



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

NOTICE OF APPLICATION

NAME OF APPLICANTS: Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of 1077 Holdings Co-operative (formerly, Mountain Equipment Co-operative) ("**1077**") and 1314625 Ontario Limited (together with 1077, the "**Petitioners**")

TO: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Monitor to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at **9:00 a.m. on December 7, 2021, via Microsoft Teams videoconference**, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"**.

Part 2: FACTUAL BASIS

A. Background

1. On September 14, 2020, the Petitioners were granted an Initial Order by this Court (the "**Initial Order**"), pursuant to which these proceedings (these "**CCAA Proceedings**") were commenced under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").
2. Among other things, the Initial Order afforded the Petitioners an initial stay of proceedings up to and including September 24, 2020 (the "**Stay Period**") and appointed A&M as the Monitor in these CCAA Proceedings.

3. On September 22, 2020, the Petitioners brought an application (the “**Comeback Application**”) to seek approval of the amended and restated initial order (the “**ARIO**”) to, *inter alia*:
 - (a) seek an extension of the Stay Period through to October 31, 2020;
 - (b) authorize an increased maximum amount of borrowing under the Interim Financing Facility (as defined in the First Report of the Monitor, dated September 24, 2020 (the “**First Report**”) to \$100,000,000;
 - (c) grant a key employee retention plan charge against the assets of the Petitioners in an amount not to exceed \$778,000; and
 - (d) seek approval of the sale approval and vesting order (the “**SAVO**”) to approve the sale transaction (the “**Transaction**”) contemplated by the asset purchase and sale agreement between the Petitioners and 1264686 B.C. Ltd. dated September 11, 2020 for the sale of the Purchased Assets and the vesting of all of the Purchased Assets in the Purchaser (defined below) free and clear of any Encumbrances other than Permitted Encumbrances (as such terms are defined in the SAVO).
4. On September 24, 2020, this Court granted an extension of the Stay Period from September 24, 2020 to September 28, 2020 to allow for the Comeback Application to be heard on September 28, 2020.
5. During the period from September 28, 2020 through to October 1, 2020, in addition to hearing the Comeback Application of the Petitioners, this Court heard several applications, including, *inter alia*, by Plateau Village Properties Inc and Midtown Plaza Inc (together, the “**Landlords’ Application**”), Kevin Harding and Save MEC (together, the “**Members’ Application**”), and the BC Co-op Association and Mutuels Canada (the “**Public Intervenors’ Application**”).
6. On October 2, 2020, this Court dismissed the Landlords’ Application, the Members’ Application, and the Public Intervenors’ Application and granted the ARIO, which included, *inter alia*, an extension of the Stay Period to November 3, 2020, and the SAVO sought by the Petitioners.
7. On October 21, 2020, this Court granted an assignment order to assign all of the rights and obligations of the Petitioners under certain remaining contracts to 1266524 B.C. Ltd. (recently renamed MEC Canada Inc. and referred to herein as the “**Purchaser**”).
8. On October 28, 2020, this Court granted a further extension of the Stay Period to January 20, 2021 to, *inter alia*, provide the Petitioners with sufficient time to complete post-closing matters related to the Transaction and seek an order to expand the powers of the Monitor provided for in the ARIO.
9. On November 12, 2020, an application was filed by a former employee on behalf of certain other former employees of 1077, to be heard on November 24, 2020 (the “**Former Employees’ Application**”), seeking an order from this Court, *inter alia*, approving the appointment of Victory Square Law Office (“**VSLO**”) as representative

counsel to former employees of 1077 in these CCAA Proceedings and granting a charge of \$85,000 over the property of the Petitioners in respect of VSLO's anticipated fees.

