

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 4TH
JUSTICE HAINEY)
) DAY OF OCTOBER, 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**”)

APPROVAL AND VESTING ORDER
(Sears Home Improvements Business)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the sale of the businesses of Sears Canada Inc. (“**Sears Canada**”) known as Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services (the “**Sears Home Improvements Business**”), together with certain ancillary assets (the “**Transaction**”) contemplated by an Asset Purchase Agreement between Sears Canada Inc. (the “**Seller**”), as vendor, and Confort Expert Inc. (the “**Purchaser**”) as purchaser dated September 28, 2017, as amended (the “**APA**”) and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), 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 on September 28, 2017 including the exhibits thereto, and the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik sworn October 1, 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 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 the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. The Seller 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 and for the conveyance of the Purchased 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.
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 the Seller’s right, title and interest in and to the Purchased Assets shall vest absolutely in 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 Purchased 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 DIP ABL Lenders’ Charge, the DIP Term Lenders’ 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**”); and
- (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;

(all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS 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 Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

6. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a “**Distribution**”).

7. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

8. 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 distribution permitted by paragraph 6 above 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.

9. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

10. 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.

11. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;

- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

12. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor and financial information contained in the APA shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

13. THIS COURT ORDERS that the Purchaser shall send, or cause to be sent, as part of the Purchaser's first invoice delivery to Active Customers (as defined in the APA) following the Closing or by specific mailing (such notification not to be later than 75 days after the issuance of this Order), the notice in the form attached as Schedule "B" hereto to each Active Customer. The Purchaser shall provide notice to Customers (as defined in the APA) who are not Active Customers by posting the notice substantially in the form attached as Schedule "B" to the website of the Buyer for a reasonable period of time from and after the Closing Date.

14. 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 vesting of the Purchased 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.

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

16. 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.



C. Irwin
Registrar

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

OCT 05 2017

PER / PAR: 

SCHEDULE "A"

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., 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**")

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 ●, 2017 (the "**Approval and Vesting Order**") approving the Asset Purchase Agreement between Sears Canada Inc. (the "**Seller**"), as vendor, and Confort Expert Inc. (the "**Purchaser**") as purchaser dated September 28, 2017, as amended (the "**APA**"), a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Seller 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"
ENGLISH FORM OF CUSTOMER NOTICE

SEARS 

 **CONFORT
EXPERT INC.**

October ●, 2017

**TO THE CUSTOMERS OF SEARS OIL SERVICES, SEARS HEATING
AND COOLING, AND/OR SEARS DUCT CLEANING SERVICES
(COLLECTIVELY, THE "ACQUIRED BUSINESSES")**

Re: Acquisition of Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services by Confort Expert Inc.

Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. *et al* (Court File No. CV-17-11846-00CL)

As you may know, Sears Canada Inc. and certain of its subsidiaries (collectively, "**Sears Canada**") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 22, 2017. As part of these CCAA proceedings, the Court has approved the acquisition by Confort Expert Inc. ("**Confort Expert**") of the Acquired Businesses, including the assignment of ongoing customer contracts henceforth assumed by Confort Expert.

Accordingly, Confort Expert has assumed all of Sears Canada's rights and obligations under your service, maintenance, rental or leasing equipment contract(s), as appropriate, with Sears Canada effective as of ●. We confirm that your contract(s) remain(s) in full force and effect, but your contract(s) will now be directly with Confort Expert.

Regarding your next payment, if you have been making payments to Sears Canada directly, you must direct your future payments to Confort Expert. Please contact a representative of Confort Expert at the details below to arrange a transfer of your payment method to Confort Expert. If you are already making payments directly to Confort Expert, you do not need to take any action at this time.

Confort Expert has been operating the Acquired Businesses on behalf of Sears Canada for several years. It is anticipated that there will be no interruption of services as a result of this transaction and services will continue to be provided by Confort Expert in the ordinary course. Confort Expert values the relationship with each of its customers and looks forward to continuing to provide you with the same quality you have relied on for years. Please do not hesitate to contact Confort Expert at 514-640-7711 ext 599 or 1-877-240-0911 ext 599 during normal business hours (Eastern time)

or by e-mail to credit@confortexpert.com with any questions you may have about your services. For more information about the transaction between Sears Canada and Confort Expert, you may refer to the website of Sears Canada's Court-appointed Monitor, FTI Consulting Canada Inc., at: <http://cfcanada.fticonsulting.com/searscanada>.

FRENCH FORM OF CUSTOMER NOTICE

SEARS 

 **CONFORT
EXPERT** 

Le • octobre 2017

**AUX CLIENTS DES SERVICES D'APPROVISIONNEMENT EN HUILE,
DES SERVICES DE CHAUFFAGE ET DE CLIMATISATION ET/OU DES
SERVICES DE NETTOYAGE DE CONDUITS DE SEARS
(COLLECTIVEMENT, LES « ENTREPRISES ACQUISES »)**

Objet : Acquisition des services d'approvisionnement en huile, des services de chauffage et de climatisation et des services de nettoyage de conduits de Sears par Confort Expert Inc.

Objet : Dans l'affaire du plan de transaction et d'arrangement de Sears Canada Inc. *et al.* (n° de dossier de la cour CV-17-11846-00CL)

Vous n'êtes probablement pas sans savoir que Sears Canada Inc. et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placées sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») le 22 juin 2017. Dans le cadre de l'instance en vertu de la LACC, la Cour a approuvé l'acquisition, par Confort Expert Inc. (« **Confort Expert** »), des entreprises acquises, ce qui comprend la cession des contrats en cours avec les clients que Confort Expert honorera à l'avenir.

Par conséquent, Confort Expert prendra en charge l'ensemble des obligations et bénéficiera de l'ensemble des droits de Sears Canada aux termes des contrats de service, d'entretien, de location ou de crédit-bail visant des équipements, selon le cas, que vous avez conclus avec Sears Canada, à compter du •. Nous confirmons que votre/vos contrat(s) conserve(nt) leurs effets, mais que vous faites maintenant affaire avec Confort Expert.

Concernant votre prochain paiement, si vous versiez vos paiements directement à Sears Canada, vous devrez maintenant les verser à Confort Expert. Veuillez communiquer avec un représentant de Confort Expert aux coordonnées ci-après pour organiser le transfert de vos paiements à Confort Expert. Si vous effectuez déjà des paiements directement à Confort Expert, vous n'avez aucune autre mesure à prendre.

Depuis plusieurs années, Confort Expert exploite les entreprises acquises pour le compte de Sears Canada. Cette transaction ne devrait occasionner aucune interruption de services et Confort Expert continuera à fournir ceux-ci dans le cours normal. Confort Expert tient à entretenir

de bonnes relations avec chacun de ses clients, et souhaite continuer à leur offrir la même qualité de services que celle qu'ils connaissent depuis des années. N'hésitez pas à communiquer avec Confort Expert au 514 640-7711, poste 599, ou au 1 877 240-0911, poste 599, pendant les heures d'ouverture habituelles (heure de l'Est) ou par courriel à credit@confortexpert.com si vous avez des questions à propos de vos services. Pour de plus amples renseignements sur la transaction entre Sears Canada et Confort Expert, vous pouvez consulter le site Web de FTI Consulting Canada Inc., contrôleur de Sears Canada nommé par la Cour, au : <http://cfcanada.fticonsulting.com/searscanada>.

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., 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.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER
APPROVAL AND VESTING ORDER
(Sears Home Improvements Business)

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