



No. S209201
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 MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625 ONTARIO
LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

(Assignment Order)

BEFORE THE HONOURABLE MADAM 21/Oct/2020
JUSTICE FITZPATRICK

APPLICATION OF the petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited (together, the "**Petitioners**") coming on for hearing by MS Teams videoconference at Vancouver, British Columbia on 21/Oct/2020 AND ON HEARING Howard A. Gorman, Q.C. and Scott M. Boucher, counsel for the Petitioners, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the material filed, including the First Affidavit of Philippe Arrata made 13/Sep/2020 (the "**First Arrata Affidavit**"), the Third Affidavit of Philippe Arrata made 15/Oct/2020, the Second Report of the Monitor dated 19/Oct/2020; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application dated October 16, 2020 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and hereby dispenses with further service thereof.
2. Any capitalized term used and not defined herein shall have the meaning ascribed to it in the Asset Purchase Agreement dated September 11, 2020 (the "**Sale Agreement**") between the Petitioners, as vendor, and 1264686 B.C. Ltd. (the "**Original Purchaser**"), as purchaser (a copy of which is attached as Exhibit "P" to the First Arrata Affidavit), or the Approval and Vesting Order dated October 2, 2020 (the "**Approval and Vesting Order**"), as applicable.

3. Pursuant to section 11.3 of the CCAA, immediately upon the delivery of the Monitor's certificate as contemplated the Approval and Vesting Order, all of the rights and obligations of the Petitioners under the agreements listed in **Schedule "B"** hereto, including all associated or related agreements, schedules, appendices, addenda, amendments, supplements, restatements or other modifications (each an **"Assigned Contract"** and collectively, the **"Assigned Contracts"**) shall be assigned, conveyed and transferred to 1266524 B.C. Ltd. (the **"Purchaser"**).
4. The assignment of the Assigned Contracts to the Purchaser is valid and binding upon all of the counterparties to the Assigned Contracts (each a **"Counterparty"** and, collectively, the **"Counterparties"**), notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Assigned Contracts.
5. The assignment and transfer of the Assigned Contracts shall further be subject to the provision of this Court's Approval and Vesting Order directing that the Petitioners' rights and obligations under the Assigned Contracts shall vest absolutely in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances (as such terms are defined in the Approval and Vesting Order).
6. No Counterparty, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Assigned Contracts hereunder shall make or pursue any demand, Claim, action or suit or exercise any right or remedy (including any termination rights) under any Assigned Contract against the Purchaser relating to:
 - (a) any defaults thereunder relating to the assignment of the Assigned Contracts;
 - (b) the Petitioners having sought or obtained relief under the CCAA;
 - (c) the insolvency of the Petitioners; or
 - (d) any failure by the Petitioners to perform a non-monetary obligation under any Assigned Contract;

and all such Counterparties and parties shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under Assigned Contracts other than in respect of items (a) through (d) above.

7. The Cure Costs of the Assigned Contracts shall be in the amounts set out in **Schedule "B"** hereto and, upon Closing, the Purchaser shall pay the Cure Costs as set out therein with respect to each applicable Assigned Contract, in full and final satisfaction of any Cure Costs owing to the applicable Counterparty by no later than the day that is the later of: (i) five (5) business days following delivery of the Monitor's Certificate to the

Purchaser; and (ii) five (5) business days from the date that the Purchaser receives wire remittance instructions or other payment instructions from such Counterparty.

8. The Petitioners shall send a copy of this Order to all of the Counterparties listed in **Schedule "B"**. The Petitioners shall provide notice to any Counterparty that is listed in **Schedule "B"** as of the date of this Order in the event that, prior to closing of the Sale Transaction, the Assigned Contract to which it is a party is subsequently added as an Excluded Contract (as the term is defined in the Sale Agreement) and such Counterparty shall thereby be removed from **Schedule "B"** without the need for further court order.
9. The Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Petitioners in the assignment and transfer of the Assigned Contracts.
10. Notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any petitions for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of either of the Petitioners and any bankruptcy order issued pursuant to any such petitions; or
 - (c) any assignment in bankruptcy made in respect of either of the Petitioners;

the assignment of the Assigned Contracts in and to the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Petitioners and shall not be void or voidable by creditors of any of the Petitioners, nor shall it constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *BIA* 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.

11. This Order shall have full force and effect in all provinces and territories in Canada.
12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, and the Monitor and their respective agents in carrying out the terms of this Order.
13. The Petitioners, the Purchaser, the Monitor, and any Counterparty 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, as necessary, to effect the transfer of the Assigned Contract (including any transfer of title registrations in respect of such Assigned Contracts), 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.

