

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

THE HONOURABLE
JUSTICE HAINEY

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)
)

MONDAY, THE 23rd
DAY OF NOVEMBER, 2020

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

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for an Order approving the proposed plan of distribution and claims process and the form and manner of distribution of the proposed notice of judgment, was heard was heard this day by judicial teleconference via Zoom at Toronto, Ontario.

WHEREAS the settlement in this action with the defendants, William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas, was approved by Order of this Court dated August 25, 2020 (the “**Directors Settlement**”);

AND WHEREAS the settlement in this action with the defendant, ESL Investments Inc. (“**ESL**”), was approved by Order of this Court dated September 18, 2020 (the “**ESL Settlement**”);

AND WHEREAS the settlement fund established pursuant to the Directors Settlement and ESL Settlement is \$6,525,000 in the aggregate (the “**Settlement Fund**”);

AND WHEREAS the fees and disbursements of Sotos LLP and Blaney McMurtry LLP (“**Class Counsel**”) were approved by Orders of this Court dated August 25, 2020 and September 18, 2020 to be paid from the Settlement Fund;

ON BEING ADVISED that the deadline for class members to comment on the proposed plan of distribution and claims process has passed, and Class Counsel received 3 comments questioning or opposing it;

ON READING the materials filed and upon hearing the submissions of Class Counsel, and notice of this hearing had been duly given to class members;

1. **THIS COURT ORDERS** that the proposed plan of distribution and claims process described in the affidavit of Andy Seretis sworn November 18, 2020, are fair and reasonable and are hereby approved.
2. **THIS COURT ORDERS** that an honorarium payment of \$15,000.00 be awarded to the plaintiff to be paid from the Settlement Amount.
3. **THIS COURT ORDERS** that all class member contributions received by Class Counsel shall be reimbursed to such class members to be paid from the Settlement Amount.

4. **THIS COURT ORDERS** that the Settlement Amount, net of approved deductions, shall be distributed on an equal basis to each class member.
5. **THIS COURT ORDERS** that the Notice of Hearing provided to class members on November 17, 2020 and the method of dissemination of such notice is hereby approved *munc pro tunc*.
6. **THIS COURT ORDERS** that the Notice of Distribution, attached as Schedule “A” to this Order (the “**Notice**”) be and is hereby approved.
7. **THIS COURT ORDERS** that the Notice shall be emailed to all class members by counsel for the plaintiff, to the extent it has such information in its possession, and published on the website of Sotos LLP.
8. **THIS COURT ORDERS** that the Notice shall be translated into French and the French version of the Notice shall be posted on the website of Sotos LLP and emailed to all class members in the Provinces of Quebec and New Brunswick by counsel for the plaintiff, to the extent it has such information in its possession.
9. **THIS COURT ORDERS AND DECLARES** that such delivery and posting of the Notice shall be good and sufficient distribution of the Notice.

10. **THIS COURT ORDERS** that, for purposes of administration of this Order, this Court will retain an ongoing supervisory role solely for the purpose of implementing, administering and enforcing the plan of distribution and claims process and approving fees and disbursements in connection herewith.

11. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without the need for entry and filing until further direction from this Court.


HAINEY, J.

SCHEDULE "A"

NOTICE OF DISTRIBUTION IN SEARS HOMETOWN DEALERS OPPRESSION CLASS ACTION

TO: All corporations, partnerships, and individuals that carried on business as a Sears Hometown Store under a Dealer Agreement with Sears Canada Inc. at any time from July 5, 2011 to November 19, 2013.

This notice is further to the notice sent to Class Members on November 17, 2020. The Court has approved the proposed Plan of Distribution to distribute the settlement funds to class members.

The purpose of this notice is to explain how we will distribute the settlement funds and how you can make a claim for your share of the settlement funds.

Distribution of the Settlement Funds

The settlement fund, after deduction of certain amounts, will be distributed to eligible class members in accordance with a Plan of Distribution that has been approved by the court.

Under the Plan of Distribution, each eligible class member will receive an equal share of the settlement funds to be distributed.

How to Submit a Claim for Payment

In order to submit a claim for payment, you must complete the statutory declaration attached to this notice and return to it Class Counsel at the contact information below. The statutory declaration must be sworn before a commissioner of oaths, which includes any lawyer practicing in Ontario, a notary public or other commissioner approved by the province in which you reside.

Deadline for Submitting Claim

All claims forms must be submitted by no later than *****, 2021**.

If, after the expiry of the deadline, certain class members have not applied for their share of the settlement funds, Class Counsel will apply to the court for directions and may request an order that any remaining balance be paid proportionately to the class members which have submitted a valid claim.

Other Matters: Eligible class members will receive a certificate showing the amount of HST attributable to their share of the legal fees paid to Class Counsel so that they may claim any credit that may be available.

The court has also approved the reimbursement of class member contributions to the funding of the class action. These amounts will also be paid from the settlement funds.

For further information about this Notice or to submit your statutory declaration, you may contact:

- Karen Whibley (kwhibley@sotosllp.com) of Sotos LLP, Barristers and Solicitors, Suite 1200, 180 Dundas St. West, Toronto, ON M5G 1Z8 | T. 416.977.0007 | F. 416.977.0717 | www.sotosllp.com

PLEASE DO NOT CALL the Ontario Superior Court of Justice or the Registrar of the court. They will not be able to answer your questions about the lawsuit.

Date: November ***, 2020

STATUTORY DECLARATION

CANADA)
PROVINCE OF _____)

IN THE MATTER OF the settlement
of 1291079 Ontario Limited v. Sears Canada
Inc. et al, Ontario Superior Court of
Justice, Court File No. CV-19-617792-00CL
(the "Action")

I, _____, of the _____ of _____, in
(name) (City/Town) (Name of City/Town)
the Province of _____, do solemnly declare:
(Province you reside in)

1. I am the _____ of _____ (the "Class
(Title) (Name of Corporation)
Member") and as such have knowledge of the matters herein deposed to.

2. (Please check one which applies)

(A) The Class Member is a subsisting corporation that is not in
bankruptcy or receivership.

(B) The Class Member has been voluntarily dissolved by the filing of
Articles of Dissolution with the appropriate governmental authority.

If (B),

(a) The Class Member was voluntary dissolved by the filing of Articles
of Dissolution on _____. A copy of the Articles of Dissolution
is attached. (Date)
(please attach a copy of the Articles of Dissolution)

(b) At the time of dissolution, all of the Class Member's undertaking,
property, assets and rights of every nature and kind whatsoever and
all of its right, title and interest therein and thereto were transferred
to the persons or corporations listed below in the proportions
indicated below:

_____ %
_____ %
_____ %

3. (Please check one which applies)

(A) The Class Member has not sold, pledged or assigned the proceeds of the Action to a third party and there is no Requirement to Pay existing in respect of the proceeds of the Action in favour of any tax authority.

(B) The Class Member has sold, pledged or assigned the proceeds of the _____ Action to a third party. The name of third party is: _____

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

SWORN before me at the _____)
_____ of _____, in the)
Province of _____)
this ___ day of _____, 202__)
_____)
_____)

_____l/s

A Commissioner for Oaths, etc.

**1291079 ONTARIO LIMITED
Plaintiff**

-and- **SEARS CANADA INC. et al.
Defendants**

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

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

PROCEEDING COMMENCED AT TORONTO

ORDER

(Motion for Approval of Plan of Distribution)

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