

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

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

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

January 21, 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., 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

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

A. INTRODUCTION

1. On January 15, 2018, the Monitor served the Eleventh Report to the Court (the “**Eleventh Report**”) in these CCAA Proceedings in relation to, among other things, a motion by the Applicants, returnable January 22, 2018, for an extension of the Stay Period to April 27, 2018 (the “**Stay Extension Motion**”). Capitalized terms used herein and not otherwise defined in this Supplement to the Eleventh Report have the meanings given to them in the Eleventh Report.
2. The purpose of this Supplement to the Eleventh Report is to provide the Court with additional information regarding discussions with counsel to certain of the landlords of

Sears Canada's premises regarding issues relating to payment of rent in the post-filing period by Sears Canada and the Monitor's proposed interim resolution of these issues.

3. In the Eleventh Report, the Monitor described a matter that arose in connection with rent payments by Sears Canada as follows:

Sears Canada advised the Monitor on December 11th that Sears Canada unintentionally made payments to certain landlords on account of certain real property taxes payable that accrued during the pre-filing period. The Monitor understands that these payments were made in error as a result of modifications to Sears Canada's financial accounting systems for identifying and tracking pre-filing period amounts in anticipation of reconciling claims in the Claims Process. The Monitor believes payment of these amounts was not permitted under the terms of the Initial Order. These payments were in the aggregate amount of approximately \$2.4 million. On January 5, 2018, the Monitor wrote to the landlords who received these payments advising of the error and proposing that the matter be rectified through repayment of the overpaid amount. In absence of such repayment, the landlords were advised that Sears Canada would offset the amount of the overpayment against rent payments due from Sears Canada to the applicable landlord or its affiliates. To date, Sears Canada has advised the Monitor that they have recovered through offset against rent, property taxes or other amounts owing to the applicable landlord or its affiliates, approximately \$1,755,000 of the improper payments.

In this Supplement to the Eleventh Report, the payments of \$2.4 million noted above will be referred to as the "**Pre-filing Tax Payments**".

4. Based upon the evidence available to the Monitor, including:
 - (a) copies of remittance forms sent by facsimile to landlords in connection with the Pre-filing Tax Payments, an example of which is attached hereto as Appendix "A" with redactions for confidentiality reasons; and
 - (b) the fact that the amounts of these payments equal the amounts shown in the Applicants' accounting system as amounts attributable to property taxes accrued during the pre-filing period,

the Monitor has concluded that the amounts paid in error on December 11th were paid in respect of property taxes accrued in the period prior to June 22, 2017.

5. After accounting for the Pre-filing Tax Payments described above and the approximately \$1,755,000 of offsets also described above, Sears Canada's accounting records do not identify material non-payments of rent amounts that are required to be paid under its leases pursuant to paragraph 11 of the Initial Order. The records show that Sears Canada has overpaid rent to the extent of the amount of the Pre-filing Tax Payments that have not yet been applied to future rent obligations.
6. Following the release of its Eleventh Report, the Monitor has been contacted by counsel to certain landlords who have raised two primary concerns regarding the payment of rent by Sears Canada at their leased locations. First, certain of these landlords take the position that the offset of \$1,755,000 described above was a violation of paragraph 11 of the Initial Order and that rent should be paid in full without offset for the December and January period (the "**Pre-filing Tax Issue**"). Second, the records of certain of these landlords show that they have outstanding balances of rent and associated costs payable for the post-filing period, even excluding the amounts of the Pre-filing Tax Payments that were offset. The amounts due, according to the landlords, do not match with the amounts shown in Sears Canada's records (the "**Ordinary Course Payment Issue**").
7. The Monitor can confirm that to date in these proceedings certain rent payments have been delayed and issues have arisen with respect to reconciliation of the amounts that landlords consider are payable under their respective leases and amounts that Sears Canada considers are payable under those same leases and in many cases those discrepancies are material. The Monitor has assisted throughout these proceedings in reconciling these amounts. Sears Canada is continuing to pay amounts on account of rent. In the months of December and January, Sears Canada's records show that it paid, in aggregate, approximately \$9.3 million on account of rent.
8. The Monitor does not believe in the circumstances of this case that any delays in payments or difficulties reconciling rent amounts are due to a lack of good faith or due

diligence by Sears Canada. The Monitor notes that the calculation and reconciliation of rent at Sears Canada's large number of leased locations involves many items including third party expenses, taxes, and other charges that are not uniformly payable in each rent payment period.

9. Given the number of leased locations that Sears Canada has and the time required to fully reconcile the amounts claimed by certain landlords against amounts paid by Sears Canada, it will take some time to resolve the Ordinary Course Payment Issue. Any non-payment of rent is a significant issue and, in the event the landlords' position is correct on the Ordinary Course Payment Issue, this should be resolved as soon as possible by ensuring that landlords are paid any amounts that, excluding the Pre-filing Tax Issue, are due and payable pursuant to paragraph 11 of the Initial Order. The Monitor and Sears Canada are working diligently with the landlords to reconcile and determine the correct amounts, if any, due to landlords. The Monitor estimates that the reconciliation process will take approximately 5 weeks from the date of this report.
10. The Monitor continues to hold the view that the Pre-filing Tax Payments were improperly made and that steps to ensure that such payments are reversed, either through repayment by the landlord or by effectively treating such Pre-filing Tax Payments as a pre-payment of future post-filing rent amounts, are appropriate.
11. Certain landlords have indicated that unless the foregoing matters are resolved to their satisfaction prior to the January 22nd hearing, they may oppose the Applicants' request for an extension of the Stay Period. However, a full reconciliation of rent obligations and payments that is required to resolve these matters will not be possible by January 22nd.
12. In the circumstances, the Monitor, following consultation with Sears Canada, proposes that an interim resolution be implemented pursuant to which the Monitor would retain an amount of \$4,300,000 (the "**Escrowed Amount**") to satisfy, if necessary, any amounts that are determined, either by agreement between Sears Canada and a landlord or by order of the Court, to be payable on account of rent pursuant to

Paragraph 11 of the Initial Order but that remain unpaid. The Monitor is optimistic that this matter can be resolved by agreement of the parties.