10. On November 27, 2020, this Court granted an order enhancing the powers of the Monitor and an order (the "**Claims Process Order**") establishing a claims process (the "**Claims Process**") by which creditors may confirm or prove their claims against 1077 arising prior to the filing date of September 14, 2020 ("**Claims**" and each a "**Claim**") by submitting proofs of their Claims in the prescribed form ("**Proofs of Claim**" and each a "**Proof of Claim**").
11. On December 21, 2020, the Former Employees' Application was dismissed.
12. On April 9, 2021, this Court pronounced an order approving the following reports of the Monitor and the activities contained therein:
 - (a) the Proposed Monitor's Report, dated September 13, 2020;
 - (b) the First Report;
 - (c) the Second Report of the Monitor, dated October 19, 2021;
 - (d) the Third Report of the Monitor, dated October 27, 2020;
 - (e) the Fourth Report of the Monitor, dated November 23, 2020;
 - (f) the Fifth Report of the Monitor, dated January 12, 2021; and
 - (g) the Sixth Report of the Monitor, dated April 1, 2021.
13. On April 29, 2021, the Monitor submitted the seventh report of the Monitor to this Court, which was a special purpose report providing this Court with an update of the Claims Process as well as disclosure of the number and quantum of claims received by the Monitor pursuant to paragraph 32 of the Claims Process Order.
14. This Court has granted the following extensions of the Stay Period to, *inter alia*, provide the Petitioners with sufficient time to complete the Claims Process:
 - (a) on January 15, 2021 to April 9, 2021;
 - (b) on April 9, 2021 to June 25, 2021;
 - (c) on June 23, 2021 to September 28, 2021; and
 - (d) September 28, 2021, to December 10, 2021.
15. As detailed further herein and in the Eleventh Report of the Monitor, dated December 1, 2021 (the "**Eleventh Report**"), the Monitor has made, and continues to make, significant progress in advancing the Claims Process and in resolving Disputed Claims (as that term is defined in the Claims Process Order).

B. The Claims Process

i. Condensed Background on the Claims Process

16. Capitalized terms used but not defined in this section have the meaning ascribed to them in the Claims Process Order.
17. Pursuant to the Claims Process Order, the Monitor commenced the Claims Process on December 11, 2020 by mailing packages containing relevant information and materials necessary to submit Proofs of Claim in the Claims Process (the “**Claims Package**”) to all known employees with a Claim (the “**Employee Claimants**”) and all known other persons with a Claim (the “**Claimants**”). The Monitor also posted a copy of the Claims Package and the Claims Process Order on the Monitor’s Website.
18. On December 14 and 18, 2020, a notice to creditors was published in the Globe and Mail (National Edition) and the Vancouver Sun.
19. Pursuant to the Claims Process Order, the Monitor commenced the Claims Process by mailing 330 Claims Packages to all known potential Claimants and Employee Claimants.

ii. Update on the Claims Process

20. As detailed further in the Eleventh Report, since the commencement of the Claims Process, the Monitor has received 97 Proofs of Claim with a total claim value of approximately \$82.5 million and has responded to 87 Claimants through NORDs, except where the Proof of Claim had been withdrawn by the Claimant, accepted in its entirety by the Monitor, or is pending review by the Monitor.
21. By way of update, and subsequent to filing the Ninth Report of the Monitor, dated September 24, 2021 (the “**Ninth Report**”), the total Accepted Claims have increased by \$16.4 million as a result of the following:
 - (a) settlement agreements have been reached with four additional landlord Claimants, one of which is pending execution of final documentation;
 - (b) settlement agreements have been reached with the four remaining Employee Claimants, whose disputed Claims were previously detailed in the Ninth Report, pending the execution of final documentation by one Employee Claimant;
 - (c) the six remaining trade and other Claimants have withdrawn or otherwise settled their Claims, with one such Claimant still to execute final settlement documentation.
22. Following the Ninth Report, the Monitor received two additional Proofs of Claim totaling approximately \$48,000 from trade creditors. These additional Proofs of Claim are currently under review by the Monitor.
23. The following table is an updated summary of the number and quantum of the Claims submitted, Notices of Revision or Disallowance (“**NORDs**”) issued by the Monitor, Claims accepted by the Monitor, and unresolved Claims that remain subject to dispute (the “**Disputed Claims**”):

1077 Holdings Co-operative and 1314625 Ontario Limited

Summary of Claims

as at November 29, 2021

(in CAD 000's)

