of such employees. The appointment of the Monitor shall not constitute the Monitor, an employer, successor, employer or payor for any purpose whatsoever.

#### **LIMITATION ON THE MONITOR'S LIABILITY**

16. THIS COURT ORDERS that the Monitor 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. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

#### **FUTURE PROCEEDINGS**

17. THIS COURT ORDERS that the appointment of Grant Thornton Limited as Monitor hereunder shall not in any manner hinder or prevent Grant Thornton Limited from acting in a future administrative capacity in respect of the Gift Program Defendants or the Property, including without limitation, as a receiver and manager.

#### **MONITOR'S ACCOUNTS**

18. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "Monitor's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Monitor'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.

19. THIS COURT ORDERS that the Monitor and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

**GENERAL**

20. THIS COURT ORDERS that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Gift Program Defendants.

22. 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 Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that the Monitor 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.

24. 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 Monitor 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.

25. THIS COURT ORDERS that the Monitor will report to the Court its preliminary findings and seek directions on ~~any date suitable to Justice Strathy in 4-6 weeks~~

GRS.

✓ **SR BEFORE OCTOBER 22, 2010 ON A**

**DATE TO BE ARRANGED THROUGH JUDGES' ADMINISTRATION ✓**

**G.R. Shatty J.**

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

SEP 17 2010

AS DOCUMENT NO.:  
A TITRE DE DOCUMENT NO.:

1338 PER PAR:

*MB*

KATHRYN ROBINSON et al.  
Plaintiffs

-and-

ROCHESTER FINANCIAL LIMITED et al.  
Defendants

Court File No. 08-CV-349792

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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SMITH GRIFFIN LLP**

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Lawyers for the Defendant,  
Fraser Milner Casgrain LLP

# **APPENDIX 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) TUESDAY, THE 3<sup>RD</sup>  
)  
JUSTICE G. STRATHY ) DAY OF FEBRUARY, 2010

BETWEEN:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP  
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE  
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**ORDER**

**THIS MOTION**, made by the plaintiffs seeking disclosure of information and an interim order for preservation of assets, was heard this day at a case conference conducted via telephone conference call.

**ON READING** the motion record of the plaintiffs re: preservation of assets including the affidavit of John Loukidelis and exhibits sworn January 28, 2010; and the affidavit of Kathryn Robinson and exhibits sworn August 5, 2008; and upon hearing the submissions of counsel for the parties;

1. **THIS COURT ORDERS** that Rochester Financial Limited (“Rochester”), Promittere Capital Group Inc. (“Promittere Capital”), Promittere Asset Management Ltd. (“Promittere

Asset”), Banyan Tree Foundation (“Banyan Tree”), immediately disclose and provide to the plaintiffs and the co-defendants, Fraser Milner Casgrain (“FMC”) the following information, by no later than 5:00 p.m. on February 18, 2010:

- A. complete particulars in respect of the history of the receipts, holding and distribution of the \$53 million (approximately) received from participants of the Banyan Tree Foundation Gift Program (the “Gift Program”) during the taxation years 2003-2007 (the “Proceeds”) to charities including the names of the charity recipients, amounts distributed to each, dates of distribution, including hard copies or electronic stored information evidencing such history; including details of receipts, holdings and all dealings with the security deposits (the “Security Deposits”) including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;
- B. complete particulars of all the Security Deposits held by them or by any other on their behalf;
- C. complete particulars of the history of the receipts, holdings and all dealings with the Security Deposits including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;
- D. complete particulars of investment Security Deposits in any mortgage or mortgages including the municipal address, details of amounts and dates of monthly payments being made, those payments are made to as well as provision

of a copy of the mortgage(s); details of the history of the receipts, holdings and all dealings with where the Security Deposits including the names and addresses, bank, trust company or financial institution as well as account numbers and the name and contact information of the person responsible for administration of Security Deposits;

- E. details as to what use is made of monthly amounts received through investment of the Security Deposits and the account into which the payments are made;
- F. particulars in respect of investments of approximately \$850,000.00 including location of funds, details of the holdings, account numbers, copies of the most recent six monthly statements and the name and contact information of the person or persons responsible for administration of the funds;
- G. particulars in respect of what has become of the balance of Security Deposits including disclosure of all steps taken to attempt to recover any Security Deposits no longer held by them or by any others on their behalf.

2. **THIS COURT ORDERS** that Rochester, Promittere Capital, Promittere Asset and Banyan Tree preserve and not dissipate, encumber, pledge or in any other respect dispose of or diminish the Proceeds and Security Deposits and any monies or assets held by them or by any others on their behalf, until further order of this Court.

3. **THIS COURT ORDERS** that Rochester, Promittere Capital, Promittere Asset and Banyan Tree are prohibited from disposing of, selling, dissipating, dealing with, transferring, assigning or encumbering all or any part of funds, monies or assets held by them or by any others

on their behalf including property such as mortgages, investments, equities and cash held in any account to their credit or held on their behalf, jointly or solely owned, directly or indirectly, beneficially or otherwise.

4. **THIS COURT FURTHERMORE ORDERS** that any party can return to the Court on such notice as is appropriate to seek an order (a) discharging this Order, or (b) varying its terms.

5. **THIS COURT ORDERS** that the costs associated with this motion be reserved to be dealt with by further Order of this Honourable Court.


