

No. S117081
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44

AND

IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.

THIRTEENTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

July 11, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
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TABLE OF CONTENTS

1.0	INTRODUCTION.....	3
2.0	PURPOSE OF REPORT	4
3.0	TERMS OF REFERENCE	4
4.0	SETTLEMENT OF THE REMAINING EMPLOYEE CLAIM.....	4
5.0	OUTSTANDING MATTERS	7
6.0	MONITOR'S RECOMMENDATIONS	7

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Monitor**") was appointed as Monitor pursuant to the order (the "**Initial Order**") pronounced by this Honourable Court on October 21, 2011 on the application of Sterling Shoes Inc. and Sterling Shoes GP Inc. ("**Sterling GP**") (together, the "**Petitioners**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings brought by the Petitioners under the CCAA will be referred to herein as the "**CCAA Proceedings**". The Petitioners and Sterling Shoes Limited Partnership (the "**Partnership**") will be referred to herein as the "**Petitioner Parties**" or the "**Company**".
- 1.2 On April 2, 2012, on the application of the Petitioner Parties, this Honourable Court made an order (the "**Claims Process Order**") approving among other things, a claims process (the "**Claims Process**") for the determination of the nature and quantum of claims against the Petitioner Parties.
- 1.3 One claim remains unresolved pursuant to the Claims Process (the "**Employee Claim**"), which is discussed in more detail below.
- 1.4 On December 12, 2012, on the application of the Petitioner Parties, this Honourable Court made an order permitting the Company to make one or more distributions to the creditors of Sterling GP and the Partnership (the "**Distribution Order**").
- 1.5 On January 25, 2013, this Honourable Court ordered that the Monitor be fully authorized and empowered to manage and carry on all aspects of the business, financial affairs and operations of the Company, including by taking any steps as, in the sole opinion of the Monitor, are necessary and appropriate to complete the Claims Process, to make distributions to creditors in accordance with the Distribution Order, and to allow the Monitor to discharge or exercise its rights, powers or duties, or to complete the administration of the CCAA Proceedings.
- 1.6 On June 27, 2013, this Honourable Court approved an extension of the stay of proceedings provided in the Initial Order and subsequent orders to August 30, 2013.
- 1.7 The Monitor has filed a notice of application dated July 11, 2013 (the "**Notice of Application**") requesting that this Honourable Court determine the Employee Claim, pursuant to paragraph 30 of the Claims Process Order. In support of the Notice of Application, the Monitor is relying on the 13th Affidavit of Mr. Daniel Gumprich, sworn July 9, 2013 (the "**Gumprich #13 Affidavit**") and this report.

- 1.8 The Initial Order, together with the Notice of Application, this report and other documentation filed in the CCAA, will be posted on the Monitor's website at www.alvarezandmarsal.com/sterling.

2.0 PURPOSE OF REPORT

This is the Monitor's thirteenth report (the "**Thirteenth Report**") and it has been prepared to provide this Honourable Court and the Company's stakeholders with information on the Employee Claim, together with the Monitor's recommendation and submission with respect to the Notice of Application.

3.0 TERMS OF REFERENCE

- 3.1 Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.
- 3.2 Capitalized terms used but not defined in this report shall have the meanings ascribed to them in prior Monitor's reports and/or other materials filed with respect to the CCAA Proceedings.

4.0 SETTLEMENT OF THE REMAINING EMPLOYEE CLAIM

- 4.1 As noted in the Monitor's Twelfth Report, there remains one outstanding claim relating to a former employee (the "**Employee**"). Details of the process for settling claims of former employees of the Company (the "**Former Employees**"), the Employee's claim and attempts by the Company's counsel and the Monitor to resolve the claim are set out below.
- 4.2 Pursuant to the Claims Process Order, the Monitor caused a "Claims Package" to be sent to all Former Employees whose employment was terminated in the course of the CCAA Proceedings, including the Employee, on or around April 4, 2012.
- 4.3 The Company, in consultation with the Monitor, determined that the appropriate basis for calculation of the claims of the majority of Former Employees was that set out in the Employment Standards Act (the "**ESA**").
- 4.4 The Employee filed a proof of claim on April 16, 2012 in the amount of \$99,682.74. The proof of claim was based on the Employee's calculation of 16.8 years of service multiplied by the Employee's monthly salary of \$5,583.00 representing one month for every year of service. The Employee's claim was incorrectly calculated at \$99,682.74. The correct calculation on the basis advanced by the Employee should have been \$93,682.74. The Employee's claim stated that the

claim was based on common law principles since the Employee was in upper management and a long term employee of the Partnership.

