

**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.

✓ BE BEFORE OCTOBER 22, 2010 ON A

DATE TO BE ARRANGED THROUGH JUDGES' ADMINISTRATION ✓

G. R. Shatty J.

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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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