  
\_\_\_\_\_  
(SIGNATURE OF JUDGE, OFFICER OR REGISTRAR)

EXHIBIT 1  
COURT OF COMMON PLEAS - TORONTO  
CASE NO. 13-00000-00000  
FEB 14 2010  
AS THE CLERK OF THE COURT  
PER: [Signature]

**KATHRYN ROBINSON ET AL**  
Plaintiffs

-and-

**ROCHESTER FINANCIAL LIMITED ET AL**  
Defendant

Court File No. 08-CV-349792

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

**LENCZNER SLAGHT ROYCE**  
**SMITH GRIFFIN LLP**  
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Suite 2600  
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Solicitors for the defendant  
Fraser Milner Casgrain LLP

# **APPENDIX 3**

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

**B E T W E E N:**

**KATHRYN ROBINSON and RICK ROBINSON**

**Plaintiffs**

**and**

**ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP**

**Defendants**

**FIRST REPORT OF THE MONITOR**

**October 20, 2010**

**Grant Thornton Limited  
Royal Bank Plaza, South Tower  
200 Bay Street, 19<sup>th</sup> Floor  
Toronto, Ontario  
M5J 2P9**

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

BETWEEN:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP

Defendants

**FIRST REPORT OF THE MONITOR**

**October 20, 2010**

**INTRODUCTION**

1. By Order of the Honourable Mr. Justice Strathy dated September 10, 2010, (the "**Appointment Order**"), Grant Thornton Limited was appointed as Monitor of all the assets, undertakings and properties of Promittere Capital Group Inc. ("**Promittere Capital**"), and Promittere Asset Management Inc. ("**Promittere Asset**"), collectively, the "**Promittere**

**Companies**", and against Rochester Financial Limited ("**Rochester**") and Banyan Tree Foundation ("**Banyan Tree**"), collectively, the "**Subject Companies**". A copy of the Appointment Order is attached as **Appendix "1"** hereto. The Appointment Order was entered and issued by the Court on September 17, 2010.

2. The litigation proceedings within which the Monitor's appointment arose was certified as a class proceeding pursuant to an Order of the Honourable Madame Lax dated January 19, 2010.
3. Pursuant to the Order of the Honourable Justice Strathy dated February 3, 2010 (the "**February 3, 2010 Order**"), the Promittere Companies and Subject Companies were directed to disclose certain information to the Plaintiffs. Apparently, only limited information was disclosed pursuant to the February 3, 2010 Order. The Monitor understands that the lack of disclosure of information pursuant to the February 3, 2010 Order led in part to the Application for the appointment of a Monitor.
4. The Monitor's mandate was set out in Paragraph 4 of the Appointment Order, which included:
  - (a) to conduct an investigation of the affairs of the Subject Companies, to include but is not limited to a source and use of funds analysis of the Gift Program Defendants and determine the existence of any assets of the Subject Companies;
  - (b) to conduct an investigation of the affairs of the Promittere Companies, to include but is not limited to a source and use of funds analysis of the Promittere Companies and determine the existence of any assets of the Promittere Companies relating to the Banyan Tree Gift Program;
  - (c) to meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all

matters relating to the Property and the Monitor's appointment, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

- (d) to take any steps reasonable incidental to the exercise of these powers.

## **THE MONITOR'S ACTIONS & PRELIMINARY INVESTIGATION**

5. On its appointment, the Monitor reviewed the available Court materials in these proceedings to familiarize itself with the nature of the litigation in which this appointment arose.
6. The Monitor understands from a review of the Court proceedings that the February 3, 2010 Order compelled the Promittere Companies and Subject Companies to disclose information to the Plaintiffs. We understand that the Promittere Companies and Subject Companies advised that the books and records were sent to PriceWaterhouseCoopers ("PwC") in the British Virgin Islands ("BVI") and limited records were provided pursuant to the February 3, 2010 Order. A copy of the February 3, 2010 Order is attached as **Appendix "2"**.
7. On September 29, 2010, the Monitor wrote to PwC in the BVI: i) advising them of their responsibilities pursuant to the Appointment Order, and ii) requesting answers to specific questions related to the books and records of the Promittere Companies and Subject Companies (the "**September 29, 2010 PwC Letter**"). On September 30, 2010, the Monitor received an email response from PwC, advising that they did not have any books and records related to the Promittere Companies or Subject Companies in their possession, and advised the Monitor that "the box is quite a mystery to us". They too had apparently made efforts to ascertain details around the shipment of the records as they had no record of receiving any records

related to these entities. The September 29, 2010 PwC Letter is attached as **Appendix “3”**, and the response from PwC of September 30, 2010 is attached as **Appendix “4”**.

8. On September 29, 2010, the Monitor wrote to Mr. Robert Thiessen (“**Thiessen**”) (as principal of the Promittere Companies and Subject Companies), the Promittere Companies and Subject Companies: i) advising them of their responsibilities pursuant to the Appointment Order, ii) requesting that the books and records of the Promittere Companies and Subject Companies be turned over to the Monitor, iii) requesting answers to specific questions related to the books and records of the Promittere Companies and Subject Companies, and iv) requesting executed Consents authorizing Canada Revenue Agency (“**CRA**”) to release certain information to the Monitor (the “**September 29, 2010 Thiessen Letter**”). A copy of the September 29, 2010 Thiessen Letter is attached as **Appendix “5”**.
9. By email dated September 29, 2010, Cassels Brock LLP (“**Cassels**”), counsel for the Promittere Companies and Subject Companies responded to the Monitor, advising that “his client is expecting to have the information and documentation referenced in your letter (to the extent available) within 5 business days or so”. The Monitor confirmed by responding email that such arrangement was acceptable. The email dated September 29, 2010 from Cassels is attached as **Appendix “6”**.
10. On October 7, 2010, eight bankers boxes related to the Promittere Companies and Subject Companies were delivered to the Monitor’s office by courier (the “**Eight Boxes**”). The boxes were secured by the Monitor.
11. Notwithstanding delivery of the Eight Boxes, the Monitor had not received responses to six questions set out to Mr. Thiessen in the September 29, 2010 Thiessen Letter, nor has it received the requested signed Consents authorizing CRA to release certain financial information related to the

