



No. S-114513
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CRAIG BARTON and
FAIRFAX FINANCIAL HOLDINGS LIMITED

PLAINTIFFS

AND:

PAKIT INC.

DEFENDANT

NOTICE OF APPLICATION

TAKE NOTICE that an application will be made by Alvarez & Marsal Canada Inc., as receiver and manager (the “**Receiver**”) of Pakit Inc. (the “**Debtor**”) before the presiding judge at the Vancouver Courthouse at 800 Smithe Street, Vancouver, British Columbia on Monday, January 8th, 2018 at 9:45 a.m. for an Order as set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. That the activities of the Receiver, as set out in the Receiver’s Fourth and Final Report, dated December 28, 2017 (the “**Fourth Report**”), be approved.
2. That the Receiver’s Statement of Receipts and Disbursements, as set out in the Fourth Report be approved.
3. That the fees and disbursements of the Receiver and its counsel, as set out in the Fourth Report, be approved.
4. That the Receiver is authorized to distribute and pay the remaining cash in the Receiver’s bank account, in an amount of \$90,000, to be paid as follows:

- (a) up to \$5,000 to satisfy the Receiver's outstanding accounts for the period December 1, 2017 to its discharge;
- (b) up to \$5,000 to Borden Ladner Gervais LLP for its final estimated account in this matter; and
- (c) the amount of \$80,000 to Fairfax Financial Holdings Limited ("**Fairfax**"),

and that to the extent the final accounts of the Receiver and/or Borden Ladner Gervais LLP are less than the estimated amounts, the final distribution to Fairfax will be increased accordingly.

5. Upon payment of the amounts set out in paragraphs 3 and 4 hereof and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Fourth Report, the Receiver be discharged as the Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver, in its capacity as Receiver.

6. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

Part 2: FACTUAL BASIS

Background

1. On February 2, 2012, the Receiver was appointed as the receiver and manager of the Debtor pursuant to the order (the "**Receivership Order**") pronounced by the Honourable Mr. Justice Burnyeat on the application of Fairfax.

2. Prior to the date of the Receivership Order, the Debtor was operating under a stay of proceedings pursuant to an order granted on July 28, 2011 under the *Companies' Creditors Arrangement Act* (the "CCAA") by this Honourable Court. The proceedings under the CCAA were terminated when the stay of proceedings expired on February 2, 2012.

3. Pakit International Trading Company Inc. ("**Pakit International**") and Pakit USA Company Inc. ("**Pakit USA**") are wholly owned subsidiaries of the Debtor. Pakit International is the sole owner of Packaging International Technology Sweden AB ("**PIT**") and, together with Pakit International and Pakit USA, collectively, the "**Pakit Group**").

4. The Receiver entered into an asset purchase agreement (the "**APA**") for the sale of certain of the assets of the Pakit Group to Petrochem Holding Co. (a subsidiary of Fairfax) (the "**Purchaser**") effective July 24, 2012 for a credit bid in the amount equal to the outstanding amount of the loans made by Fairfax to the Receiver pursuant to the Receiver's Certificates (as defined in the Receivership Order) issued by the Receiver to Fairfax from time to time, which represent approximately \$2,200,000 in aggregate.

5. On June 12, 2012, an Order was pronounced by the Honourable Mr. Justice Burnyeat approving the sale of the assets described in the APA to the Purchaser.

6. The proceeds of the sale of the assets described in the APA were paid out as described in the Fourth Report and include the following:

- (a) in respect of payroll and benefit costs of approximately \$243,000 for certain employees retained by the Receiver;
- (b) receivership professional fees of approximately \$686,000, including approximately \$562,000 for the Receiver and approximately \$124,000 for the Receiver's legal counsel which are described in detail in the Fourth Report;
- (c) other operating and administrative disbursements of approximately \$164,000; and
- (d) intercompany transfers to Pakit International and PIT consisting of payments to fund payroll and benefit costs for certain employees and the President of Pakit International, including rent arrears, and other research and development costs.

7. Following the payment of such sale proceeds as described in the Fourth Report, the Receiver continues to hold approximately \$90,000 from the proceeds of the sale of the assets described in the APA.

Activities of the Receiver

8. The Receiver had previously filed with the Court the First Report of the Receiver dated March 1, 2012 (the “**First Report**”). The Fourth Report is being filed concurrently with this Notice of Application.

9. The activities of the Receiver to date have been outlined in each of the reports filed by the Receiver.

10. Since the filing of the Third Report of the Receiver dated June 8, 2012, the activities of the Receiver included, *inter alia*, the following:

- (a) communicating with various stakeholders including Fairfax with respect to the status of the APA and the receivership generally;
- (b) attending to the closing of the transactions contemplated by the APA;
- (c) reviewing and analyzing the deemed trust claim by Canada Revenue Agency with respect to unremitted payroll source deductions and arranging for payment;
- (d) communicating with the payroll service provider in regards to source deductions and analysis of the matter;
- (e) preparing GST and other tax related filings;
- (f) attending periodic and various meetings and discussions with legal counsel to Fairfax;
- (g) responding to creditor and investor enquiries; and
- (h) preparing the Fourth Report.

Final Distribution and Discharge

11. The Receiver is seeking its discharge to become effective upon completion of the following:

- (a) filing a notice with the Court certifying that it has completed the distribution of funds being held by the Receiver and attended to all final tax filings of the Debtor; and
- (b) filing its final report to the Office of the Superintendent of Bankruptcy in compliance with section 246(3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

Part 3: LEGAL BASIS

- 1. Rules 8-1, 10-2 and 13-5 of the *Rules of Court*;
- 2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended; and
- 3. the inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

- 1. The Receiver's Fourth and Final Report, dated December 28, 2017; and
- 2. Such further and other material as counsel may advise and the court may permit.

The applicant estimates that the application will take 5 minutes.

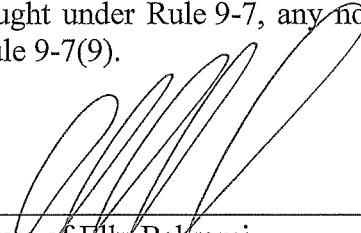
This matter is not within the jurisdiction of a master.

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: 29/DEC/2017



Signature of Elly Bahrami
☐ applicant ☒ lawyer for the Applicant,
Alvarez & Marsal Canada Inc., in its capacity as
the Receiver and Manager of Pakit Inc.

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

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters 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

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