

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., 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., 168886 CANADA INC. AND 3339611 CANADA INC.

RESPONDING MOTION RECORD
(Motion re. Deemed Trust)
(returnable November 1, 2018)

September 7, 2018

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Employee Representative Counsel

TO: THE SERVICE LIST

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Tab 1

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

AFFIDAVIT OF MARINELLA GONZALEZ

(Affirmed September 5, 2018)

I, Marinella Gonzalez, of the City of Toronto, in the Province of Ontario, DO
SOLEMNLY AFFIRM:

1. I am a former employee of Sears Canada. I was employed at Sears Canada’s headquarters in various positions from November 1999 until June 22, 2017. As such, I have personal knowledge of the matters to which I herein depose, or, where my affidavit is based on information and belief, I have stated the source of my information.
2. Throughout the CCAA Proceedings, I have kept myself informed from time to time by reviewing various materials on the website established by the Monitor. Much of my understanding of the proceedings to date comes from information in the Monitor’s Reports.

A. The Loss of My Employment

3. I was employed for 18 years in various positions at Sears Canada's headquarters. I was hired by Sears Canada in November 1999, shortly after having lost my job as a result of the insolvency of the T. Eaton Company ("Eatons"). Originally, I worked as a Replenishment Analyst for Sears Canada. In 2014, I was promoted to a managerial role, responsible for a group of employees. I was promoted to the position of Planner in early 2017.

4. My employment at Sears Canada was terminated on June 22, 2017. I was among over 300 employees terminated at that time in a mass termination at the Metro Toronto Convention Centre on the CCAA filing date.

5. As mentioned above, I had some experience with insolvency proceedings from when I was terminated at Eatons, after 15 years of employment there. I lost a significant amount of money in respect of termination and severance pay as a result of the Eatons insolvency.

6. Unlike that experience, the mass termination of Sears Canada employees was a shocking experience. Whereas at Eatons, there was an understanding that the company's future was limited, Sears Canada employees had no warning that the Company would be entering insolvency and we did not know what to expect when we were asked to report to the Convention Centre.

7. The termination was conducted in a completely impersonal manner, with a manager announcing from a podium that we were all being terminated. We were then asked to leave the room, and to return our badges to security. We were each given envelopes that advised us that we were not going to receive any money for termination or severance pay. We were not provided with an opportunity to collect our personal effects from our offices.

8. Although the announcement had indicated that there was a group of people ready to help anyone who needed assistance, I did not have an opportunity to speak

individually with anyone. I wanted to speak with a counsellor, but no one was there. We were being encouraged to leave as soon as possible.

9. As the shock of the mass termination set in, I had to reckon with a sudden and drastic change in my financial circumstances. Despite working at Sears Canada for 18 years, I did not have access to pay in lieu of notice, termination or severance pay to assist in tiding my family over until I was able to find alternative employment.

10. As a single parent of two older children, I immediately felt significant financial strain. My older daughter was in university, and my younger son was just about to graduate from high school and begin his first year at university in September 2017.

11. In addition, I had entered into a contract for orthodontic work for my son, which I had expected would be partially covered by my medical benefits. As my medical benefits were terminated on June 22, 2017 with no notice, I was on the hook for thousands of dollars of orthodontics at a time when I had no income and had received no severance or termination pay.

12. Following my termination, I applied for and began receiving Employment Insurance ("EI"). My EI benefits were approximately \$950 every two weeks, less than half of my previous income from Sears Canada. Unfortunately, I did not have a lot of savings to hold me through this time and I was dependent on these EI benefits.

13. With the sudden drop in my income, I was at risk of being unable to pay my rent and other bills, pay for my son's orthodontics and cover my car loan and credit card payments.

14. I was very lucky to receive the support of one of my family members, who lent me the money to pay off my car loan so that I did not lose my car.

15. Ultimately, I consulted with a number of financial advisors and made a consumer proposal to my creditors. This proposal was accepted, and allowed me to keep my head above water. However, my credit rating has now been affected on a long-term basis, which has an impact on how I can structure my financial life in the future.

