

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR.  
JUSTICE HAINEY

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THURSDAY, THE 13<sup>TH</sup>  
DAY OF JULY, 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**

**(Suspension of Special Payments, Supplemental Plan Payments and PRB Plan Payments, Approval of the Term Sheet and Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA"), for an order, *inter alia*: (i) authorizing the suspension of the Special Payments (as defined below); (ii) approving the suspension of the Supplemental Plan Payments (as defined below); (iii) approving the suspension of the PRB Plan Payments (as defined below); (iv) declaring that the directors, officers, officials and agents of the Applicants and SearsConnect (the "Partnership" and collectively with the Applicants, the "Sears Canada Entities") shall not incur any liability as a result of the failure of the Sears Canada Entities to make any of the Special Payments during the Stay Period (as

defined below), and during any extension of same; (v) approving the Term Sheet (as defined below); and (vi) extending the Stay Period to and including October 4, 2017, and certain related relief, 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 July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), and the Supplement to the First Report of the Monitor (the “**Supplemental Report**”), filed, and on hearing the submissions of respective counsel for the Sears Canada Entities, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 6, 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 Second Wong Affidavit.

#### **SUSPENSION OF SPECIAL PAYMENTS**

3. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Sears Pension Plan) in respect of the defined benefit component of the Sears Pension Plan (such payments being the “**Special Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the Sears Canada Entities’ CCAA proceedings (the “**CCAA Proceedings**”), subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Special Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the

suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of any component of the Sears Pension Plan.

4. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person (as defined in the Initial Order), including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Sears Pension Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) (the “**Retirees**”) or the Superintendent of Financial Services, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Sears Canada Entities have not made the Special Payments.

5. THIS COURT ORDERS that the Sears Canada Entities and each of their respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, nor shall any trust be imposed, whether express, implied, constructive, resulting, deemed or otherwise, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

6. THIS COURT ORDERS that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien, charge or trust, including deemed trust, shall have priority over the Charges (as defined in the Initial Order) in these CCAA Proceedings, or in any subsequent receivership, interim receivership or bankruptcy of the Sears Canada Entities.

#### **SUSPENSION OF SUPPLEMENTAL PLAN PAYMENTS**

7. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners and (ii) any payment required in respect of any SP Shortfall Amounts in respect of the Pre-2010 SP Pensioners (collectively, such payments being the “**Supplemental Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Supplemental Plan Payments prior to October 1, 2017 are expressly subject to

the terms set forth in the Term Sheet, and the suspension of Supplemental Plan Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the Supplemental Plan.

8. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the Supplemental Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the Supplemental Plan Payments or because the Sears Canada Entities have not made the Supplemental Plan Payments.

#### **SUSPENSION OF PRB PLAN PAYMENTS**

9. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the post-retirement health and dental benefits under the PRB Plan (such payments being the “**PRB Health and Dental Payments**”), shall be suspended effective on and after October 1, 2017, for all claims submitted and received after such date, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Health and Dental Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of PRB Health and Dental Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

10. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the life insurance benefits under the PRB Plan, including premiums for life insurance coverage (such payments, together with the PRB Health and Dental Payments, the “**PRB Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Plan Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of the PRB Plan Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

11. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including the Retirees and surviving spouses who have coverage with respect to post-retirement health and dental benefits and/or with respect to life insurance benefits under the PRB Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the PRB Plan Payments or due to the Sears Canada Entities having not made the PRB Plan Payments.

#### **APPROVAL OF TERM SHEET**

12. THIS COURT ORDERS that the term sheet attached as Appendix "A" to the Supplemental Report (the "Term Sheet") between: (a) the Sears Canada Entities; (b) the Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund; (c) Koskie Minsky LLP, as Representative Counsel and on behalf of the Representatives (as each such term is defined in the Representative Counsel Order for Pensions and Post-Retirement Benefits issued by this Court in the CCAA Proceedings on July 13, 2017); (d) the Representatives; (e) Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel and on behalf of the Employee Representatives (as each such term is defined in the Employee Representative Counsel Order issued by this Court in the CCAA Proceedings on July 13, 2017); and (f) the Employee Representatives, is hereby approved and the parties thereto shall comply with their obligations thereunder.

#### **EXTENSION OF STAY PERIOD**

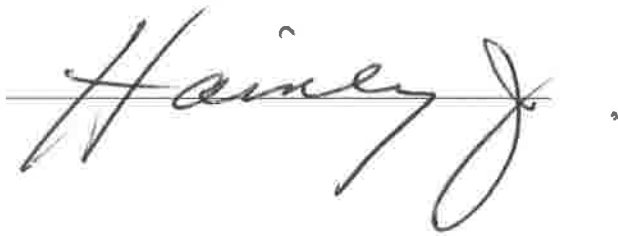
13. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended from July 22, 2017 until and including October 4, 2017.

#### **GENERAL**

14. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, 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.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

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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. (collectively, the "Applicants")

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**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**ORDER**  
**(Suspension of Special Payments, Supplemental Plan Payments**  
**and PRB Plan Payments, Approval of the Term Sheet and Stay**  
**Extension)**

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)  
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants