

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 4<sup>TH</sup>  
 )  
JUSTICE HAINEY ) DAY OF OCTOBER, 2017  
 )



IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER – LEASE SURRENDER AGREEMENT**

**SCARBOROUGH TOWN CENTRE (STORE #1308)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the lease surrender and resiliation (the “**Transaction**”) contemplated by a Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and Scarborough Town Centre Holdings Inc. (the “**Landlord**”) as Landlord dated September 27, 2017 (the “**Lease Surrender Agreement**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 28, 2017 including the exhibits thereto, and the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of

respective counsel for the Applicants, the Monitor, the Landlord, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Waleed Malik and Francesca Del Rizzo sworn October 1 and October 2, 2017, respectively, filed:

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the Lease Surrender Agreement, as applicable.

### **APPROVAL OF THE LEASE SURRENDER AGREEMENT**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the Lease Surrender Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Landlord may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the surrender by Sears Canada of its right, title and interest in and to the Leases and the Real Property Interests (each as defined in the Lease Surrender Agreement) to the Landlord and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Premises are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Landlord substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Leases and the Real Property Interests shall be surrendered to the Landlord (with the Leases being resiliated) free and clear of and from any and all security interests (whether contractual, statutory, or

otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Leases and the Real Property Interests (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall include all “Encumbrances”, as that term is defined in the Lease Surrender Agreement, but shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that: (i) all construction liens and certificates of action, including but not limited to those listed on Schedule “B” (the “**Liens**”, which defined term shall include all Construction Liens as that term is defined in the Lease Surrender Agreement) are hereby vacated, as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) all other Claims and Encumbrances affecting or relating to the Leases, the Real Property Interests, the Property and/or the Premises are hereby expunged and discharged as against the Leases, the Real Property Interests, the Property and/or the Premises including the real or immovable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically (i) vacate the Liens, and (ii) discharge,

cancel, delete and expunge from title to the applicable real or immovable property described in Schedule "B" all of the Claims and Encumbrances that are not Liens listed in Schedule "B" hereto.

6. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the "**Net Proceeds**"), with the same priority as they had with respect to the Leases, the Real Property Interests, the Property and/or the Premises immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, subject to the Construction Lien Claim Reserve (as defined below) to the DIP ABL Agent or the DIP Term Agent, as applicable, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable (a "**Distribution**").

8. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

10. THIS COURT ORDERS that the Monitor shall hold back from any distributions of proceeds as permitted hereunder, \$1,758,014.10, being the aggregate amounts claimed by the holders of construction liens registered in respect of the Leases, the Real Property Interests, the Property and/or the Premises (the “**Construction Lien Claim Reserve**”). The Construction Lien Claim Reserve shall only be distributed on further Order of this Court. For greater certainty, the creation of the Construction Lien Claim Reserve does not in itself create, enhance, affect or impair any rights of persons or parties in such funds.

11. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof, subject to the Construction Lien Claim Reserve, on behalf of the Applicants to be dealt with by further Order of the Court.

12. THIS COURT DECLARES THAT the only recourse of the Lien claimants in respect of their Liens shall be against the Construction Lien Claim Reserve and, for greater certainty, no Person shall have any recourse against the Landlord or its subsidiaries and affiliates, the Lease, the Real Property Interests, the Premises and the Property in respect of the Liens.

13. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof in accordance with the terms of the Lease Surrender Agreement.

14. THIS COURT ORDERS that subject to the terms of the Lease Surrender Agreement nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;

- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

15. THIS COURT ORDERS that notwithstanding anything else contained in the Lease Surrender Agreement or the Closing of the Transaction, the Landlord shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of this Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by the Tenant, is bound by or obtains any benefit from same. Without limiting the generality of the foregoing, during such period, the Landlord shall benefit from the stay of proceedings provision provided for at paragraph 15 of the Initial Order.

#### **SEALING**

16. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

#### **GENERAL PROVISIONS**

17. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the surrender of the Leases and the Real Property Interests to the Landlord and the resiliation of the Leases pursuant to this Order shall be binding on any trustee in bankruptcy

or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

18. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

19. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in cursive script, reading "Hainley J.", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 05 2017

PER / PAR:

A small, handwritten signature or mark, possibly initials, written in cursive.

