



No. S-171026
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF
SHOEME TECHNOLOGIES LIMITED.
SHOES.COM TECHNOLOGIES INC.**

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

- and -

SHOEME TECHNOLOGIES LIMITED
SHOES.COM TECHNOLOGIES INC.

RESPONDENT

NOTICE OF APPLICATION

Name of Applicant: Alvarez & Marsal Canada Inc. (the “**Receiver**”) in its capacity as Receiver of Shoeme Technologies Limited (“**Shoeme**”) and Shoes.com Technologies Inc. (“**Shoes.com**” and, together with Shoeme, the “**Debtors**”)

On Notice To: Deans Knight Capital Management Ltd.

And To: The parties listed on the Service List attached as **Schedule “A”**

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on June 30, 2017 at 9:45 a.m. for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order that the time for service of the Notice of Application and supporting materials is hereby abridged and properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with;
2. An Order that the Receiver is hereby authorized to make payment to Deans Knight Capital Management Limited (“**Deans Knight**”) in the amount of \$10,801,608, plus per diem accrued interest and any other recoverable fees and expenses, from the proceeds of the sale of certain assets of the Debtors to Maynards Industries Ltd. pursuant to the Order pronounced by

the Honourable Mr. Justice Grauer on February 1, 2017, the proceeds of the sale of certain assets of Shoes.com to Wal-Mart Stores, Inc. pursuant to the Order pronounced by The Honourable Mr. Justice Warren on March 31, 2017, the proceeds of the sale of certain assets of Shoeme to DSW Shoe Warehouse, Inc. pursuant to the Order pronounced by The Honourable Mr. Justice Groves on April 5, 2017, and certain other funds held by the Receiver from time to time (collectively, the “**Receivership Funds**”);

3. An Order that the Receiver is hereby authorized to make payment to Geodis Logistics LLC (“**Geodis**”) payment in the aggregate amount of \$300,937, from the Receivership Funds in satisfaction of its possessory statutory lien claim (the “**Geodis Lien Claim**”) in respect of the assets of Shoeme, which were located at the warehouse at 300 Kennedy Road South, Unit B, Brampton, Ontario;

4. An Order that the Receiver is hereby authorized and directed to hold the balance of the Receivership Funds in trust pending further order of this Court, provided that the Receiver may make such expenditures and payments as are permitted pursuant to the Receivership Order pronounced by the Honourable Mr. Justice Macintosh on February 3, 2017 in respect of Shoeme and the Receivership Order pronounced by the Honourable Mr. Justice Grauer on February 15, 2017 in respect of Shoes.com;

5. An Order requesting the aid and recognition of any domestic or foreign court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order;

6. An Order that the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order; and

7. Such other relief as counsel may advise and this Honourable Court may grant.

Part 2: FACTUAL BASIS

8. Pursuant to the credit and security agreement dated March 31, 2015 among Wells Fargo Bank, National Association (“**Wells Fargo**”), as lender, Onlineshoes.com, Inc. and Shoes.com, Inc., as borrowers, and Shoes.com, *inter alia*, as guarantor, Shoes.com was indebted to Wells Fargo in the approximate amount of USD\$4,222,092.09, plus attorneys’ fees and costs incurred on and after May 6, 2017, in respect of which, Shoes.com granted in favour of Wells Fargo a security interest over certain intellectual property and domain names of Shoes.com;

9. Pursuant to, *inter alia*, the debenture purchase agreement dated December 12, 2014 among Shoes.com and Deans Knight, in its capacity as portfolio manager on behalf of certain investors and the secured convertible debentures dated December 12, 2014 and executed by, *inter alia*, Shoes.com and Shoeme in connection therewith, Shoes.com and Shoeme are indebted to Deans Knight in the aggregate amount of \$10,801,608, plus per diem accrued interest and any other recoverable fees and expenses, in respect of which each of Shoes.com

and Shoeme has granted a security interest in favour of Deans Knight over all of its present and after-acquired personal property;

10. Pursuant to a secured convertible note dated December 12, 2014 and executed by Shoes.com and Shoes.com Holdings (USA), Inc. in favour of Caleres Investment Company, Inc. (formerly Brown Shoe Investment Company, Inc.) ("**Caleres**") and the guarantee and security agreement dated December 12, 2014 granted by, *inter alia*, Shoes.com and Shoeme in favour of Caleres, Shoes.com and Shoeme are indebted to Caleres in the approximate amount of USD\$7,500,000, in respect of which each of Shoes.com has granted in favour of Caleres a security interest in, *inter alia*, certain domain names and in respect of which Shoeme has granted in favour of Caleres a security interest in, *inter alia*, its inventory and collateral records;

11. Geodis has asserted, *inter alia*, the Geodis Lien Claim in the amount of \$300,937 with respect to certain unpaid warehousing and logistics services provided by Geodis to Shoeme prior to the date of the receivership of Shoeme;

12. On February 2, 2017, an order appointing a general receiver (the "**US Receiver**") in the matter of Shoes.com, Inc. and Onlineshoes.com, Inc. (affiliates of the Debtors) was entered by the Superior Court of Washington for King County (the "**US Court**");

