

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

**SUPPLEMENTAL REPORT TO THE
FIRST REPORT TO THE COURT OF THE RECEIVER
(August 19, 2010)**

INTRODUCTION

1. Pursuant to an Order of The Honourable Justice Turnbull dated July 2, 2010 (the “**Appointment Order**”), Deloitte & Touche Inc. was appointed as receiver (the “**Receiver**”), without security, in respect of (i) the assets, undertakings and properties of Bruce Bergez, Joanne Marie Bergez, SHS Optical Ltd. and Dundurn Optical Ltd. (the “**Debtors**”) acquired for or used in relation to the optical business, including all proceeds thereof, and (ii) the assets, undertakings and properties situated at the locations listed on Schedule “A” to the Appointment Order (the “**Locations**”) and acquired for or used in relation to the optical business, including all proceeds thereof, (collectively, the “**Property**”).
2. On August 13, 2010, the Receiver circulated its First Report to the Court (the “**First Report**”) in connection with a hearing on August 23, 2010. The purpose of the First Report was to:
 - a) provide the Court with a summary of the Receiver’s activities from the making of the Appointment Order, to August 12, 2010;
 - b) inform the Court of the results of the Receiver’s review to August 12, 2010 of the Property and the Businesses carried on by the Debtors or carried on at the Locations;
 - c) support the Receiver’s motion to vary Paragraph 2 of the Appointment Order so that it no longer directs the Receiver to make copies of the Computer Records, but merely authorizes the Receiver to do so if appropriate or necessary;
 - d) seek the Court’s approval of the First Report and of the Receiver’s activities to August 12, 2010; and
 - e) seek the Court’s approval of the fees and disbursements of the Receiver and those of its counsel, Borden Ladner Gervais LLP, up to July 31, 2010.
3. In the First Report, the Receiver reported that as at August 13, 2010, it had not obtained copies of the cancelled cheques for the account of OODC Holdings due to the cost of

obtaining that information from the bank. Subsequent to serving the First Report, on August 16, 2010, the Receiver received correspondence from Bruce Bergez advising that he had discovered 23 sealed envelopes containing a sampling of bank statements and cancelled cheques from that account. The Receiver subsequently attended at the Bergez residence on August 16, 2010, to collect the envelopes.

PURPOSE

4. The purpose of this Supplemental Report to the First Report (the “**Supplemental Report**”) is to:
 - a) update the Court on the Receiver’s preliminary review of the OODC Holdings bank statements and cancelled cheques provided by Bruce Bergez on August 16, 2010; and
 - b) advise the Court of certain other correspondence received from Bruce Bergez on August 16, 2010.

TERMS OF REFERENCE

5. In preparing this Supplemental Report, the Receiver has relied upon records and information provided by a number of parties and/or their counsel, including but not limited to current and former store operators and Bruce Bergez. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this Supplemental Report. The Receiver notes that additional information may be brought to the attention of the Receiver after the date of this report, which information could have an impact on certain of the Receiver’s findings set out herein.
6. Capitalized terms not defined in this report are as defined in the First Report. All references to dollars are in Canadian currency unless otherwise noted.
7. As in the First Report, the terms ‘franchisee’ and ‘store operator’ are used in this report to describe the owners/operators of the businesses operated at the Locations. The use of

these terms is for convenience only, and does not reflect the Receiver's opinion on the existence and legitimacy of any franchise arrangements that may or may not exist in respect of these parties. The use of the plural form of 'franchisees' or 'store operators' in this report is intended to refer to more than one store operator, but unless the report expressly provides otherwise, such references are not intended to refer to all of the store operators.

8. The Receiver has sought the advice of independent counsel for general legal matters that have arisen in respect of the receivership.

THE OODC HOLDINGS ACCOUNT

9. In paragraph 58 of the First Report, the Receiver reported that it had reviewed the bank statements of OODC Holdings, but had not obtained copies of the cancelled cheques due to the cost of obtaining those copies from the bank.
10. On, August 16, 2010, the Receiver received an e-mail from Bruce Bergez in which he indicated that "in sorting through some boxes on the weekend I came across 23 sealed envelopes representing a sampling of the bank statements and cancelled cheques for the account OODC Holdings, also known as the Kevin Brittain account." The Receiver attended at the Bergez residence that afternoon to obtain the documents.
11. The Receiver has conducted a preliminary review of the bank statements and cancelled cheques obtained from Bruce Bergez for the OODC Holdings account, which are for the period from August 9, 2006 to September 30, 2008. In total, the Receiver estimates that it reviewed approximately 700 cheques. Based on the Receiver's review of the bank statements and cancelled cheques, the Receiver notes the following:
 - a) cheques bearing the payor names of OODC Holdings and FOO Holdings were drawn on the OODC Holdings account. The Receiver is advised by Mr. Brittain

that the cheques bearing the name FOO Holdings were ordered from a third party printer by Bruce Bergez;¹

