

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)	Wednesday, the 23 rd day of
)	MR. JUSTICE PEARLMAN)	January, 2013
))	

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 23rd day of January, 2013, AND ON HEARING Andrew Crabtree on behalf of the Petitioners, and those counsel listed on Schedule "A";

THIS COURT ORDERS that:

1. The Monitor is hereby fully and exclusively authorized and empowered, but not required, to take any and all actions and steps, and execute any and all documents and writings, on behalf, and in the name of the Petitioners herein and Sterling Shoes Limited Partnership (collectively, the "**Company**") or any of them in order to manage and carry on all aspects of the business, financial affairs and operations of the Company and all aspects of the within proceedings, including, without limitation, to:

- (a) take any and all steps as, in the sole opinion of the Monitor, are necessary or appropriate to complete the claims process approved by the Order of the Court dated April 2, 2012, including, without limitation, litigating or settling any claim on behalf of the Company;

- (b) take any and all steps, as in the sole opinion of the Monitor, are necessary or appropriate to make one or more distributions to creditors in accordance with the terms of the Order of the Court dated December 12, 2012;
- (c) file a plan of compromise or arrangement on behalf of the Company;
- (d) initiate such further restructuring or liquidation proceedings on behalf, and in the name of the Company as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation, making a voluntary assignment or commencing proposal proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (e) engage, on behalf, and in the name of the Company, such employees or former employees of the Company or other persons as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, as well as with the general administration of the within proceedings;
- (f) operate on behalf of the Company any of the Company's existing accounts at any financial institution (the "**Company's Accounts**") in such manner as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, including the ability to add or remove persons having signing authority with respect to any of the Company's Accounts;
- (g) open one or more new accounts in its own name (the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Company as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, or by further Order of this Court;
- (h) make use of the funds in the Company's Accounts and the Monitor's Accounts, as applicable, from time to time to make disbursements and pay amounts for and on behalf of the Company or in connection with the Monitor's exercise of its powers and duties set out herein, as the Monitor may in its sole opinion deem necessary or appropriate from time to time;
- (i) take any and all steps, exercise any rights (including rights as shareholder), enter into any agreements or incur any obligations in the name, or on behalf of the Company as, in the sole opinion of the Monitor, are necessary or incidental to the exercise of the aforesaid powers, such agreements and obligations to be those of the Company and not of the Monitor personally;

- (j) instruct legal counsel and financial advisors to the Company in such matters and in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein; and
- (k) without limiting any of the foregoing, take any and all steps and do all such things on behalf, and in the name of the Company that, in the sole opinion of the Monitor, are necessary or advisable to allow the Monitor to discharge or exercise its rights, powers or duties hereunder, or to complete the administration of the within proceedings and all other proceedings relating to the Company or their property in this or any other jurisdiction, whether extant or arising hereafter.

2. The Company and their former, present and future directors, officers, employees, agents and shareholders, and any other persons acting on any of their respective instructions including, without limitation, the accountants and counsel for the Company and all other persons having notice of this Order (collectively, "**Affected Persons**") shall forthwith deliver and grant the Monitor access to all information and documentation belonging to the Company or to which the Company is entitled to lawfully access, provided such information is required by the Monitor in carrying out its duties and the mandate set out in this Order (excluding only communications or materials which are validly subject to solicitor-client or attorney-client privilege, litigation privilege, and common interest privilege), wheresoever situate, including, without limitation:

- (a) any and all of the books, securities, records, documents, accounts, contracts, deeds, papers, minute books, records and information related in any way to the property of the Company (the "**Property**");
- (b) any and all budgets, accounting records, computer records, computer programs, computer tapes, computer disks, leases and agreements related in any way to the Property;
- (c) any and all data storage, media and programs containing any such information;
- (d) any other records of every nature and kind relating to the Property or the business carried on by the Company;

(items (a) to (d) above being collectively referred to as the "**Information**"); and

- (e) all monies, cheques, post-dated cheques and remittances of every nature and kind whenever and howsoever arising in respect of the Property,

and to provide access to the same to the Monitor or, in the case of the Information, to permit the

Monitor to make, retain and take away copies thereof, and to allow the Monitor immediate, continued and unrestricted access to the Property and the Information and to grant to the Monitor access to and use of accounting services, computer hardware and software and all facilities relating thereto promptly at the request of the Monitor. All Affected Persons are hereby restrained and enjoined from disturbing or interfering with the Monitor and with the exercise by the Monitor of its powers and the performance by the Monitor of his duties hereunder.