16. Thankfully, I was able to find alternative employment after approximately three months. While I am grateful to have my new job, my new salary is significantly lower salary than my salary at Sears Canada.

17. My financial situation and future looks completely different than it did a year and a half ago. My income has been reduced by almost \$20,000 per year. My savings are diminished. My pension is likely to be reduced. My credit rating has dropped significantly, which means that I no longer have the same access credit cards and loans in the future as needed. Sears Canada's insolvency will have a permanent impact on my future.

B. Employee Hardship Fund

18. On August 18, 2017, the Court issued an order approving the creation of an Employee Hardship Fund to assist employees who suffered a significant impact to their standard of living as a result of the termination of their employment and the stay of their entitlements to severance and termination pay and pay in lieu of notice.

19. Following the approval of the Employee Hardship Fund, I made an application to the Monitor for relief based on the high costs of my son's orthodontics. I was required to submit an application detailing the particular grounds on which I was making a request, including highlighting any other sources of income or assistance that I could draw on and explaining why those sources were insufficient.

20. It was extremely difficult for me at my age to be in the position of having to seek this assistance and to be required to answer detailed questions about my personal finances. Nonetheless, I was grateful that some assistance was available for me.

21. The Monitor approved my claim to the Employee Hardship Fund and I received \$1800 over the course of 8 weeks, which went partway to assist me in paying for my son's orthodontics and covering my own bills.

22. I have reviewed the 21st Report of the Monitor, from which I understand that 79 employees applied to the Employee Hardship Fund, of which 58 applications were

approved. Approximately \$131,875.00 has been paid to employees in particularly difficult circumstances, including those who had no access to income, had medical expenses that were greater than 20% of their income, or suffered other significant financial hardship as a result of the stay.

C. My Termination Claim

23. Following the approval of the Employee and Retiree Claims Process, I received a Termination Claim Statement from the Monitor, outlining the details of my employment and the calculation of my Termination Claim. The Monitor determined that my Termination Claim is worth \$97,500. I did not have any other employee claims.

24. I understand from having reviewed the Monitor's Reports that that there will not be sufficient funds to pay the Employee Claims in full. I also understand from the Monitor's Reports that if the Pension Wind-Up Deficit has a priority claim on Sears Canada's assets, there will not be sufficient funds to pay any of the Employee Claims.

25. If there is a deemed trust in favour of the pension plan over Sears Canada's assets, I will personally lose the entire value of my \$97,500 Termination Claim.

26. Although I am a defined benefit pension plan member myself, and I do not wish to diminish the hardships of current retirees, I believe that it is important for the Court to be aware of the losses suffered by the employees, particularly those who were terminated without notice. Personally, I was left scrambling to figure out how I was going to survive financially following my termination, and I have been set back permanently as a result of these proceedings.

27. Even a recovery of part of my Termination Claim will be meaningful to me. These funds would help me to pay off my consumer proposal, and repay the loan I received from my family that enabled me to keep my car.

28. I swear this affidavit in support of the position of Employee Representative Counsel on this motion and for no other or improper purpose.

AFFIRMED BEFORE ME at the city of
Toronto, this 5th day of September, 2018.

 
A Commissioner for taking Affidavits


MARINELLA GONZALEZ

Andrew Douglas Hills, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires August 10, 2021.

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 ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICERS INC., INITIUM LOGISTICS SERVICE 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.

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Proceeding commenced at «place»

AFFIDAVIT OF MARINELLA GONZALEZ
(Affirmed September 5, 2018)

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Employee Representative Counsel

Tab 2

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

**AFFIDAVIT OF YULANDA SAMUEL
(Affirmed September 7, 2018)**

I, Yulanda Samuel, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY AFFIRM:

1. I am a former employee of Sears Canada. I worked in various positions at Sears Canada for 30 years. As such, I have personal knowledge of the matters to which I herein depose, or, where my affidavit is based on information and belief, I have stated the source of my information.
2. Throughout the CCAA Proceedings, I have kept myself informed from time to time by reviewing various materials on the website established by the Monitor. Much of my understanding of the proceedings to date comes from information in the Monitor’s Reports.

