

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC - 9 2011

ENTERED

No. S117081
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

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

BEFORE)	THE HONOURABLE)	Friday, the 9 th day of
)	MR. JUSTICE PEARLMAN)	December, 2011
))	

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 9th day of December, 2011, AND ON HEARING Peter L. Rubin and Andrew Crabtree on behalf of the Petitioners, and those counsel listed on Schedule "A";

THIS COURT ORDERS that:

INITIAL ORDER STAY EXTENSION

1. The stay of proceedings provided in the Order of this Court made herein on October 21, 2011 (the "Initial Order"), as amended on November 18, 2011, is hereby extended to ~~March 30,~~ ^{APRIL 2,} 2012 or such other date as this Court may subsequently order.

LIFTING OF STAY OF PROCEEDINGS

2. The stay of proceedings as provided for in the Initial Order, as extended by Order dated November 18, 2011 and this Order, shall be lifted for the sole and limited purpose of permitting adidas AG to file and advance a motion in the Federal Court of Canada, in Federal Court file

number T-1656-11, for an order extending the time for service of the Statement of Claim dated October 11, 2011 naming Sterling Shoes Inc. and Sterling Shoes Limited Partnership c.o.b. as Shoe Warehouse as defendants.

AGENCY AGREEMENT

3. Any capitalized term used and not defined herein shall have the same meaning as that ascribed to it in the Initial Order or, as applicable, the agency agreement, dated December 6, 2011 (the "**Agency Agreement**"), between Sterling Shoes Limited Partnership (the "**Partnership**") and Century Services LP (the "**Agent**"), a redacted copy of which is attached as Exhibit "B" to the Affidavit #3 of Daniel Gumprich, dated December 6, 2011 and an unredacted copy of which is attached as Exhibit "A" to the Affidavit #4 of Daniel Gumprich dated December 6, 2011.

4. The Agency Agreement and the transactions contemplated thereby, including the Sale Guidelines and signage attached to the Sales Guidelines as Schedule B, are hereby approved. The Partnership is hereby authorized to enter into the Agency Agreement (with such amendments as the Partnership may approve with the consent of the Monitor) and the Partnership and the Petitioners (collectively, the "**Petitioner Parties**") and the Agent are authorized to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Petitioner Parties are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or useful to give full and complete effect to the Agency Agreement.

THE SALE

5. Subject to payment of the Initial Guaranty Payment and the issuance of the Guaranty Letter of Credit and the Expense Letter of Credit, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sale Guidelines, as such Sale Guidelines may be amended by agreement with the applicable landlord. If there is a discrepancy between this Order, the Agency Agreement and the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

6. Subject to the terms of this Order, the Agency Agreement and the Sale Guidelines, the Agent shall have the right to use the Closing Stores and all related store services, all furniture, trade fixtures and equipment, including the Owned FF&E, (collectively, the "FF&E") and other assets of the Partnership, as designated under the Agency Agreement, for the purpose of conducting the Sale, free of any interference or impediment from any entity or person, including all utilities, landlords, creditors, any successor or assignee of the Partnership under any and all leases relating to the Closing Stores and all persons acting for or on their behalf, and all such persons shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale.

7. During the Sale Term, the Agent shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Agent is an agent of the Partnership and the Partnership has granted the right of access to the Closing Stores to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, then the terms of this Order and the Sale Guidelines shall govern.

8. Upon payment of the Initial Guaranty Payment and the issuance of the Guaranty Letter of Credit and the Expense Letter of Credit, the Agent, in its capacity as agent of the Partnership, is authorized to market and sell the Merchandise and FF&E free and clear of all liens, claims, encumbrances thereon, whether contractual, statutory, by operation of law or otherwise, including, without limitation, the encumbrances in favour of the Bank of Montreal (the "Lender") and the charges granted by the Court under the Initial Order (including the Administration Charge, Directors' Charge and the Encumbrances, as such terms are defined in the Initial Order (collectively, the "CCAA Charges")), which CCAA Charges will attach instead to the Guaranteed Amount and other amounts received or to be received by the Partnership under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

9. No Encumbrances shall attach to the portion of the Proceeds which are payable by the Partnership to, or retained by, Agent under the Agency Agreement, or to any amounts that must be reimbursed by the Partnership to Agent in the event that Agent over-funds any amounts due to

the Partnership, and the Partnership will pay such amounts to Agent, and Agent will retain such amounts, free and clear of all Encumbrances notwithstanding any enforcement.

10. Subject to Section 3.2 of the Agency Agreement, all remaining Merchandise in the Agent's possession at the Sale Termination Date shall without the need for any further deed or act, transfer to and vest in the Agent, free and clear of all liens, claims, encumbrances thereon, whether contractual, statutory, by operation of law or otherwise, including, without limitation, the encumbrances in favour of the Lender and the CCAA Charges.

