

FEB 15 2017

ENTERED



NO. S-171026  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

**ORDER MADE AFTER APPLICATION**

BEFORE ) THE HONOURABLE )  
) Mr. Justice ) 15/FEBRUARY/2017  
) Hamer )

ON THE APPLICATION of the Petitioner, without notice, coming on for hearing at Vancouver, British Columbia, on February 15, 2017, and on hearing John Smedley, counsel for the Petitioner, and those parties listed on Schedule "A" hereto:

THIS COURT ORDERS that:

1. The following party be added as a respondent to this proceeding:

SHOES.COM TECHNOLOGIES INC.

2. The Petitioner shall file an amended Petition substantially in the form attached hereto as **Schedule "B"** and shall serve same on ShoeMe Technologies Limited, Shoes.com Technologies Inc., and those parties on the service list maintained by the receiver of ShoeMe Technologies Limited, which contains the following form of style of cause:

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SHOES.COM TECHNOLOGIES INC.

RESPONDENTS


3. Shoes.com Technologies Inc. ("**Shoes.com**") is hereby deemed to be a respondent to these proceedings with immediate effect;

4. The Petitioner is hereby permitted to seek appointment of a receiver of all the assets, undertakings and properties of Shoes.com immediately without the need for prior service on Shoes.com of a copy of the filed Amended Petition and a copy of this Order.

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 JOHN SANDRELL  
Lawyer for Deans Knight Capital  
Management Ltd.

  
By the Court.

  
\_\_\_\_\_  
Registrar



# Schedule "A"

Counsel	Party
Magnus Verbrugghe	- A & M in its capacity as Receiver.
Elly Bahrami	

Schedule "B"

Amended pursuant to the Order of \_\_\_\_\_, pronounced on  
February 2017, and pursuant to Supreme Court Civil Rule 6-2 and 6-1,  
Original filed on February 2, 2017

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VANCOUVER REGISTRY

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

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED  
SHOES.COM TECHNOLOGIES INC.

RESPONDENTS

**AMENDED PETITION TO THE COURT**

ON NOTICE TO: The Respondents, **SHOEME TECHNOLOGIES LIMITED**  
**and SHOES.COM TECHNOLOGIES INC.**  
4th Floor–1500 West Georgia Street  
Vancouver, BC V6G 2Z6

AND TO: Counsel for the Respondents  
**MICHAEL, EVRENSEL & PAWAR LLP**  
Royal Ctr., 1055 Georgia St. W.,  
Suite 1750, Stn Royal Ctr.  
Vancouver, British Columbia V6E 3P3  
**Attention: Andrew Hennigar**

AND TO: **BROWN SHOE INVESTMENT COMPANY INC.**  
8300 Maryland Avenue  
St. Louis MO 63105

**CALERES INVESTMENT COMPANY, INC.**  
8300 Maryland Avenue  
St. Louis MO 63105

Counsel for Caleres Investment Company, Inc.  
**GOWLING WLG (CANADA) LLP**  
Suite 2600, 160 Elgin Street  
Ottawa, ON K1P 1C3  
**Attention: Lorne Segal**

**RCAP LEASING INC.**  
5575 North Service Rd, Ste 300  
Burlington, ON L7L 6M1

**NATIONAL LEASING GROUP INC.**  
1525 Buffalo Place  
Winnipeg, MB R3T 1L9

**ROYNAT INC.**  
Suite 1500, 4710 Kingsway St.  
Burnaby, BC V5H 4M2

**BLUE CHIP LEASING CORPORATION**  
156 Duncan Mill Rd, Unit 16  
Toronto, ON M3B 3N2

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**  
1802 Douglas Street  
Victoria, BC V8T 4K6

**ALVAREZ & MARSAL CANADA INC.**  
400 Burrard Street  
Suite 1680, Commerce Place  
Vancouver, BC V6C 3A6

Counsel for Alvarez & Marsal Canada Inc.  
**BORDEN LADNER GERVAIS LLP**  
1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC V7X 1T2  
**Attention: Magnus C. Verbrugge**

**This proceeding is brought by the petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed Response to Petition, and

- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for Response to Petition**

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is:  20 <sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8  Fax number address for service (if any) of the petitioner:  604-683-5214  E-mail address for service (if any) of the petitioner:  john.sandrelli@dentons.com tevia.jeffries@dentons.com
(3)	The name and office address of the petitioner's lawyer is:  Dentons Canada LLP 20 <sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8

## CLAIM OF THE PETITIONER

### Part 1: ORDERS SOUGHT

1. An order, substantially in the form attached and appended as Schedule "A", among other things:
  - (a) permitting the hearing of this petition to proceed without notice or, alternatively, shortening the period for notice pursuant to Rule 22-4;
  - (b) appointing Alvarez & Marsal Canada Inc. ("A&M") as receiver of all of the assets, undertakings and properties of the Respondent, ShoeMe Technologies Limited (the "**Debtor**"), acquired for or used in relation to a business carried on by the Debtor;
  - (c) approving interim financing of an amount up to \$500,000; and
  - (d) ordering costs;
2. An order among other things:
  - (a) permitting the hearing of this petition to proceed without notice or, alternatively, shortening the period for notice pursuant to Rule 22-4;
  - (b) appointing A&M as receiver of all of the assets, undertakings and properties of the Respondent, Shoes.com Technologies Inc. (the "**Parent**"), acquired for or used in relation to a business carried on by the Parent;
  - (c) approving interim financing of an amount up to \$500,000; and
  - (d) ordering costs;
3. A declaration that:
  - (a) the debentures among the Petitioner, the **Parent** ~~1006903 B.C. Ltd.~~ (the "**Parent**"), the Debtor and certain other guarantors dated December 12, 2014 (the "**Debentures**");
  - (b) the general security agreement between the petitioner and the Parent dated December 12, 2014 (the "**Parent GSA**"); and

- (c) the general security agreement between the petitioner and the Debtor dated December 12, 2014 (the “GSA” and together with the Parent GSA, the “GSAs”),

are in default, and of the amount of money due and owing under the Loan Agreement.

4. A declaration that the Petitioner has a valid and enforceable security interest in all present and after acquired inventory property of the Respondents.
5. Such further and other relief as to this Honourable Court may see fit.

## **Part 2: FACTUAL BASIS**

### **The Parties**

1. The petitioner, Deans Knight Capital Management Ltd. (“**Deans Knight**”), is a corporation governed by the *Canada Business Corporations Act*, with a principal office at 1500-999 West Hasting Street, Vancouver, British Columbia, V6C 2W2.
2. The Parent is a corporation governed by the *British Columbia Business Corporations Act*, with a registered and records office at 1750-1055 West Georgia Street, Vancouver, British Columbia, V6E 3P3.
3. The Debtor is a corporation governed by the *Canada Business Corporations Act* with a principal office at 4th Floor, 1500 West Georgia Street, Vancouver, British Columbia, V6G 2Z6.
4. The Debtor is a wholly owned subsidiary of the Parent and carried on business as an online shoe retailer.
5. The Parent owns the intellectual property, including the domain name “shoes.com”, used by the Debtor and the Parent’s other subsidiaries in their business.
6. The Debtor also operated physical retail locations in Vancouver, British Columbia and Toronto, Ontario, as well as owning inventories which are held at a third party logistics facility in Brampton, Ontario.
7. In addition to the Petitioner, the following parties are entities with registered interests in respect of the property of the Parent:



- (a) Brown Shoe Investment Company Inc. and Caleres Investment Company Inc. (either or both referred to herein as "**Brown Shoe**");
- (b) Wells Fargo Bank, National Association ("**Wells Fargo**"); and
- (c) Bank of Montreal.

8. The In addition to the Petitioner, the following parties are entities with registered interests in respect of the property of the Debtor:

- (a) ~~Brown Shoe Investment Company Inc. and Caleres Investment Company Inc. (either or both referred to herein as "**Brown Shoe**")~~;
- (b) the Crown in right of the Province of British Columbia in respect of provincial sales taxes; and
- (c) certain computer equipment lessors or vendors, namely RCAP Leasing Inc., National Leasing Group, Roynat Inc. and Blue Chip Leasing Corporation (collectively, the "**Equipment Lessors**").

#### **Debentures and GSA**

- 9. On or about December 12, 2014, the Parent, the Guarantors and Deans Knight, acting as portfolio manager on behalf of certain investors (the "**Investors**"), entered into a transaction pursuant to the Parent issued to Deans Knight secured convertible Debentures in the aggregate principal amount of CAD\$10 million.
- 10. The Debentures were issued pursuant to a Debenture Purchase Agreement between the Parent and Deans Knight as portfolio manager on behalf of the Investors.
- 11. Pursuant to the terms of the Debentures, the Parent's present and future debts, liabilities and obligations to the Investors under or in connection with each Debenture were unconditionally guaranteed by:
  - (a) the Debtor;
  - (b) A12345 Holdings Inc. (now known as Shoes.com Holdings (USA) Inc., and referred to herein as "**US Holdco**")
  - (c) Gerler and Son Inc. (now known as Onlineshoes.com Inc., and referred to herein as "**Gerler**")