	Proofs of Claim		Notice of Revision or Disallowance		Accepted Claims		Disputed Claims	
	Claim		Disallowed		Accepted		Disputed	
	No.	Amount (\$)	No.	Amount (\$)	No.	Amount (\$)	No.	Amount (\$)
Landlord	8	\$ 68,829	8	\$ 72,855	6	\$ 19,992	2	\$ 983
Employee	47	3,750	45	2,105	227	8,830	-	-
Trade and other	40	9,956	32	7,836	14	2,299	-	-
Equity	2	1	2	1	-	-	-	-
Total	97	\$ 82,536	87	\$ 82,796	247	\$ 31,121	2	\$ 983

Accordingly, and as at the date of the Eleventh Report, there are 247 Accepted Claims totaling \$31.1 million that the Monitor has or is deemed to have accepted.

iii. Update on the Disputed Claims

24. At present, and as a result of the extensive settlement discussions and negotiations detailed above, there are only two Disputed Claims, totaling \$983,000, that remain unresolved. These Disputed Claims pertain to the retail store previously located in St. Denis, Quebec (the "**St. Denis Property**").
25. As detailed further in the Ninth Report, the lease in respect of the St. Denis Property was disclaimed effective October 16, 2020. Thereafter, two Proofs of Claim (collectively, the "**St. Denis Claim**") were submitted: one was submitted by the previous landlord, 169159 Canada Inc. ("**169**"), and the second was submitted by Argo Partners ("**Argo**"), a party claiming to have been assigned the St. Denis Claim.
26. The Monitor has engaged in discussions with both 169 and Argo in an effort to resolve: (i) the dispute between 169 and Argo as to which party is entitled to assert the St. Denis Claim; and (ii) the quantum of the St. Denis Claim.
27. Discussions with and between 169 and Argo are ongoing, and the Monitor is hopeful that the parties will be able to reach a resolution of the St. Denis Claim without the need for adjudication by the Court and/or the Claims Officer.

iv. Extension of the Stay Period

28. At this time, the Monitor is seeking an extension of the Stay Period to June 10, 2022, in order to, *inter alia*:
 - (a) resolve the last remaining Disputed Claims;
 - (b) begin the process of making a distribution to affected creditors, whether pursuant to a distribution order or through the preparation/presentation of a plan of compromise and/or arrangement to the creditors and stakeholders of the Petitioners;

- (c) realize on residual assets and/or receivables of the Petitioners, including any trade and customs levy refunds and distributions resulting from the wind-up of the Parktown Project, as defined in the Eleventh Report, which may present material recoveries for the estate; and
- (d) attend to any remaining activities relating to the wind-down of the Petitioners' operations and business.

Part 3: LEGAL BASIS

1. The broad remedial objective of the CCAA is to facilitate a restructuring of a debtor company, rather than a liquidation of assets. Section 11 of the CCAA provides the supervising CCAA judge with the broad statutory authority to make such orders that are necessary to achieve this objective.

Bul River Mineral Corporation (Re), 2014 BCSC 1732 at para 36
Century Services Inc v Canada (Attorney General), 2010 SCC 60 at paras 15-19, 57-66
CCAA, s 11

2. Subsection 11.02(2) of the CCAA provides that the Court may, on an application in respect of a debtor company, and on any terms that the Court may impose, extend the Stay Period "for any period that the court considers necessary".

CCAA, s 11.02(2)(a)

3. Subsection 11.02(3) of the CCAA provides that the Court shall not make an order extending the Stay Period unless:

- (a) the applicant satisfies the Court that circumstances make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the Court that the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, s 11.02

4. In determining whether the appropriate circumstances exist to extend the Stay Period, the Court should inquire whether the order sought advances the remedial purpose of the CCAA.

North American Tungsten Corp (Re), 2015 BCSC 1376 at para 25

5. Extending the Stay Period is appropriate and necessary in the circumstances in order to permit the Monitor to complete the Claims Process and attend to any remaining activities relating to the wind-down of the Petitioners' operations and business.
6. The Seventh Cash Flow Forecast (as defined in the Eleventh Report) indicates that there is sufficient liquidity to continue operating during the requested extension of the Stay Period.
7. No creditor or stakeholder of the Petitioners will be prejudiced by the extension of the Stay Period.

