

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 21ST
)
JUSTICE HAINEY) DAY OF DECEMBER, 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
(Major Appliances Protection Agreement Business)**

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 sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement between, among others, Sears Canada Inc. (the “**Seller**”), as vendor, Buyers Group of Mississauga Inc. (the “**Purchaser**”), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), 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 December 19, 2017 including the exhibits thereto, and the Ninth 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 Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik sworn December 19, 2017, 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 the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor) and the Purchaser may agree to in writing. The Seller 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 and for the conveyance of the Purchased 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.

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 the Seller’s right, title and interest in and to the Purchased Assets (but excluding the Retained IP Addresses (as defined in the APA)) shall vest absolutely in 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 such Purchased 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**"); and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system,

(all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

5. THIS COURT ORDERS that notwithstanding the foregoing, the Purchased Assets to be vested upon delivery of the Monitor's Certificate shall not include the ownership rights held by the Seller in and to any Retained IP Addresses. Any ownership rights held by the Seller in and to any Retained IP Addresses shall be treated as Purchased Assets under this Order, and shall vest in accordance with paragraph 4 herein, only upon the release of the applicable Escrow Amount(s) to the Seller in accordance with Section 8.2 of the APA, without further Order of the Court or further action by the Monitor, the Purchaser or the Seller.

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 Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed. The term "Net Proceeds" shall not include the Escrow Amount (as defined in the APA) or any portion thereof until such time as the Escrow Amount or such portion thereof has been released to the Seller in accordance with Section 8.2 of the APA.

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 that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, or any similar provision of any applicable

provincial private-sector privacy legislation, the Seller is authorized and ordered to disclose to the Purchaser the Disclosed Personal Information in accordance with and subject to the APA.

9. 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.

10. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of the Seller 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 the Seller and the Agent dated October 10, 2017; and
- (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

11. THIS COURT ORDERS that Confidential Appendix "A" to the Ninth 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

12. THIS COURT ORDERS that, notwithstanding:

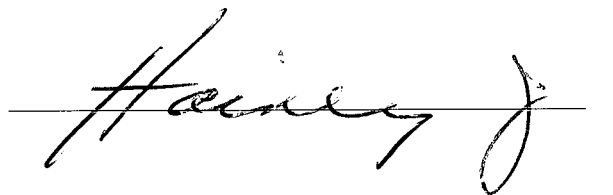
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy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

the vesting of the Purchased 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.

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

14. 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, appearing to read "Hainey J.", written over a horizontal line.

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

DEC 21 2017

PER / PAR:

Handwritten initials in cursive script, appearing to be "ML".

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 Asset Purchase Agreement between, among others, Sears Canada Inc. (the "**Seller**"), as vendor, Buyers Group of Mississauga Inc. (the "**Purchaser**"), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 2017 (the "**APA**"), a redacted copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated December 19, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA) (excluding the Retained IP Addresses (as defined in the APA)), which vesting is to be effective with respect to such Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; (ii) the portion of the Purchase

Price equal to the Escrow Amount (as defined in the APA) payable by the Purchaser to the Seller has been received by the Monitor, in its capacity as Escrow Agent (as defined in the APA); and (iii) the cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses, have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable;
2. The portion of the Purchase Price equal to the Escrow Amount payable by the Purchaser to the Seller has been received by the Monitor, in its capacity as Escrow Agent; and
3. The cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses, 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:

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.,
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CANADA INC.

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

Applicants

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

APPROVAL AND VESTING ORDER
(Major Appliances Protection Agreement Business)

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