11. Subject to, and in accordance with the Agency Agreement and the Sale Guidelines, the Agent, as agent for the Partnership, is authorized to conduct, advertise, use A-frames and sign walkers and post signs and otherwise promote the Sale without further consent of any person.

12. The Sale Termination Date shall in no circumstances extend beyond February 29, 2012, unless mutually agreed to by the Partnership, the Agent and the applicable landlord in respect of a particular Closing Store.

13. Until the Sale Termination Date, the Agent is granted a limited, royalty free, license and right to use the trade names, trademarks and logos, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

AGENT LIABILITY

14. This Order shall not deem or constitute the Agent to be an employer, or a joint or successor employer or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever, and shall have no successorship liabilities whatsoever and, further, the Agent shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores or the assets located therein or associated therewith, whether pursuant to any legislation enacted for the protection of the environment, the regulations thereunder or any other

statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

AGENT UNAFFECTED CREDITOR

15. The claims of the Agent pursuant to the Agency Agreement shall not be compromised or arranged pursuant to any plan of arrangement or compromise among the Petitioner Parties and their creditors (a "**Plan**") and the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. Notwithstanding the CCAA, the Initial Order or any order made in these proceedings, the Partnership shall not have the right to disclaim or resiliate the Agency Agreement or any of its agreements, contracts or arrangements in relation to the Agency Agreement, except as permitted under the Agency Agreement.

17. Subject to the terms of the Agency Agreement, including without limitation section 3.2 thereof, the Agency Agreement and any related agreements or documents to be entered into or signed further thereto, the transactions contemplated thereby (including, without limitation, the Agent's entitlement to a portion of the proceeds of the Sale and any other amounts which are, or may become, payable or repayable by the Partnership to the Agent, or which may be retained by the Agent, under the Agency Agreement, free and clear of any liens) and the vesting of any Remaining Merchandise at the Sale Termination Date in the Agent's possession, will survive any proposal, plan of arrangement or bankruptcy of the Petitioner Parties and will bind any successor in interest, including any trustee, monitor, interim receiver, receiver or other administrator of the property or others that may be appointed under any applicable federal or provincial legislation, and further the Sale shall not be attacked or voided as a reviewable transaction nor as a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction or constitute oppressive or unfairly prejudicial conduct under the CCAA or the *Bankruptcy and Insolvency Act* (the "**BIA**") or any other applicable provincial or federal legislation.

18. The Lender shall not take any action, including any collection or enforcement steps, with respect to the Proceeds deposited into the Designated Merchant Accounts during the Sale Term.

AGENT'S CHARGE

19. Subject to the payment by the Agent to the Partnership of the Initial Guaranty Payment and the issuance of the Guaranty Letter of Credit and Expense Letter of Credit, the Agent is hereby granted a charge (the "**Agent's Charge**") on all of the Merchandise and Proceeds (and, for greater certainty, the Agent's Charge shall not extend to all of the Property of the Petitioner Parties as defined in paragraph 4 of the Initial Order) as security for all of the obligations of the Partnership to the Agent with respect to the Partnership's obligations and all amounts owing under or in connection with the Agency Agreement in the aggregate amount of \$9,500,000, based on the priority set out in paragraph 30, provided, however, that the Agent's Charge shall be subordinate to all other CCAA Charges, other court-ordered charges ordered by any further order of the Court and all other encumbrances, solely to the extent of any unpaid portion of the Guaranteed Amount, the Merchant's Share Recovery Amount, Net FF&E Proceeds and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to the Partnership under the Agency Agreement (the "**Subordinated Amount**").

LEASES

20. Except as provided for in this Order, any further order of the Court, the Sale Guidelines and any written agreement between the Partnership and any applicable landlord, the Partnership and the Agent shall at all times abide by and be subject to the terms of the Leases in conducting the Sale. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Partnership any additional restrictions not contained in the applicable Lease or other occupancy agreement.

21. Notwithstanding any term of this Order or the Agency Agreement:

- (a) but subject to the rights of the Petitioner Parties to disclaim leases, except as expressly permitted by the terms of the leases for the Partnership's leased locations (collectively, the "**Leases**"), none of the Leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlord or without further Order of this Court;

- (b) where any Leases are not, in accordance with their terms, transferable or assignable to a third party without first obtaining the consent of the applicable landlord, none of the Leases shall be transferred, conveyed, assigned or vested in a third party by operation of this Order; save and except to the extent that respective consents have been, or are in the future, obtained from the respective landlords; and
- (c) where a dispute arises concerning the conduct of the Sale, which the Partnership and the respective landlord are unable to resolve themselves, the Partnership or the respective landlord shall have a right to schedule a hearing before this Court on not less than two (2) days' written notice to the other party or parties.

