

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
ALAN H. MARTIN, Cal. Bar No. 132301
3 NORMA V. GARCIA, Cal. Bar No. 223512
650 Town Center Drive, 4th Floor
4 Costa Mesa, California 92626-1993
Telephone: 714-513-5100
5 Facsimile: 714-513-5130
amartin@sheppardmullin.com

6 Attorneys for THOMAS A.
7 SEAMAN, RECEIVER

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 LAMBERT VANDER TUIG
(a/k/a/ LAMBERT VANDER TAG
16 a/k/a DEAN I. VANDER TAG),
THE CAROLINA DEVELOPMENT
17 COMPANY, INC. (a/k/a THE
CAROLINA COMPANY AT
18 PINEHURST, inc.), AND
JONATHAN CARMAN,

19 Defendants.
20

Case No. SACV06-172
AHS(ANx)

**DECLARATION OF
THOMAS A. SEAMAN**

[Complaint Filed: February
16, 2006]

Hearing Date: February 27,
2006

Hearing Time: 3:00 p.m.

1 I, Thomas A. Seaman, declare as follows:

2
3 1. I am over 18 years of age. I am a
4 Chartered Financial Analyst and the principal and sole
5 shareholder of Thomas Seaman Company, which provides
6 business management in civil matters that require a
7 neutral third party to serve as receiver, referee,
8 provisional director or administrator. I was appointed
9 Receiver of The Carolina Development Company, Inc. and
10 related entities (collectively, "Carolina Company") on
11 February 16, 2006, parties to this action. If called as
12 a witness I could and would competently testify to the
13 facts stated in this declaration.

14 Initial Takeover

15 2. Immediately following my appointment I took
16 possession of the Carolina Company by causing the locks
17 to be changed to the premises located at 8001 Irvine
18 Center Drive, Irvine, California.

19 3. Accompanying me on this takeover of the
20 Carolina Company were information technology consultants
21 whose job was to eliminate all external access to the
22 Carolina Company computers, conduct an orderly shut down
23 of the computers, shut down their telephone system and
24 preserve voicemails, disable the website and email
25 system, and make a digital image of all computers.

26 4. Concurrently with these efforts, I met with
27 representatives of the California Department of Justice
28 who executed a search warrant on February 16, 2006. I

1 also met with the Defendants who gave me a brief
2 overview of some Carolina Company assets and pending
3 escrow transactions.

4 5. I also retained the law firm Sheppard,
5 Mullin, Richter and Hampton LLP to represent me in this
6 matter. My counsel joined me at the Carolina Company
7 offices for initial review of books & records. These
8 records included the books and records located at the
9 Carolina Company's Irvine office, not already seized by
10 the California Department of Justice. It also included
11 a review of certain books and records taken into the
12 custody of the California Department of Justice and
13 entrusted to my custody and care. I then began my
14 review of these books and records, including bank
15 statements, cancelled checks, correspondence and escrow
16 files.

17 6. On the basis of my review of these books
18 and records, I made certain preliminary conclusions as
19 to how much was raised by the Carolina Company from
20 investors and how this money was spent, which is
21 discussed in further detail below. Additionally, I
22 developed a preliminary plan of action for marshalling
23 and preserving the assets of the Carolina Company in
24 accordance with the order appointing me as receiver.

25 7. Financial Records and Taxes. I am informed
26 the Carolina Company has never filed tax returns and did
27 not maintain financial statements. All employees of the
28 Carolina Company were paid as independent contractors,

1 thus evading payroll tax withholding requirements. The
2 higher-paid employees were paid through corporations or
3 other entities set up to receive compensation from
4 Carolina Company, and all employees were deemed
5 independent contractors.

6 8. It is also apparent the individual
7 defendant Lambert Vander Tuig was using the company bank
8 account as if it were his personal bank account. A
9 cursory review of bank statements and cancelled checks
10 reflects voluminous payments for blatantly obvious
11 personal expenses, such as Hawaiian vacations, electric,
12 gas and water bills at Mr. Vander Tuig's personal
13 residence, medical bills, church donations, swimming
14 pool service and other personal maintenance expenses,
15 Orange County property tax bills (none of the Carolina
16 Company's real estate holdings are in Orange County),
17 and restaurants, among others. Indeed the checking
18 account statements chronicle an extravagant lifestyle.

