

*Abstracted by JR*

Court File No. 05-18863

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) *FRIDAY*, THE 2<sup>ND</sup> DAY  
 )  
JUSTICE *TURNBULL* ) *JULY* OF , 2010

**COLLEGE OF OPTOMETRISTS OF ONTARIO**

Applicant

- and -

**SHS OPTICAL LTD., DUNDURN OPTICAL LTD. and  
JOHN DOE, all carrying business under the name of  
GREAT GLASSES; JOANNE MARIE BERGEZ and  
BRUCE BERGEZ**

Respondents

- and -

**COLLEGE OF OPTICIANS OF ONTARIO**

Intervenor

- and -

**THE ATTORNEY GENERAL FOR ONTARIO**

Intervenor

**ORDER**

THIS MOTION made by the Attorney General for the Province of Ontario (the "AGO"), 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 Deloitte & Touche Inc. ("Deloitte") as receiver (in such capacities, the "Receiver") without security, of certain assets, undertakings and properties of Great Glasses, Bruce Bergez, Joanne Marie Bergez, SHS Optical Ltd., Dundurn Optical Ltd. (the

"Debtors") and also certain assets, undertakings and properties situated at the locations listed on Schedule "A" hereto (the "Locations"), acquired for or used in relation to an optical business, was heard this day at 45 Main St. East, Hamilton, Ontario.

ON READING the Motion Record of the Applicant, College of Optometrists of Ontario, the Motion Record of the Intervenor, College of Opticians of Ontario, the Motion Record of the Intervenor, Her Majesty the Queen in right of Ontario as represented by the Attorney General ("HMQ"), the affidavit of Bruce Bergez sworn May 20, 2010, the Reply affidavits of the College of Optometrists of Ontario, and the affidavit of Glenna Thompson sworn May 25, 2010 filed by the College of Optometrists of Ontario, and on hearing the submissions of counsel for the College of Optometrists of Ontario, the College of Opticians of Ontario, HMQ, and on hearing the submissions of Bruce Bergez on his own behalf and on behalf of Joanne Bergez, no one appearing for any other party although duly served as appears from the affidavits of service filed, and on reading the Consent of Deloitte to act as Receiver,

#### **APPOINTMENT**

1. THIS COURT ORDERS that pursuant to section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, in respect of (i) the assets, undertakings and properties of the Debtors acquired for or used in relation to the optical business, including all proceeds thereof, and (ii) whether or not the Debtors are the owners thereof or have an interest therein, the assets, undertakings and properties situated at the Locations and acquired for or used in relation to the optical business, including all proceeds thereof, (collectively, the "Property") for the purpose of and to the extent authorized by the balance of this Order. For greater certainty, (i) except as expressly provided for in this Order, the Receiver shall not take possession or control of the Property, and (ii) the Receiver shall not carry on, manage or operate the business of the Debtors, the businesses operated at the Locations or the businesses of other persons in respect of the Property without further order of the Court.

#### **RECEIVER'S POWERS**

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized (and in respect of subparagraphs 2(a), (b) and (c) the Receiver is also directed):

- (a) to take possession (directly or through an agent or agents) of the eye testing and related equipment that forms part of the Property (the "Equipment"), including but not limited to any Eye Logic System equipment, and store the Equipment pending further order of the Court;
- (b) to review and report to the Court upon the Property and the optical business carried on by the Debtors or carried on at the Locations (the "Business") including, without limitation:
  - (i) the activities of the Business and the employees of the Business from the date of this Order;
  - (ii) the nature of the Property and the Business;
  - (iii) the estimated realizable value of the Property;
  - (iv) the Debtors' liabilities in relation to the Business;
  - (v) persons having or claiming an interest in the Business or the Property or claiming against the Debtors and the quantum and nature of those claims;
  - (vi) whether the Business or the Property can be sold (whether en bloc or on a piecemeal basis) and, if so, any recommendations concerning the method or methods of sale;
  - (vii) whether the Debtors are meeting their obligations in the ordinary course of business; and
  - (viii) the potential for recovery of any liabilities owed by the Debtors to the Minister of Finance of Ontario under any prior Order of the Court.