Promittere Companies and Subject Companies to the Monitor. Specifically, the six unanswered questions set out in the September 29, 2010 Thiessen Letter were as follows:

- i) The date the records were sent to PWC;
- ii) Why the records were sent to PWC in the BVI;
- iii) The name and contact details of the shipping company used to send the books and records;
- iv) Any receipts or bills of lading for shipping the said records;
- v) Correspondence with PWC by email or otherwise in respect of the shipment of records to PWC or any other party;
- vi) Details of the financial institutions (including names, transit numbers, account numbers and contact information) in which the Subject Companies and Promittere Companies conducted their banking.

12. In addition, on October 7, 2010 the Monitor left voice messages for Mr. Thiessen on his work and cellular telephones and on October 14, 2010, a further message was left on his work telephone number. The Monitor has not yet received a response to its messages. The Monitor was hoping that it would be able to arrange a meeting with Mr. Thiessen to discuss the availability of financial information and circumstances surrounding the litigation, but has not been successful in reaching him at this point.
13. The Monitor made a preliminary inventory of the documents included in the Eight Boxes, and attached same as **Appendix "7"**. Prior to commencing a source and application of funds analysis (as set out in Paragraph 4 of the Appointment Order), the Monitor has to assess the nature of and completeness of the information provided, and identify any gaps or missing information. The Monitor has compiled a preliminary list of missing documents, as well as identified additional questions which arose from its review of the Eight Boxes.
14. In this regard, on October 15, 2010 the Monitor again wrote to Mr. Thiessen, the Promittere Companies, and Subject Companies, setting out:
  - i) the preliminary list of missing documents from the Eight Boxes and

requesting delivery of same, ii) setting out additional questions which arose from the review of the Eight Boxes iii) reiterating six of the original questions in the September 29, 2010 Thiessen Letter and requesting answers thereto, iv) identifying potential gaps in the information provided, v) requesting that Mr. Thiessen sign the Consents authorizing CRA to release information, and return same to the Monitor, and vi) requesting Mr. Thiessen to return the Monitor's telephone messages so that it can arrange a meeting in short order to discuss its mandate. (the "**October 15, 2010 Thiessen Letter**"). A copy of the October 15, 2010 Thiessen Letter is attached as **Appendix "8"**. As of the date of this report, the Monitor has not received a response to the October 15, 2010 Thiessen Letter.

15. After its review of the records, the Monitor believes that there are serious deficiencies in the information supplied in the Eight Boxes, and in order to effect its mandate, would require complete records on which to base its investigation. The Eight Boxes were labelled as follows: B6, B7, B28, P24, P43, P44, P48, and P49. Given this labelling sequence, it appears that there would be many other boxes of records which have not yet been provided. In this regard, the Monitor either requires full disclosure and access to the remainder of the records of the Promittere Companies and Subject Companies, or, access to the information from third party sources, including financial institutions and CRA. It is the Monitor's preference to not have to access the records from third party sources, as it can be quite expensive to do so as well as delay the Monitor's investigation.

## **RELIEF REQUESTED**

16. Based upon the foregoing, the Monitor respectfully requests an Order:
  - Directing Thiessen, the Promittere Companies and Subject Companies to turn over the balance of the books and records to the Monitor;

- Directing Thiessen, the Promittere Companies and Subject Companies to turn over the balance of the books and records to the Monitor;
- Directing Thiessen, the Promittere Companies and Subject Companies to fully respond to the October 15, 2010 Thiessen Letter;
- Directing Thiessen to execute the Consents authorizing CRA to turn over to the Monitor any and all information related to the Promittere Companies and the Subject Companies; and,
- Directing Thiessen to meet with the Monitor forthwith.

Once the balance of information is provided, the Monitor will be able to move forward with its mandate as set out in the Appointment Order.

Respectfully submitted,

GRANT THORNTON LIMITED,  
In its capacity as Court-appointed  
Monitor of Promittere Capital Group Inc.,  
Promittere Asset Management Inc.  
Rochester Financial Limited and Banyan  
Tree Foundation

Per 

J. Krieger, CA●CIRP

Encl.

# **APPENDIX 4**



acquired for or used in relation to a business carried on by the Subject Companies, and upon reading the Monitor's First Report dated October 20, 2010; *and no submissions having been made on behalf of the Gift Program Defendants:*

1. **THIS COURT ORDERS** that Robert Thiessen, the Promittere Companies and Subject Companies do turn over the balance of the books and records to the Monitor;
2. **THIS COURT ORDERS** that Robert Thiessen, the Promittere Companies and Subject Companies to fully respond to the October 15, 2010 Thiessen Letter;
3. **THIS COURT ORDERS** that Robert Thiessen to execute the Consents authorizing CRA to turn over to the Monitor any and all information related to the Promittere Companies and the Subject Companies;
4. **THIS COURT ORDERS** that Robert Thiessen to meet with the Monitor within seven days of service of this Order on his counsel, Cassels, Brock & Blackwell; and
5. **THIS COURT ORDERS** that costs be paid by the Promittere Companies and Subject Companies payable forthwith in the amount of \$1,500.

