

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 12<sup>th</sup>  
JUSTICE McEWEN ) DAY OF SEPTEMBER, 2019  
)

**BETWEEN:**

**FTI CONSULTING CANADA INC., in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36**

Plaintiff

- and -

**ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL  
INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY**

Defendants

Court File No. CV-18-00611214-00CL

**AND BETWEEN:**

**SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. DOUGLAS CUNNINGHAM,  
Q.C.**

Plaintiff

- and -

**ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL  
INSTITUTIONAL PARTNERS, LP, EDWARD LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,  
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES MCBURNEY, DEBORAH  
ROSATI, and DONALD ROSS**

Defendants

Court File No. CV-18-00611217-00CL

**AND BETWEEN:**

**MORNEAU SHEPELL LTD. in its capacity as administrator of the Sears Canada Inc.  
Registered Pension Plan**

Plaintiff

- and -

**ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER  
I, LP, ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM  
HARKER, WILLIAM CROWLEY, DONALD CAMPBELL ROSS, EPHRAIM J. BIRD,  
DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS  
CAMPBELL**

Defendants

Court File No. CV-19-617792-00CL

**AND BETWEEN:**

**1291079 ONTARIO LIMITED**

Plaintiff

- and -

**SEARS CANADA INC., SEARS HOLDINGS CORPORATION, ESL INVESTMENTS  
INC., WILLIAM CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL ROSS,  
EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY  
and DOUGLAS CAMPBELL**

Defendants

## ORDER

**THIS MOTION** made by the defendants, Ephraim J. Bird, Douglas Campbell, William Crowley, William Harker, James McBurney, Donald Campbell Ross, Raja Khanna, and Deborah Rosati (the "**Former Directors**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the materials filed, and on hearing the submissions of counsel for all the parties;

**THIS COURT ORDERS** that:

1 In this Order,

- (a) the term "Counsel" means the partners, associates and employees of Cassels Brock & Blackwell LLP and Bennett Jones LLP, for the Former Directors, and Norton Rose Fulbright Canada LLP, Lax O'Sullivan Lisus Gottlieb LLP, Blake, Cassels and Graydon LLP, Blaney McMurtry LLP and Sotos LLP, for the plaintiffs;
- (b) the term "Confidential Information" means documents containing personal financial information produced by Ephraim J. Bird, Douglas Campbell, James McBurney, Donald Campbell Ross, Raja Khanna, and Deborah Rosati to Counsel to the plaintiffs on September 9, 10 and 11, 2019 in response to the plaintiffs' August 30, 2019 request for information and documents in connection with the Timetable Motion;
- (c) the term "Designating Party" refers to the Former Directors and their Counsel;  
and
- (d) the term "Receiving Party" refers to the plaintiffs and their Counsel; and

- (e) "Timetable Motion" refers to the Former Directors' motion, returnable September 19, 2019, for an order varying the timetable for these actions such that all steps are suspended pending the determination of the Former Directors' application to determine insurance coverage issues or an agreement being reached with the relevant insurers to provide interim funding for the Former Directors' defence costs, or, alternatively, for an order requiring Sears Canada Inc. through the Monitor to provide interim funding for the Former Directors' defence costs).

2 Confidential Information is hereby protected as confidential pursuant to the terms of this Order.

3 Confidential Information may be marked on each page or prominent visible surface thereof with the following legend:

**CONFIDENTIAL**

SUBJECT TO PROTECTIVE ORDER OF THE ONTARIO SUPERIOR COURT  
OF JUSTICE, COURT FILE NOS. CV-18-00611219-00CL, CV-18-00611214-  
00CL, CV-18-00611217-00CL and CV-19-617792-00CL.

4 The failure to mark Confidential Information with the foregoing legend does not constitute a waiver of that document's status as Confidential Information.

5 Confidential Information shall not be disclosed, directly or indirectly, during the course of this action or at any time after its resolution, without the written consent of the Designating Party or further Order of the Court, to any person, firm or corporation other than:

- (a) Counsel to the plaintiffs;
- (b) Representatives of each plaintiff (each, a "**Designated Representative**"); and

- (c) Any judge or master who is adjudicating matters in this action from time to time and such court staff as may be necessary to assist the judge or master, including each such judge's respective judicial assistant(s) and law clerk(s),

all on the express understanding that Confidential Information so disclosed cannot be used for any purpose, or in any proceedings, other than the Timetable Motion.

6 Each person to whom Confidential Information is disclosed pursuant to this Order:

- (a) shall not disclose such Confidential Information to any person except others permitted to see it pursuant to this Order; and
- (b) shall not use such Confidential Information for any purpose or in any other proceedings than the within action and subject to the terms and provisions of this Order.

7 This Order does not apply to information that is or becomes public knowledge or is legitimately acquired from another person by means that do not violate this Order or any other obligation of confidentiality.

8 This Order shall be without prejudice to the right of any party to apply to the Court at any time to:

- (a) have some or all of the Confidential Information excluded from the provisions of this Order, to add persons to whom Confidential Information may be disclosed, or to otherwise vary or terminate the effect of this Order;
- (b) request a modification or variation of the obligations imposed by this Order as they apply to any specific item or items as designated Confidential Information; or

- (c) oppose production of any information or documents upon any proper grounds, whether or not such information or documents are described as Confidential Information.

9 If any documents or materials containing Confidential Information, including without limitation motion records, factums, transcripts or portions thereof, are filed with the Court in this action for any reason, either voluntarily or pursuant to a Court Order, subject to any determination or adjudication otherwise, such Confidential Information shall be segregated from other information being filed with the Court by placing the Confidential Information in sealed envelopes which identify this action, identify the information as Confidential Information and are clearly and prominently marked with the following legend:

**CONFIDENTIAL INFORMATION**

Pursuant to the Protective Order of the Honourable Justice McEwen, dated September 12, 2019, in Ontario Superior Court of Justice Court File Nos. CV-18-00611219-00CL, CV-18-00611214-00CL, CV-18-00611217-00CL and CV-19-617792-00CL, this envelope shall remain sealed in the Court files and shall not be opened except in accordance with the terms of said Order or upon further Order of the Court.

and all such sealed envelopes shall not be opened except by the Court and its staff.

10 The final disposition of the Timetable Motion shall not relieve any person to whom Confidential Information was disclosed pursuant to this Order from the obligation of maintaining the confidentiality of such Confidential Information in accordance with the provisions of this Order.

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

SEP 13 2019

PER / PAR:

FTI CONSULTING CANADA INC.  
J. DOUGLAS CUNNINGHAM, Q.C.  
MORNEAU SHEPELL LTD.  
1291079 ONTARIO LIMITED

Plaintiffs

-and-  
ESL INVESTMENTS INC et  
al.

Defendants

Court File No.: CV-18-00611219-00CL  
Court File No. CV-18-00611214-00CL  
Court File No. CV-18-00611217-00CL  
Court File No. CV-19-617792-00CL

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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