- b) substantially all of the cheques reviewed by the Receiver appear to be signed by Bruce Bergez, Joanne Marie Bergez or Kevin Brittain. The Receiver notes that it reviewed 5 cheques for which the signatory may not have been one of those persons, however, as a result of the number of cheques to review and the limited time available, the Receiver has not investigated the circumstances surrounding those cheques;
- c) transfers from and cheques drawn on the OODC Holdings account appear to be payments for both business and personal expenses, and are generally consistent with the payments the Receiver observed being made from the account of the apparent successor entity, O.O.D.C. Holdings Co., as described at paragraph 61 of the First Report; and
- d) based on the bank statements provided by Bruce Bergez for the period from August 9, 2006 to September 30, 2008, the credits/deposits to the OODC Holdings account totaled \$2,907,125 and debits/withdrawals from the OODC Holdings account totaled \$2,886,911.

SALE OF THE BERGEZ RESIDENCE

12. By e-mail dated August 16, 2010, Bruce Bergez advised the Receiver that, as a result of the circumstances arising from the Order and the impecunious situation which the Bergez's now face, the Bergez's have listed for sale their home at 286 York Road, Dundas, Ontario (the "**Residence**"). Mr. Bergez provided the Receiver with a copy of the Multiple Listing Service (MLS) listing agreement for the Residence, which grants the listing agent, HomeLife Macro Realty Inc., Brokerage, the exclusive and irrevocable right to act as the listing agent for the period August 17, 2010 to October 30, 2010.

¹ The Receiver conducted Business Name and Corporate Profile Searches on "FOO Holdings" which did not return a direct match. A company named "Foo Holdings Inc." existed from 1992 to 2006, but does not appear to be related to the Debtors or the businesses operated at the Locations.

13. The listing price for the Residence is \$749,900. The Receiver notes that, based on a treasurer's certificate dated August 6, 2010, there do not appear to be any realty tax arrears or local improvement assessments outstanding on the Residence. There are, however, four Writs of Execution registered against Joanne Marie Bergez, the registered owner of the Residence, in favour of the Optometrists and the Attorney General in an aggregate amount of approximately \$17,230,000.²

QUESTIONS AND COMMENTS ON THE FIRST REPORT

14. After serving the First Report on August 13, 2010, the Receiver received certain comments from Bruce Bergez by way of email dated August 16, 2010. The Receiver responded to the comments of Bruce Bergez on August 17, 2010, by way of reply email, directing Mr. Bergez to the passages in the First Report which address his concerns and providing further clarification in respect of the activities of the Receiver during the week of August 9, 2010. Copies of the email of Bruce Bergez, dated August 16, 2010, and the email of the Receiver, dated August 17, 2010, are included as **Appendix "A"** to this report.

DATED this 19th day of August, 2010.

DELOITTE & TOUCHE INC.

solely in its capacity as Receiver of
certain assets, undertakings and properties of
SHS Optical Ltd., Dundurn Optical Ltd. and John Doe
all carrying on business under the name of Great Glasses
and not in its personal capacity



Daniel R. Weisz, CA•CIRP, CIRP
Senior Vice President

² Based on an execution certificate obtained by the Receiver, dated August 3, 2010.

A

From: Bruce Bergez [bruce.bergez@sympatico.ca]
Sent: August 16, 2010 2:59 PM
To: 'Weisz, Daniel (CA - Toronto)'; 'Dhanani, Arif (CA - Toronto)'
Cc: Szumski, James
Subject: Comments on the Report

Gentlemen

Whether or not this email has merits at this point, I wish to offer comment on two key-note items in the report.

1) The report intonates that Mr. Brittain was summarily removed from his locations after a dispute with myself. This is factually incorrect. Mr. Brittain abdicated his locations voluntarily after incurring substantial debts in the operation of his locations. The underlying email is one in a series of emails that would confirm the inaccuracies in his statement.

2) Mr. Duncan seemingly intonates that he opened a bank account under fear of losing his location, in other words, under a form of duress. This too is inaccurate. While no particular email stream exists on this particular subject, it is incongruent to think that a person under duress would also seek my advice on subjects such as expansion (to London) and his other legal issues, particularly his E.I. issues and Criminal Code violations. The assistance Mr. Duncan provided was voluntary and not under duress.

3) Amongst others, Ms. Pratt suggests that her fear is losing her location, however, she voluntarily undertook to take over the Thornhill location of Great Glasses after Mr. Brittain abdicated the location. It also seems incongruent that a person under one form of duress would undertake to amplify her duress by doubling her locations.

I add this layer of commentary in furtherance of the July 30, 2010 letter from James Szumski wherein he states that there may have been an opportunity on August 10 or 11th to clarify the factual content of the Report, for which I was not asked to participate.

