

Court File No. CV-17-11846-00CL
Court File No. CV-18-611214-00CL
Court File No. CV-18-611217-00CL
Court File No. CV-18-611219-00CL
Court File No. CV-19-617792-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE HAINEY

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FRIDAY, THE 18th
DAY OF SEPTEMBER, 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.

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,
ESL INSTITUTIONAL PARTNERS, LP, EDWARD LAMPERT, EPHRAIM J. BIRD,
DOUGLAS CAMPBELL, WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA,
JAMES MCBURNEY, DEBORAH ROSATI, and DONALD ROSS,
and SEARS HOLDINGS CORP.

Defendants

MORNEAU SHEPELL LTD. in its capacity as administrator of the
Sears Canada Inc. Registered Retirement Pension Plan

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP,
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER,
WILLIAM CROWLEY, DONALD CAMPBELL ROSS, EPHRAIM J. BIRD,

DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL
and SEARS HOLDINGS CORPORATION

Defendants

FTI CONSULTING CANADA INC., In its capacity as Court-appointed monitor in proceedings
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, SEARS HOLDINGS
CORPORATION, WILLIAM HARKER and WILLIAM CROWLEY

Defendants

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL INVESTMENTS INC.,
WILLIAM C. CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL ROSS,
EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY
and DOUGLAS CAMPBELL

Defendants

**ORDER
(APPROVAL ORDER)**

THIS MOTION made by Sears Canada Inc. ("**Sears**") by its Court-Appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the "**Litigation Trustee**") in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 (the "**CCAA Proceedings**"), FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**"), Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Pension Administrator**") and 1291079 Ontario Limited ("**129**" and collectively with the Monitor, the Litigation Trustee and the Pension Administrator, the "**Plaintiffs**") for an order approving the settlement agreement between the Plaintiffs and Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, SPE I Partners LP, ESL Investors, LLC, RBS Partners, LP, CRK Partners, LLC, RBS Investment Management, LLC, (collectively, the "**ESL Parties**" and, as a group, Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, and SPE

I Partners LP, are the "**Named ESL Parties**") and for an order releasing claims against the Named ESL Parties and barring claims against the ESL Parties as more particularly described below was heard this day via videoconference.

ON READING the Motion Record of the Plaintiffs, the 39th Report of the Monitor dated September 16, 2020 (the "**Thirty-Ninth Report**"), the Supplement to the Thirty-Ninth Report, and the Supplementary Motion Record of 129, and on hearing the submissions of counsel for the Plaintiffs and the Defendants, no one appearing for any other party although duly served and no one appearing nor any representations having been made on behalf of any class member of the 129 Settlement Class (as hereinafter defined) despite notice of this hearing having been duly given to class members:

Sufficiency of Service and Definitions

1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and Motion Record of the Plaintiffs, the Thirty-Ninth Report, the Supplement to the Thirty-Ninth Report and the Supplementary Motion Record of 129 on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable September 18, 2020 in all proceedings set out in the styles of cause above.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning attributed to those terms in the settlement and release agreement between the Plaintiffs and the ESL Parties dated September 17, 2020 (the "**Settlement Agreement**").

Approval of Settlement Agreement

3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that Sears is hereby authorized to transfer the Allowed SHC Unsecured Claim (as defined in the Thirty-Ninth Report) to ESL Investments, Inc. or to release the Allowed SHC Unsecured Claim, in each case in accordance with the terms of the Settlement Agreement, and any such transfer or release is hereby approved.

5. **THIS COURT ORDERS** that the Monitor shall be exclusively authorized to take any steps on behalf of all of the Plaintiffs to comply with the obligations set out in the Settlement Agreement in respect of the assignment or release of the Allowed SHC Unsecured Claims or the remittance to ESL Investments, Inc. (or its designee) of any distributions, dividends, or other recovery in respect of the Allowed SHC Unsecured Claims or otherwise

Release

6. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement as of the Effective Date the Released Claims are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged.

7. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each class member in Court File No. CV-19-00617792-00CL (the "**129 Settlement Class**") including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the action in Court File No. CV-19-00617792-00CL.

8. **THIS COURT ORDERS** that the notices of settlement approval hearing provided to the 129 Settlement Class on August 12, 2020 and September 14, 2020 and the method of dissemination of such notices are hereby approved *nunc pro tunc*.

9. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interest of the 129 Settlement Class.

