

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. S117081

Vancouver Registry

APR 30 2012
ENTERED

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

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE)	THE HONOURABLE)	Monday, the 30 th day
)	MR. JUSTICE PEARLMAN)	of April, 2012
))	

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 30th day of April, 2012, AND ON HEARING Peter L. Rubin and Andrew Crabtree, counsel for the Petitioners, Vicki Tickle, counsel for the Monitor, Alvarez & Marsal Canada Inc., and those counsel listed on **Schedule "A"**; AND UPON READING the material filed;

THIS COURT ORDERS that:

SERVICE

1. The time for service of the Notice of Application herein be and is hereby abridged and the Notice of Application is properly returnable today.

**APPROVAL OF PURCHASE AGREEMENT AND TRANSACTIONS
CONTEMPLATED THEREIN**

2. The sale transaction (the "**Transaction**") and other transactions contemplated by the asset purchase agreement dated April 16, 2012 (the "**Purchase Agreement**") among the Sterling Shoes GP Inc., Sterling Shoes Limited Partnership (collectively, the "**Sellers**"), Town Shoes Limited (the "**Purchaser**") and Alvarez & Marsal Canada Inc, in its capacity as the Court appointed monitor in the CCAA Proceedings (the "**Monitor**"), a copy of which is attached as Exhibit A to the Affidavit #2 of Kimberly Grierson, sworn April 17, 2012, are commercially reasonable and the Purchase Agreement (including all schedules and exhibits attached thereto) is hereby approved.

3. The execution of and entry into the Purchase Agreement by the Sellers and the Monitor is hereby authorized and approved, and the Sellers and Sterling Shoes Inc. (collectively, the "**Petitioner Parties**") and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Assets (as defined in the Purchase Agreement).

4. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Purchase Agreement.

5. The Petitioner Parties are hereby authorized to make amendments or modifications to the Purchase Agreement, in accordance with Section 8.3 of the Purchase Agreement, that would not be materially prejudicial to the interests of any of the Petitioner Parties' stakeholders, without further or other approval of this Court.

6. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "**B**" hereto (the "**Monitor's Certificate**"), all of the Petitioner Parties' right, title and interest in and to the Assets shall vest absolutely in the Purchaser subject to the Permitted Encumbrances but otherwise free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions,

levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court, including without limitation the Orders dated October 21, 2011 and December 9, 2011, or any subsequent charges that may be granted by the Court; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), which term includes the Encumbrances (as defined in the Purchase Agreement) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Assets, other than the Permitted Encumbrances.

7. The Monitor shall file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof.

8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and from and after the delivery of the Monitor’s Certificate all Claims shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

9. Notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Petitioner Parties and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Petitioner Parties;

the Purchase Agreement and the vesting of the Petitioner Parties' right, title, benefit and interest in and to the Assets in the Purchaser pursuant to the Purchase Agreement and this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Petitioner Parties and shall not be void or voidable by creditors of the Petitioner Parties, nor shall it constitute or be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. The Purchase Agreement and any ancillary documents related thereto shall not be repudiated, disclaimed or otherwise compromised in these proceedings

PRIVACY LEGISLATION

11. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and clause 18(1)(i) of the British Columbia *Personal Information Act*, the Petitioner Parties are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Petitioner Parties' records pertaining to Petitioner Parties' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioner Parties.

BULK SALES ACT, PPSA AND OTHER LEGISLATION

12. The *Bulk Sales Act*, R.S.O. 1990, c. B14, and any legislation of similar effect in any other province of Canada in which all or any part of the Assets are located, does not apply to the transaction contemplated by the Purchase Agreement.

13. Notice under subsection 59(6) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, and equivalent statutes in all other Provinces in which the Petitioner Parties have assets is hereby dispensed with.

TRANSITION ARRANGEMENTS

14. The transition arrangements (the "**Transition Arrangements**") described in Article 5.3(c) of the Purchase Agreement are hereby approved.