- (c) to make copies of any computer disks relating to the Property or the Business (the "Computer Records") and store the Computer Records pending further order of the Court;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, security personnel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to review and, if appropriate, consent to any proposed disbursement or disposition of Property, other than a sale of inventory in the ordinary course of business, to be made by the Debtors or the businesses operated at the Locations and to take such steps as in the opinion of the Receiver are necessary or appropriate in relation thereto, and to advise any banks or financial institutions where the Debtors or the businesses operated at the Locations have bank accounts (the "Banks") of the Receiver's power to review and, if appropriate, to consent to any proposed disbursement or disposition of Property, other than a sale of inventory in the ordinary course of business, including but not limited to serving a copy of this Order on any such Banks;
- (f) to report to, meet with and discuss with such Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable; and
- (g) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

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

3. THIS COURT ORDERS that (i) the Debtors and the owners of the businesses operated at the Locations, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) Joanne Marie Bergez and Bruce Bergez, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property or Equipment in such Person's possession or control, shall grant immediate and continued access to the Property or Equipment to the Receiver and shall co-operate with and shall provide such information and documents as the Receiver requests relating to the Property, the Equipment or the Business.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors or relating to the business or affairs of the businesses operated at the Locations, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver or persons engaged by the Receiver pursuant to this Order except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE EQUIPMENT**

7. THIS COURT ORDERS that no Proceeding against or in respect of the Equipment shall be commenced or continued except with leave of this Court and any and all Proceedings currently under way against or in respect of the Equipment are hereby stayed and suspended pending further Order of this Court.

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

8. THIS COURT ORDERS that all rights and remedies against the Debtors or against the businesses operated at the Locations in relation to the Property, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not (i) exempt the Receiver, the Debtors or the businesses operated at the Locations from compliance with statutory or regulatory provisions relating to health, safety or the environment, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

## **NO INTERFERENCE**

9. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors or the businesses operated at the Locations in respect of the Business or the Property as a consequence of the making of this Order or any action taken pursuant to this Order, without the written consent of the Receiver or leave of this Court.

## **EMPLOYEES**

10. THIS COURT ORDERS that all the employees of the Debtors shall remain the employees of each such Debtor and all the employees of the businesses operated at the Locations shall remain the employees of each such business. The Receiver shall not be liable for any employee-related liabilities or statutory obligations, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, or any successor employer liabilities.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

11. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

12. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

### **RECEIVER'S ACCOUNTS AND CHARGE**

13. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and as security for payment of any other obligations incurred by the Receiver in acting in that capacity (including for payment of goods or services supplied to or to be supplied to the Receiver) and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

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

15. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements (including for payment of goods or services supplied to or to be supplied to the Receiver) when and as approved by this Court.

16. THIS COURT ORDERS that to the extent the Receiver's fees and disbursements (including for payment of goods or services supplied to or to be supplied to the Receiver) are not paid out of the Property, they shall be paid by Her Majesty the Queen in right of Ontario out of the Consolidated Revenue Fund.



## **FUNDING OF THE RECEIVERSHIP**

17. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

18. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

19. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

20. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **RECEIVER'S REVIEW OF PROPOSED DISBURSEMENTS OR DISPOSITIONS OF PROPERTY**

21. THIS COURT ORDERS that the Debtors and the managers of the businesses operated at the Locations, if not the Debtors, shall provide the Receiver with the details of any proposed disbursement or disposition of Property, other than a sale of inventory in the ordinary course of business, ("Disposition") and shall obtain the written consent of the Receiver before making any

such proposed disbursement or Disposition. The Receiver shall withhold its consent to any proposed disbursement or Disposition which, in the discretion of the Receiver, is a disbursement or Disposition out of the ordinary course of business or which is contrary to any other provision of this Order.

## **REPORTING**

22. THIS COURT ORDERS that the Receiver shall report to the Court forthwith in the event that the Receiver determines that any of the Debtors or any of the businesses operated at the Locations have failed or refused to comply with this Order.

## **GENERAL**

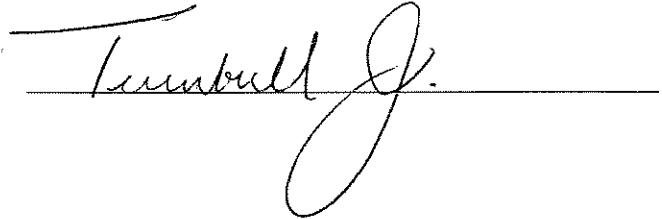
23. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any or all of the Debtors or the businesses operated at the Locations, if not the Debtors.

