



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: 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 November 5, 2018 at 9:45 a.m. for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order that the activities of the Receiver, as set out in paragraph 3.1 of the Receiver’s fifth report dated September 18, 2018 (the “**Fifth Report**”), be approved.

2. An Order that the Receiver's Statement of Receipts and Disbursements, as set out in paragraph 4.1 to 4.7 of the Fifth Report, be approved.

3. An Order that the fees and disbursements of the Receiver and its legal counsel, as set out in the Fifth Report and in the Affidavit #1 of Magnus Verbrugge sworn on October 17, 2018 (the "**Fee Affidavit**"), be approved.

4. An Order that the Receiver be authorized to distribute and pay the remaining cash in the Receiver's bank account, in an amount of approximately \$86,000, as follows:

- (a) up to \$5,000 to satisfy the Receiver's outstanding accounts for its final estimated account in this matter;
- (b) up to \$5,000 to Borden Ladner Gervais LLP ("**BLG**") for its final estimated account in this matter; and
- (c) the balance, being approximately \$76,000, to Caleres Investment Company, Inc. ("**Caleres**"),

and to the extent the final accounts of the Receiver or BLG are less than the estimated amounts required to complete this matter, the final distribution to Caleres will be increased accordingly.

5. An Order that upon the Receiver making the payments set out in paragraph 4 above, and upon the Receiver filing a certificate of discharge in the form attached as **Schedule "B"** hereto (the "**Certificate of Discharge**") with this Honourable Court, the Receiver will be discharged as the Receiver of the assets, undertaking and property of the Debtors, provided that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver, in its capacity as Receiver.

6. An Order that the completion of the Receiver's duties shall be evidenced, and its final discharge shall be effected by the Receiver filing the Certificate of Discharge with this Honourable Court.

7. 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.

8. 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.

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

Part 2: FACTUAL BASIS

Receivership Proceedings

1. On February 3, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoeme pursuant to the Shoeme Receivership Order and on February 15, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoeme's parent company, Shoes.com, pursuant to the Shoes.com Receivership Order (collectively, the "**Canadian Receivership Proceedings**").

2. On February 2, 2017, Oswego Group LLC, doing business as Inverness Group (the "**US Receiver**") was appointed as general receiver for the estates of Shoes.com, Inc. and Onlineshoes.com, Inc. (collectively, the "**US Entities**") pursuant to an Order entered by the Superior Court of Washington for King County (the "**US Receivership Proceedings**").

3. The Debtors and the US Entities are related companies. The Receiver and the US Receiver have been cooperating and communicating with one another in order to administer

the Canadian Receivership Proceedings and the US Receivership Proceedings in conjunction with one another.

Interim Distribution Order

4. Pursuant to the Order (the “**Interim Distribution Order**”) pronounced by the Honourable Mr. Justice Voith on June 30, 2017, this Honourable Court directed and authorized that, following the payment in full to the senior secured creditor of Shoes.com, Wells Fargo Bank, N.A. (“**Wells Fargo**”), from the proceeds of the concurrent US Receivership Proceedings, the Receiver distribute certain sale proceeds in respect of the Canadian Receivership Proceedings, as follows:

- (a) to Deans Knight Capital Management Limited (“**Deans Knight**”) in the amount of \$10,801,608, plus interest and other recoverable fees and expenses, in respect of its security interest in all present and after-acquired personal property of Shoeme and all present and after-acquired personal property of Shoes.com, subordinate to Wells Fargo;
- (b) to Geodis Logistics LLC (“**Geodis**”) in the amount of \$300,937, in satisfaction of its statutory lien claim in respect of Shoeme’s assets located at 300 Kennedy Road South, Unit B, Brampton, Ontario; and
- (c) that the Receiver hold the balance of the proceeds in connection with the Canadian Receivership Proceedings in trust pending further order of this Honourable Court.

5. On June 13, 2017, the US Receiver confirmed that Wells Fargo’s claim was paid in full by the US Receiver, and on July 7, 2017 the Receiver paid the amount of \$10,801,608 plus interest and other recoverable fees and expenses to Deans Knight and the amount of \$300,937 to Geodis, in accordance with the Interim Distribution Order.

Second Interim Distribution Order

6. As a result of the payments to Wells Fargo, Deans Knight and Geodis, there were no further claims against the Debtors from those parties and Caleres became the senior secured creditor of both of the Debtors.

7. Pursuant to the Order (the “**Second Interim Distribution Order**”) pronounced by the Honourable Mr. Justice Silverman on January 16, 2018, this Honourable Court directed and authorized the Receiver to distribute the amount of \$682,000 to Caleres from the Receivership Funds.

8. Following the payments made by the Receiver pursuant to the Interim Distribution Order and the Second Interim Distribution Order, the Receiver currently holds approximately \$86,000 (the “**Holdback Funds**”) in its trust accounts in connection with the Canadian Receivership Proceedings.

