

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 24TH

JUSTICE HAINEY

)

DAY OF JULY, 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
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
(Third 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 Settled Construction Claim of a certain Construction Contractor and certain reserve amounts described as the Affiliated Properties Reserves, as described in the Second Supplement to the Twentieth Report of the Monitor, dated July 20, 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 Second Supplement to the Twentieth Report dated July 20, 2018 (the "**Second 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 Catherine Ma sworn July 23, 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 Second Supplement, or where not so defined, the Twentieth Report.

CLAIMS OF CONSTRUCTION CONTRACTORS

3. THIS COURT ORDERS that the Settled Construction Claim is hereby confirmed, in accordance with the terms of the Claims Procedure Order, to be an accepted Claim pursuant to the Claims Procedure Order.

4. THIS COURT ORDERS that all Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) are deemed to have accepted and agreed (i) to the determination of the value and, if applicable, characterization of the Settled Construction Claim described in paragraph 3 above; and (ii) that, excluding the Claim described in paragraph 3 above, they have no Claims in respect of their Settled Property, in each case in accordance with the Claims Procedure Order.

PAYMENT OF SETTLED CONSTRUCTION CLAIM

5. THIS COURT ORDERS that the Monitor is hereby directed to make payments from the Affiliated Properties Reserves (or otherwise from Sears Canada's funds on account of amounts paid into Court in connection with vacating the liens registered against the Affiliated Leased Properties) in the amounts and to the Settled Contractor set out on Schedule "A" hereto in full satisfaction of the Settled Construction Claim.

6. THIS COURT ORDERS that the Settled Contractor shall have sole responsibility to distribute the payments made pursuant to paragraph 5 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 Settled Construction Claim after payment of the amounts paid pursuant to paragraph 5 is made.

7. 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 set out in paragraph 5 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

8. THIS COURT ORDERS that any Claims (as defined in the Claims Procedure Order), which for greater certainty includes 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 Settled Contractor and the Connected Sub-Contractors (in their capacities as Connected Sub-Contractors) arising in respect of the Settled Property, other than the Settled Construction Claim, are hereby extinguished and the Settled Contractor 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.

9. THIS COURT ORDERS AND DIRECTS that the Settled Contractor and Connected Sub-Contractors will execute consents to an order or orders in respect of the Settled Property, as follows:

- a) discharging all liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims, whether such liens were preserved through registration or delivery;
- b) for any liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims preserved through registration, vacating the registration of the claim(s) for lien and certificate(s) of action (if any), by which such liens were preserved and perfected;
- c) for any liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims preserved through delivery, vacating the claims for lien that have been delivered;

- d) dismissing without costs the actions through which the liens securing the Settled Contractor's or the Connected Sub-Contractor's Construction Claims are being pursued; and
- e) where security has been posted pursuant to section 44(1) of the *Construction Lien Act* or equivalent legislation in other jurisdictions, delivering up out of court of the funds or other instrument so posted.

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

JUL 24 2018



PER / PAR: *R*

SCHEDULE "A"

Identified Contractor	Store Name and Location	Amount to be Paid
Traugott Building Contractors Inc.	Fairview Park Mall, Kitchener, Ont.	\$2,131,783.96

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.,
et al.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(THIRD CONSTRUCTION LIEN CLAIMS ORDER)**

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Lawyers for FTI Consulting Canada Inc., in its capacity
as Monitor