A. The Loss of My Employment

3. I spent my entire career working for Sears Canada until I was terminated on June 22, 2017. I first started working at Sears Canada while I was in high school in 1985. I worked part-time at Sears Canada headquarters in customer service, taking phone calls and trouble shooting. I accepted a full time job with Sears Canada when I graduated,

working for approximately 3 years in Sears accounting department at Warden, and for about 9 years thereafter in merchandizing and marketing at headquarters.

4. In 1994, when I was 5 months pregnant, I lost my job in a mass layoff at Sears Canada. Fortunately, a year and a half after my son was born, I was recalled by Sears.

5. Since 1996, I have worked in a variety of jobs in the marketing and merchandizing departments of Sears Canada. I worked my way up in the company, and held the position of Marketing Promotional Sales Analyst when I was terminated in the mass layoff at the Metro Toronto Convention Centre on June 22, 2017.

6. The mass termination was a surreal event for me. The day before, I had been working in Sears Canada's studios preparing for a marketing photo shoot to take place that week. At the end of the day, a colleague told me to look at my email, which directed me to go to the Convention Centre the next morning.

7. The following morning, we spent a long time waiting around, with many security guards present. Finally, a Vice-President gave a brief announcement from a podium, while surrounded by guards, that we were all being let go and that there would be packages waiting for us outside. It was only when I went outside and gave the staff person my name to receive my package that I was told that all of the packages were the same, and that I understood that we were being given no termination or severance pay. I was shocked and felt belittled by the cold and inhumane way this message was delivered.

8. The mass termination was very surprising, since so many Sears Canada employees had grown up in the company, having given many years of dedicated service. Sears Canada was a family-type company, in which employees could grow and learn and make a career. I knew the company was in trouble, but I never expected that we would be terminated with no severance pay. It was especially shocking to be turned away with so little concern, and later to hear that some of the remaining executives would be paid so much money to stay behind.

9. Despite working at Sears Canada for over 30 years, I did not have access to pay in lieu of notice, termination or severance pay to assist in tiding my family over until I was able to find alternative employment.

10. At the time, the sudden loss of my income and benefits was extremely difficult for me and my family. As a single mother independently supporting my son, I have struggled to make ends meet ever since.

11. Following my termination, I applied for and began receiving Employment Insurance ("EI"). My EI benefits were approximately \$800 every two weeks, less than half of my previous income from Sears Canada.

12. My EI benefits were insufficient to cover my rent and living expenses, and I had to cut back on all my expenses: eliminating my home phone, reducing cable and internet to basic packages, and getting rid of discretionary spending.

13. I take regular prescription medications that previously were 75% covered by my medical benefits. When my benefits were cancelled without notice, I had to work with my pharmacy to switch to generic drugs and also to cut down the number of pills that I would receive at one time, so that I would have enough money to pay for my medication each month.

14. After missing only a couple paycheques, I realised that I would have to be drawing on my savings, including my RRSPs, to keep up with my bills.

15. I was unable to find any employment until September 2017, when I accepted a part-time, minimum wage job in order to make ends meet. Since that time, I have worked a variety of part-time jobs. Despite numerous interviews, I have not been able to find comparable, full time employment in the last 14 months.

16. It has been very difficult to be looking for work for over a year. I had worked at Sears Canada my entire career, and although I had applied and interviewed internally for promotions, I had not been on the job market in over 30 years. Learning to prepare a

resume, to interview, to demonstrate transferrable skills and to compete, as a middle-aged woman, against new university graduates, has been extremely difficult.

17. I cannot overstate the reversal of my financial situation since my termination. In June 2017, I was a long term employee of Sears Canada with job security, benefits and a career trajectory. Since that time, I have been working part-time, minimum wage jobs and barely scraping by from month to month. I have gone from having regular 9am-5pm employment to casual shift work, which has had an impact on my ability to be present for my son. At times, I have been working two part-time jobs, occasionally running from one job to the next and putting in 15 hour days, all just to barely stay afloat.

