

This is the 7<sup>th</sup> affidavit of  
D. Gumprich in this case and was  
made on May 3, 2012

No. S-117081  
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.

PETITIONERS

### AFFIDAVIT

I, **Daniel Gumprich**, Chartered Accountant and Chartered Business Valuator, of 2580 Viscount Way, Richmond, British Columbia, AFFIRM THAT:

1. I am the Chief Financial Officer of the Petitioners in this proceeding and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.
2. I am authorized to make this affidavit on behalf of the Petitioners and Sterling Shoes Limited Partnership (the "**Partnership**", and together with the Petitioners, the "**Company**").

3. Pursuant to the asset purchase agreement among the Petitioners, Town Shoes Limited (“**Town Shoes**”) and Alvarez & Marsal Canada Inc., dated April 16, 2012, and approved by Order of the Court, dated April 30, 2012 (the “**Purchase Agreement**”), Town Shoes is to acquire 69 of the Company’s 105 retail locations, as well as related inventory, equipment, trademarks and systems.

4. All terms not defined in paragraphs 5 to 7 are defined in the Purchase Agreement, attached as Exhibit “A” to Affidavit #1 of K. Grierson, sworn April 17, 2012.

5. Following the execution of the Purchase Agreement, the Company commenced a request for proposal (the “**RFP**”) process to solicit proposals to conduct a sale inventory process (the “**Sale**”) at the Company’s remaining 36 retail locations (the “**Remaining Locations**”). The Sale will be substantially similar to that approved by this Court by way of Order dated December 9, 2011 and outlined in my Affidavit #3, dated December 6, 2011, (the “**December Sale**”).

6. Pursuant to the Purchase Agreement, the Company is entitled to continue operations at the Remaining Locations and is entitled to use the Trademarks until the earlier of (i) 90 days after the Closing Date, or (ii) the completion of the Sale. Additionally, the Company is required to conduct the Sale substantially in accordance with the Sales Guidelines, previously approved by the Court.

7. The Company is entitled to keep the net proceeds of the Sale. Town Shoes will provide operational support to the Company until 45 days after the Inventory Sale Completion Date (as defined in the Purchase Agreement), provided its out-of-pocket expenses are reimbursed by the Company.

#### **The RFP Process**

8. The Company, in consultation with the Monitor, determined that in order to maximize the value of the inventory at the Remaining Locations, it would engage a professional third-party liquidator with retail liquidation expertise to conduct the Sale.

9. The Company is of the view that engaging a professional liquidator to undertake the Sale will produce better results for the Company and its stakeholders than an attempt by the Company to liquidate without professional assistance.
10. In advance of the RFP process, the Company prepared the necessary information that potential bidders would require, based on its experience from the December Sale, in order to expedite the RFP process.
11. The Company contacted all of the previous parties that had submitted bids for the December Sale, including the liquidator, Century Services LP, who eventually conducted the December Sale.
12. In order to participate in the RFP, each bidder was required to execute a confidentiality agreement and submit a proposal to the Company by no later than April 26, 2012 at 5:00 P.M. (the “**Deadline**”).
13. The Company received a number of proposals, one of which was a joint venture, at or prior to the Deadline.
14. Following a review and analysis of those proposals, the Company, in consultation with its advisors, selected Great American Group, LLC (the “**Agent**”) to conduct the Sale.
15. The Agent’s proposal was the most favourable of those submitted.
16. The Monitor was consulted during the RFP process.

#### **The Agency Agreement**

17. On May 3, 2012, the Partnership and the Agent executed an agency agreement (the “**Agency Agreement**”). The Agency Agreement is subject to certain conditions, including Court approval. Unless otherwise defined herein, all capitalized terms used hereafter shall have the meanings given to them in the Agency Agreement.

18. Attached and marked as **Exhibit "A"** to this my affidavit is a true copy of a redacted version of the Agency Agreement. Exhibit "A" has been redacted to remove a limited number of confidential business terms.

19. The redacted portions of the Agency Agreement contain sensitive and confidential details concerning the Company's assets and the Agent's proposal. As referenced above, the Agency Agreement was the product of the RFP, including the confidentiality provisions thereof, and the Agent's proposal was submitted on that basis. If the Agent's proposal were disclosed as part of the public record, that information might be used by the Agent's competitors to gain a competitive advantage in future proposals.

20. The Agent has paid a \$250,000 deposit.

21. Some of the key terms of the Agency Agreement include:

- (a) the Sale will commence no later than May 10, 2012 (the "**Sale Commencement Date**") and will be completed on or before July 31, 2012, (the "**Sale Termination Date**") unless the Sale Termination Date is (i) extended by mutual agreement between the Merchant and the Agent, with the consent of the affected landlord for such Closing Store(s) if the extension is proposed to go beyond the sale termination date provided for in the Sales Guidelines, provided that in no event shall the Sale Termination Date be extended beyond the Inventory Sale Completion Date (as such term is defined in the Purchase Agreement); or (ii) accelerated by the Agent on not less than fifteen (15) days' written notice to the Merchant. The period from and including the Sale Commencement Date to and including the Sale Termination Date is referred to herein as the "**Sale Term**";
- (b) the Merchant appoints the Agent as exclusive agent for the purpose of conducting a "store closing", "sale on everything", "everything must go" or mutually agreed theme sale at the Closing Stores during the Sale Term;

- (c) the Agent will pay the Merchant a guaranteed percentage of the aggregate Cost Value of the Merchandise as at the Sale Commencement Date, plus additional amounts based on a sharing formula set out in the Agency Agreement;
- (d) the Agent must make a payment of 90% of the Guaranteed Amount within two (2) days of court approval of the Agency Agreement, and in any event before the Sale Commencement Date. The Agent must make payment of the balance of the Guaranteed Amount on the second business day following the issuance of the Final Inventory Report;
- (e) the Agent will be responsible for all Expenses incurred in conducting the Sale, but shall be entitled to recover the Expenses from the Proceeds after payment of the Guaranteed Amount;
- (f) the Agent is entitled to the Agent's Fee based on a percentage of the aggregate Cost Value of the Merchandise in the Closing Stores, after payment of the Guaranteed Amount and reimbursing Agent for Expenses as provided for in the Agency Agreement. The Agent is also entitled to a commission in respect of the sale of any Owned FF&E;
- (g) the parties will perform an Inventory Taking at the Closing Stores within fourteen (14) days after the Sale Commencement Date;
- (h) the Agent will conduct the Sale throughout the Sale Term in accordance with (i) applicable laws and regulations, (ii) the leases and other occupancy agreements relating to the Closing Stores, as such leases and other occupancy agreements have been amended by Court Order or agreement with the applicable landlord, (iii) the Sales Guidelines, and (iv) the terms of the Agency Agreement;
- (i) the Agent is required to provide the Merchant with at least fifteen (15) days' written notice prior to vacating a Closing Store;

- (j) the Agent shall be granted a court-ordered security interest and charge (the “**Great American Charge**”) over all the Merchandise, Proceeds, Agent’s FF&E Commissions and Agent’s share of proceeds from sales of Merchant Consignment Goods to an aggregate amount of \$5,000,000, which will not apply to the amounts paid by the Agent to the Merchant on account of the Guaranteed Amount, and which will rank in priority to any and all other Encumbrances that may now exist or will arise provided, however, the Great American Charge shall be subordinate to all other Encumbrances, including the Charges (as defined in the Initial Order), the KEIP Charge (as defined in the December 9 Order) and all other court-ordered charges ordered by any further order of the Court, but solely to the extent of any Unpaid Merchant’s Entitlements; and
- (k) the Agent has the right to elect to pay, as an Expense, retention bonuses up to a specified percentage of the aggregate Base Payroll to certain Retained Employees who do not voluntarily leave employment and are not terminated for cause.

22. The Guaranteed Amount from the Sale of the Merchandise at the Closing Stores will be paid by the Company to its secured lender, the Bank of Montreal.

**Great American Charge**

23. As noted above, the Agency Agreement contemplates the creation of the Great American Charge, a Court-ordered charge in favour of the Agent in the amount of \$5,000,000 to secure all amounts due and owing to the Agent under the Agency Agreement, including reimbursement of any over-advances by the Agent to the Partnership.

24. The Agent’s services are important to the Company and its stakeholders. In particular, in the Company’s view, this represents the best way to maximize value from the inventory at its Closing Stores and improve its overall financial position, for the benefit of all stakeholders. Accordingly, the Company is of the view that it is necessary and appropriate that the Court make an order granting the Great American Charge.

**Sales Guidelines**

25. The Company prepared the Sales Guidelines to govern the conduct of the Sale. The Sales Guidelines are substantially the same as those approved by the Court in December among the Company and a number of the landlords.


26. Attached and marked as **Exhibit "B"** to this my affidavit is a true copy of the Sales Guidelines. The Sales Guidelines form part of the Agency Agreement.

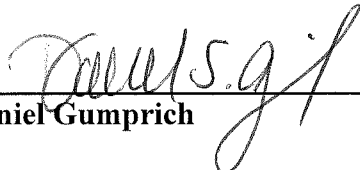
**Discharge of Century Services LP Charge**

27. In connection with the December Sale, the Court approved a charge in favour of Century Services LP, the agent in charge of conducting the December Sale.

28. To the best of my knowledge, the Sterling Shoes Limited Partnership has no outstanding monetary or non-monetary obligations pursuant to the agreement dated December 6, 2011 between the Partnership and Century Services LP.

