

NO. S-209201
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 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	TUESDAY, THE 29 TH DAY
)	
MADAM JUSTICE FITZPATRICK)	OF MARCH, 2022

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of 1077 Holdings Co-operative (formerly, Mountain Equipment Co-operative) and 1314625 Ontario Limited (collectively, the "**Petitioners**"), coming on for hearing at Vancouver, British Columbia, on the 29th day of March, 2022, via Microsoft Teams videoconference; AND ON HEARING Mary I.A. Buttery, Q.C. and Jared Enns, counsel for the Monitor, and those other counsel listed in **Schedule "A"**; AND UPON READING the material filed, including the Eleventh Report of the Monitor, dated December 1, 2021, and the Twelfth Report of the Monitor, dated March 23, 2022 (the "**Twelfth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. All terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order, pronounced in these proceedings on October 2,

2020 (the “**ARIO**”), the Claims Process Order, pronounced in these proceedings on November 27, 2020 (the “**Claims Process Order**”), or the Twelfth Report, as applicable.

2. All Claims, against the Petitioners, including Pre-filing Claims, Restructuring Period Claims, D&O Claims, and Employee Claims (as such terms are defined in the Claims Process Order), which have been allowed by the Monitor accordance with the Claims Process Order, shall be accepted and valid Claims (the “**Accepted Claims**”) for the purposes of the distributions to be made by the Monitor in accordance with and pursuant to the provisions of this Order.
3. All Claims, except for Disputed Claims, against the Petitioners, which were: (i) not asserted or preserved as required by the Claims Process Order, or (ii) were otherwise disallowed by the Monitor pursuant to the Claims Process Order (and which are not Disputed Claims), shall be forever barred and extinguished (each such claim, a “**Barred and Extinguished Claim**”), and any person who hereafter asserts a Barred and Extinguished Claim shall not be entitled to participate in the distributions provided for in paragraphs 5 and 6 of this Order.
4. The following methodology (the “**Proposed Distribution Methodology**”) for the distributions to be made by the Monitor under and pursuant to the terms of this Order is hereby approved:
 - (a) each Claimant holding an Accepted Claim will receive a *pro rata* distribution up to the maximum amount of their Accepted Claim amount;
 - (b) each Employee Claimant holding an Accepted Claim will receive a *pro rata* distribution up to the maximum amount of their Accepted Claim amount, net of applicable withholding taxes, EI overpayments, and other statutory deductions, if any;
 - (c) all distributions will be made in Canadian dollars, and any Accepted Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate as at the Filing Date;

- (d) no secured claims or priority claims remain;
 - (e) no distributions will be made to the holders of the disputed St. Denis Claim, and the Monitor shall create the St. Denis Claim Reserve (as defined below) pending the resolution of entitlement to and quantum of the St. Denis Claim. Following a determination of these issues, the Monitor shall make a *pro rata* distribution to the holder of the St. Denis Claim using the funds in the St. Denis Claim Reserve;
 - (f) any surplus funds remaining in the St. Denis Claim Reserve after payment of the holder's *pro rata* distribution, shall be distributed to the holders of Accepted Claims on a *pro rata* basis;
 - (g) a "top-up" amount will be distributed to those Employee Claimants who would have been positively affected by a determination that WEPP was applicable in these CCAA Proceedings. The total "top-up" amounts will be allocated on a *pro rata* basis to the other Employee Claimants and Claimants;
 - (h) the distributions made to Employee Claimants shall be in lieu of any and all amounts they might have otherwise received from Service Canada, through its administration of WEPP, had a determination been made under subsection 5(5) of WEPPA;
 - (i) sufficient funds will be withheld from any interim distributions to cover the anticipated administration costs to the completion of these CCAA Proceedings; and
 - (j) final distributions shall only be made to those Claimants who would be entitled to distributions of \$10 or more.
5. The Monitor, on behalf of the Petitioners, is hereby authorized, directed, and empowered to make an interim cash distribution, in accordance with the Proposed Distribution Methodology in the aggregate amount of no more than \$23.3 million, to:
- (a) each Claimant holding an Accepted Claim for their applicable *pro rata* amount;
 - (b) each Employee Claimant holding an Accepted Claim for their applicable *pro rata* amount; and

- (c) a "top-up" amount to those Employee Claimants who would have otherwise been positively affected by a determination under subsection 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**").
6. Upon the filing of a Monitor's Certificate in substantially the form attached hereto as **Schedule "B"**, and without further Order of this Court, the Monitor is hereby authorized, directed, and empowered to, in its sole discretion, make the following distributions in accordance with the Proposed Distribution Methodology:
- (a) further interim distributions to all Claimants and Employee Claimants holding Accepted Claims for their *pro rata* amounts; and
 - (b) a final distribution to all Claimants and Employee Claimants, except those whose *pro rata* final distributions are not equal to or greater than \$10.00.
7. Any distribution and or any payments/deliveries made by the Monitor in accordance with this Order, shall not constitute a "distribution", and the Monitor shall not constitute a "legal representative" or "representative" of the Petitioners or "other person" for the purposes of Section 159 of the *Income Tax Act* (Canada), Section 270 of the *Excise Tax Act* (Canada), Section 46 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation in the Provinces or Territories in which the Petitioners conducted business (collectively, the "**Statutes**"), and the Monitor in making any such payment or deliveries of funds in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any payments or deliveries in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Petitioners' tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against the Monitor under or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries in accordance with this Order, and any claims of such nature are hereby forever barred.

