

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 4TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 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**”)

APPROVAL AND VESTING ORDER
(Corbeil Électrique Inc.)

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*, approving: (i) the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement between Corbeil Électrique Inc. (the “**Seller**”) as Seller, Am-Cam Électroménagers Inc. (the “**Buyer**”) as Buyer, Distinctive Appliances Inc. (the “**Guarantor**”) as Guarantor and Sears Canada Inc. (“**Sears Canada**”) as intervenor, dated October 1, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Buyer all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), 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 October 1, 2017 including the exhibits thereto, and the Third 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, the Buyer, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Ana Chalupa and Waleed Malik sworn October 2, 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**”), or in the APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller and Sears Canada (as intervenor) is hereby approved and ratified and that the execution of the APA by the Seller and Sears Canada (as intervenor), is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Buyer may agree to in writing. The Seller is 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 to the Buyer and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that on Closing, the Monitor shall hold back from the Purchase Price an amount of five million dollars (\$5,000,000) (the “**Holdback Amount**”) in escrow, such amount to be held by the Monitor in trust and dealt with as follows: if the net amount based on the calculations set forth in Sections 3.5(a) to 3.5(e) of the APA is owed by the Seller to the Buyer (the “**Final Negative Adjustment**”), as determined by the Seller and the Buyer,

or the Independent Auditor, as the case may be, the Monitor, on behalf of the Seller, will wire transfer the amount from the Holdback Amount that is the lesser of (i) the amount of the Final Negative Adjustment, and (ii) the Holdback Amount, to the Buyer within two (2) Business Days after the Settlement Date.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets, excluding any SCI IT Assets subject to the Information Technology Agreement, as amended, with Sears Roebuck and Co., shall vest absolutely in the Buyer, 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 the Purchased Assets (collectively, the "**Claims**"), including, without limiting the generality of the foregoing:

- (a) any and all encumbrances or charges created by Order of this Court, including the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**");
- (b) any and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Register of Personal and Movable Real Rights* or any other personal property registry system; and

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

6. THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all of the Seller's right, title and interest in and to the Purchased Assets that consist of the Intellectual

Property (excluding as SCI Assets the intellectual property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co.) and applications and registration listed in Schedule "D" hereto, to the Buyer as described in the APA, free and clear of and from any and all Claims.

7. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Purchase Price (except for the Holdback Amount as described in paragraph 5 above) (the "**Closing Purchase Price**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed. Upon the Settlement Date (as defined in the APA), all Claims and Encumbrances shall attach to any amount of the Holdback Amount retained by the Seller (the "**Remaining Holdback Amount**", and together with the Closing Purchase Price, the "**Net Proceeds**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

8. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants: (i) on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Closing Purchase Price, and (ii) on the Settlement Date, the Remaining Holdback Amount, if any, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and the DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a "**Distribution**").

9. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

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;

any distribution permitted by paragraph 8 above 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, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

GENERAL PROVISIONS

13. THIS COURT ORDERS that, pursuant to clause 7(3) of the Canada Personal Information Protection and Electronic Documents Act, the Seller or the Monitor shall be authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller's records pertaining to the Employees (as defined in the APA), including personal information of those Employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

14. 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 the Seller and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of the Seller;

the vesting of the Purchased Assets in the Buyer pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, 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.

15. THIS COURT ORDERS THAT (i) on or after the Closing Date, Corbeil shall be permitted to execute and file articles of amendments or such other documents or instruments as may be required to change its corporate and business names in accordance with the APA, and such articles, documents or other instruments shall be deemed to have been duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation.

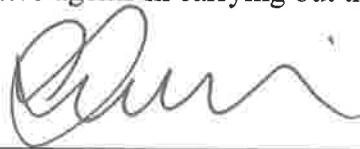
16. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor and the schedules to and other financial information contained in the APA shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

17. 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 carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 05 2017

PER / PAR:



C. Irwin
Registrar

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

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**")

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 October 1, 2017 (the "**Approval and Vesting Order**") approving the Asset Purchase Agreement between Corbeil Électrique Inc. (the "**Seller**") as Seller, Am-Cam Électroménagers Inc. (the "**Buyer**") as Buyer, Distinctive Appliances Inc. (the "**Guarantor**") as Guarantor and Sears Canada Inc. ("**Sears Canada**") as intervenor, a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated October 1, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Buyer of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Buyer and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and (ii) the

cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Buyer to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.

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

Per: _____

Name:

Title:

SCHEDULE "B"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means:

- (i) inchoate statutory liens for Taxes, assessments, governmental or utility charges or levies not due as at the Closing Date (including the Encumbrances of public utilities, workers, suppliers of materials, builders, contractors, architects and unpaid vendors of moveable property);
- (ii) rights of equipment lessors pursuant to Assumed Contracts and Personal Property Leases;
- (iii) any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under any Assumed Contract;
- (iv) any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law;
- (v) any easements, servitudes or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner;
- (vi) the provisions of all by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Leased Property;
- (vii) all Off-Title Compliance Matters;
- (viii) the Encumbrances which the Real Property Leases and/or any Leased Property are stated to be subject to or bound by pursuant to the terms of the Real Property Leases;
- (ix) any ground lease, emphyteutic lease, head lease or other lease which is superior to any Real Property Lease (each a "Head Lease"), any Encumbrances or other rights in favour of the applicable landlord contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease;
- (x) all Encumbrances affecting a Landlord's freehold interest in any Leased Property; and
- (xi) all Encumbrances listed on Schedule 1.1(vvvv) of the APA.