*G. R. Chatty J.*

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

DEC 13 2010

AS DOCUMENT NO..  
À TITRE DE DOCUMENT NO..  
PER / PAR:

*MB*

KATHRYN ROBINSON ET AL  
Plaintiffs

-and-

ROCHESTER FINANCIAL LIMITED ET AL  
Defendant

Court File No. 08-CV-349792 (

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Solicitors for the defendant

# **APPENDIX 5**

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

**BETWEEN:**

**KATHRYN ROBINSON and RICK ROBINSON**

**Plaintiffs**

**and**

**ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP**

**Defendants**

**SECOND REPORT OF THE MONITOR**

**May 20, 2011**

**Grant Thornton Limited  
Royal Bank Plaza, South Tower  
200 Bay Street, 19<sup>th</sup> Floor  
Toronto, Ontario  
M5J 2P9**

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

BETWEEN:

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP INC.,  
PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE FOUNDATION  
and FRASER MILNER CASGRAIN LLP

Defendants

**SECOND REPORT OF THE MONITOR**

**May 20, 2011**

**INTRODUCTION**

1. By Order of the Honourable Mr. Justice Strathy dated September 10, 2010, (the "**Appointment Order**"), Grant Thornton Limited was appointed as Monitor of all the assets, undertakings and properties of Promittere Capital Group Inc. ("**Promittere Capital**"), and Promittere Asset Management Inc. ("**Promittere Asset**"), collectively, the "**Promittere**

**Companies**", and against Rochester Financial Limited ("**Rochester**") and Banyan Tree Foundation ("**Banyan Tree**"), collectively, the "**Subject Companies**". The Promittere Companies and the Subject Companies are sometimes jointly referred to as the "**Gift Program Defendants**". A copy of the Appointment Order is attached as **Appendix "1"** hereto. The Appointment Order was entered and issued by the Court on September 17, 2010.

2. The Monitor's appointment arose in the context of an action that was certified as a class proceeding under the Class Proceedings Act, 1992 by Order of the Honourable Madame Lax dated January 19, 2010.
3. By Order of the Honourable Justice Strathy dated February 3, 2010 (the "**February 3, 2010 Order**"), the Promittere Companies and Subject Companies were directed to disclose certain information to the Plaintiffs and the co-defendant Fraser Milner Casgrain ("**FMC**"). Apparently, only limited information was disclosed pursuant to the February 3, 2010 Order. The Monitor understands that the lack of disclosure of information pursuant to the February 3, 2010 Order led, in part, to the motion for the appointment of a Monitor. A copy of the February 3, 2010 Order is attached as **Appendix "2"**.
4. The Monitor's mandate was set out in Paragraph 4 of the Appointment Order, which included:
  - (a) to conduct an investigation of the affairs of the Subject Companies, to include but is not limited to a source and use of funds analysis of the Gift Program Defendants and determine the existence of any assets of the Subject Companies;
  - (b) to conduct an investigation of the affairs of the Promittere Companies, to include but is not limited to a source and use of funds analysis of the Promittere Companies and determine the

existence of any assets of the Promittere Companies relating to the Banyan Tree Gift Program;

(c) to meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the Monitor's appointment, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(d) to take any steps reasonable incidental to the exercise of these powers.

5. Pursuant to Paragraph 25 of the Appointment Order, the Monitor was to report to the Court its preliminary findings and seek directions on or before October 22, 2010.
6. The Monitor prepared and filed its First Report (the "**First Report**") dated October 20, 2011. A copy of the First Report (without Appendices) is attached hereto as **Appendix "3"**.
7. In the First Report the Monitor reviewed its several attempts to contact Mr. Robert Thiessen ("**Mr. Thiessen**") following the Appointment Order and the limited and incomplete corporate records received as a result of its efforts.
8. Accordingly, in the First Report the Monitor sought the following relief to assist in discharging its' mandate:
  - Directing Mr. Thiessen, the Promittere Companies and Subject Companies to turn over the balance of the books and records to the Monitor;

- Directing Mr. Thiessen, the Promittere Companies and Subject Companies to fully respond to the October 15, 2010 Thiessen Letter (as defined in the First Report);
  - Directing Mr. Thiessen to execute the Consents authorizing CRA to turn over to the Monitor any and all information related to the Promittere Companies and the Subject Companies; and,
  - Directing Mr. Thiessen to meet with the Monitor forthwith.
9. By Order dated December 8, 2010 of the Honourable Mr. Justice Strathy (the "**December 8, 2010 Order**") the Court granted the relief sought by the Monitor. A copy of the December 8, 2010 Order is attached as **Appendix "4"**.
10. As of the date of this Second Report, Mr. Thiessen has not complied with the December 8, 2010 Order.

#### **THE MONITOR'S ATTEMPTS TO CONTACT MR. THIESSEN**

11. On December 14, 2010, Lenczner Slaughter, counsel for FMC, wrote to Cassels Brock by email and served a copy of the December 8, 2010 Order. A copy of the email is attached hereto as **Appendix "5"**.
12. Also on December 14, 2010, the Monitor wrote to Cassels Brock asking for an email address to contact Mr. Thiessen, as Mr. Thiessen had not returned the Monitor's telephone calls or responded to its letters sent by courier. Cassels Brock responded advising that they had not had any recent communications from Mr. Thiessen, but that they would send Mr. Thiessen an email to the last email address they had for him and ask him to contact the Monitor immediately. A copy of the emails with Cassels Brock is attached hereto as **Appendix "6"**.