All the best

Bruce

-----Original Message-----

From: Bruce Bergez [mailto:bruce.bergez@sympatico.ca]
Sent: May-28-09 8:01 AM
To: 'Kevin Brittain'
Subject: RE: Assignment of Franchises

Hi Kevin

I have them, thanks.

I will visit both locations today and assess the situation and make my next moves accordingly.

Bruce

-----Original Message-----

From: Kevin Brittain [mailto:glassman341@sympatico.ca]
Sent: May-28-09 7:31 AM
To: 'Bruce Bergez'
Subject: RE: Assignment of Franchises

They are on the porch now
Oops I just got this

-----Original Message-----

From: Bruce Bergez [mailto:bruce.bergez@sympatico.ca]
Sent: May-27-09 10:11 PM
To: 'Kevin Brittain'
Cc: david.mekker@bell.ca; 'Doug Kneebone'; 'Gary and Susanne Kneebone'
Subject: RE: Assignment of Franchises

Hi Kevin

Perhaps I could come now.

If you don't want to speak I understand that but I would prefer to ensure that I get them and not have them left on the porch, and I do have the time now.

Bruce

-----Original Message-----

From: Kevin Brittain [mailto:glassman341@sympatico.ca]
Sent: May-27-09 10:04 PM
To: 'Bruce Bergez'
Cc: david.mekker@bell.ca; 'Doug Kneebone'; 'Gary and Susanne Kneebone'
Subject: RE: Assignment of Franchises

Not a problem I will leave a set of keys for both stores, but I do not have alarm codes for either I recommend that you get these from Susanne Susanne could you please reply with the codes I am out in the morning, but I will leave them in a bag on the front verandah Ps I have given an inventory list to my trustee already, so they are aware of the contents and these are as of today a part of my only assets Kevin

-----Original Message-----

From: Bruce Bergez [mailto:bruce.bergez@sympatico.ca]
Sent: May-27-09 9:53 PM
To: 'Kevin Brittain'
Cc: david.mekker@bell.ca; 'Doug Kneebone'
Subject: RE: Assignment of Franchises

Hi Kevin

Can I make arrangements with you to pick up a set of keys for each of the locations tomorrow?

I will then go to the locations, photograph the contents, change the locks, and make my next move accordingly.

Please provide a time, preferably early in the morning, say 8:30 or 9:00 a.m. for the exchange of keys.

Bruce

-----Original Message-----

From: Kevin Brittain [mailto:glassman341@sympatico.ca]
Sent: May-27-09 9:39 PM
To: bruce.bergez@sympatico.ca
Cc: david.mekker@bell.ca; 'Doug Kneebone'
Subject: Assignment of Franchises

Dear Bruce

I understand that you are engaged in discussions with Groovy Glasses and perhaps other third parties that are interested in taking over the Richmond Hill and Thornhill store locations. I support these discussions, but I cannot continue to operate the stores.

I am willing to consent to any arrangement that you make that is in the

best interest of the creditors of those stores and will waive my rights accordingly in favour of Great Glasses or any such third party.

Best regards,

Kevin

From: Dhanani, Arif (CA - Toronto) [adhanani@deloitte.ca]
Sent: August 17, 2010 11:42 AM
To: Bruce Bergez; Weisz, Daniel (CA - Toronto)
Cc: Szumski, James
Subject: RE: Comments on the Report

Bruce,

With reference to your e-mail of August 16, 2010. As noted in paragraph 14 of the Report, the Receiver has relied on records and information provided by a number of parties with an interest in the Receivership proceedings in preparing its Report. With particular reference to the comments you have raised, the Receiver can advise that:

* As noted in the Report, the comments relating to Mr. Brittain were based on the Receiver's discussions with, and correspondence received from, Mr. Brittain.

* The comments attributable to Mr. Duncan and Ms. Pratt, were based on their sworn affidavits and attached questionnaires, which are included for your review in appendix C of the Report.

* With reference to the letter from Borden Ladner Gervais LLP dated July 30, 2010, no meetings were held by the Receiver on August 10th and 11th and no party received a copy of the Receiver's Report prior to service on August 13, 2010. Certain parties were contacted by the Receiver during the week of August 9, 2010, to confirm the references in the Receiver's Report attributed to them. In that regard, you were contacted by the Receiver by email on August 11, 2010, to confirm certain factual content attributed to you in the Report. You provided your response by email on August 12, 2010, which was considered by the Receiver when finalizing its Report.

Regards,

Arif

-----Original Message-----

From: Bruce Bergez [mailto:bruce.bergez@sympatico.ca]
Sent: Monday, August 16, 2010 2:59 PM
To: Weisz, Daniel (CA - Toronto); Dhanani, Arif (CA - Toronto)
Cc: 'Szumski, James'
Subject: Comments on the Report

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Applicant

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT HAMILTON

SUPPLEMENTAL REPORT TO THE FIRST REPORT TO THE COURT OF THE RECEIVER
 (August 19, 2010)

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 Court-appointed Receiver.