9. The Receiver proposes to:

- (a) retain \$5,000 from the Holdback Funds for final payment of its estimated fees and expenses to conclude this matter;
- (b) make a distribution in the amount of \$5,000 from the Holdback Funds to BLG for final payment of BLG’s estimated fees and expenses to conclude this matter; and
- (c) make a final distribution to Caleres in the amount of \$76,000.

Activities of the Receiver

10. The activities of the Receiver since the Receiver’s fourth report dated January 3, 2018 are summarized at paragraph 3.1 of the Fifth Report, which is being filed concurrently with this Notice of Application. Significant activities of the Receiver included, among other things:

- (a) communicating with various stakeholders including Caleres;
- (b) making the distributions set out in the Second Interim Distribution Order;

- (c) engaging with the US Receiver in connection with the US Receivership Proceedings; and
- (d) preparing the Fifth Report.

Professional Fees and Disbursements

11. In connection with these proceedings, it was necessary that the Receiver incur professional and legal fees. The professional fees and legal fees incurred by the Receiver are described at paragraphs 5.1 to 5.6 of the Fifth Report, and further detail is provided in the Fee Affidavit. Copies of the relevant invoices, with detailed narratives, are attached as Exhibits to the Fee Affidavit.

12. From February 3, 2017 to September 11, 2018, the Receiver billed fees, disbursements and taxes of approximately \$551,000. The work completed by the Receiver was delegated to the appropriate professionals in the Receiver's organization based on seniority and hourly rates. The hourly rates for each of the Receiver's professionals and the time per professional are set out in Appendix "A" of the Fifth Report.

13. From February 3, 2017 to September 11, 2018, the Receiver's legal counsel, BLG, billed fees, disbursements and taxes of approximately \$156,000. The hourly rates for each of the BLG legal professionals and the time per professional are set out in Exhibit "N" to the Fee Affidavit.

14. Michael, Evrensel & Pawar LLP ("**MEP**"), which acted as legal counsel to the Debtors prior to the Canadian Receivership Proceedings, billed approximately \$1,000, inclusive of taxes, for services rendered to the Receiver.

15. Norton Rose Fulbright Canada LLP ("**NRF**"), which was retained by the Receiver to conduct an independent legal review of the validity and enforceability of the security held by Deans Knight and Caleres as against Shoes.com, billed approximately \$11,000, inclusive of taxes, for services rendered to the Receiver.

16. The Receiver has reviewed the accounts of BLG, MEP and NRF (collectively, the "**Receiver's Counsel**") and has confirmed that all services described in the accounts were

rendered to the Receiver by each of the Receiver's Counsel and that the Receiver believes that all charges in the accounts of each of the Receiver's Counsel are fair, reasonable, and consistent with the market for such legal services in British Columbia.

Final Distribution and Discharge

17. The Receiver is seeking its discharge to become effective upon filing of the Certificate of Discharge with this Honourable Court confirming that all remaining matters are concluded.

Part 3: LEGAL BASIS

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
2. *Business Corporations Act*, S.B.C. 2002, c. 57; and
3. the inherent jurisdiction of this Court.

Approval of Fees and Disbursements

4. In insolvency proceedings, in assessing whether the fees of professionals and their counsel ought to be approved, the Court considers whether those fees and disbursements are "fair and reasonable".

Redcorp Ventures Ltd. (Re), 2016 BCSC 188 at para. 19 [*Redcorp*] .

Confectionately Yours Inc., Re (2002), 36 C.B.R. (4th) 200 (Ont. C.A.) at para. 35
[*Confectionately Yours*].

5. In order for the Court to make a determination of whether fees and disbursements are fair and reasonable, the Court ought to have evidence regarding the fees to be approved that discloses: (i) the name of each person who rendered services; (ii) the dates on which the services were rendered; (iii) the time expended each day; and (iv) the rate charged and the total charges for each of the categories of services rendered.

Confectionately Yours at para. 37.

6. The Court considers a number of factors in assessing whether fees are reasonable, including: (i) the nature, extent, and value of the assets, (ii) the complications and difficulties encountered by the professionals; (iii) the time spent by the professionals; (iv) the professionals' knowledge, experience, and skill, (v) the diligence and thoroughness displayed by the professionals; (vi) the responsibilities assumed, (vii) the results of the efforts, and (viii) the cost of comparable services.

HSBC Bank Canada v. Maple Leaf Loading Ltd., 2014 BCSC 2245 at para. 11 [*Maple Leaf*].

Bank of Montreal v. Nican Trading Co. Ltd. (1990), 43 B.C.L.R. (2d) 315 (C.A.).

7. Similar factors are considered on the assessment of the fees and disbursements of legal counsel, including (i) the time expended, (ii) the complexity of the matter, (iii) the degree of responsibility assumed by the lawyers, (iv) the amount of money involved, including proceedings after realization, (v) the degree of skill of the lawyers involved, (vi) the results achieved, and (vii) the client's expectations as to legal fees.