3. If any of the Information is stored or otherwise contained in a computer (which term shall include any electronic data processing system) accessible to any of the Affected Persons, such Affected Persons shall, at the request of the Monitor, give the Monitor access to and assistance retrieving such Information in such manner as the Monitor in its discretion considers reasonable and expedient. Without limiting the generality of the foregoing, if the Information is stored on a lap top or other computer that is the property of the Affected Person, the Affected Person shall immediately deliver said computer to the Monitor or its agent so that the Information can be downloaded by the Monitor or its agent. The Monitor will download said Information and return the computer to the Affected Person as quickly as is practicable in the circumstances.

4. The Monitor shall accommodate reasonable requests by one or more of the Company and from their respective former, current and future directors and officers (and their respective agents, advisors, attorneys, accountants or other professionals) to access any original documents provided to the Monitor relating to the relevant Company for the purposes of defending any regulatory or other proceedings involving one or more of those directors and officers or (or their agents, advisors, attorneys, accountants or other professionals) in connection with their business and financial affairs. Any documents or information delivered to the Monitor in furtherance of this Order (i) shall not be not used for any purpose in relation to any regulatory or other proceedings involving the Company, any of their former, current or future directors and officers, and/or any of their respective employees, agents, advisors, attorneys, accounts or other professionals; and (ii) shall be subject to the continuation of any privilege attaching to such information and documents, including but not limited to solicitor-client or attorney-client privilege, litigation privilege, and common interest privilege, which privileges the Monitor shall maintain and uphold.

5. All persons with notice of this Order shall deliver to the Monitor any of the Property in their possession, without prejudice to any person's right to seek a declaration from this Court that they have a claim, charge or security interest in respect of the Property.

6. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Monitor of any person in connection with its appointment and the performance of its powers and duties shall not constitute the Monitor the employer, successor employer or related employer of the employees of the Company within the meaning of the *Employment Standards Act* of British Columbia, the *Pension Benefits Standards Act* of British Columbia, the *Canada Labour Code*, the *Pension Benefits Standards Act* of Canada or any other provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their previous employment by the Company. In particular, the Monitor shall not be liable to any of the employees for any wages (as "wages" are defined in the *Employment Standards Act* of British Columbia), including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

7. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not and shall not be an owner of any of the Property for any purposes.

8. The Monitor is not, and shall not be or be deemed to be, a director, officer or employee of the Company.

9. Notwithstanding anything to the contrary contained in this or any other Order in these proceedings, the Monitor shall not incur any liability or obligation as a result of the enhancement of the Monitor's powers and duties hereunder, the exercise (or refusal to exercise) by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except as may result from gross negligence or wilful misconduct of the Monitor.

10. In the event of a conflict between this Order and any previous Order made in the within proceeding, including the Initial Order, this Order shall govern, but the terms of the Initial Order and all subsequent Orders shall not otherwise be affected by this Order, including without limitation:

- (a) the creation and priority of the Administration Charge (as that term is defined in the Initial Order); and
- (b) the limitation on the Monitor's liability as set forth in paragraphs 29-32 of the Initial Order.


11. The Monitor may, from time to time, apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.

12. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator or similar person of the Company, the business of the Company or the Company.

13. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunals, 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 Company 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 Company and the Monitor and their respective agents in carrying out the terms of this Order.

14. Endorsement of this Order by counsel appearing on this application, other than counsel for the Company, 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 Company
Andrew Crabtree


BY THE COURT.



Registrar



Schedule "A"

List of Counsel

Name of Counsel	Party
Kibben Jackson	The Monitor, Alvarez & Marsal Canada Inc.