13. Further on December 14, 2010, the Monitor made several attempts to contact Mr. Thiessen by telephone at both his work and cellular numbers. Mr. Thiessen's work number was no longer in service and there was no forwarding number provided. A message was left for Mr. Thiessen on his cellular telephone requesting that he return the Monitor's calls in accordance with the December 8, 2010 Order.
14. Mr Thiessen did not respond to the Monitor's requests for cooperation.
15. On February 7, 2011, the Monitor received an email from Cassels Brock advising that they would soon be removing themselves as solicitors of record for the Gift Program Defendants.
16. Other than the documents as described in the First Report, the Monitor has not received any further documents since the December 8, 2010 Order. The Monitor remains unable to discharge its mandate without the documents and information ordered to be given to the Monitor.
17. The Monitor continued its search to locate Mr. Thiessen to obtain compliance with the December 8, 2010 Order.
18. The Monitor also contacted parties connected to Mr. Thiessen, including Peter Math, a lawyer at the firm Miller Canfield, who appears to have acted on behalf of some of the Subject Companies on a corporate transaction.
19. On May 16, 2011, shortly after speaking with Mr. Math, the Monitor received a telephone call from Mr. Thiessen who advised that he had moved to the United States in December 2010.
20. Mr. Thiessen claimed that he had not received a copy of the December 8, 2010 Order but that he was aware that there was "some sort of contempt motion" pending against him in Ontario. The Monitor immediately forwarded a copy of the December 8, 2010 Order to the email address

provided by Mr. Thiessen. In addition, the Monitor sent Mr. Thiessen a copy of the October 15, 2010 Letter, which set out the specific questions and document requests the Monitor had previously made of Mr. Thiessen. Mr. Thiessen advised that he would cooperate in answering the Monitor's questions.

21. The Monitor received emails from Mr. Thiessen acknowledging receipt of the documents but has not received a response to the questions posed in the Monitor's letter of October 15, 2010 and ordered to be answered in the December 8, 2010 Order. A copy of the Monitor's email chain with Mr. Thiessen is attached hereto as **Appendix "7"**.
22. The Monitor believes that the email address rthiessen@rogers.com is an active address for Mr Thiessen and that communications sent to this address will come to Mr. Thiessen's attention.

#### **THE MONITOR'S INDEPENDENT INVESTIGATION**

23. In the absence of any further books and records, the Monitor has been unable to complete a source and application of funds analysis for the Gift Program Defendants. Once the Monitor has the relevant books and records it will perform a preliminary assessment of completeness and provide an estimate of the anticipated costs to complete the analysis.
24. Notwithstanding the lack of documentation from Mr. Thiessen, the Monitor has conducted its own investigation into the assets of the Promittere Companies and Subject Companies and sets out the preliminary results of its investigation below:

## **Promittere Capital Group Inc.**

### **Property Searches**

Searches of current property ownership in Ontario using the name Promittere Capital Group Inc. did not surface any properties for which the company is listed as an owner.

### **PPSA Searches**

Searches of the Ontario PPSA registry using the names Promittere Capital Group Inc. did not identify any registrations relating to the company.

### **Aircraft Ownership Searches**

Enquiries with Transport Canada did not surface any aircraft currently held in the name of Promittere Capital Group Inc.

### **Watercraft Ownership Searches**

Enquiries with Transport Canada did not surface any watercraft currently held in the name of Promittere Capital Group Inc.

### **News Media Searches**

We conducted news media searches using the name Promittere Capital Group Inc. and identified the following which may be of interest:

- A 1996 article indicating that Promittere Capital Group acquired all of the shares of 875547 Ontario Limited, the general partner of a series of limited partnerships named Jojoba.
- Six articles from 2005 and 2006 which indicate that Robert Thiessen and Promittere Capital Group sponsored the Promittere Cup in the Junior A Hockey league.

### Civil Litigation Searches

A search of the records for Ontario Superior Court of Justice (Toronto) using the name Promittere Capital Group Inc. identified three cases in which the company was named as a defendant. A review of these cases did not surface any information of interest.

### Promittere Asset Management Ltd.

#### Property Searches

Searches of current property ownership in Ontario using the name Promittere Asset Management Ltd. did not surface any properties for which this company is listed as an owner.

#### PPSA Searches

Searches of the Ontario PPSA registry using the names Promittere Asset Management Ltd. did not identify any registrations relating to this company.

#### Aircraft Ownership Searches

Enquiries with Transport Canada did not surface any aircraft currently held in the name of Promittere Asset Management Ltd.

#### Watercraft Ownership Searches

Enquiries with Transport Canada did not surface any watercraft currently held in the name of Promittere Asset Management Ltd.

#### News Media Searches

We conducted news media searches using the name Promittere Asset Management Ltd. and identified the following articles that are of interest:

- A March 2005 article from "Oshawa This Week" regarding a dispute over a property at 95 Athol Street in Oshawa. The article mentions

that the foundation and Robert Thiessen as well as the "property management firm" Promittere Asset Management Limited were sued by the tenant of the property, a church.

