

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

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.

PETITIONERS

NOTICE OF APPLICATION

Names of applicants: Sterling Shoes Inc. and Sterling Shoes GP Inc.

To: The Service List as set out in **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to Mr. Justice Pearlman at the courthouse at 800 Smith Street, Vancouver, BC, V6Z 2E1, on Wednesday, the 12th day of December, 2012 at **9:00 a.m.** for the Order as set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order in the draft form attached as **Schedule "B"**.

Part 2: FACTUAL BASIS

1. With the assistance of the Monitor, the Company is continuing to analyze and seek a resolution to the outstanding claims under the claims process.
2. A summary of the key events of the claims process is as follows:
 - (a) 643 Proofs of Claims were submitted (collectively, the "**Claims**");
 - (b) 222 Notices of Disallowance or Revision were issued; and
 - (c) 60 Notices of Dispute were submitted.

3. A number of the Claims were disallowed on the basis that they contained insufficient information to substantiate the Claims or their value. In other cases, Notices of Revision were issued to creditors setting out the revised amount the Company was prepared to accept for such creditor's Claims. In either case, creditors were notified of their right to file a Notice of Dispute.

4. As outlined above, 60 Notices of Dispute have been filed, all of which have been reviewed by the Company and the Monitor. 45 of the Notices of Dispute relate to Claims filed by landlords in respect of the disclaimer of leasing agreements (the "**Landlord Disputes**"). The overwhelming majority of the Landlord Disputes resulted from the submission by certain landlords (the "**Subject Landlords**") of Proofs of Claim claiming losses equal to the full amount which would be due pursuant to the terms of the applicable lease on the assumption the premises could not be re-let to the end of the lease term.

5. The Company and the Monitor were of the view that there was insufficient information in the Subject Landlords' Proofs of Claim to analyze and evaluate their Claims, including whether they could mitigate their losses. As a result, the Monitor delivered a letter to each Subject Landlord (the "**Landlord Information Letter**") requesting certain additional information from regarding their Claim.

6. The Landlord Information Letters were sent on or around October 10, 2012 and requested that the additional information be provided to the Monitor by October 19, 2012.

7. A significant number of the Subject Landlords did not provide their responses until November 2012. As a result, the Company and the Monitor are continuing to review the information provided by the Subject Landlords with a view to resolving the Landlord Disputes.

Request for Interim Distribution

8. The Company has received requests from a group of trade creditors for a distribution of proceeds pending a final resolution of all outstanding disputed Claims.

9. The Company believes that it is appropriate to make one or more distributions at this time given that the overwhelming majority of Claims have been accepted or resolved and it is unclear when the Landlord Disputes will be resolved.

10. The Company and the Monitor have discussed the amount available to be distributed pursuant to a distribution order. That amount may vary from week to week, as disputed Claims are resolved. Accordingly, in order to provide an appropriate level of flexibility, and to avoid unnecessary court applications, the Company is seeking authorization to make one or more distributions to creditors having Allowed Claims (as such term is described in the Order of the Court, dated April 2, 2012 (the "**Claims Process Order**")) against Sterling Shoes GP Inc. and Sterling Shoes Limited Partnership.

11. The Company will at all times retain sufficient funds to, among other things:

- (a) make *pro rata* distributions to holders of disputed Claims based on (i) the full amount of those Claims as set forth in the holders' Proofs of Claim, and (ii) the total amount available for distribution to all creditors; and
- (b) pay all outstanding and anticipated administration costs.

12. The Monitor will be filing a report discussing the outstanding disputed Claims in further detail and the potential distribution amounts (both interim and final) based on the current status of the claims process.

13. The Company is not aware of any claims for unpaid wages as all employees were paid their wages, including vacation pay, following the termination of their employment. The Company is current with its obligations to the Canada Revenue Agency.

Part 3:LEGAL BASIS

- 1. The applicants will rely on the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended,
- 2. Supreme Court Civil Rules, Rule 8-1, 13-1; and
- 3. The inherent jurisdiction of this court.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Daniel Gumprich, affirmed October 20, 2011;
- 2. Affidavit #2 of Daniel Gumprich, affirmed November 15, 2011;
- 3. Affidavit #3 of Daniel Gumprich, affirmed December 6, 2011;
- 4. Affidavit #5 of Daniel Gumprich, affirmed March 28, 2012;
- 5. Affidavit #6 of Daniel Gumprich, affirmed April 18, 2012;
- 6. Affidavit #7 of Daniel Gumprich, affirmed May 3, 2012;
- 7. Affidavit #8 of Daniel Gumprich, affirmed June 7, 2012;
- 8. Affidavit #9 of Daniel Gumprich, affirmed October 5, 2012; and
- 9. Affidavit #10 of Daniel Gumprich, affirmed December 4, 2012.

The applicants estimate that the application will take 30 minutes.

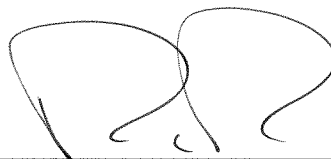
[] This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. Mr. Justice Pearlman is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: December 4, 2012



Signature of
[] applicant [X] lawyer for the applicants
Peter L. Rubin

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

Schedule "A"

SERVICE LIST

**IN THE MATTER THE CCAA AND STERLING SHOES
S.C.B.C. ACTION NO. S117081**

<p><i>Counsel for Petitioners</i> BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 2600 - 595 Burrard Street Vancouver, BC V7X 1L3 Attn: Peter L. Rubin / Andrew Crabtree</p> <p>Direct: 604.631.3315 / 4185 Fax: 604.631.3309 Email: peter.rubin@blakes.com andrew.crabtree@blakes.com</p>	<p><i>Counsel for the Bank of Montreal</i> GOWLINGS 2300 - 550 Burrard Street Vancouver, BC V6C 2B5 Attn: Colin D. Brousson / David Cohen</p> <p>Direct: 604.891.2286 / 416.369.6667 Fax: 604.683.3558 / 416.862.7661 Email: colin.brousson@gowlings.com david.cohen@gowlings.com</p>
<p><i>Monitor</i> ALVAREZ & MARSAL CANADA INC. 1680 - 400 Burrard Street Vancouver, BC V6C 3A6 Attn: Todd M. Martin / Pam Boparai</p> <p>Direct: 604.638.7445 / 7446 Fax: Email: tmartin@alvarezandmarsal.com pboparai@alvarezandmarsal.com</p>	<p><i>Counsel for the Monitor</i> FASKEN MARTINEAU 2900-550 Burrard Street Vancouver, BC V6C 0A3 Attn: John F. Grieve / Kibben Jackson</p> <p>Direct: 604.631.4772 / 4786 Fax: 604.632.4772 / 4786 Email: jgrieve@fasken.com kjackson@fasken.com</p>
<p><i>Counsel for BII Acquisition Inc.</i> BORDEN LADNER GERVAIS LLP 1200 - 200 Burrard Street Vancouver, BC V7X 1T2 Attn: Magnus C. Verbrugge</p> <p>Direct: 604.640.4198 Fax: 604.622.5898 Email: mverbrugge@blg.com</p>	<p><i>BII Acquisition Inc.</i> BELKORP GROUP OF COMPANIES 900 - 1508 West Broadway Vancouver, BC, V6J 1W8 Attn: Randy Smith, General Counsel</p> <p>Direct: 604.688.8533 (co.) Fax: 604.688.3569 Email: rsmith@belkorp.com</p>
<p><i>Counsel for Ivanhoe Cambridge</i> McCARTHY TETRAULT 1300 - 777 Dunsmuir Street Vancouver BC V7Y 1K2 Attn: Warren Milman</p> <p>Direct: 604.643.7104 Fax: 604.643.7900 Email: wmilman@mccarthy.ca</p>	<p><i>Sports Industry Credit Association (Footwear Credit Group)</i> 800 - 245 Victoria Avenue Montreal, QC H3Z 2M6 Attn: William Anidjar</p> <p>Direct: 514.931.5561 ext. 223 Fax: 514.931.2896 Email: william@sica.ca</p>

<p><i>Counsel for The Cadillac Fairview Corporation Limited</i> TORYS LLP 3000 – 79 Wellington Street West Toronto, ON M5K 1N2 Attn: David Bish</p> <p>Direct: 416.865.7353 Fax: 416.865.7380 Email: dbish@torys.com</p>	<p><i>The Clarks Companies</i> Clarks, Bostonian, Indigo, Privo 156 Oak Street Newton, MA 02464 U.S.A. Attn: Dan Logan, Credit Manager</p> <p>Direct: 800.842.9305 x 4334 Fax: 866.700.3041 Email: dan.logan@clarksna.com</p>
<p><i>Counsel for Morguard Investments Limited, Morguard Real Estate Investment Trust, Primaris Retail Estate Investment Trust, 20 VIC Management Inc., Oxford Properties Group Inc. and Retrocom Mid-Market REIT</i> ALEXANDER HOLBURN BEAUDIN & LANG LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8 Attn: Sharon Urquhart</p> <p>Direct: 604.484.1757 Fax: 604.484.9757 Email: surquhart@ahbl.ca</p>	<p><i>Western Compensation & Benefits Consultants</i> 2000 – 1188 West Georgia Street Vancouver, BC V6E 4A2 Attn: Barry Cook</p> <p>Direct: 604.443.3706 Fax: 604.687.2315 Email: barry_cook@wcbc.ca</p>
<p><i>Counsel for MC Leaseholds Ltd.</i> BORDEN LADNER GERVAIS LLP 1200 – 200 Burrard Street Vancouver, BC V7X 1T2 Attn: Blair A. Rebane</p> <p>Direct: 604.640.4130 Fax: 604.622.5897 Email: brebane@blg.com</p>	<p><i>Counsel for adidas AG</i> GOWLINGS 2600 – 160 Elgin Street Ottawa, ON K1P 1C3 Attn: Martha J. Savoy</p> <p>Direct: 613.786.0180 Fax: 613.788.3471 Email: martha.savoy@gowlings.com</p>
<p><i>Counsel for Rocket Dog Brands LLC</i> GOODMANS LLP 3400 – 333 Bay Street Toronto, ON M5H 2S7 Attn: Brian F. Empey</p> <p>Direct: 416.597.4194 Fax: 416.979.1234 Email: bempey@goodmans.ca</p>	<p><i>Counsel for Canada Revenue Agency</i> DEPARTMENT OF JUSTICE CANADA 900-840 Howe Street Vancouver, BC V6Z 2S9 Attn: Kirat K. Khalsa</p> <p>Direct: 604.666.2390 Fax: 604.666.1462 Email: kirat.khalsa@justice.gc.ca</p>

