

CITATION: Sears Canada Inc., et al. (Re), 2018 ONSC 6918
COURT FILE NO.: CV-17-11846-00CL
DATE: November 21, 2018

SUPERIOR COURT OF JUSTICE – ONTARIO

- COMMERCIAL LIST

RE: 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., 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., 16886 CANADA INC.,
AND 3339611 CANADA INC.

BEFORE: Hainey J.

COUNSEL: *Jeremy Dacks, Shawn Irving* for the Applicants
Virginie Gauthier, Alan Merskey for the Monitor
David T. Ullmann for the Landlords
Susan M. Ursel, Katy O'Rourke for the Employees
D.J. Miller, Paul D. Guy for Oxford Properties
Lily I. Harmer for Superintendent of Financial Services
Natalie Levine for Certain Former Directors and Officers
Sandy Lockhart for ESL Parties
Gustavo F. Camelino for Ivanhoe Cambridge
Andrew J. Hatnay, Amy Tang for Pension Representatives
Pamela L.J. Huff for Morneau Shepell, Plan Administrator

HEARD: In writing

COSTS ENDORSEMENT

[1] On September 20, 2018 I heard a motion brought by Oxford Properties Group Inc. ("Oxford") for an order appointing John A. Keefe as arbitrator to determine the current value of property in Newmarket ("Newmarket Property").

[2] Sears Canada and the Monitor opposed Oxford's motion. They brought a cross-motion, seeking the appointment of the Honourable James Farley as arbitrator to have the current value of the Newmarket Property determined concurrently with other claims advanced by Oxford in these CCAA proceedings. Mr. Farley has been appointed by me as the Claims Officer in these proceedings.

[3] In reasons I released on October 4, 2018 I dismissed Oxford's motion. I granted Sears Canada's and the Monitor's cross-motion and appointed Mr. Farley as the arbitrator to determine all of the disputes.

[4] Sears Canada and the Monitor seek their costs of the motion in the amount of \$24,178.29 for Sears Canada and \$15,146.37 for the Monitor.

[5] Cost orders are often not made in CCAA proceedings. I agree with Oxford's submission that there is no good reason to depart from this usual practice for this motion.

[6] Oxford's position was not unreasonable. The Option Agreement clearly provided for the appointment of an arbitrator by the court if the parties to the agreement could not agree on an arbitrator within 15 days. Oxford was exercising its rights under the Option Agreement in bringing this motion. Further, Oxford's proposed arbitrator was an appropriate choice. I dismissed Oxford's motion because I concluded its proposed approach was not the most efficient and cost-effective way to determine the disputes between the parties, not because Mr. Keefe was not an appropriate choice.

[7] Oxford was also partially successful on the motion because I ordered Mr. Farley to determine the current value of the Newmarket property in accordance with the terms of the Option Agreement.

[8] Oxford submits that the Monitor's costs are duplicative of Sears Canada's costs. Sears Canada's position was fully argued by its counsel. I agree that it was not necessary for the Monitor to argue the same issues. This is particularly the case because I had the Monitor's recommendations on this issue in its Twenty-Third Report.

[9] For these reasons I have concluded that this is an appropriate case to make no order as to costs.


Hailey J.

Date: November 21, 2018