14. 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

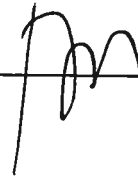
☐ party ☒ lawyer for the Petitioners

Scott M. Boucher



By the Court.

Registrar



SCHEDULE "A" – List of Counsel

COUNSEL	NAME OF PARTY(IES) REPRESENTED
Mary I.A. Buttery, Q.C.	The Monitor, Alvarez & Marsal Canada Inc.
John Sandrelli Valerie Cross	Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement
Dylan Chochla Kibben Jackson	Kingswood Capital Management LP and the Purchasers
Katie Mak	Plateau Village Properties Inc.

J. WUTHMANN

RIOCAN REAL ESTATES
INVESTMENT TRUST COMPANY

SCHEDULE "B" – List of Assigned Contracts and Cure Costs

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
Supplier Agreements			
1.	Agreement for the Sale of Parks Canada's Discovery Passes and Expiration Date Decals, dated December 8, 2017, between Mountain Equipment Co-operative and Parks Canada Agency.	Parks Canada Agency	\$0
Material IT Contracts			
2.	Volume Licensing Program (Agreement no. E0541091), dated June 29, 2019, between Mountain Equipment Co-operative and Microsoft Corporation, such Program including the following licensing and purchasing documents: (i) Microsoft Business and Services Agreement X20-10008; (ii) Enterprise Agreement X20-10136; (iii) Enterprise Enrollment No. 82652644; (iv) Enterprise Purchase Agreement X20-10134; (v) Enterprise Agreement Customer Price Sheet Quote No. 0857974.004; (vi) Pricing Amendment P-CTM-CPT-OPT,P-M239	Microsoft Corporation	\$0
3.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 282776), dated February 26, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	\$24,799.26
4.	Statement of Work # 726432 for Professional Services Agreement between TELUS and Mountain Equipment Co-operative, dated February 20, 2019.	TELUS Communications Inc.	
5.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 282941), dated February 26, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	

No.	Name of Agreement	Counterparty	Cure Costs (Cdn\$)
6.	Telus Customer Agreement – Non-Regulated/ Forborne Services (Contract ID# ECB 285127), dated August 29, 2019, between Mountain Equipment Co-operative and TELUS Communications Inc.	TELUS Communications Inc.	
7.	IBM Customer Agreement Number ICA-234238, dated September 7, 1994, between Mountain Equipment Co-operative and IBM Canada Ltd.	IBM Canada Ltd., by IBM Global Financing Canada Corporation.	\$7,202.24
8.	Software Support Agreement, dated April 7, 2000, between Mountain Equipment Co-operative and Blue Yonder, Inc. (fka JDA Software Inc.), as amended from time to time.	Blue Yonder, Inc. (fka JDA Software Inc.)	\$0
9.	Master Service Agreement, dated January 30, 2015, between Mountain Equipment Co-operative and Reliant Web Hosting Inc. DBA Pivotree (formerly DBA Tenzing Managed IT Services).	Reliant Web Hosting Inc. DBA Pivotree (formerly DBA Tenzing Managed IT Services).	\$14,871.40
10.	Master Services Agreement, dated June 9, 2014, between Mountain Equipment Co-operative and hybris Canada, Inc.	hybris Canada, Inc.	\$0
Other IT and Software Agreements			
11.	Cb Response Cloud Agreement, dated July 27, 2018, between Mountain Equipment Co-operative and Carbon Black, Inc.	Carbon Black, Inc.	\$0
12.	Software License Agreement, dated August 19, 2014, between Mountain Equipment Co-operative and Computer Generated Solutions Quebec, Inc. (as assigned by Visual 2000 International, Inc. effective May 29, 2019).	Computer Generated Solutions Quebec, Inc.	\$7,640.00
13.	Mutual Non-Disclosure Agreement, dated August 19, 2014, between Mountain Equipment Co-operative and Computer Generated Solutions Quebec, Inc. (as assigned by Visual 2000 International, Inc. effective May 29, 2019).	Computer Generated Solutions Quebec, Inc.	\$0
14.	Sophos End User License Agreement, dated September 28, 2016, between Mountain Equipment Co-operative and Sophos Limited.	Sophos Limited	\$0

No.	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs</u> <u>(Cdn\$)</u>
15.	End User License and Services Terms and Conditions, dated December 29, 2016, between Mountain Equipment Co-operative and Rapid7 LLC.	Rapid7 LLC	\$0
16.	SaaS Model Agreement, dated September 4, 2015, between Mountain Equipment Co-operative and The Ultimate Software Group of Canada, Inc.	The Ultimate Software Group of Canada, Inc.	\$24,689.71
17.	Multi-Year Order Form dated July 29, 2016 between Mountain Equipment Co-operative and New Relic Inc.	New Relic Inc.	\$0
18.	Value Incentive Plan Commercial Membership Agreement between Mountain Equipment Co-operative and Adobe Inc.	Adobe Inc.	\$0
Personal Property Leases			
	The equipment lease agreements between Mountain Equipment Co-operative, as lessee, and LBEL Inc., as lessor, under the following lease numbers:		
19.	100411519-1	LBEL Inc.	\$4.47
20.	100411519-10	LBEL Inc.	\$0
21.	100411519-11	LBEL Inc.	\$0
22.	100411519-12	LBEL Inc.	\$0
23.	100411519-13	LBEL Inc.	\$698.93
24.	100411519-14	LBEL Inc.	\$0
25.	100411519-15	LBEL Inc.	\$0
26.	100411519-16	LBEL Inc.	\$0
27.	100411519-17	LBEL Inc.	\$1.95
28.	100411519-18	LBEL Inc.	\$0
29.	100411519-19	LBEL Inc.	\$0
30.	100411519-2	LBEL Inc.	\$2.03
31.	100411519-20	LBEL Inc.	\$0

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
32.	100411519-3	LBEL Inc.	\$0
33.	100411519-4	LBEL Inc.	\$2.65
34.	100411519-5	LBEL Inc.	\$46.39
35.	100411519-6	LBEL Inc.	\$1.20
36.	100411519-7	LBEL Inc.	\$0
37.	100411519-9	LBEL Inc.	\$12.12
38.	780-0503662-001	LBEL Inc.	\$0
39.	780-0504382-001	LBEL Inc.	\$0
40.	780-0505741-001	LBEL Inc.	\$0
41.	780-0506079-001	LBEL Inc.	\$0
42.	780-0506143-001	LBEL Inc.	\$0
43.	780-0506319-001	LBEL Inc.	\$0
44.	780-0506594-001	LBEL Inc.	\$0
45.	780-0506835-001	LBEL Inc.	\$0
46.	780-0506844-001	LBEL Inc.	\$0
47.	780-0506954-001	LBEL Inc.	\$0
48.	780-0507484-001	LBEL Inc.	\$0
49.	780-0508885-001	LBEL Inc.	\$0
50.	780-0508887-001	LBEL Inc.	\$143.10
51.	780-0509880-001	LBEL Inc.	\$0
52.	780-0509995-001	LBEL Inc.	\$0
53.	780-0510004-001	LBEL Inc.	\$0
54.	780-0511098-001	LBEL Inc.	\$0
55.	780-0514039-001	LBEL Inc.	\$16.36

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
	The equipment lease agreements between Mountain Equipment Co-operative, as lessee, and Wells Fargo Equipment Finance Company, as lessor, under the following lease numbers:		
56.	9796948-001	Wells Fargo Equipment Finance Company	\$32.17
57.	9796937-001	Wells Fargo Equipment Finance Company	\$62
58.	9769866-001	Wells Fargo Equipment Finance Company	\$881.68
59.	9796943-001	Wells Fargo Equipment Finance Company	\$0
60.	9796939-001	Wells Fargo Equipment Finance Company	\$1,253.70
61.	9816189-001	Wells Fargo Equipment Finance Company	\$0
62.	9882171-001	Wells Fargo Equipment Finance Company	\$65.49
63.	9944836-001	Wells Fargo Equipment Finance Company	\$0
64.	9796954-001	Wells Fargo Equipment Finance Company	\$0
65.	9796933-001	Wells Fargo Equipment Finance Company	\$0
66.	9769864-001	Wells Fargo Equipment Finance Company	\$504.56
67.	9796936-001	Wells Fargo Equipment Finance Company	\$0
68.	9944837-001	Wells Fargo Equipment Finance Company	\$0
69.	9796951-001	Wells Fargo Equipment Finance Company	\$0

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

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

Petitioners

ORDER MADE AFTER APPLICATION

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors
1800 – 510 West Georgia Street
Vancouver, BC V6B 0M3
Attention: Howard A. Gorman, Q.C.
Filing Agent: West Coast Title Search

SCB/ker

Matter# 1001118436