- 4.5 The Monitor and the Company disagreed with the calculation of the Employee's claim and the Employee was sent a Notice of Revision or Disallowance dated May 18, 2012 revising her claim to \$25,401.10, which was calculated based on the Employee's entitlement under the ESA. The letter accompanying the Notice of Revision or Disallowance provided details of the process for filing a Notice of Dispute as well as the requirement to provide details of any alternative employment secured or steps taken to find alternative employment. The approach taken by the Monitor was consistent for all Former Employees who had submitted claims based on common law principles with the exception of claims from Former Employees which had severance obligations detailed in their employment contracts.
- 4.6 The amount of the claim in the Notice of Revision or Disallowance was subsequently increased by the Company to \$26,925.16 as the amount set out in the Notice of Revision or Disallowance did not include the Employee's entitlement to vacation pay. The amount of \$26,925.16 is based on the Employee's entitlement under the ESA of 19.714 weeks multiplied by the Employee's weekly salary of \$1,288.46 (being the annual salary of \$67,000 divided by 52 weeks) plus 6% vacation pay. The 19.714 weeks is calculated based on (i) 8 weeks (the maximum claim under the ESA) plus (ii) 12 weeks group termination less (iii) 0.286 weeks (2 days) notice period given.
- 4.7 The Employee subsequently submitted a Notice of Dispute for \$99,682.74 on May 31, 2012.
- 4.8 The Monitor received 164 proofs of claim from Former Employees and in response issued 149 Notices of Revision or Disallowance accepting the claims at amounts calculated under the ESA for a variety of reasons including, but not limited to, disagreement with the basis of the Former Employees' claim and incorrect calculations. Of the affected Former Employees, ten (including the Employee) subsequently filed Notices of Dispute. Of the nine other Former Employees' claims, seven were ultimately agreed at amounts calculated pursuant to the ESA. Of the other two claims:
 - (a) one was accepted at an amount slightly higher than the amount payable pursuant to the ESA, following receipt of evidence from the relevant Former Employee that they had found alternative employment but at a significantly lower salary; and
 - (b) one was accepted at a significantly higher amount than the amount payable pursuant to the ESA due to the fact that the Monitor was satisfied that the relevant Former Employee

was close to retirement and would have found it difficult to find alternative employment and as such had little ability to mitigate their claim.

- 4.9 Subsequent to issuing the Notice of Revision or Disallowance to the Employee, Management informed the Monitor that they had received information that the Employee had secured alternative full-time employment within a few months of leaving the Partnership. Information on this alternative employment has not been disclosed at any time by the Employee to the Company or the Monitor.
- 4.10 Following receipt of the Notice of Dispute on May 31, 2012, the Monitor and the Company's legal counsel have written to the Employee on numerous separate occasions requesting further information regarding the Employee's efforts to mitigate her claim, including:
- (a) on March 6, 2013, when the Monitor wrote to the Employee requiring provision of the requested information by March 22, 2013; and
 - (b) on April 18, 2013, when the Monitor sent a final letter notifying the Employee of the Monitor's intention to apply to this Honourable Court to have their claim determined in the amount of \$26,925.16.
- 4.11 The Employee has provided some general information regarding certain temporary employment, but has failed to provide particulars thereof or any other employment, or any other information requested. The Employee has also sought clarification regarding the requirement to mitigate and the treatment of other Former Employees. The Company's counsel and the Monitor have responded to these requests but to date the Employee has failed to provide all of the information requested.
- 4.12 The most recent exchange of correspondence between the Monitor and the Employee took place on May 14, 2013. On that day, the Employee wrote to the Monitor and raised similar questions to those referred to above. The Monitor responded to the Employee that same day, repeating its request for further information. As at the date of this Thirteenth Report, the Employee has still not provided the information requested by the Monitor.
- 4.13 Based on the above, the Monitor asks this Honourable Court's to determine the Employee Claim, pursuant to paragraph 30 of the Claims Process Order, and declare that the Employee has an Allowed Claim in the amount of \$26,925.16.

5.0 OUTSTANDING MATTERS

- 5.1 As noted in the Monitor's Twelfth Report, the Monitor is currently in discussions with Canada Revenue Agency ("CRA") to resolve some remaining issues which, if successful, will result in further funds being received by the Company.
- 5.2 The Monitor intends to make one final distribution to creditors as soon as the Employee Claim and the issues with CRA as noted above have been resolved. This is currently expected to take place in or around the end of July 2013.

6.0 MONITOR'S RECOMMENDATIONS


- 6.1 The Monitor respectfully recommends that this Honourable Court grant the declaration sought in respect of the Employee Claim.

All of which is respectfully submitted to this Honourable Court this 11th day of July, 2013.

**Alvarez & Marsal Canada Inc.,
in its capacity as Monitor of Sterling Shoes Inc.
and Sterling Shoes GP Inc.**



Per: Todd M. Martin
Senior Vice President



Per: Callum D.M. Beveridge
Senior Director