13. On February 3, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoeme pursuant to the Receivership Order pronounced by the Honourable Mr. Justice Macintosh on that date;

14. On February 15, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoes.com pursuant to the Receivership Order pronounced by the Honourable Mr. Justice Grauer on that date;

15. On February 15, 2017, certain inventory and fixtures of Shoeme were sold to Maynards Industries Ltd. (the "**Maynards Sale**") pursuant to the Order pronounced by the Honourable Mr. Justice Grauer on that date;

16. On March 31, 2017, certain domain names and related intellectual property of Shoes.com were sold to Wal-Mart Stores, Inc. (the "**Wal-Mart Sale**") pursuant to the Order pronounced by the Honourable Mr. Justice Warren on that date;

17. On April 5, 2017, certain inventory, domain names and intellectual property of Shoeme were sold to DSW Shoe Warehouse, Inc. (the "**DSW Sale**") pursuant to the Order pronounced by the Honourable Mr. Justice Groves on that date;

18. The proceeds of the Maynards Sale, the Wal-Mart Sale and the DSW Sale (collectively, the "**Sale Proceeds**") and the rest of the Receivership Funds are held in the Receiver's trust account pending further order of this Court;

19. On June 12, 2017, the US Receiver was granted an Order by the US Court providing for, among other things, allowance of the secured claim of Wells Fargo in the amount of US\$4,222,092.09 plus attorneys' fees and costs incurred on and after May 6, 2017 (the "**Wells**");

Fargo Claim”) in the United States receivership proceedings and authorization for the US Receiver to pay the Wells Fargo Claim;

20. On June 13, 2017, the US Receiver confirmed that the Wells Fargo Claim was paid in full by the US Receiver, subject to an adjustment for certain recoverable fees and expenses and subject to a refund from Wells Fargo in due course related to certain expired letters of credit. Accordingly, the Receiver understands that there will be no further claims from Wells Fargo against Shoes.com and Deans Knight will be the senior secured creditor of both Shoes.com and Shoeme;

21. Pursuant to the pre-receivership invoices provided by Geodis and pursuant to the *Repair and Storage Liens Act* (Ontario), Geodis has priority over Deans Knight and any other secured creditor up to the amount of the Geodis Lien Claim and is deemed to continue to have possession of the inventory sold to DSW Shoe Warehouse, Inc. pursuant to the DSW Sale; and

22. The Receiver estimates that, following payment of the Geodis Lien Claim, the accrued professional fees in the Receiverships and, the estimated costs to complete the administration of the two receivership estates of Shoes.com and Shoeme, the Receivership Funds are sufficient to pay out Deans Knight in full with a surplus of approximately \$1,400,000 available for subordinate secured creditors.

Part 3: LEGAL BASIS

23. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

24. *Business Corporations Act*, S.B.C. 2002, c. 57; and

25. the inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

26. The Receivership Order in respect of Shoeme granted on February 3, 2017;

27. The Receivership Order in respect of Shoes.com granted on February 15, 2017;

28. The Order of the US Court granted on June 12, 2017;

29. The Receiver’s Third Report dated June 19, 2017; and

30. Such other material as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take 15 minutes.

☐ This matter is within the jurisdiction of a master.

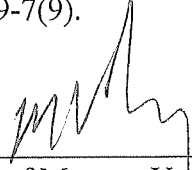
☒ This matter is not within the jurisdiction of a master.

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: June/ 19 /2017



Signature of Magnus Verbrugge

☐ applicant ☒ lawyer for applicant(s)

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

SCHEDULE "A"

SERVICE LIST
(UPDATED ON JUNE 19, 2017)

NO. S-171026
VANCOUVER REGISTRY

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BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John R. Sandrelli Tevia Jeffries</p> <p>Telephone: 604-657-4460 Fax: 604-683-5214</p> <p>Email: john.sandrelli@dentons.com Email: tevia.jeffries@dentons.com Email: Miriam.dominguez@dentons.com</p> <p><i>Counsel for Deans Knight Capital Management Ltd.</i></p>	<p>Michael, Evrensel & Pawar LLP Royal Ctr., 1055 Georgia St. W., Suite 1750, Stn Royal Ctr. Vancouver, British Columbia V6E 3P3</p> <p>Attention: Andrew Hennigar Telephone: (604) 891-1184 Email: ahennigar@meplaw.ca</p> <p><i>Counsel for Shoeme Technologies Limited</i></p>
<p>Brown Shoe Investments Company Inc. 8300 Maryland Avenue St. Louis MO 63105</p>	<p>Gowling WLG (Canada) LLP Suite 2600, 160 Elgin Street Ottawa, ON K1P 1C3</p> <p>Attention: Lorne Segal Telephone: 613-786-0141 Fax: 613-788-3435 Email: lorne.segal@gowlingwlg.com Email: Garrett.Hamel@gowlingwlg.com</p> <p><i>Counsel for Caleres Investment Company, Inc.</i></p>