8. The Petitioners (to the extent still relevant) have acted in good faith and with due diligence in these CCAA Proceedings since the pronouncement of the Initial Order.
9. In further support of the relief sought herein, the Petitioners rely on the following:
 - (a) *the CCAA*, and in particular section 11 thereof;
 - (b) *Supreme Court Civil Rules* and, in particular, Rules 8-1 and 13-1 thereof;
 - (c) the inherent and equitable jurisdiction of this Court; and
 - (d) such further and other grounds as counsel may advise and this Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

10. Ninth Report of the Monitor, dated September 24, 2021;
11. Eleventh Report of the Monitor, dated December 1, 2021; and
12. such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the Application will take 20 minutes.

- ☐ This matter is within the jurisdiction of a Master.
- ☒ This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by the Honourable Madam Justice Fitzpatrick, who is seized of these proceedings.

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: December 1, 2021

 for:

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

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 matter 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
- ☒ other

SCHEDULE "A"

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PETITIONERS

SERVICE LIST

[Current to: December 1, 2021]

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<p>Cassels Brock & Blackwell LLP 2200 - 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Mary I.A. Buttery, Q.C. Jared Enns</p> <p>Email: mbuttery@cassels.com jenns@cassels.com sdanielisz@cassels.com</p> <p>Tel: 604-691-6100</p> <p><i>Counsel for the Monitor, Alvarez & Marsal Canada Inc.</i></p>	<p>Dentons Canada LLP 2000 – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John R. Sandrelli Valerie Cross</p> <p>Email: john.sandrelli@dentons.com valerie.cross@dentons.com emma.newbery@dentons.com avic.arenas@dentons.com sarah.howes@dentons.com</p> <p>Tel: 604-687-4460</p> <p><i>Counsel for Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement</i></p>

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<p>Camelino Galessiere LLP 6 Adelaide Street East, Suite 220 Toronto, ON M5C 1H6</p> <p>Attention: Linda Galessiere Jessica Wuthmann</p> <p>Email: lgalessiere@cglegal.ca jwuthmann@cglegal.ca</p> <p>Tel: 416-306-3827</p> <p><i>Counsel for RioCan Reit</i></p>	<p>Kirryn Hashmi Legal Counsel First Capital Realty Inc. 85 Hanna Avenue, Suite 400 Toronto, ON M6K 3S3</p> <p>Email: kirryn.hashmi@fcr.ca</p> <p>Tel: 416.216.2083</p> <p><i>Counsel for First Capital Realty Inc.</i></p>
<p>The Cadillac Fairview Corporation Limited 1100 avenue des Canadiens-de-Montréal Bureau 400 Montréal, QC H3B 2S2</p> <p>Attention: Robert Crepin</p> <p>Email: robert.crepin@cadillacfairview.com</p> <p>Tel: 514-353-2241</p> <p><i>The Cadillac Fairview Corporation Limited</i></p>	<p>Gowling WLG (Canada) S.E.N.C.R.L., s.r.l. 1, Place Ville Marie, bureau 3700 Montréal QC H3B 3P4</p> <p>Attention: François Viau</p> <p>Email: francois.viau@gowlingwlg.com</p> <p>Tel: 514-392-9530</p> <p><i>Counsel for Les Galeries de la Capitale Holdings Inc., managed by Oxford Properties Group</i></p>

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- and -

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*Crestpoint Real Estate Investments Ltd.,
as authorized asset manager on behalf of
0965311 B.C. Ltd.*