18. I find that each month, I am scrambling to be able to pay my bills. Although I understood the tax consequences of drawing from my RRSPs, I did so because I needed the money to cover my immediate expenses. Since my tax return came due, I have struggled to pay the penalties in installments. From time to time, I have accepted small loans from my family members. My son has also converted from working part-time to working full-time in order to help cover our household costs, which has put his schooling on hold.

19. Although I have considered a personal bankruptcy or making a consumer proposal, that is an option of last resort. For now, I continue to scrape by each month while I look for a full time job comparable to what I had at Sears Canada.

B. Employee Hardship Fund

20. On August 18, 2017, the Court issued an order approving the creation of an Employee Hardship Fund to assist employees who suffered a significant impact to their standard of living as a result of the termination of their employment and the stay of their entitlements to severance and termination pay and pay in lieu of notice.

21. Upon approval of the Employee Hardship Fund in August 2017, I made an application to the Monitor for relief based on the high costs of a sleep apnea machine, which I had been prescribed but was unable to pay for. I was required to submit an

application detailing the particular grounds on which I was making a request, including highlighting any other sources of income or assistance that I could draw on.

22. The Monitor approved my claim to the Employee Hardship Fund and I received a one-time payment of \$1000 (less tax withholding) to assist in covering the costs of the sleep apnea machine and associated costs.

23. Unfortunately, this money was claimed as an overpayment in relation to my EI benefits. I am informed by Karen Ensslen, an associate at Ursel Phillips Fellows Hopkinson LLP, acting as employee representative counsel in these proceedings, and do believe, that a test case appeal has been launched in relation to whether money received from the Employee Hardship Fund is subject to deduction from EI or is instead a "relief grant" that should be exempt, which appeal is awaiting decision.

24. I have reviewed the 21st Report of the Monitor, from which I understand that 79 employees applied to the Employee Hardship Fund, of which 58 applications were approved. Approximately \$131,875.00 has been paid to employees in particularly difficult circumstances, including those who had no access to income, had medical expenses that were greater than 20% of their income, or suffered other significant financial hardship as a result of the stay.

C. My Termination Claim

25. Following the approval of the Employee and Retiree Claims Process, I received a Termination Claim Statement from the Monitor, outlining the details of my employment and the calculation of my Termination Claim. The Monitor determined that my Termination Claim is worth **\$67,242.00** I did not have any other employee claims.

26. I understand from having reviewed the Monitor's Reports that that there will not be sufficient funds to pay the Employee Claims in full. I also understand from the Monitor's Reports that if the Pension Wind-Up Deficit has a priority claim on Sears Canada's assets, there will not be sufficient funds to pay any of the Employee Claims.

27. If there is a deemed trust in favour of the pension plan over Sears Canada's assets, I will personally lose the entire value of my \$67,242.00 Termination Claim.

28. Although I am a member of the defined benefit pension plan myself, and I do not wish to diminish the hardships of current retirees, I believe that it is important for the Court to be aware of the losses suffered by the employees, particularly those who were terminated without notice. Personally, I have been struggling to survive from month to month following my termination. Had I received the severance and termination pay that was owing to me at the time of my termination, I would have been able to live reasonably for several months while finding new employment, without drawing on my RRSPs.

29. Now, even a recovery of part of my Termination Claim will be meaningful to me. A couple thousand dollars means a lot more to me today than it did in early 2017, when I was employed full time. These funds would give me a bit of breathing room for a few months and will make a difference to my everyday life and the life of my family.

30. I swear this affidavit in support of the position of Employee Representative Counsel on this motion and for no other or improper purpose.

AFFIRMED BEFORE ME at the city of Toronto, this 7th day of September, 2018.



A Commissioner for taking Affidavits
Karen Ensslen LSO: 60419G



YULANDA SAMUEL

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Proceeding commenced at TORONTO

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Proceeding commenced at TORONTO

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EMPLOYEE REPRESENTATIVE COUNSEL**

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