

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**”)

ORDER APPROVING ASSIGNMENT OF CONTRACTS

(Sears Home Improvements Business)

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 the assignment of certain contracts (the “**Assignment**”) to the Buyer as contemplated by the Asset Purchase Agreement between Sears Canada Inc. (the “**Seller**”), as seller, and Confort Expert Inc. (the “**Buyer**”), as buyer, dated September 28, 2017 (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 September 28, 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 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 Affidavit of Service of Waleed Malik sworn October 1, 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**”), the Approval and Vesting Order dated October 4, 2017 (the “**Approval and Vesting Order**”), or in the APA, as applicable.

APPROVAL OF ASSIGNMENT OF CONTRACTS

3. THIS COURT ORDERS that immediately upon the delivery of the Monitor's certificate substantially in the form attached as Schedule A to the Approval and Vesting Order (the “**Monitor's Certificate**”), all of the rights and obligations of the Seller under all Assumed Contracts (as defined in the APA) shall be assigned to the Buyer pursuant to section 11.3 of the CCAA.

4. THIS COURT ORDERS that the Seller's right, title and interest in and to the Assumed Contracts shall vest absolutely in the Buyer free and clear of all Encumbrances other than Permitted Encumbrances in accordance with the provisions of the Approval and Vesting Order.

5. THIS COURT ORDERS that the assignment of the Assumed Contracts is valid and binding upon all of the counterparties to the Assumed Contracts, notwithstanding any restriction or prohibition, if any, contained in any such Assumed Contract relating to the assignment thereof, including, but not limited to, provisions, if any, requiring the consent of any party to the assignment of the Assumed Contracts.

6. THIS COURT ORDERS that no counterparty to any Assumed Contract shall terminate an Assumed Contract as against the Buyer as a result of the Seller's insolvency or the Seller's CCAA proceedings. In addition, no counterparty shall terminate an Assumed Contract as against the Buyer as a result of the Seller having breached a non-monetary obligation unless such non-monetary breach arises or continues after the Assumed Contract is assigned to the Buyer, such non-monetary default is capable of being cured by the Buyer and the Buyer has failed to remedy the default after having received notice of such default pursuant to the terms of the applicable Assumed Contract. For clarification purposes, no counterparty shall rely on a notice of default sent to the Seller to terminate the Assumed Contract as against the Buyer.

7. THIS COURT ORDERS that all monetary defaults in relation to any of the Assumed Contracts, if applicable, other than those arising by reason only of the Seller's insolvency, the commencement of these CCAA proceedings or failure to perform a non-monetary obligation under any Assumed Contract, incurred or accrued on or before the Closing Date, shall be paid no later than three (3) Business Days following the delivery of the Monitor's Certificate.

8. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Buyer to assume the Assumed Liabilities and to perform its obligations under the Assumed Contracts, as set out in the APA.

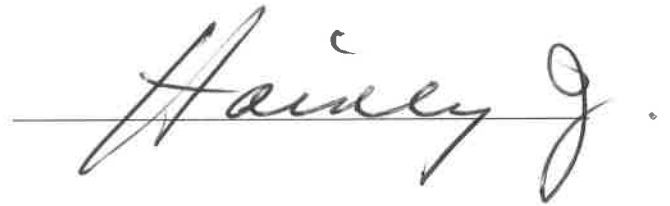
9. THIS COURT ORDERS AND DIRECTS that the Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Seller in the assignment and transfer of the Assumed Contracts.

GENERAL

10. 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.

11. THIS COURT ORDERS that the Seller, the Buyer, the Monitor and any counterparty to any Assumed Contract being assigned may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, including without limitation, as necessary, to effect the assignment of the Assumed Contracts, the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line.

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

OCT 05 2017

PER / PAR 

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
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COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER APPROVING ASSIGNMENT OF
CONTRACTS
(Sears Home Improvements Business)

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