<p>Department of Justice – Nova Scotia 6th floor, 1690 Hollis Street Halifax, NS B3J 3J9</p> <p>Attention: Pamela Branton Senior Solicitor Legal Services Division</p> <p>Email: pamela.branton@novascotia.ca catherine.lunn@novascotia.ca agnes.macneil@novascotia.ca</p> <p>Tel: 902-424-7244</p> <p><i>Counsel for Department of Justice (Nova Scotia)</i></p>	<p>Borden Ladner Gervais LLP 1200 - 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention: Ian Graf</p> <p>Email igrf@blg.com</p> <p>Tel: 604-640-4121</p> <p><i>Counsel for Southern Railway of British Columbia Limited</i></p>
<p>Lax O'Sullivan Lisus Gottlieb LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Attention: Matthew P. Gottlieb Andrew Winton Crawford Smith Sapna Thakker</p> <p>Email: mgottlieb@lolg.ca awinton@lolg.ca csmith@lolg.ca sthakker@lolg.ca</p> <p>Tel: 416-598-1744</p> <p>- and -</p> <p>McEwan Cooper Dennis LLP 900 – 980 Howe Street Vancouver, BC V6Z 0C8</p> <p>Attention: J. Kenneth McEwan, Q.C. William Stransky</p> <p>Email: kmcewan@mcewanpartners.com wstransky@mcewanpartners.com</p> <p>Tel: 604-283-7740</p> <p><i>Counsel for Midtown Plaza Inc.</i></p>	<p>The Tax and Revenue Administration 9811 - 109 Street Edmonton, AB TSK 2L5</p> <p>Attention: Tessi Midiburo, Senior Compliance Officer</p> <p>Email: TBF.SCO@gov.ab.ca</p> <p>Tel: 780-644-4230</p> <p><i>Her Majesty The Queen In Right of The Province of Alberta as represented by The Minister of Finance (Income Tax)</i></p> <p>Elliot H. Bridgewater 3232 Morley Trail NW Calgary, AB T2M 4H2</p> <p>Email: ehb@bridgewaterlaw.ca</p> <p>Tel: 403-703-9821</p> <p><i>Counsel for BC Coop Association and Cooperatives and Mutuels Canada</i></p>

<p>Environment Legal Services Department of Justice – Government of Canada 1869 Upper Water St., Suite AH201 Halifax, NS B3J 1S9</p> <p>Attention: J.G. (Jim) Rossiter, Q.C.</p> <p>Email: jim.rossiter@canada.ca</p> <p>Tel: 902-830-2927</p> <p><i>Counsel for Parks Canada Agency</i></p>	<p>Nite Ize, Inc. 5660 Central Avenue Boulder, CO 80301</p> <p>Attention: Clint Todd, Chief Legal Officer</p> <p>Email: ctodd@niteize.com</p> <p>Tel: 303-962-0532</p> <p><i>Counsel for Nite Ize, Inc.</i></p>
<p>Bison Transport 1001 Sherwin Road Winnipeg, MB R3H 0T8</p> <p>Attention: Scott Griffiths, Senior Credit Specialist</p> <p>Email: sgriffiths@bisontransport.com</p> <p>Tel: 204-833-0277</p> <p><i>Bison Transport</i></p>	<p>Blaney McMurtry LLP 1500 – 2 Queen Street East Toronto, ON M5C 3G5</p> <p>Attention: John C. Wolf Brendan Jones</p> <p>Email: jwolf@blaney.com bjones@blaney.com</p> <p>Tel: 416-593-1221</p> <p><i>Counsel for bclMC Realty Corporation</i></p>
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SCHEDULE "B"

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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	TUESDAY, THE 7 TH DAY
MADAM JUSTICE FITZPATRICK)	OF DECEMBER, 2021

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, coming on for hearing at Vancouver, British Columbia, on the 7th day of December, 2021, via Microsoft Teams videoconference; AND ON HEARING Mary I.A. Buttery, Q.C., counsel for the Monitor and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Ninth Report of the Monitor, dated September 21, 2021, and the Eleventh Report of the Monitor, dated December 1, 2021;

THIS COURT ORDERS AND DECLARES THAT:

1. The stay of proceedings provided for in the Amended and Restated Initial Order, pronounced in these proceedings on October 2, 2020, as extended by the Orders pronounced on October 28, 2020, January 15, 2021, April 9, 2021, June 23, 2021, and September 28, 2021, is hereby extended to June 10, 2022.

2. Endorsement of this Order by counsel appearing on this application, 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