Maple Leaf at para. 12.

Redcorp at para. 33.

8. The Second Report, and in particular Appendices E and F, sets out particulars of the time spent, and professionals involved, throughout this matter. The Receiver has reviewed all of the accounts and is of the view that fees and disbursements incurred by it and its legal counsel were necessary and reasonable in light of the work required and the complexity of the issues raised throughout these proceedings. As a result, the Receiver requests that this Honourable Court approve its fees and the fees of its legal counsel.

Approval of Receiver's Activities

9. The court has the inherent jurisdiction to review the activities of professionals and, if satisfied that the professionals have acted reasonably, prudently and not arbitrarily, to approve the activities set out in the professionals' reports. The assessment of whether the professionals have acted "reasonably, prudently and not arbitrarily" is made on an objective basis.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855 at para. 54.

10. The Receiver has reported to the Court, and all interested parties and stakeholders, throughout these proceedings. The Receiver submits that its activities were carried out in a reasonable, prudent and not arbitrary manner, both generally and in light of the unique circumstances of this proceeding.

Discharge of Receiver

11. Upon completion of its mandate, a court-appointed professional will typically seek a discharge order. The Ontario Superior Court of Justice has held that in the absence of any evidence of improper or negligent conduct on the part of a court-appointed professional, the release should be issued, and that the professional is entitled to close its file once and for all.

Pinnacle v. Kraus, 2012 ONSC 6376 at para 47.

12. The Receiver submits that, as it has now substantially completed its mandate as Receiver in these proceedings, it is appropriate for it to be discharged as Receiver.

Part 4: MATERIAL TO BE RELIED ON

13. The Receivership Order in respect of Shoeme granted on February 3, 2017;
14. The Receivership Order in respect of Shoes.com granted on February 15, 2017;
15. The Order of the US Court granted on June 12, 2017;
16. The Interim Distribution Order granted on June 30, 2017;
17. The Second Interim Distribution Order granted on January 16, 2018; and
18. The Receiver's Fifth Report dated September 18, 2018;
19. Affidavit #1 of Magnus Verbrugge sworn on October 17, 2018; and
20. 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: 18/OCT/2018



Signature of Elly Seddon

☐ 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

<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>Gowling WLG (Canada) LLP 550 Burrard Street, Suite 2300, Bentall 5 Vancouver, BC, V6C 2B5</p> <p>Attention: Colin Brousson Telephone: 604.891.2286 Fax: 613.683.3558 Email: colin.brousson@gowlingwlg.com m</p> <p><i>Counsel for Bank of Montreal</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 m</p> <p><i>Counsel for Caleres Investment Company, Inc.</i></p>

Sports Industry Credit Association

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US Counsel for Wells Fargo

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Counsel for Geodis

<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>
<p>Joli-Coeur Lacasse S.E.N.C.R.L. 2001 McGill College Avenue, Suite 900 Montreal QC H3A 1G1</p> <p>Attention: Greg Moore Telephone : (514) 871.3927 (ext. 4470) E-mail: greg.moore@jolicoeurlacasse.com</p> <p><i>Counsel for Jane Winkworth and French Sole Ltd.</i></p>	<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver BC V6C 0A3</p> <p>Attention: Kibben Jackson Telephone : (604) 631.4786 E-mail: kjackson@fasken.com</p> <p><i>Canadian Counsel for Daniel Gerler</i></p> <p>Hillis Clark Martin & Peterson P.S. 999 Third Avenue, Suite 4600 Seattle WA 98104</p> <p>Attention: Bradley R. Duncan Telephone : (206) 470.7625 E-mail: Bradley.duncan@hcmp.com</p> <p><i>US Counsel for Daniel Gerler</i></p>

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Counsel for Shoeme Technologies Limited

SCHEDULE "B"

No. S-171026
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE RECEIVERSHIP OF
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DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

- and -

SHOEME TECHNOLOGIES LIMITED
SHOES.COM TECHNOLOGIES INC.

RESPONDENTS

CERTIFICATE OF DISCHARGE

WHEREAS pursuant to an Order of the Honourable ____ Justice _____ pronounced on October ____, 2018, the ("**Discharge Order**"), Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as Court-appointed Receiver of Shoeme Technologies Limited and Shoes.com Technologies Inc. was discharged as Receiver in respect of these proceedings, to be effective upon the filing with this Honourable Court of a certificate of discharge.

NOW THEREFORE: The Receiver's duties are fully satisfied and completed in accordance with the Discharge Order.

DATED at Vancouver, British Columbia this ____ day of _____, 2018.

**ALVAREZ & MARSAL CANADA INC.,
In its capacity as Receiver of
Shoeme Technologies Limited and Shoes.com Technologies Inc.,
and not in its personal capacity,**

By: _____

Name:

Title:

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

NOTICE OF APPLICATION

ESS **562462/000001**

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