- Three articles from 2008 to 2010 regarding the Banyan Tree class action lawsuit which mention both Promittere companies which was previously noted above.

### **Banyan Tree Foundation**

#### **Property Searches**

Searches of current property ownership in Ontario using the name Banyan Tree Foundation did not surface any properties which the foundation is listed as an owner.

#### **PPSA Searches**

Searches of the Ontario PPSA registry using the name Banyan Tree Foundation did not identify any registrations relating to the foundation.

#### **Aircraft Ownership Searches**

Enquiries with Transport Canada did not surface any aircraft currently held in the name of the Banyan Tree Foundation.

#### **Watercraft Ownership Searches**

Enquiries with Transport Canada did not surface any watercraft currently held in the name of the Banyan Tree Foundation.

#### **News Media Searches**

We conducted news media searches using the name Banyan Tree Foundation and identified the following articles:

- A June 2008 National Post article regarding double taxation mentioned the foundation in relation to certain IRS summonses in the US.
- Two articles from 2006 and 2005 regarding donations made by the foundation.
- The March 2005 article from "Oshawa This Week" noted above.
- A November 2003 National Post article which identifies the foundation as a potential target of a CRA tax shelter crackdown.

#### Civil Litigation Searches

A search of the records for Ontario Superior Court of Justice (Toronto) using the name Banyan Tree Foundation identified one case in which the company was named as a plaintiff and one case as a defendant. A review of these cases did not identify any information of interest.

#### Rochester Financial Limited

##### Property Searches

Searches of current property ownership in Ontario for Rochester Financial Limited identified the following property:

**PT LT 20 CON 1 Whitby PTS 4. 5. 6. & 7, 40R15047, Except PT3, 40R10248 (the "First Whitby Property")**

This is an approximate 2 acre parcel of vacant land adjacent to a commercial building at 1600 Champlain Avenue, Whitby. On July 23, 2004 the property was transferred to Rochester Financial Limited from B.J. Atmac Investments Inc. and Jarigay Investments Ltd. for \$0. The explanation provided for the transfer amount was recorded as "Explanation for nominal considerations: b) trustee to trustee (evidence required to be submitted)."

On November 25, 2009 a mortgage was filed against the property by an entity named The Life Foundation for \$3,500,000. The address for the foundation is listed as PO Box CB12724, Compass Point Office Suite West, Bay St. Nassau, Bahamas. We note that this address is shared with Hampton Insurance and the Britannia Group, which appear to be companies under some administration in the Caribbean. The Monitor has no documentation in respect of this mortgage as the books and records of Rochester were incomplete.

On December 17, 2010, Her Majesty the Queen in Right of Canada (The Minister of National Revenue) filed a \$761,947 lien against the property.

The parcel register for the First Whitby Property is attached as **Appendix "8"**. The Monitor is in the process of registering notice of the February 3, 2010 Order on title to this parcel.

#### PPSA Searches

Searches of the Ontario PPSA registry using the name Rochester Financial Limited identified one lien relating to the company.

- File Date: January 24, 2007  
Expiry Date: January 24, 2012  
Debtor: Rochester Financial Limited  
Creditor: Her Majesty the Queen in Right of Ontario / Minister of Finance  
Item: GSA  
Amount: \$823,187

#### Aircraft Ownership Searches

Enquiries with Transport Canada did not surface any aircraft currently held in the name of Rochester Financial Limited.

### Watercraft Ownership Searches

Enquiries with Transport Canada did not surface any watercraft currently held in the name of Rochester Financial Limited.

### News Media Searches

We conducted news media searches using the name Rochester Financial Limited and identified the following articles that are of interest:

- Three articles from 2008 to 2010 regarding the Banyan Tree class action lawsuit which mention Rochester Financial and the Promittere companies.
- A number of articles regarding the company's loans in the Banyan Tree Foundation donation scheme and the subsequent CRA investigation.

### Civil Litigation Searches

A search of the records for Ontario Superior Court of Justice (Toronto) using the name Rochester Financial Limited identified two cases in which the company was named as a plaintiff and two cases as a defendant.

### Property Mortgage

#### **100 Banbury Rd. Toronto, ON M2B 2L3 Mortgage**

This property was purchased by Mr. Thiessen and Deanna Naus from Semine Fazalbhoy on October 16, 2003 for \$2,300,000.

- On January 7, 2004 a \$2,343,000 mortgage was filed against the property by 1106999 Ontario Limited (now known as Rochester Financial Limited).

- On September 16, 2008, the Rochester mortgage was discharged, however, we have seen no evidence that Rochester was repaid on this mortgage.
- On August 8, 2005 a construction lien was placed against the property by AST Stone Restoration Inc. which was later discharged on November 13, 2008.
- On June 29, 2010 the property was sold to LUO Jianfeng and XING Chaohong for \$3,850,000.

During our research on this property, we identified another property of interest at 1600 Champlain Ave. Whitby, ON. Further searches on the property revealed that it is adjacent to the First Whitby Property mentioned above on page 1, this being PT LT 20 CON 1 Whitby PTS 4, 5, 6, & 7, 40R15047. Details are as follows:

**PT LT 20 CON 1 Whitby PTS 1, 2, & 3, 40R15047 (the “Second Whitby Property”)**

- Purchased by Champlain-Thickson Centre Corp from Sunoco Inc. on May 7, 1987 for \$950,000. (We note that Champlain-Thickson Centre Corp. is a Robert Thiessen related company)
- On November 19, 2009 a \$6,800,000 mortgage was filed against the property by Duca Financial Services Credit Union Ltd. (This parcel, together with Parcels 4, 5, 6, and 7 are herein defined as the “**Whitby Property**”).