SCHEDULE "D"
INTELLECTUAL PROPERTY




LEGEND:

P = Pending Mark (not registered yet)


R = Registered Mark

D = Design Feature in mark

Status	Design Feature	TRADEMARK	FRENCH / ENGLISH EQUIVALENT FILED / REGISTERED (if applicable)	REGISTRATION / APPLICATION NUMBER	FILING DATE	REG. DATE	OWNER OF THE MARK	NEXT DUE DATE (M/D/Y)	DESIGN (if Applicable)	WARES AND/OR SERVICES COVERED BY MARK
R		CABINALTO		1,629,747 TMA950,959	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC	9/30/2031	-----	GOODS Cl. 20: Kitchen Cabinets
R		CABIVIA		1,629,745 TMA950,962	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC	9/30/2031	-----	GOODS Cl. 20: Kitchen Cabinets
R		CORBEIL APPLIANCES		0,813,296 TMA480,117	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027	-----	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL APPLIANCES & Dessin		0,826,026 TMA488,467	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.

R	D	CORBEIL APPLIANCES THE ONLY TRUE APPLIANCE SPECIALIST! 1 AND DESIGN	Corbeil Electroménagers Le Seul Vrai Spécialiste De L'électroménager & Design	1,218,866 TMA694,137	6/2/20-04	8/15/2007	CORBEIL ELECTRIQUE INC.	8/15/2022		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service.
R		CORBEIL ÉLECTRIQUE		0,807,404 TMA476,453	3/19/1996	5/20/1997	CORBEIL ELECTRIQUE INC.	5/20/2027	-----	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R		CORBEIL ÉLECTROMÉNAGERS		0,813,295 TMA480,039	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027	-----	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS & DESSIN		0,826,025 TMA488,468	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS LE SEUL VRAI SPÉCIALISTE DE L'ÉLECTROMÉNAGER & DESIGN	Corbeil Appliances The Only True Appliance Specialist & Design	1,218,990 TMA696,621	6/2/2004	9/17/2007	CORBEIL ELECTRIQUE INC.	9/17/2022		SERVICES CL.35 ET CL.36: Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service.

R	D	CORBEIL ÉLECTROMÉNAGERS LE SPÉCIALISTE DE L'ELECTROMENAGER! & DESIGN		1,093722 TMA592,376	2/27/2001	10/16/2003	CORBEIL ELECTRIQUE INC.	10/16/2018		SERVICES CL.35: Commercial operation of retail sales of appliances, electronic devices and accessories; extended warranty service and customer service.
R	D	CORBEIL PROTECTION PLAN & DESIGN	Plan Protection Corbeil & Design	1,205,650 TMA702,230	2/3/2004	12/4/2007	CORBEIL ELECTRIQUE INC.	12/4/2022		SERVICES CL.36 : Extended warranty plans for appliances.
R		CUCINORA		1.629.746 TMA950,961	6/05/2013	09/30/2016	CORBEIL ELECTRIQUE INC.	03/13/2032		GOODS CL.20: Kitchen Cabinets
R	D	ELLIPSE CORBEIL & DESIGN		1,733,698 TMA965,555	06/19/2015	03/13/2017	CORBEIL ELECTRIQUE INC.	09/30/2031		GOODS CL.11: refrigerators, freezers, range hoods
R	D	LE SEUL VRAI SPÉCIALISTE DE L'ÉLECTROMÉNAGER & DESIGN	The Only True Appliance Specialist & Design	1,205,649 TMA654,397	2/3/2004	12/6/2005	CORBEIL ELECTRIQUE INC.	12/6/2020		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service
R	D	PLAN PROTECTION CORBEIL & DESIGN	Corbeil Protection Plan & Design	1,205651 TMA706,588	2/3/2004	2/5/2008	CORBEIL ELECTRIQUE INC.	2/5/2023		SERVICES CL.36 : Extended warranty plans for appliances.

R	D	THE ONLY TRUE APPLIANCE SPECIALIST & DESIGN	Le Seul Vrai Spécialiste De L'électroménager & Design	1,205648 TMA670,580	2/3/2004	8/21/2006	CORBEIL ELECTRIQUE INC.	8/21/2021		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service in connection with the aforementioned services
		BOUTIQUE CORBEIL H2O		1,207,951 TMA688667	02/24/2004	05/31/2007	CORBEIL ELECTRIQUE INC.	05/31/2022		SERVICES CL.35 ET CL.42: Retail store services specializing in the sale of water coolers, water filtration systems and filters.

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

ORDER
APPROVAL AND VESTING ORDER
(Corbeil Électrique Inc.)

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