- (d) Shoes.com, Inc. ("**Shoes.com**", collectively with Gerler and US Holdco, the "**US Guarantors**", and collectively with Gerler, US Holdco and the Debtor, the "**Guarantors**").
12. Pursuant to a collateral agency agreement dated December 12, 2014, among the Parent, Deans Knight, and the Investors, Deans Knight was appointed as collateral agent for and on behalf of the Investors (in such capacity, the "**Collateral Agent**").
13. To secure the obligations of the Parent and the Guarantors under the Debentures, the Parent and the Guarantors executed certain security agreements (collectively, the "**Security**"), including the GSAs ~~a general security agreement~~ executed by the Parent and the Debtor granting to the Collateral Agent a security interest in all of their ~~its~~ present and after acquired personal property, assets and undertaking, including all proceeds thereof and therefrom.
14. Notices of the Security Interests was ~~were~~ registered in the British Columbia Personal Property Registry on December 12, 2014, under base registration numbers 3403161 and 3403101.
15. Under the terms of the Debentures, as of February 2, 2017, the Parent was indebted to the Collateral Agent, guaranteed by the Debtor, in the amount of \$10,098,630.14, plus interest and costs of enforcement, which interest continues to accrue (the "**Indebtedness**").
16. The Indebtedness has not been repaid.
17. The Parent and the Guarantors, including the Debtor, are also indebted to Brown Shoe.
18. As a result of a subordination, postponement and standstill agreement dated on December 12, 2014, among the Collateral Agent, Brown Shoe, the Parent, and the Guarantors (the "**Brown Shoe Intercreditor Agreement**"), Deans Knight has a first-ranking charge over all of the Debtor's present and after-acquired property, senior in priority to Brown Shoe.
19. As a result of the Brown Shoe Intercreditor Agreement, Deans Knight's Security Interest in the Parent's present and after-acquired property is also senior in priority to Brown Shoe.

20. The Parent and the US Guarantors are also indebted to Wells Fargo National Association ("**Wells Fargo**") in the amount of approximately US\$3.8 million.
21. The Debtor is not indebted to Wells Fargo and has not guaranteed its affiliates obligations to Wells Fargo.
22. As a result of a subordination, postponement and standstill agreement dated on March 15, 2015, among Wells Fargo, the Collateral Agent, the Parent and the US Guarantors (the "**Wells Fargo Intercreditor Agreement**"), the Collateral Agent is restricted in its ability to enforce as against the Parent absent the consent of Wells Fargo without breaching such agreement.

#### **Default**

23. On January 27, 2017, the Parent informed Deans Knight, and issued a press release announcing, that it would be shutting down operations as at that date, taking the Debtor's e-commerce properties offline and closing its two brick-and-mortar stores.
24. A failure to maintain its business operations constitutes an event of default under the debentures issued under the Debenture Purchase Agreement.
25. Given this breach, on February 1, 2017, the Collateral Agent accelerated and demanded repayment of the Indebtedness, and delivered notice of its intent to enforce security in accordance with s. 244 of *Bankruptcy and Insolvency Act*.
26. On February 1, 2017, the Debtor consented to the Collateral Agent's enforcement of its security and waived the ten-day notice period required pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

#### **Urgency**

27. Wells Fargo has issued notices of default to Gerler and Shoes.com, and intends to commence receivership proceedings in respect of Gerler and Shoes.com (the "**Senior Creditor Default Notice**").
28. The Debtor and its affiliates have ceased operations and are not generating any additional cash or receivables.
29. The Parent and the Debtor has limited cash and is incurring expenses, including employment expenses.

30. The directors of the Debtor have all resigned, and the directors of the Parent are expected to resign soon.
31. Given the value of inventory and other assets of the Debtor and the Parent and the shutdown of their operations, the Collateral Agent and the Investors are likely to suffer a shortfall.
32. The Equipment Lessors are unaffected by the Receiver's Charge and the Receiver's Borrowing Charge (as defined in the form of order sought). If the Equipment Lessors are true lessors, the leased property is not property of the estate. If the Equipment Lessors have valid and enforceable purchase money security interests, they have been carved out of the requested charges. If the Equipment Lessors do not have valid and enforceable purchase money security interests, they are junior in priority to the Collateral Agent and are unlikely to recover whether the Receiver borrows funds or not.
33. A&M has consented to act as receiver in this matter (in such capacity, the "Receiver").
34. Financial information on the Debtor provided to me by the Debtor and A&M shows that, depending on the timing of asset sale(s), borrowings are likely required by the Receiver to effect an orderly liquidation of the Debtor's assets.
35. Deans Knight, on behalf of certain of its clients, is willing to provide funding of up to \$500,000 only on a super-priority basis secured by a Court-ordered charge.
36. The Debtor has consented to A&M acting as Receiver.
37. Given that creditors junior in interest to the Collateral Agent are not expected to receive a distribution from the receivership of the Parent and the Debtor, a Court-ordered charge to secure the borrowings of the Receiver will not be detrimental to any creditors.
38. It is necessary for the Receiver to have the power to assign the Parent and the Debtor into bankruptcy to fully administer the Debtor's estate, including certain priority payables owed by the Debtor.

### **Part 3: LEGAL BASIS**

1. The court may extend or shorten any period of time provided for in the *Supreme Court Civil Rules* to further their object.

*Supreme Court Civil Rules*, B.C. Reg. 168/2009, R. 22-4(2).

2. It is appropriate to shorten the period of time given to the respondents to respond given the urgency raised by
  - (a) the delivery of the Senior Credit Default Notice
  - (b) the risk of the Debtor's collateral depreciating before an orderly liquidation can be achieved.
3. A secured creditor who intends to enforce a security on all or substantially all of the property of an insolvent person that is acquired for, or is used in relation to, a business carried on by the insolvent person must send a notice of intention to the insolvent person in the prescribed form (the "NOI").

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 244(1) [BIA]

4. Deans Knight has sent an NOI and has received consent from the Debtor to exercise its enforcement rights.
5. **The Parent has consented to the appointment of the Receiver.**
6. Given the consent of **the Parent and** the Debtor, the court may appoint a receiver to (a) take possession of all or substantially all of the insolvent person's property that was acquired for or used in relation to a business carried on by the insolvent person; (b) exercise any control the court considers advisable over than property and the insolvent person's business, or (c) take any other action the court considers advisable.

*Bankruptcy and Insolvency Act*, s. 243(1).

7. A court may appoint a trustee as receiver of all or any part of the debtor's property that is subject to the security to which a notice under s. 244(1) of the *Bankruptcy and Insolvency Act* relates where it is "just and convenient".

*Bankruptcy and Insolvency Act*, s. 47(1)

*Supreme Court Civil Rules*, R. 10-2(1)

*Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 39

8. In determining whether it is just and convenient to appoint a receiver, a court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property. Generally, a court will appoint a receiver when it is necessary to enforce rights between parties or preserve assets, particularly where there is a serious apprehension about the safety of assets.

*Canadian Tire Corp. v. Healy*, 2011 CarswellOnt 7430 at para 18 (S.C.J. [Commercial List])

*Callidus Capital Corp v Carcap Inc* (2012), 84 C.B.R. (5th) 300 at para 53 (Ont S.C.J. [Commercial List]).

9. In the circumstances, it is just and convenient to appoint a receiver to preserve the Parent's and the Debtor's assets to provide the Collateral Agent, as the first-ranking secured creditor, the opportunity to enforce its rights and available remedies under the Debenture Purchase Agreement and GSA as well as Part 5 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359.

10. It is further necessary to appoint a receiver to ensure an efficient liquidation of the Parent's and the Debtor's assets ~~inventor~~ and maximize recovery to the creditors.

11. When appointing a receiver the court must fix any remuneration to be paid to the receiver. If a receiver is appointed the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper.

*Supreme Court Civil Rules*, R. 10-2(3)

12. Section 243(1) of the *BIA*, provides that, on application by a secured creditor, a court may appoint a receiver to take "any ... action that the court considers advisable" if the court "considers it to be just or convenient to do so".

13. It is just and convenient to authorize the Receiver to borrow up to \$500,000 on a super-priority basis because the Debtor's secured creditors other than the Petitioner are unaffected by such funding.

14. Courts can authorize receivers to assign a company into bankruptcy

*Royal Bank v. Sun Squeeze Juices Inc.* (1994), 24 C.B.R. (3d) 302 at para 6

The petitioner estimates that the hearing of the Petition will take 20 minutes.

Date: 02/ February / 2017

\_\_\_\_\_  
Signature of Tevia Jeffries  
Lawyer for petitioner

Date: 15/ February / 2017

\_\_\_\_\_  
Signature of  
Lawyer for petitioner

***To be completed by the court only:***

Order made

- ☐ in the terms requested in paragraphs \_\_\_\_\_ of  
Part 1 of this Petition
- ☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master