

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

B E T W E E N:

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, SEARS HOLDINGS
CORPORATION, WILLIAM R. HARKER and WILLIAM C. CROWLEY

Defendants

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

B E T W E E N:

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, DONALD ROSS and SEARS HOLDINGS CORPORATION

Defendants

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

B E T W E E N:

MORNEAU SHEPELL LTD., in its capacity as administrator of the Sears Canada Inc.
Registered Retirement 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, DOUGLAS CAMPBELL and SEARS HOLDINGS
CORPORATION

Defendants

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

-and-

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

Defendants

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

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

(Approval of ESL Parties Settlement)

September 16, 2020

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J. Douglas Cunningham, Q.C

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TO: SERVICE LIST

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Court File No. CV-18-00611219-00CL

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

B E T W E E N:

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, SEARS HOLDINGS
CORPORATION, WILLIAM R. HARKER and WILLIAM C. CROWLEY

Defendants

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

B E T W E E N:

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, DONALD ROSS and SEARS HOLDINGS CORPORATION

Defendants

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

B E T W E E N:

MORNEAU SHEPELL LTD., in its capacity as administrator of the Sears Canada Inc.
Registered Retirement 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, DOUGLAS CAMPBELL and SEARS HOLDINGS
CORPORATION

Defendants

Court File No. CV-19-00617792-00CL

B E T W E E N :

1291079 ONTARIO LIMITED

Plaintiff

-and-

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

Defendants

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

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.

**NOTICE OF MOTION
(Approval of ESL Parties Settlement)**

The Plaintiffs will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on September 18, 2020, at 11 a.m., or as soon after that time as the motion can be heard, by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Gianni Bianchi at gianni.bianchi@nortonrosefulbright.com.

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

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "B", *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 a settlement (the “**ESL Parties Settlement**”) between Sears Canada Inc. (“**Sears Canada**”), by its Court-Appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the “**Litigation Trustee**”), FTI Consulting Canada Inc., as Court-Appointed Monitor of Sears Canada Inc. (the “**Monitor**”), Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan as appointed under the *Pension Benefits Act* (the “**Pension Administrator**”), 1291079 Ontario Limited in its capacity as representative plaintiff in the class proceeding certified pursuant to the order of Justice McEwen dated June 21, 2019 in Court File No. CV-19-617792-00CL (together with the Litigation Trustee, the Pension Administrator and the Monitor, the “**Plaintiffs**”), and Edward S. Lampert, ESL Investments Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, SPE I Partners LP, ESL Investors, LLC, RBS Partners, LP, CRK Partners, LLC, RBS Investment Management, LLC (collectively, the “**ESL Parties**”), including approving the ESL Parties Settlement for the purposes of the *Class Proceedings Act, 1992*;
- (c) approving certain releases and bar orders for the Released Claims (as defined below), which releases and bar orders shall apply to claims asserted by any and all persons against the ESL Parties in relation to the subject matter of the Dividend Claims (as defined below); and

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

THE GROUNDS FOR THE MOTION ARE:

1. Sears Canada and certain affiliates commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated (the “**CCAA Proceedings**”);

The Dividend Claims

2. On March 2, 2018, the Court issued an Order (as amended on April 26, 2018, the “**Litigation Investigator Order**”) in the CCAA Proceedings appointing Lax O'Sullivan Lisus Gottlieb LLP as Litigation Investigator, with a mandate to identify and report on certain rights and claims that Sears Canada or any creditors of Sears Canada may have against any parties;

3. On December 3, 2018, the Monitor and the Litigation Trustee were authorized by the Court in the CCAA Proceedings to pursue litigation against certain third parties, on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013;

4. Following the December 3, 2018 orders, the following claims related to the 2013 Dividend were commenced:

- (a) a claim of the Monitor against Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, and SPE I Partners (collectively, the “**Named ESL Parties**”) and certain former directors of Sears Canada, as subsequently amended to include Sears Holdings Corporation (“**SHC**”) as an additional defendant (the “**Monitor Claim**”);
- (b) a claim of Sears Canada, by the Litigation Trustee, against the Named ESL Parties and certain former directors and officers of Sears Canada, as amended to include SHC as an additional defendant (the “**Litigation Trustee Claim**”); and
- (c) a claim of the Pension Administrator against the Named ESL Parties and certain former directors and officers of Sears Canada, as amended to include SHC as an additional defendant (the “**Pension Administrator Claim**”);

5. These claims as well as class action claims (the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers (collectively, the “**Dividend Claims**”) are proceeding on the Commercial List of the Ontario Superior Court of Justice under the case management of Justice McEwen;