FINANCIAL ARRANGEMENTS

22. Notwithstanding any other provision in this Order:

- (a) the Petitioner Parties are hereby authorized and empowered to borrow, repay and re-borrow from the Lender such amounts from time to time as the Petitioner Parties consider necessary and the Lender approves, and the Lender shall be entitled to revolve its loan facility as set forth in the amended/updated commitment letter dated July 6, 2010, as amended by amendments dated March 15, 2011, August 25, 2011 and October 14, 2011, as further amended by the forbearance agreement dated as of October 20, 2011 and amended on December 6, 2011 between Sterling Shoes Limited Partnership, as borrower, and the Petitioners, as guarantors (collectively, the "**Lender Loan Facility**") and collect interest, fees and costs on the Lender Loan Facility, subject to such amendments as are agreed between the Lender and the Petitioner Parties;
- (b) the Lender Loan Facility shall be secured by the same security (the "**Lender Security**") as secured the Lender Loan Facility as at the date of the Initial Order; and

- (c) the Petitioner Parties are authorized to deal with the Lender and perform all of their obligations to the Lender under and pursuant to the Lender Loan Facility, in accordance with the terms of the Lender Loan Facility.

SALE AND INVESTMENT SOLICITATION PROCESS

23. The solicitation process, attached as Exhibit "E" to Affidavit #3 of Daniel Gumprich, dated December 6, 2011, (the "**Solicitation Process**"), is hereby approved, and the Petitioner Parties are authorized, with the assistance of and in consultation with Capital West Partners LLP ("**Capital West**"), to take such steps as they consider necessary or desirable in carrying out the Solicitation Process.

24. The agreement between the Special Committee of the Board of Directors of Sterling Shoes Inc. and Capital West, dated August 19, 2011 (the "**Capital West Agreement**"), an unredacted copy of which is attached as Exhibit "B" to Affidavit #4 of Daniel Gumprich, is hereby approved and the Petitioner Parties are authorized to make any payments to Capital West as contemplated by the Capital West Agreement, notwithstanding whether or not such payments were authorized pursuant to the Initial Order.

KEY EMPLOYEE INCENTIVE PROGRAM

25. The letter agreements (collectively, the "**KEIP Agreements**") pursuant to which the Partnership agrees to provide compensation to key employees (collectively, the "**Key Employees**") in accordance with a key employee incentive program ("**KEIP**"), as identified in Exhibit "C" to Affidavit #4 of Daniel Gumprich, are hereby approved.

26. The Partnership (and any other person that may be appointed to act on behalf of the Partnership, 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 enter into the KEIP Agreements and to perform its obligations under the KEIP Agreements and the KEIP.

27. The Petitioner Parties are hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KEIP Agreements, subject to the prior approval of such documents by the Monitor or as may be ordered by this Court.

28. The Partnership shall make all payments to the Key Employees of amounts due and owing under the KEIP at the time specified in and in accordance with the terms of the KEIP.

KEIP CHARGE

29. The Key Employees are hereby granted a charge (the "**KEIP Charge**") on all of the Property as security for all of the obligations of the Partnership to the Key Employees under the KEIP Agreements and the KEIP in the aggregate amount of \$500,000. The KEIP Charge shall have the priority set out in paragraph 30.

PRIORITY OF CHARGES

30. The priorities of the Administration Charge, the Directors' Charge, the Lender Security, the Agent's Charge and the KEIP Charge as among them, shall be as follows:

First – Agent's Charge (to the maximum amount of \$9,500,000 (but only in respect of the Merchandise and Proceeds as defined in the Agency Agreement and not the Property as defined in paragraph 4 of the Initial Order) provided however that the Subordinated Amount, as defined in paragraph 19 shall be subordinated to all of the CCAA Charges);

Second – Administration Charge (to the maximum amount of \$350,000);

Third – Directors' Charge (to the maximum amount of \$500,000);

Fourth – Lender Security;

Fifth – Administration Charge (to the maximum amount of a further \$150,000);

Sixth – Directors' Charge (to the maximum amount of a further \$1,000,000); and

Seventh – KEIP Charge (to the maximum amount of \$500,000).

31. No security documentation evidencing, or the filing, registration or perfection of the Agent's Charge and the KEIP Charge (collectively, the "**Additional Charges**") shall be required; and the Agent's Charge shall be effective as against the Merchandise and the Proceeds, subject to the Subordinated Amount; and the KEIP Charge shall be effective as against the

Property; and the Additional Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Additional Charges coming into existence, notwithstanding any failure to file, register or perfect any such Additional Charges.