**BOOKS AND RECORDS OF THE PROMITTERE COMPANIES AND SUBJECT COMPANIES**

25. During the telephone discussion with Mr. Thiessen on May 16, 2011, the Monitor questioned him on the location of the books and records of the

Promittere Companies and Subject Companies. Mr. Thiessen advised that at least 25 boxes of records were sent to Thorsteinssons LLP who have allegedly been retained by some of the Plaintiffs in respect of certain tax matters. This is the first the Monitor has been advised of these records. Mr. Thiessen had previously advised that the books and records of the Gift Program Defendants (apart from eight boxes delivered to the Monitor in October 2010 see paragraphs 6-15 of the Monitor's First Report) were with PwC in the British Virgin Islands. The Monitor was informed by PwC that they did not have the relevant books and records.

26. The Monitor called Thornsteinssons LLP on May 17, 2011 to attempt to confirm whether they have the books and records of the Gift Program Defendants.
27. By letter dated May 20, 2011 the Monitor wrote to Thorsteinssons to inform them of the September 10, 2010 Order and requested the delivery of books and records of the Gift Program Defendants in the possession of Thorsteinssons to the Monitor as well as clarification of other information. Attached as **Appendix "9"** is a copy of the letter to Thornsteinssons. The Monitor received a call from Thornsteinssons following delivery of its letter, and advised it only had minimal books and records, and nowhere near the 25 boxes described by Mr. Thiessen.
28. By letter dated May 20, 2011 the Monitor wrote to Peter Math of Miller Canfield and requested the delivery of books and records related to the Whitby Property to the Monitor as well as clarification of other information. Attached as **Appendix "10"** is a copy of the letter to Miller Canfield.

## **RELIEF REQUESTED**

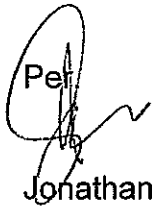
29. Given the results of our investigation above, the Monitor seeks an Order granting the following relief:

- (a) An Order directing Robert Theissen to comply with paragraphs 1, 2 and 3 of the Court's Order dated December 8, 2010 attached as **Appendix "3"** hereto within seven (7) days of service of this Order on Robert Theissen, by email at *rtheissen@rogers.com* failing which any party and/or the Monitor will be at liberty to move for a contempt order against Robert Theissen to enforce compliance with this Court's Orders dated September 10 and December 8, 2010 and the terms of this Order;
- (b) An Order that the Monitor be and it is hereby authorized to examine under oath Robert Theissen, in Toronto, Ontario, respecting his knowledge of the affairs of the Promittere Companies and the Subject Companies and that a Notice of Examination shall be given in the form set forth in the *Rules of Civil Procedure* for examinations for discovery and service shall be effective by email at *rtheissen@rogers.com* sent on seven (7) days' notice to Robert Theissen and Robert Theissen is ordered and directed to attend such examination;
- (c) An Order requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere (including without limitation The Commonwealth of the Bahamas and The British Virgin Islands) to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All such courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order;

- (d) Directing Thornsteinssons to deliver up immediate possession of any and all books, records or documents of the Subject Companies and Promittere Companies in its possession to the Monitor
  
- (e) Directing the law firm Miller Canfield, to deliver up immediate possession of any and all books, records or documents of the Subject Companies and the Promittere Companies, except documents subject to solicitor client privilege, to the Monitor.

Respectfully submitted,

GRANT THORNTON LIMITED,  
In its capacity as Court-appointed  
Monitor of Promittere Capital Group Inc.,  
Promittere Asset Management Inc.  
Rochester Financial Limited and Banyan  
Tree Foundation

Per 

Jonathan Krieger, CA●CIRP

Encl.

# **APPENDIX 6**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. )

FRIDAY, THE 25<sup>th</sup>

JUSTICE G. STRATHY )

DAY OF MAY, 2011

B E T W E E N

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP  
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE  
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER RE: PLAINTIFFS' OMNIBUS MOTION**

**THIS MOTION**, made by the plaintiffs seeking various procedural and other relief as set-out in the plaintiffs' Notice of Motion dated April 5, 2011 was heard this day at Osgoode Hall in Toronto.

**ON READING** the Motion Record of the plaintiffs including the Affidavit of Michael B. Stanton and exhibits sworn April 5, 2011, the Supplementary Motion Record of the plaintiffs dated May 20, 2011 including the Affidavit of Michael B. Stanton and exhibits sworn May 20,

2011, the Compendium of Pleadings and Orders dated April 5, 2011, the Factum and Brief of Authorities of the plaintiffs, and upon hearing the submissions of counsel for the plaintiffs, the defendant, Fraser Milner Casgrain LLP ("FMC"), the defendants, Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd. and Banyan Tree Foundation (the "Gift Program Defendants"), and Cassels Brock & Blackwell <sup>LLP</sup> ("Cassels"),

