



Court File No. **VLC-S-S-151299**

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

LEONARD KENNETH TONN

PLAINTIFF

And:

SEARS CANADA INC.

DEFENDANT

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named Registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named Registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Leonard Kenneth Tonn ("Tonn"), resides in Chilliwack, BC. He is well-suited to advance the interests of the Class Members, as defined below.
2. The Defendant, Sears Canada Inc. ("Sears"), is a company incorporated under the laws of Canada and extra-provincially registered in BC. The registered address of its attorney for service in BC is 4750 Kingsway in Burnaby.

The Class

3. Tonn brings this action on his own behalf and as a representative under the *Class Proceedings Act*, RSBC 1996, c.50, of all persons employed by Sears in its home services division in BC under contracts of employment of indefinite duration which terminated on or about March 2, 2013 (collectively, the "Class Members").

Sears Employment

4. Sears entered into employment contracts, which were materially identical for the purposes of this proceeding, with the Class Members (the "Sears Employment Contracts"). The terms of the Sears Employment Contracts were expressed orally, in writing and implied by conduct.
5. As at the Sears Termination (as defined below), the Class Members were entitled to the following compensation and benefits pursuant to the Sears Employment Contracts:
 - (a) Monetary remuneration (the "Sears Remuneration");
 - (b) Group insurance benefits (the "Sears Insurance Benefits");
 - (c) Group retirement savings benefits (the "Sears Retirement Benefits"); and
 - (d) Staff discounts on Sears' products and services (the "Sears Staff Discount").
6. It was a term of each of the Sears Employment Contracts, express or implied, that Sears would provide continuous employment of indefinite duration and could not assign, transfer and/or otherwise convey its entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to a third party.
7. The Class Members were employed by Sears pursuant to the Sears Employment Contracts continuously until termination on or about March 2, 2013. The Class Members faithfully, diligently and continuously performed their duties on behalf of Sears pursuant to the Sears Employment Contracts at all times and continuously throughout the term of the Sears Employment Contracts proved to be valuable employees of Sears.

SHS Formation

8. In or around 2012, Sears resolved to sell and/or outsource its home services division to a third party. In or around June of that year, Sears solicited a group of individuals for this purpose.
9. On or about November 19, 2012, the said individuals formed SHS Services Management Inc. ("SHS") under the laws of Canada for the express purpose of enabling Sears to outsource its home services division to SHS.
10. On or about December 20, 2012, Sears and SHS entered into a written agreement whereby SHS purchased a license from Sears to operate its home services business in exchange for ongoing periodic payments (the "Branded Concession Agreement").
11. SHS entered into the Branded Concession Agreement in reliance on Sears' representation(s) that SHS' annual sales would total approximately \$208,000,000.
12. On or about December 20, 2012, Sears and SHS entered into a written agreement whereby Sears conveyed the assets and property comprising its home services division to SHS on terms including a purchase price (the "Asset Transfer Agreement"). Sears loaned SHS \$5,676,525.80 towards this purchase price.
13. As a term of the Asset Transfer Agreement, Sears required SHS to offer employment to Sears' employees in its home services division on specific terms by February 18, 2013 (the "SHS Employment Offer"). Sears represented to SHS that it employed 92 people in its home services division in BC at that time.

Sears Termination

14. On or about February 18, 2013:
 - (a) Sears advised the Class Members that, on March 2, 2013, it might complete the sale of its home services division to SHS;
 - (b) Sears advised the Class Members that the completion of the sale of its home services division would result in the immediate elimination of their positions with Sears and the termination of their employment with Sears;
 - (c) SHS offered employment to the Class Members, in writing, by way of the SHS Employment Offer; and
 - (d) Sears and SHS advised the Class Members that the SHS Employment Offer was conditional upon the successful completion of the sale of Sears' home services division to SHS on March 2, 2013.
15. The Class Members executed the SHS Employment Offer.
16. On or about March 2, 2013:
 - (a) The sale of Sears' home services division to SHS completed;
 - (b) SHS commenced its sole business activity of operating the former Sears' home services division; and
 - (c) Sears terminated the Sears Employment Contracts (the "Sears Termination").