6. Each of the Dividend Claims relates to the 2013 Dividend declared and paid by Sears Canada in the amount of \$509 million:

- (a) the Monitor Claim and the Litigation Trustee Claim are each asserted in the amount of \$509 million plus interest and costs;
- (b) the Pension Administrator Claim is asserted in the amount of the wind-up deficit of the Sears Canada Inc. Registered Retirement Plan, then estimated at approximately \$260 million;
- (c) the Dealer Class Action claim is asserted in the amount of \$80 million;

7. The Dividend Claims as against SHC have now been settled. As part of that settlement, the Plaintiffs received an allowed Class 4 general unsecured claim in an amount equal to CDN\$200 million under the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors* (the “**Allowed SHC Unsecured Claim**”);

8. The Dividend Claims against certain former directors and officers of Sears Canada are also the subject of a court-approved settlement agreement;

ESL Parties Settlement

9. Following lengthy negotiations in the context of a judicial mediation, the ESL Parties and the Plaintiffs have agreed, as a global settlement of all claims arising from or related to or that could have been asserted in the Dividend Claims, that the Plaintiffs, collectively, would receive \$22.5 million, to be paid by the Named ESL Parties subject to the terms of the ESL Parties Settlement;

10. A summary of the material terms of the ESL Parties Settlement is set out below¹:

- (a) Settlement Funds: The Named ESL Parties will pay to the Plaintiffs the amount of \$22,500,000 (as defined and described below) (the “**Settlement Funds**”) in full and final satisfaction of all claims arising from or related to or that could have been asserted in the Dividend Claims (the “**Released Claims**”). The Settlement Funds are to be paid to the Monitor, in trust for the Plaintiffs, within fifteen days after the requested Order approving the settlement becomes final and non-appealable;
- (b) Releases: The ESL Parties and the Plaintiffs will enter into mutual releases to be agreed by counsel acting reasonably;
- (c) Non-Disparagement: The ESL Parties and the Plaintiffs will sign a non-disparagement agreement to be agreed to by counsel acting reasonably;
- (d) No Admission of Liability: The settlement has been made on the basis that none of the allegations against the Named ESL Parties have been proven. As part of the requested approval of the ESL Parties Settlement, the Plaintiffs will confirm that all

¹ This summary is provided for general information purposes only. In the case of any inconsistency between this summary and the terms of the ESL Parties Settlement, the ESL Parties Settlement shall govern.

claims and allegations in their respective pleadings of intentional wrongdoing by the Named ESL Parties are withdrawn;

- (e) Allowed SHC Unsecured Claim: The Plaintiffs agree that at the written election of ESL Investments, Inc., and subject to the terms and conditions of the ESL Parties Settlement, the Plaintiffs shall either execute documents reasonably requested by the ESL Parties for the purposes of assigning the Plaintiffs' right, title and interest in the Allowed SHC Unsecured Claim to ESL Investments, Inc. or retain legal title to the Allowed SHC Unsecured Claim but grant ESL Investments, Inc. or its designee a 100% participation interest in the Allowed SHC Unsecured Claim. In addition, the Plaintiffs acknowledge that ESL Investments, Inc. may elect to release the Allowed SHC Unsecured Claim at any time on reasonable written notice to the Plaintiffs;
- (f) Court Approval: The settlement is conditional upon receipt of approval of the Court and of the court in the Dealer Class Action proceedings;
- (g) Joint Statement: Following the granting of court approval of the ESL Parties Settlement, the parties would release a joint public statement. The form of public statement has been agreed and will be set out in the settlement documentation to be served in a Supplemental Report of the Monitor;

11. The proposed settlement is fair and reasonable in view of: (i) the merits and risks associated with the claims against the Named ESL Parties; (ii) the time and cost required to determine the Dividend Claims through litigation, including through any appeals; and (ii) uncertainties around the ability to recover any judgment from the Named ESL Parties;

12. The proposed settlement is also consistent with the purposes of the CCAA as it would reduce the litigation costs to be incurred by the estate of Sears Canada and, in the case of the Monitor's claim, provides an opportunity for recovery on a claim advanced pursuant to Section 36.1 of the CCAA;

13. The Estate 2013 Dividend Litigation is the last material remaining asset to be realized upon by Sears Canada and the resolution of the Dividend Claims will be an important step toward completion of these proceedings;

14. The Monitor and the Litigation Trustee provided updates to, and consulted with, the Creditors' Committee on the status of the settlement discussions with the Named ESL Parties. The Monitor has been advised that the Creditors' Committee, which includes representatives of key stakeholders, support the proposed settlement;