<p><i>Counsel for Jackson Lam and Yvonne Yee Wan Lau, Landlords</i> MILLER THOMSON 1000 – 840 Howe Street Vancouver, BC V6Z 2M1 Attn: Gordon Plottel</p> <p>Direct: 604.643.1245 Fax: 604.643.1200 Email: gplottel@millerthomson.com</p>	<p><i>Counsel for the Directors of Sterling Shoes Inc. and Sterling Shoes GP Inc.</i> DAVIS LLP 2800 – 666 Park Place Vancouver, BC V6C 2Z7 Attn: Mary I.A. Buttery</p> <p>Direct: 604.643.6478 Fax: 604.605.3768 Email: mbuttery@davis.ca</p>
<p><i>Shaw Cablesystems G.P.</i> 900, 630 – 3rd Avenue SW Calgary, AB T2P 4L4 Attn: Sandra Bazian</p> <p>Direct: 403.750.4709 Fax: 403.716.6544 Email: sandra.bazian@sjrb.ca</p>	<p><i>Counsel for Town Shoes Limited</i> LAWSON LUNDELL LLP 1600 – 925 West Georgia Street Vancouver, BC V6C 3L2 Attn: Heather M.B. Ferris</p> <p>Direct: 604.631.9145 Fax: 604.694.2957 Email: hferris@lawsonlundell.com</p> <p>TORYS LLP 3000 – 79 Wellington Street West Toronto, ON M5K 1N2 Attn: Lee J. Cassey</p> <p>Direct: 416.865.7960 Fax: 416.865.7380 Email: lcassey@torys.com</p>
<p><i>Counsel for Mythel Holdings Ltd.</i> WATSON GOEPEL MALEDY LLP 1700 - 1075 West Georgia Street Vancouver, BC V6E 3C9 Attn: Shael E. Smith</p> <p>Direct: 604.642.4555 Fax: 604.688.8193 Email: ssmith@wgmlaw.com</p>	<p><i>Counsel for Vanprop Investments Ltd.</i> BULL HOUSSER TUPPER LLP 3000 - 1055 West Georgia Street Vancouver, BC V6E 3R3 Attn: Decatur Howe</p> <p>Direct: 604.641.4838 Fax: 604.646.2633 Email: cdh@bht.com</p>

Schedule "B"

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

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AND

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

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE))	
)	THE HONOURABLE)	Wednesday, the 12 th day of
)	MR. JUSTICE PEARLMAN)	December, 2012
))	

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 12th day of December, 2012, AND ON HEARING Peter Rubin and Andrew Crabtree on behalf of the Petitioners, and those counsel listed on Schedule "A";

THIS COURT ORDERS that:

1. Sterling Shoes GP Inc. ("**GP Inc.**"), with the assistance of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Petitioners and Sterling Shoes Limited Partnership (the "**Partnership**") (the "**Monitor**"), is hereby authorized to make one or more distributions to Creditors having Allowed Claims (as such terms are defined in the Order of the Court, dated April 2, 2012 (the "**Claims Process Order**")) against GP Inc. or the Partnership, provided that GP Inc. shall at all times reserves sufficient funds to:

- (a) make pro rata distributions to holders of disputed Claims (as such term is defined in the Claims Process Order) against GP or the Partnership, based on (i) the amounts of such Claims as set forth in the applicable Proof of Claim or Landlord Proof of Claim, and (ii) the total amount available for distribution to Creditors;

- (b) satisfy any claims referred to in subsections 6(3), (5) and (6) of the *Companies' Creditors Arrangement Act*; and
- (c) pay all outstanding and anticipated administration costs to the conclusion of this proceeding.

2. GP Inc. shall not make any distributions to the creditors of Sterling Shoes Inc., which creditors include, but are not limited to, Computershare Trust Company of Canada, in trust for the registered holders of 6.5% convertible unsecured debentures due on October 31, 2012 or any registered or beneficial holders thereof.

3. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
☐ party ☒ lawyer for the Petitioners
Peter Rubin

BY THE COURT.

Registrar

Schedule "A"

List of Counsel

Name of Counsel	Party
	The Monitor, Alvarez & Marsal Canada Inc.