10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

Bar Orders

11. **THIS COURT ORDERS** that no person not party to the Settlement Agreement (the "**Non-Parties**") shall now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against any of the ESL Parties (or any other person who may claim contribution or indemnity from any of the ESL Parties) in respect of the Released Claims or any claims related to the subject matter of the Actions. All claims for contribution or indemnity or other claims over (whether asserted or unasserted, tolled

or not tolled) relating to or arising from the Released Claims or any claims related to the subject matter of the Actions which were or could have been brought in any of the Actions or in a separate proceeding against the ESL Parties are barred, extinguished, prohibited and enjoined by this Order.

12. **THIS COURT ORDERS** that all Persons (regardless of whether or not such Persons are creditors or claimants), including the 129 Settlement Class, Sears Canada Inc., the Litigation Trustee, the Monitor, the Pension Administrator, the Pension Benefits Guarantee Fund (Ontario), the beneficiaries of the Sears Canada Inc. Registered Retirement Plan, the ESL Parties, and all beneficiaries of any of the foregoing, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Date, from:

- a) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any action or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) which constitutes a Released Claim;
- b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, damages, or order in respect of a Released Claim, other than the enforcement of the Settlement Agreement;
- c) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Released Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a claim, in any manner or forum, against one or more of the ESL Parties;
- d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the ESL Parties or their property in respect of a Released Claim; or
- e) taking any actions to interfere with the implementation or consummation of the Settlement Agreement.

13. **THIS COURT ORDERS** that the bar order and injunctions set out herein and in the Settlement Agreement shall not apply to the obligations of any Person in respect of this Order and the Settlement Agreement.

14. **THIS COURT ORDERS** that any plan of compromise or arrangement of Sears Canada Inc. or any order sanctioning such plan of compromise or arrangement shall be supplementary to, and shall not derogate from, the releases and injunctions set out in this Order.

15. **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 Sears Canada Inc. or any of its affiliates and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of any of Sears Canada Inc. or any of its affiliates,

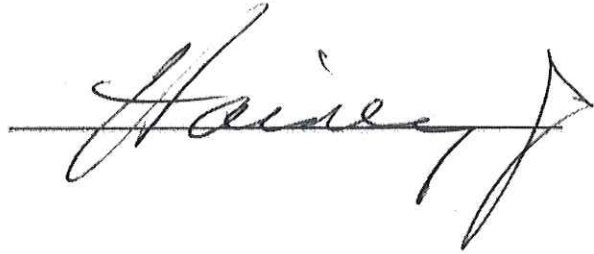
the settlement approved pursuant to this Order and the releases and bar orders shall be binding on any trustee in bankruptcy that may be appointed in respect of any of Sears Canada Inc. or any of its affiliates and shall not be void or voidable by creditors of any of the Applicants in the proceedings of Sears Canada Inc. or any of its affiliates under the Companies' Creditors Arrangement Act (Canada), 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.

16. **THIS COURT ORDERS** that the releases, bar orders and injunctions set out herein shall be conditional upon the completion of the settlement set out in the Settlement Agreement.

Recognition and Enforcement

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body (collectively, "**Bodies**") having jurisdiction in Canada or in the United States or in any other jurisdiction to give effect to this order and to assist the Plaintiffs,

the Litigation Trustee (as an officer of this Court) and the Monitor (as an Officer of this Court) and their respective agents in carrying out the terms of this order. All Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) as may be necessary or desirable to give effect to this order or to assist the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) and their respective agents in carrying out the terms of this order.

A handwritten signature in black ink, appearing to read "Haines", written over a horizontal line.

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

SEP 24 2020

PER / PAR:

Handwritten initials in blue ink, possibly "ML".

FTI CONSULTING CANADA INC.
 Plaintiff
 SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas
 Cunningham, Q.C.
 Plaintiff
 MORNEAU SHEPELL LTD.
 Plaintiff
 1291079 ONTARIO LIMITED
 Plaintiff

ESL INVESTMENTS INC. et al.
 Defendants
 ESL INVESTMENTS INC. et al.
 Defendants
 ESL INVESTMENTS INC. et al.
 Defendants
 ESL INVESTMENTS INC. et al.
 Defendants

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

ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER
 (Approval Order)

BLAKE, CASSELS & GRAYDON LLP 199 Bay Street, Suite 4000 Commerce Court West Toronto ON M5L 1A9	SOTOS LLP 180 Dundas St W Suite 1200, Toronto, ON M5G 1Z8 David Sterns LSO #36274J dsterns@sotosllp.com Tel: 416 977 0007 Fax: 416 977 0717	LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto ON M5H 1J8	NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street, Suite 3000, P.O. Box 53 Toronto ON M5K 1E7
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