Releases

15. The ESL Parties Settlement provides a comprehensive release and bar order in favour of the ESL Parties in respect of the Released Claims asserted by any and all persons, including all claims that could be asserted against the ESL Parties in relation to the subject matter of the Dividend Claims;

16. The releases and bar orders are a requirement of the ESL Parties Settlement and are requested by the ESL Parties in return for the consideration paid by the Named ESL Parties;

17. The Monitor believes the request for these releases is reasonable in the circumstances to provide finality in respect of these claims in return for the payment of \$22.5 million;

General

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

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

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

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

1. The Thirty-Ninth Report of the Monitor, dated September 16, 2020;

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

September 16, 2020

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J. Douglas Cunningham, Q.C

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Lawyers for 1291079 Ontario Limited

TO: SERVICE LIST

SCHEDULE "A"
ZOOM CONFERENCE DETAILS

Join Zoom Meeting

<https://nortonrosefulbright.zoom.us/j/97097950271?pwd=cDBoSXZJdHBZazhCaTNMbFIxVVdnUT09>

Meeting ID: 970 9795 0271

Password: 134839

One tap mobile

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Dial by your location:

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+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

833 548 0282 US Toll-free

877 853 5257 US Toll-free

888 475 4499 US Toll-free

833 548 0276 US Toll-free

Meeting ID: 970 9795 0271

Password: 134839

Find your local number: <https://nortonrosefulbright.zoom.us/u/abJ86ARth>

SCHEDULE "B"
Form of Draft Order

Court File No. CV-17-11846-00CL
 Court File No. CV-18-611214-00CL
 Court File No. CV-18-611217-00CL
 Court File No. CV-18-611219-00CL
 Court File No. CV-19-617792-00CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

THE HONOURABLE)
 JUSTICE HAINEY)
)

●, THE ●
 DAY OF ●, 2020

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 QUEBEC 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.

 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,
and SEARS HOLDINGS CORP.

Defendants

 MORNEAU SHEPELL LTD. in its capacity as administrator of the
 Sears Canada Inc. Registered Retirement 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
and SEARS HOLDINGS CORPORATION

Defendants

 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, SEARS HOLDINGS
CORPORATION, WILLIAM HARKER and WILLIAM CROWLEY

Defendants

 1291079 ONTARIO LIMITED

Plaintiff

- and -

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

Defendants

ORDER (APPROVAL ORDER)

THIS MOTION made by Sears Canada Inc. ("**Sears**") by its Court-Appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the "**Litigation Trustee**") in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 (the "**CCAA Proceedings**"), FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**"), Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Pension Administrator**") and 1291079 Ontario Limited ("**129**" and collectively with the Monitor, the Litigation Trustee and the Pension Administrator, the "**Plaintiffs**") for an order approving the settlement agreement between the Plaintiffs and Edward S. Lampert, ESL Investments Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, SPE I Partners LP, ESL Investors, LLC, RBS Partners, LP, CRK Partners, LLC, RBS Investment Management, LLC, (collectively, the "**ESL Parties**" and, as a group, Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL

Institutional Partners, LP, SPE Master I, LP, and SPE I Partners, are the “**Named ESL Parties**”) and for an order releasing claims against the Named ESL Parties and barring claims against the ESL Parties as more particularly described below was heard this day via videoconference.

ON READING the Motion Record of the Plaintiffs, the 39th Report of the Monitor dated ●, 2020 (the “**Thirty-Ninth Report**”), and the Supplementary Motion Record of 129, and on hearing the submissions of counsel for the Plaintiffs and the Defendants, no one appearing for any other party although duly served and no one appearing nor any representations having been made on behalf of any class member of the 129 Settlement Class (as hereinafter defined) despite notice of this hearing having been duly given to class members:

Sufficiency of Service and Definitions

1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and Motion Record of the Plaintiffs, the Thirty-Ninth Report, and the Supplementary Motion Record of 129 on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable ●, 2020 in all proceedings set out in the styles of cause above.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning attributed to those terms in the settlement and release agreement between the Plaintiffs and the ESL Parties dated ●, 2020, (the “**Settlement Agreement**”).

Approval of Settlement Agreement

3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that Sears is hereby authorized to transfer the Allowed SHC Unsecured Claim (as defined in the Thirty-Ninth Report) to ESL Investments, Inc. or to release the Allowed SHC Unsecured Claim, in each case in accordance with the terms of the Settlement Agreement, and any such transfer or release is hereby approved.
5. **THIS COURT ORDERS** that the Monitor shall be exclusively authorized to take any steps on behalf of all of the Plaintiffs to comply with the obligations set out in the Settlement Agreement in respect of the assignment or release of the Allowed SHC Unsecured Claims or the remittance

to ESL Investments, Inc. (or its designee) of any distributions, dividends, or other recovery in respect of the Allowed SHC Unsecured Claims or otherwise

Release

6. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement as of the Effective Date the Released Claims are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged.

7. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each class member in Court File No. CV-19-00617792-00CL (the “**129 Settlement Class**”) including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the action in Court File No. CV-19-00617792-00CL.

8. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interest of the 129 Settlement Class.

9. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

Bar Orders

10. **THIS COURT ORDERS** that no person not party to the Settlement Agreement (the “**Non-Parties**”) shall now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against any of the ESL Parties (or any other person who may claim contribution or indemnity from any of the ESL Parties) in respect of the Released Claims or any claims related to the subject matter of the Actions. All claims for contribution or indemnity or other claims over (whether asserted or unasserted, tolled or not tolled) relating to or arising from the Released Claims or any claims related to the subject matter of the Actions which were or could have been brought in any of the Actions or in a separate proceeding against the ESL Parties are barred, extinguished, prohibited and enjoined by this Order.

11. **THIS COURT ORDERS** that all Persons (regardless of whether or not such Persons are creditors or claimants), including the 129 Settlement Class, Sears Canada Inc., the Litigation

Trustee, the Monitor, the Pension Administrator, the Pension Benefits Guarantee Fund (Ontario), the beneficiaries of the Sears Canada Inc. Registered Retirement Plan, the ESL Parties, and all beneficiaries of any of the foregoing, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Date, from:

- a) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any action or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) which constitutes a Released Claim;
- b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, damages, or order in respect of a Released Claim, other than the enforcement of the Settlement Agreement;
- c) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Released Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a claim, in any manner or forum, against one or more of the ESL Parties;
- d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the ESL Parties or their property in respect of a Released Claim; or
- e) taking any actions to interfere with the implementation or consummation of the Settlement Agreement.

12. **THIS COURT ORDERS** that the bar order and injunctions set out herein and in the Settlement Agreement shall not apply to the obligations of any Person in respect of this Order and the Settlement Agreement.

13. **THIS COURT ORDERS** that any plan of compromise or arrangement of Sears Canada Inc. or any order sanctioning such plan of compromise or arrangement shall be supplementary to, and shall not derogate from, the releases and injunctions set out in this Order.

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 Sears Canada Inc. or any of its affiliates and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of any of Sears Canada Inc. or any of its affiliates,

the settlement approved pursuant to this Order and the releases and bar orders shall be binding on any trustee in bankruptcy that may be appointed in respect of any of Sears Canada Inc. or any of its affiliates and shall not be void or voidable by creditors of any of the Applicants in the proceedings of Sears Canada Inc. or any of its affiliates under the Companies' Creditors Arrangement Act (Canada), 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 the releases, bar orders and injunctions set out herein shall be conditional upon the completion of the settlement set out in the Settlement Agreement.

Recognition and Enforcement

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body (collectively, "**Bodies**") having jurisdiction in Canada or in the United States or in any other jurisdiction to give effect to this order and to assist the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an Officer of this Court) and their respective agents in carrying out the terms of this order. All Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Plaintiffs, the

Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) as may be necessary or desirable to give effect to this order or to assist the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) and their respective agents in carrying out the terms of this order.

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|---|-------|---|------------------------------------|
| FTI CONSULTING CANADA INC. Plaintiff | | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611219-00CL |
| SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C. Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611214-00CL |
| MORNEAU SHEPELL LTD. Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611217-00CL |
| 1291079 ONTARIO LIMITED Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-19-00617792-00CL |
| 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
(Approval Order)**

| | | | |
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|---|-------|---|------------------------------------|
| FTI CONSULTING CANADA INC. Plaintiff | | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611219-00CL |
| SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C. Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611214-00CL |
| MORNEAU SHEPELL LTD. Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-18-00611217-00CL |
| 1291079 ONTARIO LIMITED Plaintiff | -and- | ESL INVESTMENTS INC. et al. Defendants | Court File No. CV-19-00617792-00CL |
| 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

**NOTICE OF MOTION
(Approval of ESL Parties Settlement)**

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FTI CONSULTING CANADA INC.

Plaintiff

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas
Cunningham, Q.C.

Plaintiff

MORNEAU SHEPELL LTD.

Plaintiff

1291079 ONTARIO LIMITED

Plaintiff

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

ESL INVESTMENTS INC. et al.
Defendants

-and-

ESL INVESTMENTS INC. et al.
Defendants

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Defendants

-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-19-00617792-00CL

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

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Approval of ESL Parties Settlement)

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