## SCHEDULE "A"

Court File No. CV-17-11846-00CL

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

### MONITOR'S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "**Approval and Vesting Order**") approving the Lease Surrender Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Scarborough Town Centre Holdings Inc. (the "**Landlord**") as Landlord dated September 27, 2017 (the "**Lease Surrender Agreement**"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Surrender Agreement and provided for the surrender to the Landlord of Sears Canada's right, title and interest in and to the Leases and the Real Property Interests (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Leases and the Real Property Interests upon the delivery by the Monitor to the Landlord and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement



have been satisfied or waived by the Landlord and Sears Canada, as applicable, and (ii) the Surrender Consideration and any Taxes payable (each as defined in the Lease Surrender Agreement) to Sears Canada that are not self-assessed and remitted by the Landlord have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as applicable; and
2. The Surrender Consideration and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Landlord have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
1.	300 Borough Drive, Scarborough	ON	LRO No. 66 (Toronto)	PIN 06000-0287 (LT) BLOCKS M & N PLAN 66M1410...T/W R.O.W. OVER PT LOT 24, CON 2, PT 2 66R1261...S/T EASE. AS IN A71301...T/W R.O.W. OVER BLKS AX, DX, FX, GX, HX, KX, LX, OX, PX, QX, RX, TX, AS IN A322822 AND BLKS EX, JX, SX, UX AS IN A322823 AND A344281 AS AMENDED BY C754001...SUBJECT TO COVENANTS AS IN A365838...S/T EASE AND COVENANT AS IN A387102... S/T RIGHT, EASE AND COVENANT AS IN A652794...S/T EASE, COVENANT & RESTRICTION AS IN C155633 (FOR PARTIAL DELETION OF EASEMENT C155633 SEE C742395) ..SCARBOROUGH , CITY OF TORONTO	<ul style="list-style-type: none"> <li>a. Instrument No. AT4620014 registered July 6, 2017 being a construction lien in favour of 152610 Canada Inc. in the amount of \$988,747.70</li> <li>b. Instrument No. AT4623148 registered July 10, 2017 being a construction lien in favour of Abbarch Architecture Inc. in the amount of \$99,359.94</li> <li>c. Instrument No. AT4623801 registered July 11, 2017 being a construction lien in favour of Citymark Construction and Drywall Inc. in the amount of \$128,301.33</li> <li>d. Instrument No. AT4640337 registered July 28, 2017 being a construction lien in favour of Nelnor Construction, a division of Décor Craft Inc. in the amount of \$87,000.00</li> <li>e. Instrument No. AT4643739 registered August 1, 2017 being a construction lien in favour of 9241582 Canada Inc. in the amount of \$235,586.02</li> <li>f. Instrument No. AT4656477 registered August 16, 2017 being a construction lien in favour of Industrial Floor Systems Corp. in the amount of \$203,774.15</li> <li>g. Instrument No. AT4697588 registered October 3, 2017 being a construction lien in favour of Kone Inc. in the amount of \$15,244.96</li> <li>h. Instrument No. AT4676578 registered September 8, 2017 being a certificate of action in favour of 152610 Canada Inc. perfecting the construction lien registered on July 6, 2017 as Instrument No. AT4620014</li> <li>i. Instrument No. AT4681133 registered September 14, 2017 being a certificate of action in favour of Abbarch Architecture Inc.</li> </ul>

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
					<p>perfecting the construction lien registered on July 10, 2017 as Instrument No. AT4623148</p> <p>j. Instrument No. AT4683400 registered September 18, 2017 being a certificate of action in favour of Citymark Construction and Drywall Ltd. perfecting the construction lien registered on July 11, 2017 as Instrument No. AT4623801</p> <p>k. Instrument No. AT4684086 registered September 19, 2017 being a certificate of action in favour of Nelnor Construction, a division of Décor Craft Inc. perfecting the construction lien registered on July 28, 2017 as Instrument No. AT4640337</p> <p>l. Instrument No. AT4688184 registered September 22, 2017 being a certificate of action in favour of Industrial Floor Systems Corp. perfecting the construction lien registered on August 16, 2017 as Instrument No. AT4656477</p> <p>m. Instrument No. A461974 registered November 12, 1974 being a Notice of Sublease in favour of Simpsons, Limited</p> <p>n. Instrument No. A824056 registered December 17, 1979 being a Notice of Agreement with Simpson Limited</p> <p>o. Instrument No. C735864 registered September 26, 1991 being an Application to Change Name-Instrument re Simpsons Limited re Nos. A461974 and A601584</p> <p>p. Instrument No. C735865 registered September 26, 1991 being an Agreement between Simpsons Limited and Hudson's Bay Company</p>

**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES**

**"Permitted Encumbrances"** means, collectively: (a) any Encumbrances encumbering the freehold or other ownership interest in the Property or any other interest in the Property of the Landlord, but excludes any Encumbrances solely encumbering the Tenant's leasehold interest in and to any Property situated outside of the Province of Québec on which the Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from the Landlord's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender Agreement; provided however that, for greater certainty, "Permitted Encumbrances" shall not include any of the Construction Liens or any other Encumbrances, and the Landlord expressly does not assume or accept any obligations or liabilities in respect of same.

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

*Ontario*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced at Toronto

**ORDER**  
Approval and Vesting Order – Lease Surrender  
Agreement Scarborough Town Centre (Store #1308)

**OSLER, HOSKIN & HARCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants