

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST



THE HONOURABLE MR.
JUSTICE HAINEY

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FRIDAY, THE 8TH
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")

**OMNIBUS APPROVAL AND VESTING ORDER
(Residual Assets Sales)**

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*: (i) approving the Transactions (as defined below) on an omnibus basis between one or more of the Applicants and SearsConnect (collectively, the "Sears Canada Entities", and individually, a "Sears Canada Entity"), as vendors, and one or more Purchasers (collectively, the "Purchasers", and individually, a "Purchaser"), as purchasers, on the dates to be specified in the Transaction Documents (as defined below), and (ii) vesting in and to the Purchasers all right,

title and interest of the Sears Canada Entities in and to the Purchased Assets (as defined below), and certain related relief, 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 1, 2017 including the exhibits thereto (the “**Wong Affidavit**”), and the Eighth 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, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Justine Erickson sworn December 4, 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**”).

OMNIBUS APPROVAL OF TRANSACTIONS

3. THIS COURT ORDERS that, notwithstanding paragraph 10(a) of the Initial Order, the Sears Canada Entities shall have the right to dispose of Residual Assets (as defined in the Wong Affidavit) not exceeding \$5 million in any one transaction or a series of related transactions (each one transaction or a series of related transactions, a “**Transaction**”), subject to the requirements set forth herein.

4. THIS COURT ORDERS that upon the entering into of one or more definitive transaction documents (the “**Transaction Documents**”) with respect to a Transaction, the Sears Canada Entities, in consultation with the Monitor, shall forthwith provide notice of the Transaction, substantially in the form attached hereto as Schedule “A” (a “**Transaction Notice**”), which Transaction Notice shall include a copy of the Transaction Documents (which Transaction Documents may contain a redaction of the purchase price and other financial information if the Monitor determines in its discretion that it would be in the best interests of the Applicants’ estate to do so), to the Service List and to any party listed on Schedule “D” to a Transaction Notice.

5. THIS COURT ORDERS that any Person who wishes to object to the Transaction must notify the Sears Canada Entities and the Monitor (by service upon counsel to Sears Canada Inc., the Monitor and counsel to the Monitor at the addresses shown on the Service List) of such objection, in writing, (such notice being a “**Notice of Objection**”) such that the Notice of Objection is received within seven (7) days of the applicable Transaction Notice being sent to such Person.

6. THIS COURT ORDERS AND DIRECTS that the Monitor shall, with respect to each Transaction and subject to the terms of the Transaction Documents and the expiration of the seven (7) day notice period set forth in paragraph 5 hereof without any Notice of Objection having been received in accordance with the requirements contained in paragraph 5 above (or if all such Notices of Objection are subsequently revoked or deemed by the Court to be revoked), deliver a Monitor’s certificate to the Purchaser and the Sears Canada Entities substantially in the form attached as Schedule “B” hereto (the “**Monitor’s Certificate**”). The Monitor shall also hereby be directed to file with the Court a copy of the Monitor’s Certificate forthwith after delivery thereof to the Purchaser and the Sears Canada Entities and to post the Monitor’s

Certificate to the Monitor's website. Upon delivery of the Monitor's Certificate to the Purchaser and the Sears Canada Entities, the entering into of any such Transaction by the applicable Sears Canada Entities is hereby approved and ratified and the execution of the Transaction Documents by the applicable Sears Canada Entities is hereby authorized, approved and ratified with such minor amendments as the applicable Sears Canada Entities (with the consent of the Monitor) and the Purchaser may agree to in writing. The applicable Sears Canada Entities are 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 set forth in the Transaction Documents and identified in the applicable Transaction Notice (the "**Purchased Assets**") to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Transaction Documents and this Order, and shall not incur any liability as a result thereof.

7. THIS COURT ORDERS AND DECLARES that upon the delivery of the Monitor's Certificate with respect to a Transaction to the Purchaser and the Sears Canada Entities, all of the applicable Sears Canada Entities' right, title and interest in and to the Purchased Assets pursuant to the Transaction 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 those 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 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 any personal property registry system, including those listed in Schedule “B” to the applicable Transaction Notice;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” to the applicable Transaction Notice), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets pursuant to the Transaction are hereby expunged and discharged as against the Purchased Assets.

8. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate with respect to a Transaction, all Claims and Encumbrances previously related to the Purchased Assets under the applicable Transaction shall thereafter attach to the net proceeds from that Transaction (the “**Net Proceeds**”), with the same priority as they had with respect to the Purchased Assets immediately prior to the closing of the Transaction, as if the Transaction had not been completed. The Monitor shall be entitled to (i) retain the Net Proceeds (other than applicable transfer Taxes) on behalf of the Applicants to be dealt with by further Order of the Court; and (ii) deliver any applicable transfer Taxes to the Sears Canada Entities to be remitted to the applicable tax authorities by the Sears Canada Entities.

9. THIS COURT ORDERS that subject to the terms of any Transaction Documents nothing herein affects:

- (a) the rights and obligations of Sears Canada Inc. (“**Sears Canada**”) 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 Sears Canada 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.

GENERAL PROVISIONS

10. 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 any 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.

11. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and similar provisions under applicable

provincial private sector privacy legislation, the Sears Canada Entities or the Monitor are authorized and ordered, where applicable, to disclose and transfer personal information in the Sears Canada Entities' records ("**Personal Information**") to a Purchaser in accordance with the Transaction Documents. Any Purchaser to whom such Personal Information is disclosed shall (i) use and disclose the Personal Information solely for the purposes for which the Personal Information was collected, permitted to be used or disclosed by the Sears Canada Entities, except as otherwise permitted by law; (ii) protect the Personal Information by security safeguards appropriate to the sensitivity of such information; (iii) give effect to any withdrawal of consent by an individual to the collection, use or disclosure of the Personal Information; and (iv) notify the individuals to whom such Personal Information relates, within a reasonable time after the Transaction is completed, that their Personal Information has been disclosed in connection with the Transaction.

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

ENTERED AT / INSCRIT À TORONTO
ON / BOEKING out the terms of this Order.
LE / DANS LE REGISTRE NO:

DEC 08 2017

PER / PAR:

pl

Hainey J.

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

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TRANSACTION NOTICE

NOTICE IS HEREBY GIVEN, pursuant to paragraph 4 of the Order of the Court dated ●, 2017 (the "**Omnibus Approval and Vesting Order**"), by the Applicants and SearsConnect (collectively, the "**Sears Canada Entities**"), that the Sears Canada Entity listed below as "Seller" has executed definitive documents (the "**Transaction Documents**") with the Purchaser listed below in respect of the sale of the assets listed below as "Purchased Assets" (the "**Transaction**"):

SELLER	●
PURCHASER	●
PURCHASED ASSETS	● ● ●

The Transaction Documents with respect to this Transaction are attached as Schedule “A” to this Transaction Notice.

Upon the closing of this Transaction and in accordance with the Transaction Documents and the Omnibus Approval and Vesting Order, all of the Seller’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of Claims and Encumbrances (as such terms are defined in the Omnibus Approval and Vesting Order), including those listed in Schedule “B” to this Transaction Notice, but excluding the Permitted Encumbrances listed in Schedule “C” to this Transaction Notice, and such Claims and Encumbrances shall be expunged and discharged as against the Purchased Assets.

Should any person wish to object to this Transaction, such person shall notify the Sears Canada Entities and FTI Consulting Canada Inc. (the “**Monitor**”) (by service upon counsel to Sears Canada Inc., the Monitor and counsel to the Monitor at the addresses shown on the Service List) of such objection, in writing (such notice being a “**Notice of Objection**”), such that the Notice of Objection is received within seven (7) days of this Transaction Notice being sent to such person. Any notice of objection must specify the reasons for such objection.

If no Notice of Objection is received by the applicable parties in accordance with the procedures and the timelines set out above or if all Notices of Objection are subsequently revoked or deemed by the Court to be revoked, the closing of this Transaction will become effective upon delivery by the Monitor of a Monitor’s certificate (the “**Monitor’s Certificate**”) to the Purchaser under the Transaction and the Sears Canada Entities , certifying that, among other things, all conditions to closing have been satisfied or waived. The Monitor’s Certificate filed in respect of the

Transaction shall be made available on the Monitor's website at:
<http://cfcanada.fticonsulting.com/searscanada/>.

Schedule "A" to the Transaction Notice
TRANSACTION DOCUMENTS

Schedule "B" to the Transaction Notice
ENCUMBRANCES TO BE VESTED

Schedule "C" to the Transaction Notice
PERMITTED ENCUMBRANCES

Schedule "D" to the Transaction Notice
PARTIES TO RECEIVE NOTICE OF TRANSACTION

SCHEDULE "B"

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

ONTARIO

SUPERIOR COURT OF JUSTICE

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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 ●, 2017 (the "**Omnibus Approval and Vesting Order**") approving the entering into of certain Transactions by the Applicants and SearsConnect (collectively, the "**Sears Canada Entities**").

B. Pursuant to the rights granted to the Sears Canada Entities under paragraph 3 of the Omnibus Approval and Vesting Order, ●, as seller (the "**Seller**"), has entered into definitive transaction documents with ●, as purchaser (the "**Purchaser**") dated ● (the "**Transaction Documents**"), whereby the Purchaser has agreed to purchase, and the Seller has agreed to sell, the Purchased Assets (as defined below) (the "**Transaction**").

C. Pursuant to the Omnibus Approval and Vesting Order, the Court approved the Transaction Documents and the vesting in the Purchaser of the Seller's right, title and interest in and to the purchased assets set forth in the Transaction Documents and identified in Schedule "A" to this Monitor's Certificate (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Sears Canada Entities of a certificate confirming (i) all conditions to closing of the Transaction have been satisfied or waived by the Purchaser and the Seller, as applicable; (ii) the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the Transaction Documents) by the Purchaser to the Seller have been received by the Monitor, and (iii) no Notice of Objection in respect of the Transaction has been received by the Monitor that has not also been, or been deemed by the Court to be, revoked.

THE MONITOR CERTIFIES the following:

1. All conditions to closing of the Transaction have been satisfied or waived by the Purchaser and the Seller, as applicable;
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Seller have been received by the Monitor; and
3. No Notice of Objection in respect of the Transaction has been received by the Monitor that has not been, or been deemed by the Court to be, revoked.

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

By: _____
Name:
Title:

Schedule "A" to the Monitor's Certificate
PURCHASED ASSETS

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., 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.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

OMNIBUS APPROVAL AND VESTING ORDER
(Residual Assets Sales)

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