8. The distributions made to Employee Claimants shall be in lieu of any and all amounts they might have otherwise received from Service Canada, through its administration of the Wage Earner Protection Program, had a determination been made under subsection 5(5) of WEPPA.
9. All distributions shall be made in Canadian dollars, regardless of the currency indicated in the Proof of Claim, calculated by the Monitor as at the Filing Date, in accordance with paragraph 4 of the Claims Process Order.
10. All distributions made by the Monitor pursuant to and in accordance with this Order shall be free and clear of the Charges provided for in the ARIO.
11. The Monitor or any other person facilitating distributions pursuant to this Order shall be entitled to deduct and withhold from any such distribution to any Claimant and Employee Claimant, as the case may be, such amounts as may be required to be deducted or withheld under any applicable law including, without limitation, any tax withholdings, statutory deductions and/or any EI overpayments, and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law.
12. Notwithstanding:
 - (a) the pendency of these proceedings or the termination of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985 c. B-3, as amended (the "**BIA**") in respect of any of the Petitioners and any bankruptcy order issued pursuant to any such application; or
 - (c) any assignment in bankruptcy made in respect of any of the Petitioners,any distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Petitioners, and shall not be void or voidable by creditors of the Petitioners, nor shall any such distributions

constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Petitioners.


13. The Monitor shall establish, hold and maintain a reserve fund of in the amount \$733,000 (the "**St. Denis Claim Reserve**"), being the quantum of the larger of the two St. Denis Claims, pending a determination of both entitlement to and quantum of the St. Denis Claim.
14. Upon a resolution of the extant issues regarding entitlement to and quantum of the St. Denis Claim, the Monitor shall make a distribution to the holder of the St. Denis Claim in respect of its *pro rata* amount and any surplus remaining in the St. Denis Claim Reserve shall form part of the remaining funds available for further distributions to the Claimants and Employee Claimants.
15. The Monitor, whether in its personal capacity or in its capacity as the Monitor:
 - (a) shall have all of the protections provided to it as an officer of the Court, including the protections granted pursuant to the CCAA and other orders granted in these CCAA proceedings; and
 - (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with this Order, save and except for any gross negligence or willful misconduct.
16. The Monitor shall be at liberty, and is hereby authorized and empowered to:
 - (a) apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order; and
 - (b) take any further steps that the Monitor deems necessary or desirable in order to complete the distributions described in and authorized by this Order.
17. Endorsement of this Order by counsel appearing, other than counsel for the Monitor 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:



Lawyers for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and Jared Enns)

BY THE COURT


REGISTRAR

Schedule "A"

List of Counsel

Name of Counsel	Party Represented
Trevor Batty	Brookfield Residential (Alberta) LP

Schedule “B”
Monitor’s Certificate

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MONITOR’S CERTIFICATE

RECITALS

- A. On September 14, 2020, 1077 Holdings Co-operative (then known as Mountain Equipment Co-operative) and 1314625 Ontario Limited (collectively, the “**Petitioners**”) obtained an initial order pursuant to which, *inter alia*, the within proceedings were commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, and Alvarez & Marsal Canada Inc. was appointed as the monitor of the Petitioners (and, in such capacity, the “**Monitor**”).
- B. Unless otherwise indicated herein, capitalized terms shall have the meaning ascribed to them in the Distribution Approval Order (as defined below), and the Twelfth Report of the Monitor, dated March 23, 2022.
- C. On March 29, 2022, this Court pronounced an Order (the “**Distribution Approval Order**”) approving the Monitor’s Proposed Distribution Methodology and authorizing the Monitor to, *inter alia*:
 - (i) make an interim distribution to Claimants and Employee Claimants holding Accepted Claims, on a *pro rata* basis, in the aggregate amount of no more than \$23.3 million;
 - (ii) create the St. Denis Claim Reserve; and
 - (iii) in its sole discretion, make further *pro rata* distributions to all Claimants and Employee Claimants holding Accepted Claims without further Order of this Court, upon the filing of a Monitor’s Certificate with this Court.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has completed a further *pro rata* distribution to all Claimants and Employment Claimants holding Accepted Claims in the aggregate amount of \$____.
2. This Certificate was filed by the Monitor on ●, 2022.

Alvarez & Marsal Canada Inc. in its capacity as
the court-appointed Monitor of 1077 Holdings
Co-operative and 1314625 Ontario Limited, and
not in its personal or corporate capacity

Per: _____

Name: Todd M. Martin

Title: Senior Vice President

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CASSELS BROCK & BLACKWELL LLP

Barristers & Solicitors

2200 – 885 West Georgia Street

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(Attention: Mary I.A. Buttery, Q.C. and Jared Enns)

JE/sd

****RETURN BY FILING AGENT: WEST COAST TITLE SEARCH****