13. Holding the Escrowed Amount will protect these funds from competing claims by other creditors.
14. The proposed Escrowed Amount has been established based upon a total of: (i) the amount of the \$1,755,000 disputed offset described above; and (ii) additional amounts that counsel to the landlords have specifically identified and claimed as unpaid rent accruing during the post-filing period. The Monitor has requested information on claimed unpaid amounts from counsel to the landlords who have raised the Pre-Filing Tax Issue and the Ordinary Course Payment Issue. In cases where the Monitor has not received any response regarding specific unpaid amounts for a particular landlord, no additional amounts have been added to the Escrowed Amount for that landlord.
15. The Monitor and the Applicants would be willing to discuss increases to the Escrowed Amount if additional landlords identify amounts that have accrued and remain unpaid in the post-filing period. However, the Monitor notes that the current proposed Escrowed Amount should include material excess protection over and above the amounts currently claimed by the landlords because Sears Canada paid an additional amount of rent to landlords generally on January 15th and January 18th in an aggregate amount of \$1,317,790 that is not yet reflected in the amounts that landlords have claimed as unpaid and that has not yet been credited against the Escrowed Amount. The Monitor also notes that the Escrowed Amount is not intended to be the sole source of recovery for landlords who claim to be owed unpaid rent in the post-filing period. To the extent such unpaid amounts exist, such amounts can also be paid from Sears Canada's general operating funds.
16. Portions of the Escrowed Amount would be released periodically as determined appropriate by the Monitor when rent amounts are reconciled and, if necessary, paid. Landlords would be able to raise any future concerns with the quantum of the Escrowed Amount if such concerns arise.

17. The Monitor believes this interim resolution is fair, reasonable, appropriate and practical in the circumstances and has proposed it to the applicable landlords for their consideration.

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

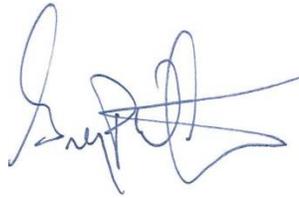
Dated this 21st day of January, 2018.

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



Paul Bishop

Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix “A”

SEARS CANADA INC.
 290 Yonge St., D768APA
 Toronto, ON
 M5B 2C3
 email: VRMTEAM@sears.ca

Sears*

REMITTANCE ADVICE/AVIS DE PAIEMENT

PAGE NO.
 NO. DE PAGE 1 OF 1

REMITTANCE NO /NO. DE PAIEMENT
0004062852

CHEQUE DATE /DATE DE CHÈQUE
 YR/MO/DAY AN/MO/JR
2017-12-11

CHEQUE AMOUNT / MONTANT DE CHÈQUE
\$85,513.40

1 Acceptance of attached cheque constitutes final acceptance of all documents listed herein thirty days after date/
 L'acceptation du chèque ci-joint, constitue l'approbation finale de tous les documents ci-après mentionnés, trente jours après
 2 If this remittance appears to be incorrect: DO NOT RETURN; instead WRITE AT ONCE to our accounts payable department at the
 above address.
 Si ce paiement se révèle inexact NE PAS LE RENVOYER MAIS, ÉCRIRE IMMÉDIATEMENT à notre service des comptes-
 fournisseurs à l'adresse ci-dessus.

MAIL TO

- | | |
|---|---|
| <p>C AJD Disc Adj/Ajust des escomptes des caisse
 AJP Price Adj/Ajust des prix
 AMS/AM2 Quantity adj/Return Memo/adjust des
 quantites/avis de retour
 O CAP/CP2 Merch ASN / Preavis d'expédition de merchandise
 D CRC/CR2 CRC-Goods Returned / Centre des
 retours-merchandise retournee
 E CRD Sears Credit Services / Services du credit Sears
 DOS/DS2 Returned Goods / Merchandise retournee
 S EIN ADP Non PO/ADP Non Bonde Commande
 EIP ADP PO/ADP Bonde Commande
 IAC Imports & Customs Charges / Frais de
 douane et d'importation
 INV Regular Invoice / Facture</p> | <p>LDWLW2 Licensee Concession Remittance / Remise
 des entreprises sous licence
 MSC Miscellaneous / Divers
 NET/NT2 Catalogue Commissions / Commissions du catalogue
 NIO/N12 NIO Installations Dept / Service d'installation-NIO
 PRT Parts & Service / Pieces et entretien
 SCP/SP2 Non-Conformance / Non-conformite
 SPO Customer Returns / Retours des clients
 SPV Single Payment Vouchers-Manuel /
 Bon de paiement unique-Manuel
 SRV/SR2 Source Revenue/Revenu de fournisseur
 TPR Third Party Recoveries / Recouvrement de tierce partie
 VCC/VC2 Dealer Store Commissions / Commissions
 des magasin-concessions</p> |
|---|---|

Origin Origine	DOCUMENT NO. NO. DE DOCUMENT	DATE YR MO DY AN MO JR	DOCUMENT AMOUNT MONTANT DU DOCUMENT	TAXES	DISCOUNT ESCOMPTE	AMOUNT PAID MONTANT PAYE
INV	042432PREFILINGPROPTAX	2017-12-05	75,675.57	9,837.83	0.00	85,513.40
						\$85,513.40
TOTAL						
AMOUNT/MONTANT TOTAL						

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Proceeding commenced at TORONTO

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

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