

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

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**SUPPLEMENT TO THE FIFTEENTH REPORT OF FTI CONSULTING CANADA  
INC., AS MONITOR**

**April 16, 2018**

**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

**SUPPLEMENT TO THE FIFTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION**

1. On March 12, 2018, the Monitor filed the Fifteenth Report to the Court (the “**Fifteenth Report**”) in these CCAA Proceedings in relation to a motion (the “**Pre-Filing Tax Motion**”) brought by the Monitor, originally returnable March 19, 2018 and adjourned at the request of certain landlords to April 18, 2018, for the granting of an order directing the return of certain Pre-Filing Tax Payments (as defined in the Supplement to the Monitor’s Eleventh Report, dated January 21, 2018).
2. Capitalized terms used herein and not otherwise defined in this Supplement to the Fifteenth Report (the “**Supplement**”) have the meanings given to them in the Fifteenth Report.

## **B. RECOVERY OF PRE-FILING TAX PAYMENTS**

3. Issues relating to the Pre-Filing Tax Payments were first identified by the Monitor in December 2017. As previously reported, the Monitor was advised by Sears Canada on December 11<sup>th</sup> that on or around that date Sears Canada unintentionally made payments on account of certain real property taxes payable and accrued during the pre-filing period (the “**Pre-Filing Tax Obligations**”).
4. As set out in the Fifteenth Report, the Monitor believes, based upon the principles set out in the decision in these CCAA Proceedings on the motion of Remington Properties Inc. (“**Remington**”), that the Pre-Filing Tax Payments must be repaid to Sears Canada to the extent that Sears Canada has not been able to offset such payments against valid post-filing rent obligations.
5. The Monitor requested repayment of the Pre-Filing Tax Payments from landlords who received such amounts, starting on January 5, 2018 and continuing thereafter on several occasions.
6. After the issuance of the Fifteenth Report, the Monitor’s work on reconciliation of these matters continued as additional information became available. This additional reconciliation work included: (i) the addition to outstanding post-filing balances of 2018 property tax amounts that were estimated to be due and payable by Sears Canada; and (ii) the deduction of amounts previously identified as post-filing rent amounts that were subsequently determined to be attributable to rent for periods after the effective date of the disclaimers of the applicable leases. Based upon this information, the Monitor has updated the remaining Pre-Filing Tax Payments that could not be offset against post-filing rent and that the Monitor believes must be repaid to Sears Canada. Based upon this updated analysis, outstanding amounts remain at the following properties:

<b>Location</b>	<b>Landlord</b>	<b>Original Pre-Filing Payment</b>	<b>Pre-Tax</b>	<b>Offsets Applied</b>	<b>Remaining Pre-Filing Tax Payment amount</b>
Regina Home	3015 Quance Street Properties LP	\$83,042.82		\$0.10	\$83,042.72
Guelph	Stone Road Mall Holdings Inc.	\$160,479.01		\$105,992.58	\$54,486.44
Hamilton	Eastgate Square GP Inc.	\$102,380.65		\$87,522.51	\$14,858.14
Victoria	Hillside Centre Holdings Inc.	\$166,913.39		\$87,804.98	\$79,108.42
<b>Total</b>		<b>\$512,815.87</b>		<b>\$281,320.17</b>	<b>\$231,495.70</b>

7. The specific issues at each of the foregoing properties leading to these outstanding balances are summarized below.
8. Based upon the additional information noted above, amounts that were previously identified as payable to Sears Canada at the Vancouver (Capilano) and Langley locations have been eliminated.
9. In addition, the Monitor has resolved previously identified outstanding issues at the Edmonton North Home Store by agreement with counsel to the landlord at that location.

*Regina Home*

10. Account statements received from the landlord at the Regina Home store location show that, leaving aside any amounts attributable to damages resulting from the disclaimer of this lease (which is a Restructuring Period Claim in accordance with the Claims Procedure Order), no amounts are owing to such landlord under this lease. A copy of the statement of account received from the applicable landlord is attached hereto as Appendix "A".

11. The account statement also expressly shows a charge for, and payment by Sears Canada of, taxes accrued during the pre-filing period. Any claim for such Pre-Filing Tax Obligations, would be a pre-filing claim in accordance with the decision in the Remington motion. The amount the Monitor seeks to recover from the landlord at the Regina Home location is the remaining Pre-Filing Tax Payment that was improperly paid in error and could not be offset against other amounts owing to this landlord or affiliated landlords. That amount is \$83,042.72.
12. The Monitor does not believe there can be any dispute regarding these outstanding amounts or the obligation to repay them. However, such repayment has not yet been received.
13. The Monitor notes that it has been engaged in correspondence with the landlord at this location for many months. The landlord has not taken the position that it will not pay these amounts, but no payment has been made to date.
14. The Monitor further notes that due to an inadvertent service error, the landlord at this location did not receive service of the Monitor's motion on March 12, 2018. However, the landlord at this location did receive a copy of the Monitor's motion record on the morning of April 12<sup>th</sup> and receipt of the transmission of the motion record was acknowledged by the landlord. The Monitor has contacted the landlord multiple times since April 12<sup>th</sup> to attempt to obtain the landlord's position on these outstanding amounts.

*Victoria Hillside, Guelph, and Hamilton (Eastgate)*

15. The Monitor has received limited information from the account statements delivered in respect of these three locations.
16. Counsel to the landlords at these locations submitted proofs of claim for these locations on the applicable claims bar date (April 2, 2018) and the Monitor received correspondence from counsel to the landlords at these locations on April 12, 2018. As a result of the short time provided to review this information, the Monitor was unable to serve this Supplement on an earlier date.

17. Copies of the account statements at these locations as included in the applicable landlords' proofs of claim are attached hereto as Confidential Appendix "B".<sup>1</sup>
18. A copy of correspondence received from counsel to the landlords at these locations is attached hereto as Confidential Appendix "C".<sup>2</sup>
19. The account statements and correspondence received identify certain disputes regarding the amounts of the Pre-Filing Tax Payments that the Monitor states are recoverable. Specifically, the applicable landlords take the position that no amounts are recoverable and, in fact, Sears Canada owes each of these landlords additional amounts for the post-filing period.
20. The Monitor has reviewed these disputes and sets out below the apparent reasons for the discrepancies between Sears Canada's records and the landlords' records.
21. In all cases, it appears the disputes are limited to one or both of the following questions: (i) whether the Pre-Filing Tax Payments should have been applied against accrued pre-filing taxes, or instead applied only against post-filing rent for December 2017 and January 2018, with the balance being returned; and (ii) whether rent that accrued during the period after the relevant lease disclaimer became effective at these locations should have been payable as a post-filing claim. The Monitor's view is that any Pre-Filing Tax Payments should have been applied only against unpaid post-filing rent amounts, with any remainder being returned to Sears Canada. Following the Remington motion, the Monitor does not believe this point can be disputed. The Monitor also does not believe that there is any legal basis to support the proposition that rent accruing following the effective date of a disclaimer should be paid; rather such amount should form part of the landlord's Restructuring Period Claim (as defined in the Claims Procedure Order).

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<sup>1</sup> Counsel to the applicable landlord has stated that account information in respect of these landlords is subject to confidentiality obligations that restrict disclosure in this report.

<sup>2</sup> Counsel to the applicable landlord has stated that account information in respect of these landlords is subject to confidentiality obligations that restrict disclosure in this report.

### Victoria Hillside

22. The Pre-Filing Tax Payment made in error at this location was \$166,913.40.
23. Sears Canada has been able to recover, through offset from amounts of post-filing rent payable at other affiliated landlord locations, an amount of \$38,877.68. Sears Canada has also been able to recover, through offset against post-filing rent owing for December 2017 and January 2018 at this location, an amount of \$48,927.30<sup>3</sup>. This leaves an outstanding recoverable balance of \$79,108.42.
24. Correspondence from counsel to the landlord at the Victoria Hillside location advises that this landlord claims to be owed \$53,117.65 of post-filing rent. This corresponds with the amount of rent claimed for the months of December 2017 and January 2018 in the proof of claim submitted by this landlord. This amount includes \$4,190.35 of rent that Sears Canada's records show as accruing following the effective date of the disclaimer of this lease.
25. The proof of claim submitted by the landlord at this location does not include a pre-filing claim for Pre-Filing Tax Obligations. The Monitor assumes this is the case because the Pre-Filing Tax Payment made in error was improperly applied in satisfaction of such amounts.
26. If: (i) the Pre-Filing Tax Payment was not applied against Pre-Filing Tax Obligations and was instead applied against December 2017 and January 2018 rent that this landlord now claims; and (ii) the post-filing claim for rent accruing after the disclaimer effective date at this location is not treated as a post-filing claim, it does not appear there are any factual disputes that would change the conclusion that at least \$79,108.42 is now recoverable by Sears Canada on account of the Pre-Filing Tax Payments made in error with respect to the location.

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<sup>3</sup>Hillside Centre Holdings Inc. has provided statements showing post-filing rent for December and January in the amount of \$53,177.65. However, this amount includes \$4,190.35 of rent that Sears Canada's records indicate was accrued during the period after the effective date of the disclaimer at this location.

## Guelph

27. The Pre-Filing Tax Payment made in error at this location was \$160,479.02.
28. Sears Canada has been able to recover, through offset from amounts of post-filing rent payable at other affiliated landlord locations, an amount of \$21,722.48. Sears Canada has also been able to recover, through offset against post-filing rent owing for December 2017 and January 2018 as reflected in the account statements provided by the landlord, an amount of \$84,270.10<sup>4</sup>. This leaves an outstanding recoverable balance of \$54,486.44.
29. The proof of claim submitted by the landlord at this location includes a pre-filing claim for property taxes accrued during the pre-filing period. This appears to be an error as the amount claimed for pre-filing property taxes does not equal the amount of pre-filing property taxes that accrued at this location up to June 22, 2017. Instead, this amount corresponds to ordinary course rent that became due and payable during December 2017 and January 2018.
30. If one were to apply the full amount of the Pre-Filing Tax Payment against rent attributable to December 2017 and January 2018 at this location, and none of the Pre-Filing Tax Payment to any pre-filing tax accruals, there does not appear to be any basis to factually dispute that an amount of at least \$54,486.44 would remain recoverable.

## Hamilton (Eastgate)

31. The Pre-Filing Tax Payment made in error at this location was \$102,380.65.

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<sup>4</sup>Statements provided by Stone Road Mall Holdings Inc. indicate that this amount is on account of property taxes accrued during the pre-filing period. However, this amount in fact corresponds to rent payment amounts that became due during December 2017 and January 2018.



32. Sears Canada has been able to recover, through offset against post-filing rent owing for December 2017 and January 2018, an amount of \$87,522.51<sup>5</sup>. This leaves an outstanding recoverable balance of \$14,858.14.
33. Correspondence from counsel to the landlord at the Hamilton (Eastgate) location advises that this landlord claims to be owed \$111,270.66 for the post-filing period, comprised of unpaid post-filing rent amounts of \$101,697.28 and unpaid property taxes that appear to be attributable to the post-filing period of \$9,573.38. This amount includes \$23,748.15 of rent that Sears Canada's records show as accruing following the effective date of the disclaimer of this lease.
34. It appears the landlord has applied the full Pre-Filing Tax Payment for this location against the Pre-Filing Tax Obligations.
35. If one were to:
  - (a) deduct the post-disclaimer rent amounts from the outstanding post-filing balance claimed by the landlord at Hamilton (Eastgate) on the basis that such amounts are not payable as a post-filing claim;
  - (b) apply none of the Pre-Filing Tax Payment to any Pre-Filing Tax Obligations; and
  - (c) apply the full amount of the Pre-Filing Tax Payment against rent attributable to December 2017 and January 2018 at this location and to post-filing taxes that appear to be owing,

there does not appear to be any basis to factually dispute that an amount of \$14,858.14 would remain recoverable by Sears Canada.

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<sup>5</sup>. Eastgate Square GP Inc. has provided statements showing post-filing rent in the amount of \$111,270.66. However, this amount includes \$23,748.15 of rent that Sears Canada's records indicate was accrued during the period after the effective date of the disclaimer at this location.

**C. RESOLUTION OF PRE-FILING TAX PAYMENTS ISSUES**

36. Counsel for the landlords at the Guelph, Hamilton (Eastgate) and Victoria (Hillside) locations has suggested that following the Monitor’s review of the information provided, an all-parties meeting could be held to attempt to settle any discrepancies rather than litigating them.
37. The Monitor believes such proposed meeting would only be productive if all parties accepted the same legal principles that: (i) the Pre-Filing Tax Payments should not be applied to Pre-Filing Tax Obligations, as decided in the Remington motion; and (ii) rent accruing following the effective date of the disclaimer of a lease is not a valid post-filing claim.
38. The information provided by the landlords at Guelph, Hamilton (Eastgate) and Victoria (Hillside) indicates a fundamental disagreement with the above principles. Unless the applicable landlords’ positions on these principles are reversed, the Monitor believes the Pre-Filing Tax Payment issues will need to be determined by the Court.