1. **THIS COURT ORDERS** that the opt-out deadline in the case of the 209 individuals who are to receive a further Opt-Out Notice and Opt-Out Form pursuant to the Order of Mr. Justice Strathy dated September 17, 2010, in the form and content approved by Mr. Justice Strathy on November 25, 2010, is hereby amended to August 30, 2011.
2. **THIS COURT FURTHER ORDERS** that plaintiffs' counsel shall deliver by mail the Opt-Out Notice and Opt-Out Form to those 209 individuals pursuant to paragraph 1 above, on or before June 30, 2011, and the reasonable expense of carrying-out such notice shall be borne by FMC.
3. **THIS COURT DECLARES** that the documents contained in the legal files of FMC regarding ~~any~~ <sup>the</sup> legal services provided to the Gift Program Defendants that are relevant to the Gift Program are not subject to solicitor-client or any other privilege for the purposes of this action.
4. **THIS COURT FURTHER ORDERS** that all documents ~~contained~~ <sup>any of</sup> in the legal files of FMC regarding ~~any~~ <sup>the</sup> legal services provided to the Gift Program Defendants that are relevant to the Gift Program be listed in Schedule "A" to FMC's affidavit of documents and produced to the lawyers for the plaintiffs, within 30 days.

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5. **THIS COURT FURTHER ORDERS** that FMC shall deliver to plaintiffs' counsel a further and better affidavit of documents to include ~~all~~ documents contained in the legal files of FMC regarding <sup>the</sup> ~~any~~ legal services provided to <sup>any of</sup> the Gift Program Defendants that are relevant to the Gift Program within <sup>45</sup> ~~30~~ days of the date of this order and the affidavit of documents shall be sworn by a representative of FMC.

6. **THIS COURT FURTHER ORDERS** that Cassels shall produce to plaintiffs' counsel copies of all documents in their possession and control relevant to matters in issue in this action relating to the Gift Program, excluding documents which are the subject of solicitor-client or litigation privilege as between Cassels and the Gift Program Defendants in this action, within 30 days of the date of this order.

7. **THIS COURT FURTHER ORDERS** that Grant Thornton Limited, in its capacity as Court-appointed Monitor (the "Monitor") shall make available for inspection by any party, at that party's expense, all documents of the Gift Program Defendants in the Monitor's possession that were provided to the Monitor by the Gift Program Defendants or by any other person. The Monitor will be at liberty to provide copies of the documents (the "Documents") of the Gift Program Defendants to any party requesting the Documents, at that party's expense, provided that the party requesting the Documents has given written notice to the other parties and the Monitor of its request for the Documents. If no written objection is made to the delivery of the Documents within seven days, the Monitor shall provide copies of the Documents to the party requesting them. If an objection is made to the request for copies of the Documents, the dispute over entitlement to the documents will be determined by the Court.

8. **THIS COURT FURTHER ORDERS** that a representative on behalf of FMC and Robert Thiessen ("Thiessen") on behalf of the Gift Program Defendants shall attend on examinations for discovery on dates to be agreed upon by the parties and their counsel, or fixed by the Court ~~and that such examinations take place in Toronto, Ontario no later than~~ <sup>within 30 days in default of agreement</sup> ~~July 29, 2011.~~ <sup>to be fixed by the court at a case conference to be held before June 30, 2011.</sup>

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9. **THIS COURT FURTHER ORDERS** that the parties are to agree upon the form and content of a discovery plan within 30 days of the date of this order, which discovery plan shall comply with Rule 29.1.03 of the *Rules of Civil Procedure*.

10. **THIS COURT FURTHER ORDERS** that Thiessen shall attend as an officer or director of the Gift Program Defendants on an examination in aid of execution, in Toronto, Ontario, date and time to be fixed by the Court due to Thiessen's failure to attend on the examination in aid of execution scheduled for February 1, 2011.

11. **THIS COURT FURTHER ORDERS** that the defence of the Gift Program Defendants is hereby struck due to their failure to comply with various court orders in this action.

12. **THIS COURT FURTHER ORDERS** that the Gift Program Defendants are hereby in contempt of the orders of this Court requiring the Gift Program Defendants to produce documents and information, cooperate with the Monitor and to deliver the further Opt-out Notices and Opt-out Forms, and to make payments of costs. <sup>orders of the Court dated February 3, 2010, April 1, 2010 and September 17, 2010, include their failure to pay costs awarded</sup> <sup>therein</sup>

13. **THIS COURT FURTHER ORDERS** that the plaintiffs may make further submissions to the court regarding the costs and unnecessary expense incurred by the plaintiffs' lawyers as a result of the Gift Program Defendants' interference with the Notice Plan, <sup>of Thiessen by the Monitor, for discovery and in aid of execution, such date to be fixed at a case conference to be held before June 30, 2011</sup>

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and further orders concerning notice to Class Members in this action and, particularly, their failure to provide the further Opt-out Notice and Opt-out Form to those 209 individuals whose Opt-out Forms were declared invalid, and regarding the costs of the other relief sought and granted in this motion.



*(Signature of judge, officer or registrar)*

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

MAY 27 2011

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:



**KATHRYN ROBINSON ET AL.**

**V.**

**ROCHESTER**

Cou

**ONTARIO**  
SUPERIOR COURT

Proceeding under the *Class*

PROCEEDING COM  
TORONTO

**ORDER RE: PLAINTIFFS'  
MOTION**

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Lawyers for the plaintiffs, Kathryn  
Robinson

**KATHRYN ROBINSON and RICK ROBINSON**

Plaintiffs

and

**ROCHESTER FINANCIAL LIMITED et al.**

Defendants

Court File No.: 08-CV-349792

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **Toronto**

**MOTION RECORD OF THE MONITOR  
RE: SETTLEMENT AND CLASS COUNSEL FEE APPROVAL  
(Returnable January 17, 2012)**

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