

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

MONDAY, THE 13TH

JUSTICE HAINEY)

DAY OF JANUARY, 2020



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., 9370-2751
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., 9845488 CANADA 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
(BARRIE)**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as Monitor (the "Monitor"), 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 sale of lands and buildings located at 521 Bayfield Street, Barrie, Ontario, together with certain ancillary assets (the "Transaction") contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. ("Sears Canada"), as vendor, and 1485900 Ontario Limited (the "Purchaser") as purchaser dated October 25, 2019 (the "APA") and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the Thirty-Fourth Report of the Monitor, filed, and on hearing the submissions of respective counsel for the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Catherine Ma sworn January 7, 2020, 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 APA, as applicable.

APPROVAL OF THE APA

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 APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser 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 sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA 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 Subject Assets 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 Purchaser 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 Subject Assets shall be sold, assigned and transferred to the Purchaser, 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 Subject Assets (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 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 not include the Permitted Encumbrances listed on Schedule "C" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada's right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada's right, title and interest in and to the Subject Assets including the real or immoveable 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 discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule "B" all of the Encumbrances listed in Schedule "B" hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and 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 Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. 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 APA.

SEALING

9. THIS COURT ORDERS that Confidential Appendices "B" and "C" to the Thirty-Fourth 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.

PURCHASE OPTION

10. THIS COURT ORDERS that the rights of RioCan Holdings Inc. and its affiliates, successors and assigns (collectively, "**RioCan**") to purchase the Subject Assets and/or the properties identified in PIN No. 58928-2332 (LT) pursuant to Section 12 of the Easement and Operating Agreement registered February 8, 2008 and attached to Instrument No. SC623572, between Sears Canada Inc., Ontrea Inc. and CF/Realty Holdings Inc. (the "**Purchase Option**") have been deemed to be at an end and, for greater certainty, RioCan shall not be permitted to re-engage the Purchase Option at any time in the future.

GENERAL PROVISIONS

11. 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 sale, assignment and transfer of the Subject Assets in 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 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.

12. THIS COURT ORDERS that 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 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 blue ink, appearing to read "Haidey J", written over a horizontal line.

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

JAN 13 2020

PER / PAR:

A handwritten signature in black ink, appearing to be a stylized "C" or similar mark.

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
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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 January 13, 2020 (the "**Approval and Vesting Order**") approving the Agreement of Purchase and Sale between Sears Canada Inc. ("**Sears Canada**"), as vendor, and 1485900 Ontario Limited (the "**Purchaser**") as purchaser dated October 25, 2019 (the "**APA**"), a copy of which is attached as Confidential Appendix "C" to the Monitor's Thirty-Fourth Report dated January 6, 2020.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the sale, assignment and transfer to the Purchaser of Sears Canada's right, title and interest in and to the Subject Assets (as defined in the APA), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser 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 APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable, and (ii) the Purchase Price and any Taxes payable (each as defined in the APA) to Sears Canada that are not self-assessed and remitted by the Purchaser 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 APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
- 2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser 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"

Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
521 Bayfield Street, Barrie	Ontario	LRO #51	PIN 58928-2332 (LT) PT LT 19 CON 4 VESPRA PTS 1, 2 & 3 51R12305 EXCEPT PT 3 51R35109, S/T & T/W EASEMENT RO487004 (FIRSTLY), S/T EASEMENT OVER PT 1 51R29766 AS IN LT512231; BARRIE	<ol style="list-style-type: none"> 1. Instrument No. RO1306928 – Agreement dated November 3, 1995 between CF/Realty Holdings Inc., Ontrea Inc., Markborough Properties Inc., and Mason Ventures Ltd. 2. Instrument No. RO1307344 – Agreement dated November 3, 1995 between CF/Realty Holdings Inc., Ontrea Inc., Markborough Properties Inc., and Mason Ventures Ltd. 3. Instrument No. SC623574 – Right of First Refusal Agreement dated July 15, 2007 between Sears Canada Inc. and Ontrea Inc. 4. Instrument No. SC1008536 – Assignment and Assumption of ROFR Memorandum of Agreement dated August 31, 2012 between Ontrea Inc. and RioCan Holdings Inc.

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Purchaser's actions or omissions; and (b) the items identified in Schedule "G" of the APA.

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., et al.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER
(BARRIE)

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