15. The Petitioner Parties (and any other person that may be appointed to act on behalf of the Petitioner Parties, including without limitation, any trustee, liquidator, receiver, interim receiver, receiver and manager or other person acting on behalf of any such person) is hereby authorized and directed to perform the Petitioner Parties' obligations under the Transition Arrangements, provided such funds are available for such purposes.

16. The Petitioner Parties are hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the Transition Arrangements.

17. The Petitioner Parties are authorized and directed to make all payments due and owing under the Transition Arrangements at the times specified in and in accordance with the terms of the Transition Arrangements.

18. The Petitioner Parties are authorized, with the prior approval of the Monitor, to pay additional bonus amounts to any employee of the Petitioner Parties, provided such payments do not exceed the sum of \$50,000 in the aggregate.

GENERAL

19. Upon receipt of the BMO Amount from the Purchaser, the Monitor is hereby authorized and directed to pay to Bank of Montreal ("**BMO**") from the BMO Amount such amount as is necessary to satisfy in full all obligations of the Petitioners to BMO under and pursuant to a credit agreement between the Company and BMO, dated July 6, 2010, as amended.

20. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested

to (i) make such orders and to provide such assistance to the Petitioner Parties and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, (ii) grant representative status to any of the Petitioner Parties, in any foreign proceeding, and (iii) assist the Petitioner Parties, the Monitor and the respective agents of each of the foregoing in carrying out the terms of this Order.

21. The Petitioner Parties, the Purchaser and the Monitor may apply to this Court for advice and direction, or to seek relief in respect of, any matters arising from or under this Order, including without limitation the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

APPROVAL

22. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner Parties 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 Petitioner Parties
Peter Rubin/Andrew Crabtree


BY THE COURT.

Registrar

Schedule "A"

List of Counsel

Name of Counsel	Party
Colin Brousson	Bank of Montreal
Sharon Urquhart	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
Heather Ferris	Town Shoes Limited
Mary Buttery	Directors of the Petitioner Parties
Warren Milman	Ivanhoe Cambridge Inc.

Schedule "B"

**No. S117081
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PETITIONERS

Monitor's Vesting Order Certificate

PURSUANT TO AN ORDER of the British Columbia Supreme Court (the "**Court**") dated October 21, 2011, Alvarez & Marsal Canada Inc. was appointed the monitor (the "**Monitor**") of the Petitioners and Sterling Shoes Limited Partnership (collectively, the "**Company**").

PURSUANT TO AN ORDER of the Court dated April [●], 2012, the Court approved the asset purchase agreement among Sterling Shoes GP Inc., Sterling Shoes Limited Partnership, Town Shoes Limited (the "**Purchaser**") and the Monitor for the sale to the Purchaser of certain assets of the Company (the "**Purchase Agreement**"). The Company's right, title, benefit and interest in and to the assets described in the Purchase Agreement shall vest in the Purchaser at the Closing Time on the Closing Date subject to the delivery of this Certificate by the Monitor to the Purchaser at or prior to such time.

THE MONITOR HEREBY CERTIFIES as follows:

1. The Monitor has received written confirmation from the Purchaser that it paid to the Company, and the Monitor received written confirmation from the Company that it received from the Purchaser, the amounts owing to the Company as set out in the Purchase Agreement.
2. The Monitor confirms that it has received from the Purchaser the Deposit, the Escrow Amount, the Administrative Charge and the BMO Amount, as defined in the Purchase Agreement.
3. The Monitor has received written confirmation from the Purchaser and the Company that all conditions precedent to the close of the sale of the assets under the Purchase Agreement have been satisfied or waived in accordance with the Purchase Agreement and that the Purchase Agreement has not been terminated.

DATED at the City of Vancouver, in the Province of British Columbia, this [•] of May, 2012.

**ALVAREZ & MARSAL
CANADA INC. in its capacity as
court-appointed Monitor of the
Petitioners and not in its personal
capacity**

Per: _____
Name:
Title: