

**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., 9370-2751 QUÉBEC 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., 168886 CANADA INC., AND 3339611 CANADA INC.

**MOTION RECORD OF THE MONITOR
(Fourth Construction Lien Claims Order)
(returnable September 20, 2018)**

September 18, 2018

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TO: THE SERVICE LIST

**ONTARIO
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**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., 9370-2751 QUÉBEC 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., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**NOTICE OF MOTION
(Fourth Construction Lien Claims Order)
(returnable September 20, 2018)**

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List), on September 20, 2018, at 10:00 am or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1 an Order, substantially in the form included in the Monitor's Motion Record (the "**Fourth Construction Lien Claims Order**");

- (a) confirming the Settled Construction Claim of the Settled Contractor and Connected Sub-Contractors (in each case, as defined below);

- (b) confirming the Monitor's determination that the Settled Contractor and the Connected Sub-Contractors do not hold any Claims (as defined in the Claims Procedure Order of the Ontario Superior Court of Justice (Commercial List) granted in these proceedings on December 8, 2017 (the "**Claims Procedure Order**")) in respect of the Settled Property (as defined below) other than the Settled Construction Claim;
- (c) directing the Monitor to distribute certain funds to the Settled Contractor in full satisfaction of the Settled Secured Construction Claim of the Settled Contractor and the Connected Sub-Contractors;
- (d) confirming that any further Claim (as defined in the Claims Procedure Order) by the Settled Contractor or by any Connected Sub-Contractor arising in respect of the Settled Property is fully and finally barred and extinguished;
- (e) directing steps be taken to dismiss and discharge resolved lien claims and construction liens; and

2 such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Lease Surrender Transactions

1 On October 4, 2017 and October 13, 2017, the Court approved transactions that would provide for the return to the applicable landlord of certain premises leased by Sears Canada Inc. ("**Sears Canada**") in return for cash consideration payable to Sears Canada by the applicable landlord (the "**Lease Surrender Transactions**");

2 The Lease Surrender Transactions provided material cash consideration to Sears Canada in connection with the surrender of the following leased premises: Promenade Mall; Lime Ridge Mall; Polo Park; Fairview Pointe-Claire; Fairview Mall; Scarborough Town Centre; Oakville Place; Nanaimo North Town Centre; Orchard Park Shopping Centre; Brentwood Mall; and Avalon Mall (collectively, the “**Surrendered Leased Properties**”);

3 The Lease Surrender Transactions were all implemented during October and November 2017;

4 In connection with the Lease Surrender Transactions, certain Court-ordered Construction Lien Claim Reserves were established to hold proceeds from the Lease Surrender Transactions in the aggregate amounts claimed under all construction liens registered against the Surrendered Leased Properties.

Claims Procedure Order

5 On December 8, 2017, the Court granted the Claims Procedure Order;

6 The Claims Procedure Order established a process for the Monitor to notify Construction Contractors of the Monitor’s position on the value of the Construction Claims, which notification (the “**Notice of Construction Claim**”) is deemed to include all of the Construction Claims of not only the Construction Contractor itself but also the Construction Claims of any and all sub-contractors who provided materials and/or services in connection with the improvement under an agreement or engagement with the Construction Contractor or any other construction sub-contractor at any level (each a “**Connected Sub-Contractor**”);

7 The Claims Procedure Order also provided a notice procedure (the “**Notices of Dispute of Construction Claims**”) for any Construction Contractor to dispute, for its own part and on

the part of any Connected Sub-Contractor, the position of the Monitor and Sears Canada on applicable Construction Claims as set out in a Notice of Construction Claim;

Resolution of Construction Claims

8 On June 15, 2018, the Court granted an Order (the “**Initial Construction Lien Claims Order**”) which, among other things provided for payment of distributions to those Construction Contractors holding (on their own behalf and on behalf of their Connected Sub-Contractors) undisputed Secured Construction Claims against the Construction Lien Claims Reserves;

9 Construction Claims that have been disputed by the applicable Construction Contractors remain, including Construction Claims secured against the Construction Lien Claims Reserves;

10 Further to Orders issued on July 4, 2018 and July 24, 2018 (the “**Prior Disputed Lien Claim Orders**”), the Monitor has settled a number of the remaining disputed Construction Claims that were secured against either the Construction Lien Claims Reserves or certain supplemental “affiliated properties” reserves.

11 The Monitor has now settled the disputed Construction Claim of one additional Construction Contractor and its Connected Sub-Contractors in connection with a specified Surrendered Leased Property (the “**Settled Property**”), and to that end has entered into a letter agreement with such Construction Contractor (the “**Settled Contractor**”, with the letter agreement being, the “**Letter Agreement**”).

