

**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., 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.

**MOTION RECORD OF THE MONITOR  
(Fifth Construction Lien Claims Order)  
(returnable November 19, 2018)**

November 15, 2018

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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., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
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10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531  
CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**NOTICE OF MOTION  
(Fifth Construction Lien Claims Order)  
(returnable November 19, 2018)**

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 November 19, 2018, at 10:00 am or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue.

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

**THE MOTION IS FOR:**

1 an Order, substantially in the form included in the Monitor's Motion Record (the "**Fifth Construction Lien Claims Order**"):

- (a) authorizing payment of those Determined Owned Property Claims (as defined below) made in respect of certain properties that have recently been or are about to be sold by the Applicants (the “**Remaining Owned Properties**”); and
- (b) confirming that any further Claim (as defined in the Claims Procedure Order granted by the Court on December 8, 2017) by the Secured Contractors or by any Connected Sub-Contractors arising in respect of the Remaining Owned Properties is fully and finally barred and extinguished; and

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

**THE GROUNDS FOR THE MOTION ARE:**

Claims Procedure Order

1 On December 8, 2017, the Court granted the Claims Procedure Order;

2 The Claims Procedure Order established a process for the Monitor to notify Construction Contractors (as defined in the Claims Procedure Order) of the Monitor’s position on the value of the Construction Claims, which notification (the “**Notice of Construction Claim**”) is deemed to include all of the Construction Claims of not only the Construction Contractor itself but also the Construction Claims of any and all sub-contractors who provided materials and/or services in connection with the improvement under an agreement or engagement with the Construction Contractor or any other construction sub-contractor at any level (each a “**Connected Sub-Contractor**”);

3 The Claims Procedure Order also provided a notice procedure (the “**Notices of Dispute of Construction Claims**”) for any Construction Contractor to dispute, for its own part and on

the part of any Connected Sub-Contractor, the position of the Monitor and Sears Canada on applicable Construction Claims as set out in a Notice of Construction Claim;

Resolution of Construction Claims

4 On June 15, 2018, the Court granted an Order (the “**Initial Lien Claims Order**”) which, among other things provided for payment of distributions to those Construction Contractors holding (on their own behalf and on behalf of their Connected Sub-Contractors) undisputed Construction Claims secured against various reserves established in connection with the sale or surrender of various leases of the Applicants (the “**Construction Lien and Affiliated Property Reserves**”);

5 The Initial Lien Claims Order also confirmed the Monitor’s determination of the quantum of other undisputed Construction Claims of Construction Contractors and their Connected Sub-Contractors that were unsecured or owing in respect of Remaining Owned Properties;

6 Further to an Order issued on July 4, 2018 (the “**Second Lien Claim Order**”), the Monitor confirmed the quantum of certain disputed Construction Claims that were secured against the Construction Lien and Affiliated Property Reserves, and authorized payment in respect of the same. The Second Lien Claims Order also confirmed the quantum of certain disputed Construction Claims that had been claimed in respect of any Remaining Owned Properties.

7 However neither the Initial Lien Claims Order nor the Second Lien Claims Order authorized payment of the undisputed and confirmed Construction Claims (the “**Determined Owned Property Claims**”) against the Remaining Owned Properties as such properties were still the subject of an ongoing marketing process by the Applicants and had not yet been sold.

8 The Applicants have since sold two Remaining Owned Properties (the “**Closed Property Transactions**”) and are seeking approval of a further sale of the Remaining Owned Property located in Newmarket, Ontario (the “**Pending Property Transaction**”). The approval and vesting orders as issued—and in the case of that for the Pending Property Transaction, as proposed—in respect of such transactions provide that the net proceeds (the “**Net Proceeds**”) from each sale are to be held pending further order of the Court;

Distributions

9 The Monitor now requires approval of the Court to distribute funds from the Net Proceeds to the Construction Contractors holding the Determined Owned Property Claims (the “**Secured Contractors**”) to satisfy such claims and for the distribution onwards to their respective Connected Sub-Contractors;

