



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 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 6, 2022, 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 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 granted 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 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. In addition to the foregoing, 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;
 - (d) September 28, 2021, to December 10, 2021;
 - (e) December 10, 2021, to June 10, 2022; and
 - (f) June 10, 2022 to December 9, 2022.

B. Update on the Claims Process and the Disputed Claims

15. As detailed further at section 5.0 of the Thirteenth Report, there are 248 Accepted Claims totaling \$31.0 million that the Monitor has or is deemed to have accepted.

16. There are two Disputed Claims consisting of two duplicative Proofs of Claims totaling \$983,000 (the “**St. Denis Claim**”), which were submitted in respect of the retail store previously located in St. Denis, Quebec. One Proof of Claim was submitted by the former landlord, 169159 Canada Inc. (“**169**”), and a second submitted by Argo Partners (“**Argo**”), a party claiming to have been assigned the St. Denis Claim.
17. Despite efforts by the Monitor, the dispute between 169 and Argo remains unresolved. Accordingly, and as directed by the Distribution Order, the Monitor has established a reserve fund of \$733,000 (the “**St. Denis Reserve**”), which is the amount equivalent to the larger of the two St. Denis Claims.
18. The St. Denis Reserve will be held in trust by the Monitor pending a resolution of the entitlement and quantum of the St. Denis Claim and, as further directed by the Distribution Order, no distributions will be made in connection with the St. Denis Claim until such time as the dispute between 169 and Argo has been resolved.

C. The Distribution Order

19. On March 29, 2022, the Court pronounced an order (the “**Distribution Order**”) granting, *inter alia*, the following relief:
 - (a) approval of the following distribution methodology (the “**Distribution Methodology**”), to be applied by the Monitor in administering any distributions in these CCAA Proceedings (the “**Distributions**”):
 - (i) all Claims against the Petitioners, including Pre-filing Claims, Restructuring Period Claims, D&O Claims, and Employee Claims, which have been allowed by the Monitor accordance with the Claims Process Order, shall be accepted and valid Claims (the “**Accepted Claims**”) for purposes of participating in any Distributions;
 - (ii) directing the Monitor to establish and maintain a reserve fund for Claims that are subject to a Notice of Revision or Disallowance and/or a Notice of Dispute, and are therefore not Accepted Claims (the “**Disputed Claims**”);
 - (iii) all Claims against the Petitioners, except for the Disputed Claims, that were: (i) not asserted or preserved as required by the Claims Process Order, or (ii) were otherwise disallowed by the Monitor pursuant to the Claims Process Order (and which are not Disputed Claims), shall be forever barred and extinguished (each such claim, a “**Barred and Extinguished Claim**”), and any such person asserting a Barred and Extinguished Claim shall not be entitled to participate in the Distributions;
 - (iv) approval of a “top-up” payment to certain Employee Claimants, in lieu of the payments under the Wage Earners Protection Program (the “**WEPP**”) to which they would otherwise have been entitled, and allocating the total “top-up” amounts to the other Employee Claimants and Claimants on a *pro rata* basis,
 - (b) authorizing the Petitioners to make one or more cash Distributions to each Claimant and Employee Claimant holding an Accepted Claim; and

- (c) confirming that the Distributions made to the Employee Claimants shall be in lieu of any and all amounts that might have otherwise received from Service Canada, through its administration of the WEPP.

20. In addition to the Distribution Order, on March 29, 2022, this Court also pronounced an order sealing the confidential appendix appended to the Twelfth Report of the Monitor, dated March 23, 2022 (the **"Twelfth Report"**), on the basis that it contained personal and sensitive details pertaining to the Employee Claimants.

D. Update on the Interim Distribution

21. As detailed further in the Thirteenth Report of the Monitor, dated May 26, 2022 (the **"Thirteenth Report"**), and in accordance with the terms of the Distribution Order, the Monitor is in the process of arranging for an interim distribution (the **"Interim Distribution"**) to be made to all Claimants and Employee Claimants holding Accepted Claims before June 3, 2022.

22. As detailed in the table below, the Interim Distribution will total \$23.3 million and represents 75% of the total Accepted Claims:

1077 Holdings Co-operative and 1314625 Ontario Limited Interim Distribution to Claimants as at May 20, 2022 (in CAD 000's)			
	Accepted Claims		
	No.	Accepted Amount (\$)	Interim Distribution
Landlord	5	\$ 19,901	\$ 14,925
Employees	228	8,980	6,735
Trade and other	15	2,151	1,613
	248	\$ 31,031	\$ 23,273
Recovery to Claimants			75%

23. In accordance with the Distribution Methodology, the Interim Distribution will be made as follows:

- (a) each Claimant holding an Accepted Claim will receive a pro rata distribution of their Accepted Claim amount;
- (b) each Employee Claimant holding an Accepted Claim will receive a pro rata distribution of their Accepted Claim amount, net of applicable withholding taxes, EI overpayments, and other statutory deductions, if any;
- (c) the distribution will be made in Canadian dollars;
- (d) no distribution will be made to the holders of the disputed St. Denis Claim until such time as the dispute between 169 and Argo has been resolved; and

- (e) the distributions made to Employee Claimants shall be in lieu of any and all amounts they might have otherwise received from Service Canada, through its administration of WEPP, had a determination been made under subsection 5(5) of Wage Earners Protection Program Act.
- 24. An announcement will be posted on the Monitor's Website once the Interim Distribution has been completed.
- 25. The "top-up" payment payable to those Employee Claimants entitled to such a payment under the Distribution Order (and in accordance with the Distribution Methodology) will be calculated at the time a final distribution is made.
- 26. The quantum of the Interim Distribution will allow the Monitor to retain a sufficient holdback of funds in respect of the St. Denis Reserve, make meaningful further distributions to Claimants and Employee Claimants in connection with their Accepted Claims, as well as to fund administration and other costs for the pendency of the CCAA Proceedings.
- 27. The Monitor anticipates that it will make a final distribution following the resolution of all residual matters pertaining to the CCAA Proceedings, including the resolution of the Disputed Claims and collection of all anticipated receipts, which is projected to occur in late fall of 2022.
- 28. The total anticipated recovery to Claimants continues to be in the range of 90% of their Accepted Claim. This is consistent with the analysis that was previously presented by the Monitor at paragraph 7.8 of the Twelfth Report.

