

**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 QUEBEC 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.

Applicants

**NOTICE OF MOTION**

**(Motion for Sealing Order, Returnable on September 20, 2018)**

Oxford Properties Group and OPGI Management Limited Partnership, together with Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, "**Oxford**") will make a motion to the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on Thursday, September 20, 2018 at 11:00 a.m., or as soon thereafter as the motion can be heard, at 330 University Avenue in the City of Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An order:
  - (a) directing the Monitor to continue to maintain the confidentiality of Confidential Appendices “A”, “B” and “C” from the Twenty-Third Report of FTI Consulting Canada Inc., in its capacity as Monitor dated September 10, 2018 (the “**Monitor’s Report**”), and not disclose same.
  - (b) if needed, an order sealing from the public record Confidential Appendices “A”, “B” and “C” to the Monitor’s Report.
2. An order directing the Monitor to maintain the existing redaction as it relates to the amount referred to in the last paragraph of the cover letter dated June 29, 2018 attached as Exhibit “C” to the Affidavit of Philip Mohtadi, sworn September 10, 2018, in support of the Applicants’ and Monitor’s Joint Motion (page 125 of the Motion Record filed by the Applicants and Monitor, dated September 10, 2018) (“**Oxford’s Settlement Offer**”).
3. Costs of this motion, if opposed.
4. Such further and other relief as this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Oxford’s Confidential Information**

1. Oxford filed a motion dated August 29, 2018 to appoint John A. Keefe as arbitrator pursuant to an Option Agreement dated January 21, 1994 (the “**Option Agreement**”).

2. Sears and the Monitor served a joint motion record dated September 10, 2018 seeking the appointment of Justice Farley as arbitrator pursuant to the Option Agreement, and other relief (the “**Joint Motion**”).
3. In support of its Joint Motion, the Monitor filed the Monitor’s Report.
4. Beginning at paragraph 26 in the Monitor’s Report, the Monitor describes a proof of claim filed by Oxford in this proceeding dated March 2, 2018 (the “**Proof of Claim**”). The Monitor’s description of the Proof of Claim in the body of its report includes: (i) the amounts of the claim; (ii) the subject matter of the claim; (iii) the fact that the Proof of Claim was rejected by the Monitor; and (iv) the fact that Oxford has submitted a notice of dispute in respect of its claims, and the amount included in the notice of dispute.
5. Despite all this information being included in the body of the Monitor’s Report, the Monitor wishes to include copies of Oxford’s Proof of Claim, the Monitor’s Notice of Revision or Disallowance dated July 27, 2018 and Oxford’s Notice of Dispute dated August 24, 2018 (collectively, the “**Confidential Oxford Documents**”) as appendices to its report.
6. Oxford objected to its confidential information being disclosed, prior to same being served on the Service List in this proceeding. As a result, the Monitor did not include the Confidential Oxford Documents as Confidential Appendices “A”, “B” and “C” to its Report “pending any sealing order that Oxford may apply for in connection with same” (quoting from paragraph 29 of the Monitor’s Report), but provided same to the Court.

7. Certain of the Confidential Oxford Documents contain highly commercially-sensitive information relating not only to Oxford, but also its tenants at the Upper Canada Mall, above and beyond the general information already unilaterally disclosed by the Monitor in its Report.
8. It is not necessary for the Confidential Oxford Documents to be included with the Monitor's Report. They are irrelevant to the Court's determination of the issues raised in the Joint Motion.
9. In the alternative, any information in the Confidential Oxford Documents that is relevant to the Joint Motion is already included in the body of the Monitor's Report.
10. If the Confidential Oxford Documents are made public, they will provide pertinent business information to competitors and customers of Oxford which may result in Oxford suffering material prejudice.
11. A reasonable alternative to sealing the Confidential Oxford Documents is the Monitor voluntarily removing them from the Monitor's Report, given their irrelevance to the Joint Motion. Failing this step, the Court should order that the Confidential Oxford Documents be removed from the Monitor's Report.
12. If the Monitor refuses to remove the Confidential Oxford Documents from its report and the Court is not willing to order it to do so, then other than sealing the information, there are no other reasonable alternatives to protect the Confidential Oxford Documents.
13. The salutary effects of the sealing order outweigh its deleterious effects.

**Oxford's Privileged Information**

14. Oxford's Settlement Offer is protected by settlement privilege.
15. Aside from the prejudice that would accompany the disclosure of Oxford's Settlement Offer, any amount that Oxford proposed in June, 2018 as the Current Value of the Newmarket Property to be utilized for purposes of the Option Agreement on the basis that a sale is completed within seven days, has no relevance to the issues raised on the Joint Motion.
16. Section 137(2) of the *Courts of Justice Act*, RSO 1990, c C43, as amended.
17. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** to be used at the hearing of the motion:

1. The Twenty-Third Report of FTI Consulting Canada Inc., as Monitor, dated September 10, 2018.

2. Such further and other materials counsel may advise and this Honourable Court may permit.

September 19, 2018

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

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Proceedings commenced at Toronto

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