12 The Construction Claim of the Settled Contractor and any Connected Sub-Contractors claiming under it that has been agreed upon pursuant to the Letter Agreement (the “**Settled Construction Claim**”), including the portion thereof secured against the Construction Lien Claim Reserve (the “**Settled Secured Construction Claim**”), is set out in the Third Supplement to the Twentieth Report of the Monitor served in connection with this motion;

13 The Settled Contractor has agreed that it and its Connected Sub-Contractors have no other Claims in connection with the Settled Property;

Distributions

14 The Monitor now requires approval of the Court to distribute funds to the Settled Contractor from the Construction Lien Claim Reserves to satisfy the Settled Secured Construction Claim;

Releases

15 Sears Canada and the Monitor require certainty regarding the resolution of lien and Construction Claim issues and, accordingly, the Monitor requests an Order confirming that all Claims by the Settled Contractor and the Connected Sub-Contractors claiming under it arising in respect of the Settled Property, including any claims against any Sears Canada Entities or their current and former directors and officers, and any claims against the Sears Canada Entities' current and former employees, are fully and finally determined as set out above and, in the case of the Settled Secured Construction Claim, fully and finally satisfied through the payment in satisfaction of such claim;

16 Upon payment of the Settled Secured Construction Claim, any liens securing such claim, any actions in which such liens are asserted, and any funds paid into court in respect of such claim should be vacated and discharged, dismissed and released as applicable;

General

17 The Monitor believes that the terms of the proposed Fourth Construction Lien Claims Order are reasonable in the circumstances, and substantially similar to those of the Initial

Construction Lien Claims Order and the Prior Disputed Lien Claims Orders already granted by this Court;

18 The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Court;

19 Rules 1.04, 1.05, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended; and

20 Such other and further grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1 The Third Supplement to the Twentieth Report of the Monitor dated September 18, 2018 2018; and

2 Such further and other evidence as counsel may advise and this Court may permit.

September 18, 2018

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Lawyers for the Monitor

TO: THE SERVICE LIST

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., et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**NOTICE OF MOTION
(Fourth Construction Lien Claims Order)
(returnable September 20, 2018)**

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Lawyers to the Monitor, FTI Consulting Canada Inc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 20TH
)	
JUSTICE HAINEY)	DAY OF SEPTEMBER, 2018

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
QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
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SOURCING CORP., SEARS FLOOR COVERING CENTRES
INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

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

**ORDER
(Fourth Construction Lien Claims Order)**

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor (the “**Monitor**”), for an Order with respect to the Settled Construction Claim of a certain Construction Contractor and certain reserve amounts described as the Construction Lien Claims Reserves, as described in the Third Supplement to the Twentieth Report of the Monitor, dated September 18, 2018 (the “**Third Supplement**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twentieth Report of the Monitor, dated June 12, 2018, (the “**Twentieth Report**”), the Third Supplement, and on hearing the submissions of counsel for the

Applicants, the Monitor, and those other counsel present, no one else appearing although duly served as appears from the affidavit of service of [REDACTED] sworn [REDACTED], 2018,

SERVICE

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

DEFINED TERMS

2. THIS COURT ORDERS that all capitalized terms used herein and not defined have the meanings ascribed to them in the Third Supplement, or where not so defined, the Twentieth Report.

CLAIMS OF CONSTRUCTION CONTRACTORS

3. THIS COURT ORDERS that the Settled Construction Claim is hereby confirmed, in accordance with the terms of the Claims Procedure Order, to be an accepted Claim pursuant to the Claims Procedure Order.

4. THIS COURT ORDERS that all Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) are deemed to have accepted and agreed (i) to the determination of the value and, if applicable, characterization of the Settled Construction Claim described in paragraph 3 above; and (ii) that, excluding the Claim described in paragraph 3 above, they have no Claims in respect of the Settled Property, in each case in accordance with the Claims Procedure Order.

PAYMENT OF SETTLED CONSTRUCTION CLAIM

5. THIS COURT ORDERS that the Monitor is hereby directed to make payment from the Construction Lien Claims Reserve in the amount and to the Settled Contractor set out on Schedule "A" hereto in full satisfaction of the Settled Secured Construction Claim.

6. THIS COURT ORDERS that the Settled Contractor shall have sole responsibility to distribute the payment made pursuant to paragraph 5 above to the Connected Sub-Contractors in connection with the improvement for which such payment is made and the Sears Canada

Entities shall have no liability to the Connected Sub-Contractors in connection with any Settled Secured Construction Claim after payment of the amount paid pursuant to paragraph 5 is made.

7. THIS COURT ORDERS that the Monitor shall have no liability with respect to or as a result of performing its duties under this Order, including the payment of the amount set out in paragraph 5 above except to the extent such liabilities result from the gross negligence or wilful misconduct of the Monitor as determined by this Court.

RELEASE OF CLAIMS

8. THIS COURT ORDERS that any Claims (as defined in the Claims Procedure Order), which for greater certainty includes D&O Claims (as defined in the Claims Procedure Order), and any claims against the Sears Canada Entities' current or former employees, in each case by the Settled Contractor and the Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) arising in respect of the Settled Property, other than the Settled Construction Claim, are hereby extinguished and the Settled Contractor and the Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) are hereby barred, estopped and enjoined from asserting or enforcing any such claims.

9. THIS COURT ORDERS AND DIRECTS that the Settled Contractor and each Connected Sub-Contractor will execute consents to an order or orders in respect of the Settled Property, as follows:

- a) discharging all liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims, whether such liens were preserved through registration or delivery;
- b) for any liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims preserved through registration, vacating the registration of the claim(s) for lien and certificate(s) of action (if any), by which such liens were preserved and perfected;
- c) for any liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims preserved through delivery, vacating the claims for lien that have been delivered;and

- d) dismissing without costs the actions through which the liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims are being pursued.
-

SCHEDULE "A"

Identified Contractor	Store Name and Location	Amount to be Paid
APM Construction Services Inc.	Fairview Mall, Toronto ON	\$1,532,284.04

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

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INC., et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
OF
(FOURTH CONSTRUCTION LIEN CLAIMS
ORDER)**

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capacity as Monitor

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