The Monitor respectfully submits to the Court this, its Supplement to the Fifteenth Report.

Dated this 16<sup>th</sup> day of April, 2018.

FTI Consulting Canada Inc.  
in its capacity as Monitor of  
the Sears Canada Entities



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

**Appendix “A”**

**Account Statement: Regina Home Store**

**3015 Quance Street Properties Limited Partnership  
Statement of Account**

February 19, 2018

Sears Canada Inc,  
149th West 4th Ave.,  
Vancouver BC  
V5Y 4A6

855 Park Street Limited Partnership  
Suite 1088 - 550 Burrard Street  
Vancouver, BC  
V6C 2B5

As of: February 19, 2018

Date	Description	Charge	Cheque #/EFT	Payment	Balance
04/01/2017	Commercial Rent	\$ 57,410.93	EFT	-\$ 57,393.43	\$ 17.50
05/01/2017	Commercial Rent	\$ 57,410.93	EFT	-\$ 57,400.43	\$ 10.50
06/01/2017	Commercial Rent	\$ 57,410.93	26-May-17	-\$ 57,400.43	\$ 10.50
06/30/2017	Jan-Jun/17 Property Tax Recovery	\$ 87,388.08			\$ 87,388.08
07/01/2017	Commercial Rent	\$ 71,975.61	Wire	-\$ 27,333.54	\$ 44,642.07
07/11/2017			Wire	-\$ 1,349.18	-\$ 1,349.18
07/14/2017			Wire	-\$ 28,700.22	-\$ 28,700.22
08/01/2017	Commercial Rent	\$ 71,975.61	Wire July 28	-\$ 28,700.22	\$ 43,275.39
08/16/2017			Wire Aug 16	-\$ 28,700.22	-\$ 28,700.22
08/28/2017			Wire Aug 28	-\$ 28,700.22	-\$ 28,700.22
09/01/2017	Commercial Rent	\$ 71,975.61	Wire Sept 13	-\$ 28,700.22	\$ 43,275.39
09/14/2017			Wire Sept 14	-\$ 48,345.33	-\$ 48,345.33
10/01/2017	Commercial Rent	\$ 71,975.61	Wire Oct 12	-\$ 9,037.61	\$ 62,938.00
10/13/2017			Wire Oct 13	-\$ 4,345.60	-\$ 4,345.60
10/13/2017			Wire Oct 13	-\$ 63,029.69	-\$ 63,029.69
10/26/2017			Wire Oct 26	-\$ 28,700.22	-\$ 28,700.22
10/30/2017			Wire Oct 30	-\$ 4,345.26	-\$ 4,345.26
11/01/2017	Commercial Rent	\$ 71,975.61	Wire Nov 15	-\$ 28,700.22	\$ 43,275.39
11/16/2017			Wire Nov 16	-\$ 7,238.00	-\$ 7,238.00
	Rent as per CCAA Proceedings of Sears Canada Inc. et al (Court File No. CV-17-11846- 00CL) 30 Days from date of notice.				
12/01/2017	Nov.23,2017	\$ 51,678.64	Wire Nov 28	-\$ 28,700.22	\$ 22,978.42
12/01/2017			Wire Dec 1	-\$ 7,238.00	-\$ 7,238.00
12/11/2017			Wire Dec 11	-\$ 97,855.83	-\$ 97,855.83
01/01/2018	2017 Recovery Reconciliation			\$ 606.55	-\$ 606.55
	Subtotal			-\$ 672,520.04	\$ [1,342.48]
01/01/2018	Accelerated rent as per section 11.2 (a)	\$ 218,478.24			\$ 217,135.76

**UNEXPIRED BALANCE OF THE LEASE**

Lease Commencement March 27, 2017 - Expires March 26, 2019	
January 2018 -December 2018 Rent	\$832,298.00
January to March 26, 2019	\$196,888.00
<b>TOTAL UNEXPIRED BALANCE OF LEASE</b>	<b>\$1,029,186.00</b>

**Confidential Appendix “B”**

**Account Statements: Hamilton (Eastgate); Guelph; Victoria (Hillside)**

**Confidential Appendix “C”**  
**Correspondence from Counsel**

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

**SUPPLEMENT TO THE FIFTEENTH REPORT TO THE  
COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

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