

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

OCT 28 2020

ENTERED

SUPREME COURT  
OF BRITISH COLUMBIA

SEAL  
VANCOUVER  
REGISTRY



No. S209201  
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 MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625 ONTARIO  
LIMITED

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(Assignment Order)**

ON THE BEFORE THE HONOURABLE MADAM 28/Oct/2020  
JUSTICE FITZPATRICK

APPLICATION OF the petitioners, Mountain Equipment Co-operative and 1314625 Ontario Limited (together, the "Petitioners") coming on for hearing by MS Teams videoconference at Vancouver, British Columbia on 28/Oct/2020 AND ON HEARING Howard A. Gorman, Q.C. and Scott M. Boucher, counsel for the Petitioners, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the material filed, including the First Affidavit of Philippe Arrata made 13/Sep/2020 (the "**First Arrata Affidavit**"), the Fourth Affidavit of Philippe Arrata made 23/Oct/2020, the Third Report of the Monitor dated 27/Oct/2020; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application dated October 26, 2020 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and hereby dispenses with further service thereof.
2. Any capitalized term used and not defined herein shall have the meaning ascribed to it in the Asset Purchase Agreement dated September 11, 2020 (the "**Sale Agreement**") between the Petitioners, as vendor, and 1264686 B.C. Ltd. (the "**Original Purchaser**"), as purchaser (a copy of which is attached as Exhibit "P" to the First Arrata Affidavit), or the Approval and Vesting Order dated October 2, 2020 (the "**Approval and Vesting Order**"), as applicable.

3. Pursuant to section 11.3 of the CCAA, immediately upon the delivery of the Monitor's certificate as contemplated the Approval and Vesting Order, all of the rights and obligations of the Petitioners under the real property lease listed in **Schedule "B"** hereto, including all associated or related agreements, schedules, appendices, addenda, amendments, supplements, restatements or other modifications (the "**Real Property Lease**") shall be assigned, conveyed and transferred to MEC Canada Inc. (formerly known as 1266524 B.C. Ltd.) (the "**Purchaser**").
4. Upon delivery of the Monitor's Certificate, the Purchaser shall be entitled to all of the rights and benefits and subject to all of the obligations and restrictions as tenant pursuant to the terms of the Real Property Lease and registrations thereof and may enter into and upon and hold and enjoy each of the premises contemplated by the Real Property Lease and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Lease, without any interruption from the Petitioners, the landlord under the Real Property Lease or any person whomsoever claim through or under the Petitioners or the landlord under the Real Property Lease.
5. The assignment of the Real Property Lease to the Purchaser is valid and binding upon the counterparty to the Real Property Lease (the "**Counterparty**"), notwithstanding any restriction or prohibition contained in the Real Property Lease relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Real Property Lease.
6. The assignment and transfer of the Real Property Lease shall further be subject to the provision of this Court's Approval and Vesting Order directing that the Petitioners' rights and obligations under the Real Property Lease shall vest absolutely in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances (as such terms are defined in the Approval and Vesting Order).
7. Neither the Counterparty, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Real Property Lease hereunder shall make or pursue any demand, Claim, action or suit or exercise any right or remedy (including any termination rights) under the Real Property Lease against the Purchaser relating to:
  - (a) any defaults thereunder relating to the assignment of the Real Property Lease;
  - (b) the Petitioners having sought or obtained relief under the CCAA;
  - (c) the insolvency of the Petitioners; or
  - (d) any failure by the Petitioners to perform a non-monetary obligation under the Real Property Lease;

and the Counterparty and other parties shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in

respect of obligations accruing, arising or continuing after the date hereof, under the Real Property Lease other than in respect of items (a) through (d) above.

8. The Cure Costs of the Real Property Lease shall be in the amount set out in **Schedule "B"** hereto and, upon Closing, the Purchaser shall pay the Cure Costs as set out therein with respect to the Real Property Lease, in full and final satisfaction of any Cure Costs owing to the Counterparty by no later than the day that is the later of: (i) five (5) business days following delivery of the Monitor's Certificate to the Purchaser; and (ii) five (5) business days from the date that the Purchaser receives wire remittance instructions or other payment instructions from the Counterparty.
9. The Petitioners shall send a copy of this Order to the Counterparty. The Petitioners shall provide notice to the Counterparty as of the date of this Order in the event that, prior to closing of the Sale Transaction, the Real Property Lease is subsequently added as an Excluded Contract (as the term is defined in the Sale Agreement) and the Counterparty shall thereby be removed from **Schedule "B"** without the need for further court order.
10. The Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Petitioners in the assignment and transfer of the Real Property Lease.
11. Notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) any petitions for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") in respect of either of the Petitioners and any bankruptcy order issued pursuant to any such petitions; or
  - (c) any assignment in bankruptcy made in respect of either of the Petitioners;

the assignment of the Real Property Lease in and to the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Petitioners and shall not be void or voidable by creditors of any of the Petitioners, nor shall it constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *BIA* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. This Order shall have full force and effect in all provinces and territories in Canada.
13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective 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 Petitioners, or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, and the Monitor and their respective agents in carrying out the terms of this Order.

14. The Petitioners, the Purchaser, the Monitor, and the Counterparty may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, including without limitation, as necessary, to effect the transfer of the Real Property Lease (including any transfer of title registrations in respect of the Real Property Lease), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.
15. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, 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:

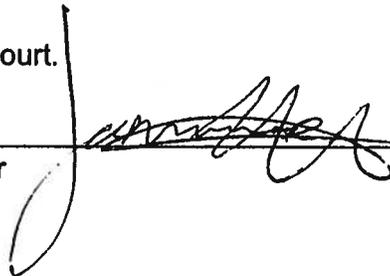
  
\_\_\_\_\_  
Signature of  
 party  lawyer for the Petitioners

Scott M. Boucher



By the Court.

Registrar





Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.

DATED: OCT 28 2020

  
\_\_\_\_\_  
Authorized Signing Officer

**DRINA READ**

**SCHEDULE "A" – List of Counsel**

<b>COUNSEL</b>	<b>NAME OF PARTY(IES) REPRESENTED</b>
H. Lance Williams	The Monitor, Alvarez & Marsal Canada Inc.
Valerie Cross	Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement
Dylan Chochla Kibben Jackson	Kingswood Capital Management LP and the Purchasers
Ada Keon	Plateau Village Properties Inc.

**SCHEDULE "B" – The Real Property Lease and Cure Costs**

<u>No.</u>	<u>Name of Agreement</u>	<u>Counterparty</u>	<u>Cure Costs (Cdn\$)</u>
1.	Ground Lease, dated December 30, 2015, between Beedie Development Limited Partnership (as landlord) and MEC (as tenant) in respect of certain lands and premises located at 101 East 2nd Avenue, Vancouver, British Columbia, V5T 1B4, Canada.	Beedie Development Limited Partnership	\$0

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**ORDER MADE AFTER APPLICATION**

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**NORTON ROSE FULBRIGHT CANADA LLP**

Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, BC V6B 0M3  
Attention: Howard A. Gorman, Q.C.  
Filing Agent: West Coast Title Search

SCB/ker

Matter# 1001118436