19 9. Moreover, it appears from the Carolina
20 Company's accounts payable records that approximately
21 \$183,000 was spent leasing private planes. In addition,
22 in December 2005, Mr. Vander Tuig made a \$50,000 down
23 payment for an airplane which cost \$1.7 million. I
24 terminated the escrow for said airplane and the funds
25 have been returned to me. The preliminary accounting of
26 the source and uses of funds below more specifically
27 quantifies these inappropriate disbursements.

28

1 10. Commission Structure. It appears from the
2 Carolina Company's records, that it was paying a
3 commission of between 5-25% to its sales people, not
4 including additional commissions to the group sales
5 manager directing the sales person and in some cases an
6 additional 10% going to Mid Tex Survey, an entity
7 controlled by Mr. Vander Tuig and his wife. Referral
8 fees were also paid in some instances. It appears the
9 Carolina Company has paid sales commissions totaling
10 \$9.962 million since
11 February 2002.

12 11. Potential TRO violations. Certain agents
13 of the Carolina Company have not respected this Court's
14 Temporary Restraining Order. On three occasions,
15 Carolina Company's website provider has turned the
16 Carolina Company website back on. The second time, the
17 Carolina Company actually changed the content on the
18 site and referenced this lawsuit pending against it. It
19 also accused the Securities and Exchange Commission (the
20 "Commission") of making false statements about the
21 Carolina Company and encouraging investors to contact
22 the Commission and local newspapers to express their
23 satisfaction with their investment in the Carolina
24 Company. A true and correct copy of printouts dated
25 February 26, 2006 of the altered Carolina Company
26 website is attached hereto as Exhibit A. Additionally,
27 sales people and others have attempted to gain access to
28

1 the Carolina Company offices on at least two occasions.
2 They were successful once.

3 12. Dividends and Return of Principal. My
4 review of the bank records indicates that some investors
5 were receiving "dividends" from the Carolina Company.
6 Since the Carolina Company, however, had not realized
7 any returns on its purported investments, these payments
8 could not be dividends, nor should have they been
9 characterized as such. They were simply the payment of
10 other investor funds. Further, many investors received
11 their original investment back, which can have the
12 effect of giving an imprimatur of legitimacy to the
13 investment fraud.

14 13. Investor Communications. Carolina Company
15 appears to have between 500-1000 investors. In order to
16 keep investors informed and to collect addresses and
17 assemble an investor database, I established a telephone
18 line specifically for this matter. The number is 949-
19 222-0305. I also established a website to maintain
20 investors informed: www.carolinareceivership.com.

21 Preliminary Forensic Accounting.

22 14. As previously stated, the Carolina Company
23 did not maintain financial statements. By examining the
24 Carolina Company's bank statements, cancelled checks,
25 and checking account register, however I was able to
26 prepare a preliminary accounting of how much money was
27 raised by investors and how that money was spent. The
28 review covers the time period beginning from the

1 apparent inception of the Carolina Company on or around
 2 February 1, 2002 through January 2006. A summary of
 3 this preliminary accounting follows:

4
 5
 6 **Preliminary Estimate (In \$**
Sources and Uses of Funds millions)

7 Sources:

8 Investor Funds 49.375

9 Uses:

10 To Defendants 4.410

11 On behalf of Vander Tuig 1.664

12 Commissions and payroll 9.962

13 Dividends 0.412

14 Return of principal 1.379

15 Office operating
 16 expenses, selling
 17 expenses 1.149

18 Land Purchases, escrow
 19 deposits and debt
 20 service, and expenses of
 21 owing land 22.977

22 Development Expenses 0.593

23 Legal Fees and other
 24 professional fees 0.504

25 Unidentified 1.874

26 Total Disbursements 44.924

27 Ending Balance to
 28 Receiver 4.451

1 15. As shown above, the Carolina Company, their
2 spouses and family members, as well as entities
3 affiliated with them, namely Mid Tex Survey in the case
4 of Mr. Vander Tuig, and JDC Development and DC Property
5 Management in the case of individual defendant Jonathan
6 Carman, collectively received \$4.41 million of investor
7 funds. In addition to these amounts as discussed
8 previously above, Mr. Vander Tuig used the company bank
9 account as his personal account, taking another \$1.664
10 million of investor funds for his personal use. The
11 commission and payroll numbers above do not include
12 amounts paid to Mr. Vander Tuig and Mr. Carman, or their
13 affiliates purportedly for investments.

14 16. Ignoring these amounts, the commissions of
15 \$9.962 million represent over 20% of the amount raised
16 from investors.