Releases

10 Sears Canada and the Monitor require certainty regarding the resolution of lien and Construction Claim issues and, accordingly, the Monitor requests an Order confirming that all Claims by the Secured Contractors and the Connected Sub-Contractors claiming under them arising in respect of the relevant Remaining Owned Property, including any claims against any Sears Canada Entities or their current and former directors and officers, and any claims against the Sears Canada Entities’ current and former employees, are fully and finally determined as set out above and, in the case of the Determined Owned Property Claims, fully and finally satisfied through the payment in satisfaction of such claims;

General

11 The Monitor believes that the terms of the proposed Fifth Construction Lien Claims Order are reasonable in the circumstances, and substantially similar to those of the Initial Lien Claims Order and the Second Lien Claims Orders already granted by this Court;

12 The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Court;

13 Rules 1.04, 1.05, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended; and

14 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 Fourth Supplement to the Twentieth Report of the Monitor dated November 15, 2018; and

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

November 15, 2018

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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., et al.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**NOTICE OF MOTION**  
**(Fifth Construction Lien Claims Order)**  
**(returnable November 19, 2018)**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 19TH
	)	
JUSTICE HAINEY	)	DAY OF NOVEMBER, 2018

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  
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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,  
168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**ORDER  
(Fifth Construction Lien Claims Order)**

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor (the "**Monitor**"), for an Order with respect to the Determined Construction Claims of certain Construction Contractors, as described in the Fourth Supplement to the Twentieth Report of the Monitor, dated November 15, 2018, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twentieth Report of the Monitor, dated June 12, 2018, (the "**Twentieth Report**"), the Fourth Supplement to the Twentieth Report dated November 15, 2018 (the "**Fourth Supplement**"), and on hearing the submissions of counsel for the Applicants, the

Monitor, and those other counsel present, no one else appearing although duly served as appears from the affidavit of service of ● sworn November ●, 2018,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINED TERMS**

2. THIS COURT ORDERS that all capitalized terms used herein and not defined have the meanings ascribed to them in the Fourth Supplement, or where not so defined, the Twentieth Report.

### **PAYMENT OF DETERMINED CONSTRUCTION CLAIMS**

3. THIS COURT ORDERS that the Monitor is hereby directed to make payments from the Net Proceeds of the Closed Property Transactions and Pending Property Transaction in the amounts and to the Secured Contractors set out on Schedule "A" hereto in full satisfaction of the Determined Owned Property Claims.

4. THIS COURT ORDERS that the Secured Contractors shall have sole responsibility to distribute the payments made pursuant to paragraph 3 above to the Connected Sub-Contractors in connection with the improvement for which such payment is made and the Sears Canada Entities shall have no liability to the Connected Sub-Contractors in connection with any Determined Owned Property Claim after payment of the amounts paid pursuant to paragraph 3 are made.

5. THIS COURT ORDERS that the Monitor shall have no liability with respect to or as a result of performing its duties under this Order, including the payment of the amounts pursuant to paragraph 3 above except to the extent such liabilities result from the gross negligence or wilful misconduct of the Monitor as determined by this Court.

### **RELEASE OF CLAIMS**

6. THIS COURT ORDERS that, upon payment of the Determined Owned Property Claims pursuant to paragraph 3 above, any Claims (as defined in the Claims Procedure Order), which

for greater certainty include D&O Claims (as defined in the Claims Procedure Order), and any claims against the Sears Canada Entities' current or former employees, in each case by the Secured Contractors and the Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) arising in respect of the relevant Remaining Owned Properties listed at Schedule "A" hereto are hereby extinguished and the Secured Contractors and the Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) are hereby barred, estopped and enjoined from asserting or enforcing any such claims.

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## SCHEDULE "A"

Secured Contractor	Remaining Owned Property - Store Name and Location	Amount to be Paid
152610 Canada Inc. cob Laurin & Company	Upper Canada Mall, Newmarket, ON	\$1,220,585.05
Abbarch Architecture Inc.	Upper Canada Mall, Newmarket, ON	\$83,767.80
Kone Inc.	Upper Canada Mall, Newmarket, ON	\$8,029.49
Kone Inc.	Devonshire Mall, Windsor, ON	\$11,251.57
Kone Inc.	637 Lansdowne Street, Peterborough, ON	\$11,226.93

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
(FIFTH CONSTRUCTION LIEN CLAIMS ORDER)**

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