AFFIRMED BEFORE ME at Vancouver,  
British Columbia on May 3, 2012.

  
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A Commissioner for taking Affidavits for  
British Columbia

  
\_\_\_\_\_  
Daniel Gumprich

**Tanveer Siddiqui**  
*Barrister & Solicitor*  
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This is **Exhibit "A"** referred to in the affidavit of  
**Daniel Gumprich** affirmed before me at  
Vancouver, BC this 3<sup>rd</sup> day of May 2012.



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A Commissioner for taking Affidavits  
for British Columbia



**AGENCY AGREEMENT**

This Agency Agreement (the "Agreement") is made as of May 3, 2012, by and between Great American Group, LLC ("Agent"), and Sterling Shoes Limited Partnership ("Merchant"), a limited partnership formed under the laws of Manitoba.

**RECITALS**

WHEREAS Sterling Shoes Inc. and Sterling Shoes GP Inc., the general partner of Merchant ("Sterling GP"), have commenced a proceeding (the "CCAA Proceedings") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and obtained an initial order, as amended and extended (the "Initial Order") from the Supreme Court of British Columbia (the "Court") on October 21, 2011;

AND WHEREAS Merchant has also obtained certain protections under the Initial Order;

AND WHEREAS at the time of the commencement of the CCAA Proceedings, Merchant operated 158 retail stores across Canada in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;

AND WHEREAS pursuant to an order of the Court dated December 9, 2011 (the "December 9 Order"), Merchant closed and conducted closing store sales in 53 of its retail stores;

AND WHEREAS pursuant to an order of the Court dated April 30, 2012, the Court approved the sale of 69 of Merchant's retail stores (the "Town Shoes Stores") to Town Shoes Limited ("Town Shoes") and related assets pursuant to an Asset Purchase Agreement among, *inter alia*, Merchant and Town Shoes dated as at April 16, 2012 (as it may be amended, restated or supplemented from time to time, the "Town Shoes APA");

AND WHEREAS Merchant wishes to close Merchant's remaining 36 stores and desires that Agent act as Merchant's exclusive agent for the limited purpose of (a) selling, by conducting a "store closing", "sale on everything", "everything must go" or mutually agreed theme sale (the "Sale"), all of the Merchandise (each as hereinafter defined) located in Merchant's remaining retail store locations identified in Exhibit 1A annexed hereto (collectively, the "Closing Stores" and each a "Closing Store"); and (b) subject to Section 14 hereof, disposing of such Merchant's owned furniture, trade fixtures and equipment located at the Closing Stores (collectively, "Owned FF&E"), subject to the terms and conditions set forth herein;

AND WHEREAS Agent is willing to serve as Merchant's exclusive agent to conduct the Sale in accordance with the terms and conditions of this Agreement;

AND WHEREAS this Agreement shall govern the conduct of the Sale at the Closing Stores and Merchant's and Agent's respective rights and obligations with respect thereto.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent and Merchant hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Defined Terms. The terms set forth below are defined in the Sections referenced of this Agreement:

<i>Defined Term</i>	<i>Section Reference</i>
Additional Taxes & Penalties	Section 8.3
Adjustment Amount	Section 3.4(e)
Agency Accounts	Section 3.8(b)
Agency Agreement Proceeds	Section 3.8(b)
Agency Documents	Section 11.1(b)
Agent	Preamble
Agent Claim	Section 12.6
Agent Indemnified Parties	Section 13.1
Agent's Charge	Section 2.3(j)
Agent's Fee	Section 3.1(b)
Agent's Sharing Recovery Amount	Section 3.1(b)
Agreement	Preamble
Approval Order	Section 2.3
Base Payroll	Section 4.2
Benefits Cap	Section 4.1(c)
Business Day	Section 3.4(b)
CCAA	Recitals
Central Services Expenses	Section 4.2
Charged Property	Section 2.3(j)
Closing Stores	Recitals
Cost File	Section 5.2(a)
Cost Value	Section 5.2(a)
Court	Recitals
Credit Card Processing Facilities	Section 7.2
December 9 Order	Recitals
Deposit	Section 3.4(b)
Defective Merchandise	Section 5.1(a)(i)
Designated Merchant Accounts	Section 3.8(a)
Encumbrances	Section 2.3(c)
Estimated Guaranteed Amount	Section 3.4(a)
Events of Default	Section 15
Excluded Benefits	Section 4.2
Excluded Defective Merchandise	Section 5.1(a)(ii)
Excluded Merchandise	Section 5.1(a)
Excluded Pricing Adjustments	Section 5.2(c)
Expense Letter of Credit	Section 4.3(a)
Expenses	Section 4.1
FF&E	Section 2.3(e)