<p>Alvarez & Marsal Canada Inc. 400 Burrard Street Suite 1680, Commerce Place Vancouver, BC V6C 3A6</p> <p>Attention: Todd Martin Tom Powell Marianna Lee</p> <p>Telephone: 604-638-7440 Fax: 604-638-7441 E-mail: tmartin@alvarezandmarsal.com Email: tpowell@alvarezandmarsal.com Email: marianna.lee@alvarezandmarsal.com</p> <p><i>Receiver</i></p>	<p>Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention: Magnus C. Verbrugge Elly Bahrami</p> <p>Telephone: 604.640.4198 Fax: 604.622.5898</p> <p>Email: MVerbrugge@blg.com Email: ebahrami@blg.com</p> <p><i>Counsel for Alvarez & Marsal Canada Inc.</i></p>
<p>Sports Industry Credit Association 245 Victoria Ave., Suite 800 Westmount, Quebec, H3Z 2M6</p> <p>Attention: Brian Dabarno Senior Credit Analyst Tel: (514) 931-5561 Fax: (514) 931-2896</p> <p>Email: brian@sica.ca</p>	<p>Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver British Columbia V6C 3L2</p> <p>Attention: Heather M.B. Ferris</p> <p>Telephone: 604.631.9145 Fax: 604.669.1620 Email: hferris@lawsonlundell.com Email: asimister@lawsonlundell.com</p> <p><i>Counsel for Roger Hardy and Hardy Capital Corporation</i></p>
<p>RCAP Leasing Inc. 5575 North Service Rd, Ste 300 Burlington, ON L7L 6M1</p>	<p>National Leasing Group Inc. 1525 Buffalo Place Winnipeg, MB R3T 1L9</p>
<p>Roynat Inc. Suite 1500, 4710 Kingsway St. Burnaby, BC V5H 4M2</p>	<p>Blue Chip Leasing Corporation 156 Duncan Mill Rd, Unit 16 Toronto, ON M3B 3N2</p>
	<p>Gowling WLG (Canada) LLP 550 Burrard Street, Suite 2300, Bentall 5 Vancouver, BC, V6C 2B5</p> <p>Attention: Colin Brousson</p> <p>Telephone: 604.891.2286 Fax: 613.683.3558 Email: colin.brousson@gowlingwlg.com</p> <p><i>Counsel for Bank of Montreal</i></p>

<p>Bennett Jones LLP 3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4</p> <p>Attention: Mark S. Laugesen Telephone: 416 777 4802 Fax: 416 863 1716 Email: laugesenm@bennettjones.com</p> <p><i>Canadian Counsel for Wells Fargo</i></p> <p>Lane Powell 1420 Fifth Ave, Suite 4200 Seattle, WA 98111-9402</p> <p>Attention: Gregory Fox Annie Norby</p> <p>Telephone: 206.223.7129 Email: foxg@lanepowell.com Email: NorbyA@LanePowell.com</p> <p><i>US Counsel for Wells Fargo</i></p>	<p>Chaitons LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p>Attention: Harvey G. Chaiton Telephone: 416.218.1129 Fax: 416.218.1849 Email: harvey@chaitons.com</p> <p><i>Counsel for Geodis</i></p>
<p>Rosenthal & Rosenthal, Inc. 1370 Broadway, 3rd Floor New York, YU 10018</p> <p>Attention: Anthony DiTirro Telephone: 212.356.1452 Fax: 212.356.3452 Email: TDiTirro@rosenthalinc.com</p> <p><i>Counsel for Dolce Vita Footwear, Report Footwear and Steve Madden</i></p>	<p>Schwabe, Williamson & Wyatt 1211 SW Fifth Avenue Suite 1500 Portland, OR 97204</p> <p>Attention: Alex Poust Telephone: 503-796-2913 Cell: 503-381-4301 Email: apoust@schwabe.com</p> <p><i>US Counsel for Oswego Group, LLC d/b/a Inverness Group, Receiver</i></p> <p>Oswego Group LLC PO Box 861 Lake Oswego, OR 97034</p> <p>Attn: John Davidson</p>
<p>Gall Legge Grant and Munroe LLP 1000 – 1199 West Hastings Street Vancouver BC V6E 3T5</p> <p>Attention: Wendy Zhang Telephone: (604) 891-1166 Fax: (604) 669-5101 E-mail: wzhang@glgmlaw.com</p> <p><i>Counsel for 0999849 B.C. Ltd.</i></p>	<p>McMillan LLP Royal Centre, 1055 W. Georgia Street, Suite 1500, PO Box 11117 Vancouver BC V6E 4N7</p> <p>Attention: Peter Reardon Telephone: (604) 691.7460 E-mail: peter.reardon@mcmillan.ca</p> <p><i>Counsel for Wal-Mart Stores, Inc.</i></p>

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Attention: Bradley R. Duncan

Telephone : (206) 470.7625

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US Counsel for Daniel Gerler

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
- ☒ other

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RESPONDENT

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