

**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., 9845488 CANADA
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.

**MOTION RECORD OF THE MONITOR
(returnable January 13, 2020)**

January 6, 2020

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000,
P.O. Box 53
Toronto, Ontario M5K 1E7

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting
Canada Inc.

TO: THE SERVICE LIST

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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168886 CANADA INC., AND 3339611 CANADA INC.

APPLICANTS

**NOTICE OF MOTION
(Sale Approval - Barrie)
(Returnable January 13, 2020)**

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**"), will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List), on Monday, January 13, 2020, at 10 a.m. or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1 An Order (the "**Approval and Vesting Order**") substantially in the form included in the Motion Record, *inter alia*:

- (a) If necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
- (b) Approving the Agreement of Purchase and Sale (the “**APS**”) dated October 25, 2019 between Sears Canada Inc. (“**Sears Canada**”) and 1485900 Ontario Inc. (the “**Purchaser**”) and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in the Purchaser;
- (c) Sealing from the public record certain commercially sensitive information and documents (described below);

2 Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1 On June 22, 2017, the Applicants in these proceedings sought and obtained an initial order under the CCAA;

2 The Initial Order, among other things, appointed FTI Consulting Canada Inc. as Monitor of the Applicants;

Approval and Vesting Order

3 On July 13, 2017, an Order was granted approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and

liquidation proposals, involving the business, property, assets and/or leases of the Applicants (the “**SISP Approval Order**”);

4 Expressions of interest were received for Sears Canada’s owned real property by the August 31, 2017 bid deadline under the SISP;

5 Sears Canada determined that additional time should be provided for the completion of further due diligence by potential purchasers;

6 On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who had previously expressed an interest in the real estate assets under the SISP and parties who had contacted BMO expressing interest subsequent to the original bid deadline;

7 Subsequently, Sears Canada sold all of the real estate assets except the property located adjacent to the Georgian Mall in Barrie, Ontario (the “**Barrie Property**”);

8 CBRE commenced marketing of the Barrie Property in August 2019;

9 Sears Canada entered into the APS dated October 25, 2019 under which the Purchaser would purchase the Barrie Property in accordance with the terms and conditions set out in the APS;

10 The Monitor shall be entitled to retain the net proceeds from the Transaction on behalf of the Applicants to be dealt with by further Order of the Court;

11 The consideration to be received is fair and reasonable;

12 The process leading to the APS was fair and reasonable in the circumstances and approved by the Monitor;

13 The APS is in the best interest of the creditors and other stakeholders of the Applicants;

14 The relief sought on this motion is supported by the Owned Real Estate Consultation Parties (as defined in the Thirty-Fourth Report of the Monitor);

Sealing Order

15 The Confidential Appendices to the Thirty-Fourth Report of the Monitor filed in connection with this motion contain confidential and commercially sensitive information which, if made public, would be materially prejudicial to any further marketing efforts for the Barrie Property if the proposed transaction is not completed;

16 There are no reasonable alternative measures to sealing this information from the public record;

17 The salutary effects of sealing this information outweigh the deleterious effects of doing so;

18 The provisions of the CCAA, including Section 36 thereof, and the inherent and equitable jurisdiction of the Court;

19 Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

20 Such other and further grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1 The Thirty-Fourth Report of the Monitor; and

2 Such further and other evidence as counsel may advise and this Court may permit.

January 6, 2020

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000,
P.O. Box 53
Toronto, Ontario M5K 1E7 CANADA

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

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Lawyers for the Monitor

TO: **THE SERVICE LIST**

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AS AMENDED

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

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INC., et al.

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Proceeding commenced at TORONTO

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alan.merskey@nortonrosefulbright.com

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Lawyers to the Monitor, FTI Consulting Canada
Inc.

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**ONTARIO
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THE HONOURABLE MR.)	MONDAY, THE 13 TH
)	
JUSTICE HAINEY)	DAY OF JANUARY, 2020

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(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER
(BARRIE)**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), 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 sale of lands and buildings located at 521 Bayfield Street, Barrie, Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and 1485900 Ontario Limited (the “**Purchaser**”) as purchaser dated October 25, 2019 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the Thirty-Fourth Report of the Monitor, filed, and on hearing the submissions of respective counsel for the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Catherine Ma sworn January 6, 2020, 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 Sears Canada is hereby approved and ratified and that the execution of the APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada 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, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser 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. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, 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 Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority 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) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and
- (c) those Claims listed on Schedule "B" hereto;

(all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on Schedule "C" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada's right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada's right, title and interest in and to the Subject Assets including the real or immovable property identified in Schedule "B".

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule "B" all of the Encumbrances listed in Schedule "B" hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the "**Net Proceeds**") with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. 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.

SEALING

9. THIS COURT ORDERS that Confidential Appendices "B" and "C" to the Thirty-Fourth Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

PURCHASE OPTION

10. THIS COURT ORDERS that the rights of RioCan Holdings Inc. and its affiliates, successors and assigns (collectively, "**RioCan**") to purchase the Subject Assets and/or the properties identified in PIN No. 58928-2332 (LT) pursuant to Section 12 of the Easement and Operating Agreement registered February 8, 2009 and attached to Instrument No. SC623572, between Sears Canada Inc., Ontrea Inc. and CF/Realty Holdings Inc. (the "**Purchase Option**") have been deemed to be at an end and, for greater certainty, RioCan shall not be permitted to re-engage the Purchase Option at any time in the future.

GENERAL PROVISIONS

11. 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;

the sale, assignment and transfer of the Subject Assets in the Purchaser pursuant to this Order 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.

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

13. 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.

SCHEDULE “A”

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

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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 January 13, 2020 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and 1485900 Ontario Limited (the “**Purchaser**”) as purchaser dated October 25, 2019 (the “**APA**”), a copy of which is attached as Confidential Appendix “C” to the Monitor’s Thirty-Fourth Report dated January 6, 2020.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APA), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2

and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable, and (ii) the Purchase Price and any Taxes payable (each as defined in the APA) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser 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"

Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
521 Bayfield Street, Barrie	Ontario	LRO #51	PIN 58928-2332 (LT) PT LT 19 CON 4 VESPRE PTS 1, 2 & 3 51R12305 EXCEPT PT 3 51R35109, S/T & T/W EASEMENT RO487004 (FIRSTLY), S/T EASEMENT OVER PT 1 51R29766 AS IN LT512231; BARRIE	<ol style="list-style-type: none"> <li data-bbox="1062 422 1495 617">1. Instrument No. RO1306928 – Agreement dated November 3, 1995 between CF/Realty Holdings Inc., Ontrea Inc., Markborough Properties Inc., and Mason Ventures Ltd. <li data-bbox="1062 638 1495 833">2. Instrument No. RO1307344 – Agreement dated November 3, 1995 between CF/Realty Holdings Inc., Ontrea Inc., Markborough Properties Inc., and Mason Ventures Ltd. <li data-bbox="1062 854 1495 1016">3. Instrument No. SC623574 – Right of First Refusal Agreement dated July 15, 2007 between Sears Canada Inc. and Ontrea Inc. <li data-bbox="1062 1037 1495 1232">4. Instrument No. SC1008536 – Assignment and Assumption of ROFR Memorandum of Agreement dated August 31, 2012 between Ontrea Inc. and RioCan Holdings Inc.

**SCHEDULE “C”
PERMITTED ENCUMBRANCES**

“Permitted Encumbrances” means, collectively, (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “G” of the APA.

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Virginie Gauthier, LSO#: 41097D
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Tel: +1 416.216.4805

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Tel: +1 416.216.1929

Fax: +1 416.216.3930

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