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

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

27. THIS COURT ORDERS that any interested party (including the Debtors, the businesses operated at the Locations, if not the Debtors, and the Receiver) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, appearing to read "Turnbull J.", is written over a horizontal line. The signature is fluid and extends below the line.

## SCHEDULE "A"

1. 1025 Plains Road, Burlington, Ontario.
2. 1550 Upper James Street, Hamilton, Ontario.
3. 50 Dundurn Street South, Hamilton, Ontario.
4. 119 Osler Drive, Unit 7, Dundas, Ontario.
5. 1250 Steeles Avenue East, Milton, Ontario.
6. 300 King George Road, Brantford, Ontario.
7. 2180 Itabashi Way, Burlington, Ontario.
8. 220 North Service Road, Oakville, Ontario.
9. 95 Saginaw Parkway, Unit 6, Cambridge, Ontario.
10. 125 Queensway, Etobicoke, Ontario.
11. 132 Front Street East, Toronto, Ontario.
12. 808 York Mills Road, Toronto, Ontario.
13. 26-17 Worthington Avenue, Brampton, Ontario.
14. 393 Danforth Avenue, Toronto, Ontario.
15. 1070 Major Mackenzie Drive East, Richmond Hill, Ontario.
16. 20-9200 Bathurst Street, Thornhill, Ontario.
17. 285 Geneva Street, St. Catharines, Ontario.
18. 565 Woodlawn Road West, Guelph, Ontario.
19. 1865 Lakeshore Road West, Mississauga, Ontario.
20. 1319 Commissionaires Road, London, Ontario.

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver (the "Receiver") in respect of (i) the assets, undertakings and properties of Great Glasses, Bruce Bergez, Joanne Marie Bergez, SHS Optical Ltd., Dundurn Optical Ltd. acquired for or used in relation to the optical business, including all proceeds thereof, and (ii) whether or not the Debtors are the owners thereof or have an interest therein, the assets, undertakings and properties situated at the locations listed on Schedule "1" hereto and acquired for or used in relation to the optical business, including all proceeds thereof (collectively, the "Property"), appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the • day of •, 2010 (the "Order") made in an action having Court file number 05-18863, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person but subordinate to the Receiver's Charge.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Deloitte & Touche Inc., solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

Per: \_\_\_\_\_

Name:

Title:

## **SCHEDULE "1"**

### **to the Receiver's Certificate**

- 1. 1025 Plains Road, Burlington, Ontario.**
- 2. 1550 Upper James Street, Hamilton, Ontario.**
- 3. 50 Dundurn Street South, Hamilton, Ontario.**
- 4. 119 Osler Drive, Unit 7, Dundas, Ontario.**
- 5. 1250 Steeles Avenue East, Milton, Ontario.**
- 6. 300 King George Road, Brantford, Ontario.**
- 7. 2180 Itabashi Way, Burlington, Ontario.**
- 8. 220 North Service Road, Oakville, Ontario.**
- 9. 95 Saginaw Parkway, Unit 6, Cambridge, Ontario.**
- 10. 125 Queensway, Etobicoke, Ontario.**
- 11. 132 Front Street East, Toronto, Ontario.**
- 12. 808 York Mills Road, Toronto, Ontario.**
- 13. 26-17 Worthington Avenue, Brampton, Ontario.**
- 14. 393 Danforth Avenue, Toronto, Ontario.**
- 15. 1070 Major Mackenzie Drive East, Richmond Hill, Ontario.**
- 16. 20-9200 Bathurst Street, Thornhill, Ontario.**
- 17. 285 Geneva Street, St. Catharines, Ontario.**
- 18. 565 Woodlawn Road West, Guelph, Ontario.**
- 19. 1865 Lakeshore Road West, Mississauga, Ontario.**
- 20. 1319 Commissionaires Road, London, Ontario.**





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Intervenor

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**THE ATTORNEY GENERAL FOR  
ONTARIO**

Intervenor

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**CONSENT TO ACT AS  
RECEIVER**

**ATTORNEY GENERAL FOR  
ONTARIO**

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Ontario**