32. The Agent's Charge shall constitute a mortgage, security interest, assignment by way of security and charge over the Merchandise and the Proceeds; and the KEIP Charge shall constitute a mortgage, security interest, assignment by way of security and charge over the Property; and both such charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise in favour of any Person.

33. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner Parties shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Additional Charges, unless the Petitioner Parties obtain the prior written consent of the Monitor and the beneficiaries of the Additional Charges.

34. The Additional Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Additional Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner Parties; and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Additional Charges shall not create or be deemed to constitute a breach by the Petitioner Parties of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Additional Charges; and
- (c) the payments made by the Petitioner Parties pursuant to this Order and the granting of the Additional Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

35. The Additional Charges created by this Order over leases of real property in Canada shall only constitute charges on the Petitioner Parties' interest in such real property leases.

SEALING ORDER

36. Affidavit #4 of Daniel Gumprich, dated December 6, 2011, including all exhibits thereto (the "**Gumprich Confidential Affidavit**"), is hereby ordered sealed in the court file in these proceedings and shall be segregated from, and not form part of, the public record.

37. Affidavit #1 of Steven Richardson, dated December 5, 2011, including all exhibits thereto (the "**Richardson Confidential Affidavit**"), is hereby ordered sealed in the court file in these proceedings and shall be segregated from, and not form part of, the public record.

38. The Gumprich Confidential Affidavit and the Richardson Confidential Affidavit (together, the "**Confidential Affidavits**") shall be filed with the Court under seal in envelopes, which envelopes shall be labelled with (a) the style of cause in this action, (b) a description of the contents of the envelope and (c) the words "Confidential – SUBJECT TO THE ORDER OF THE COURT MADE DECEMBER 9, 2011". The Confidential Affidavits shall be kept under seal by court registry staff, unless otherwise directed by the Court.

39. Upon the expiry of the stay of proceedings in this matter and the expiry of any appeal period from the hearing of this matter and the final disposition of any and all appeals of these proceedings, any person is at liberty to apply for the release of the Gumprich Confidential Affidavit or the Richardson Confidential Affidavit from the sealing provisions of this Order, on notice to all parties of record.

BULK SALES ACT, PPSA AND OTHER LEGISLATION

40. The *Bulk Sales Act*, R.S.O. 1990, c. B14, and any legislation of similar effect in any other province of Canada, does not apply to the transactions contemplated by the Agency Agreement including, without limitation, the sale of any Merchandise or FF&E by the Agent on behalf of the Partnership or on its own behalf, and that 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 shall not be required, and that compliance with provincial and municipal rules, by-laws, laws, or regulations as they relate to licensing or permitting requirements that would otherwise govern the Sale be and are hereby dispensed with.

GENERAL

41. The Monitor shall deliver to all landlords of the Closing Stores who are not represented by counsel on the Service List with a copy of this Order and the Sale Guidelines within 5 days of entry of this Order (the "**Remaining Landlords**"). The Remaining Landlords shall be deemed to have agreed to permit the Sale to take place at the Closing Stores in accordance with this Order, the Agency Agreement and the Sale Guidelines, commencing immediately, unless a further Order of this Court varying the terms of this Order to the contrary is obtained within fifteen (15) days of entry of this Order.

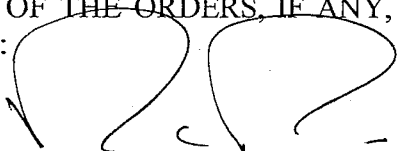
42. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any Federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary 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 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, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner Parties and the Monitor and their respective agents in carrying out the terms of this Order.

43. The Petitioner Parties 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.

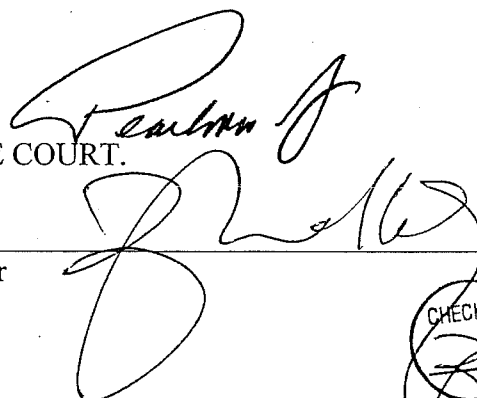
44. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

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
Peter L. Rubin

BY THE COURT.



Registrar

CHECKED

Schedule "A"

List of Counsel

Name of Counsel	Party
Kibben Jackson Vicki Tickle	The Monitor, Alvarez & Marsal Canada Inc.
Colin Brousson	Bank of Montreal
David Garner	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