E. Update on Activities of the Monitor

- 29. Since the filing of the Thirteenth Report, the Monitor has been engaged in the following activities:

Administering the Claims Process and Interim Distributions

- (a) administering the Claims Process in accordance with the Claims Process Order (including resolving the final Disputed Claim and dealing with numerous enquiries with Claimants and Employee Claimants);
- (b) making two interim distributions totaling approximately \$28.2 million to Claimants and Employee Claimants holding Accepted Claims, in accordance with the Distribution Methodology as set out in and approved by the Distribution Order;
- (c) corresponding and following up with numerous Claimants and Employee Claimants and/or their legal counsel regarding their distribution payments, as well as outstanding cheques and updating addresses and contact information as required;
- (d) coordinating with a third-party payroll service provider to assist the Monitor in completing the interim distributions and Records of Employment for Employee Claimants with Accepted Claims;

Monitoring of Cash Receipts & Disbursements

- (e) preparing and reviewing weekly payments, as well as reconciling cash receipts and disbursements of the trust accounts of the Monitor;

Asset Realization and Recovery Matters

- (f) advancing the wind-down of 1077's interest in Park Towns Developments Limited Partnership, a residential townhouse project located in Toronto, Ontario (the "**Park Towns Project**");
- (g) corresponding with the Canada Border Services Agency ("**CBSA**") and customs consultants, Tradewin, to address CBSA's request for amendments and other enquiries from CBSA and the Canadian Food Inspection Agency;
- (h) coordinating and advancing the recovery of certain customs levies applied by the CBSA for importation of certain goods with the assistance of KPMG LLP;

Statutory and Other Responsibilities

- (i) preparing the Fourteenth Report and Ninth Cash Flow Forecast;
- (j) reconciling and filing of post-filing GST returns and corresponding with the Canada Revenue Agency ("**CRA**") regarding post-filing refunds;
- (k) corresponding with the Ministry of Finance regarding the assessment and payment of the British Columbia employer health tax and making payment of same;
- (l) corresponding with the British Columbia Workers' Compensation Board regarding calculation and reconciliation of post-filing benefits premiums and making payment of same;
- (m) attending to numerous telephone calls with and correspondence received from the CRA regarding trust audit requests, reconciliation of pre-filing payroll withholdings remittances, and other related matters;
- (n) receiving and responding to telephone and email enquiries from trade creditors, members, former employees and other interested parties; and

Conducting Review of CCAA Court Materials

- (o) reviewing draft Court application materials in consultation with the Monitor's legal counsel.

F. Extension of the Stay

30. At this time, the Monitor is seeking an extension of the Stay Period to March 30, 2023, in order to, *inter alia*:

- (a) complete the Interim Distribution;
- (b) 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 Park Towns Project, which may present material recoveries for the estate; and

- (c) 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 to December 9, 2022, is appropriate and necessary in the circumstances, as it will limit the need for the Monitor to schedule, and incur professional fees and other costs relating to, further applications before this Court while it focuses on:

- (a) resolving and completing the outstanding issues, including the St. Denis Claim and other matters related to winding down the Petitioners' operations and business; and
- (b) completing the Interim Distribution and making future distribution(s) to the Petitioners' unsecured creditors.

6. The Eighth Cash Flow Forecast, attached to the Thirteenth Report as Appendix "A", demonstrates 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. Twelfth Report of the Monitor, dated March 23, 2022;
11. Thirteenth Report of the Monitor, dated May, 26 2022;
12. Fourteenth Report of the Monitor, to filed and served; and
13. such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the Application will take 45 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: November 28, 2022



Signature of Lawyer for the Applicant
Osler, Hoskin & Harcourt LLP
(Mary I.A. Buttery, K.C.)

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

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	TUESDAY, THE 6 TH DAY
)	
MADAM JUSTICE FITZPATRICK)	OF DECEMBER, 2022

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 6th day of December, 2022, via Microsoft Teams videoconference; AND ON HEARING Mary I.A. Buttery, K.C., counsel for the Monitor and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Twelfth Report of the Monitor, dated March 23, 2022; the Thirteenth Report of the Monitor, dated May 26, 2022; and the Fourteenth Report of the Monitor, dated _____;

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,

September 28, 2021, December 7, 2021, and June 3, 2022 is hereby extended to March 31, 2023.

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:

Lawyer for the Applicant
Osler, Hoskin & Harcourt LLP
(Mary I.A. Buttery, K.C.)

BY THE COURT

REGISTRAR

SCHEDULE “A”

List of Counsel

Name of Counsel	Party Represented

NO. S-209201
VANCOUVER REGISTRY

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ORDER MADE AFTER APPLICATION

OSLER, HOSKIN & HARCOURT LLP

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(Attention: Mary I.A. Buttery, K.C.)

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