17 17. The preliminary accounting also shows that
18 \$22.977 was spent acquiring land, making escrow deposits
19 on the purchase of land, service debt used to finance
20 the purchase of land and for expenses ancillary to the
21 ownership of the land such as real property taxes. This
22 amount represents approximately 40% of the amount raised
23 from investors. Based on this low percentage of funds
24 that were actually productively employed to create
25 future returns, the amount invested in land would need
26 to increase by 150% before investors would break even,
27 let alone achieve a return on their investment.

28

1 18. Moreover, the effective 60% drag on
2 investor funds was creating a cash crunch which was
3 preventing the company from concluding sales
4 transactions. Indeed, the day the Receiver was
5 appointed, Vander Tuig represented, and the Receiver has
6 confirmed, the Company was due to make an additional
7 escrow deposit of \$5 million on the Galileo project at
8 Lake Las Vegas. Yet there was only \$4.4 million in the
9 bank. Additional evidence of the cash crunch was the
10 fact that the Company had made an earnest money deposit
11 of \$1,000,000 on a project know as River Bend in Denton
12 County, Texas. The money became non-refundable on
13 January 31, 2006. In order to keep the transaction
14 alive the company authorized the seller to withdraw
15 \$350,000 from the escrow account and to allow the
16 purchase price to increase by \$1,000 per day. The
17 Company has essentially put \$1,000,000 of investor funds
18 at risk because it was skimming 60%. The Receiver has
19 settled this matter for the remaining \$650,000 held in
20 escrow which will be released to the Receiver shortly.
21 The Receiver believes that this was the appropriate
22 course of action in that he was able to able to avoid
23 litigation with the seller which may or may not have
24 been successful and preserve the \$650,000 which could
25 conceivably have been lost if the Receiver was not
26 successful in his litigation to recover the deposit.

27 19. Finally, the cash crunch forced the
28 Company's to enter into onerous loans for the purchase

1 of property. The loan to value ratio on the Celina
2 Bridges property exceeds 75% and the interest rate on
3 the first trust deed is 10.75% while the second trust
4 deed is at 11.1%. It appears to me from my preliminary
5 review of the Company files, that the Company used a
6 high degree of leverage in its land purchases.

7 20. Potential Sources of Recovery. I am in the
8 process of marshalling, preserving and liquidating the
9 assets of the Carolina Company in accordance with the
10 order appointing me as receiver. Since my appointment
11 ten days ago, I have taken possession of \$5,991,936.88.
12 This amount is comprised of in cash on hand in the
13 Company's frozen bank account in the amount
14 \$4,451,100.58, \$1,500,986.30 from the escrow account for
15 a property commonly known as the Lakes of Birds Fort in
16 Texas, and \$39,850.00 from the aforementioned escrow for
17 the purchase of an airplane. I also expect to receive
18 \$650,000 from the aforementioned Carolina Company's
19 interest in another escrow known as River Bend in Denton
20 County, Texas. I have made disbursements of \$202,107.92
21 for debt service on the Celina Bridges land in Texas
22 which it appears has equity of at least \$11.5 million.
23 I am currently holding funds in the amount
24 \$5,789,758.96. I have identified several other escrows
25 and am evaluating the Carolina Company's rights and
26 interests in same.

27 21. Further, there are other matters in which
28 the Carolina Company has ownership interests in real

1 property, as well as interests in partnerships and
2 engineering rights, which I identified and am attempting
3 to preserve and recover.

4 22. The Carolina Company owns a property
5 commonly known as Celina Bridges, which appears to be
6 worth approximately \$40 million. The Carolina Company
7 owes \$23.5 million on the property and I am keeping the
8 notes current in order to preserve the equity pending a
9 sale of the asset.

10 23. Aside from preserving and/or liquidating
11 the Carolina Company's ownership or other interests in
12 real properties, I am investigating recipients of the
13 Carolina Company funds and attempting to identify
14 recipients of ill-gotten gains to seek disgorgement of
15 these amounts and their timely return to the Carolina
16 Company.

17 24. Finally, I am evaluating potential claims
18 against professionals, officers and directors of the
19 Carolina Company.

20 I declare under penalty of perjury under the
21 laws of the State of California and the United States of
22 America that the foregoing is true and correct, and that
23 this Declaration was executed this ____ day of February
24 2006 at Irvine, California.

25 _____
26 THOMAS A. SEAMAN
27
28