17. Sears effected the Sears Termination without just cause, reasonable notice and/or pay in lieu thereof to any of the Class Members.
18. At no time did the Class Members, or any of them, consent, expressly or impliedly, to Sears assigning, transferring and/or otherwise conveying its interest(s), entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to SHS, or any third party, whether directly or indirectly, at all or in part.
19. The Sears Termination constituted:
 - (a) An arbitrary and willful breach of the Sears Employment Contracts by Sears;
 - (b) A wrongful dismissal of the Class Members;
 - (c) A wrongful termination of the Sears Insurance Benefits;
 - (d) A wrongful termination of the Sears Retirement Benefits;
 - (e) A wrongful termination of the Sears Staff Discount; and
 - (f) A breach of Sears' obligation not to assign, transfer and/or otherwise convey its interest(s), entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to a third party.

SHS Employment

20. On or about March 2, 2013, as a result of the completion of the conveyance of Sears' home services division to SHS, the Class Members commenced employment with SHS (the "SHS Employment Contracts").
21. The Class Members were employed by SHS pursuant to the SHS Employment Contracts continuously until those contracts were terminated on or about December 13, 2013. Throughout this time, the Class Members adequately and continuously performed their duties on behalf of SHS, pursuant to the SHS Employment Contracts, and throughout this employment proved to be valuable employees of SHS.
22. Shortly after March 2, 2013, SHS began experiencing significant financial difficulties, which included, but were not limited to:
 - (a) Its revenues were substantially less than represented by Sears;
 - (b) Sears demanded full re-payment of the monies it loaned to SHS towards the purchase price specified in the Asset Transfer Agreement and SHS complied in full in early September, 2013; and
 - (c) As a result of re-payments demanded by and made to Sears by SHS, it required additional financing.
23. In or around September 30, 2013, SHS obtained additional financing from Sears and other private lenders. Sears took, registered and perfected a general security agreement and/or other security instruments over SHS' assets as security for this additional financing.
24. On or about December 13, 2013, SHS went into receivership, without prior notice to the Class Members, citing, among other things, that:

- (a) The terms of the Branded Concession Agreement were such that SHS was not a viable business;
 - (b) Sears refused to provide any additional financing or other relief to SHS;
 - (c) Sears intended to issue a Notice of Intention to Enforce Security pursuant to s.244(1) of the *Bankruptcy and Insolvency Act*, RSC;
 - (d) SHS had dismal financial prospects; and
 - (e) SHS would be unable to make its payroll beyond December 13, 2013.
25. By Order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. (the "Receiver") was appointed as SHS' interim receiver. On the same date, the Receiver, on behalf of SHS, terminated the SHS Employment Contracts, without cause, notice, and/or compensation in lieu to the Class Members, or any of them (the "SHS Termination").
26. On or about January 9, 2014, by Order of the Ontario Superior Court of Justice, the Receiver was relieved of its duties as interim receiver and appointed as SHS' receiver.
27. At the time of the SHS Termination, Sears was one of SHS' two (2) secured creditors. The indebtedness of SHS to Sears at that time totaled approximately \$2,000,000, plus substantial interest and costs thereon.
28. As a result of the Sears and SHS Terminations, the Class Members have and continue to suffer damage, loss and expense, including loss of compensation and/or benefits to which they would have been entitled during the period(s) of reasonable notice, including loss and/or diminishment of:
- (a) Monetary remuneration, including the Sears Remuneration;
 - (b) Group insurance benefits, including the Sears Insurance Benefits;
 - (c) Retirement savings assets, rights and entitlements, including in relation to the Sears Retirement Benefits; and
 - (d) Sears Staff Discount.
29. Sears failed to discharge its obligation of good faith, honesty and fair dealing to the Class Members in effecting the Sears Termination by acting in a high-handed, outrageous, reckless, wanton, careless, deliberate, callous, disgraceful, willful manner and with contemptuous disregard for the rights of the Class Members.

Part 2: RELIEF SOUGHT

1. Tonn, on his own behalf, and on behalf of the Class Members, claims against Sears for:
- (a) An Order certifying this Action as a class proceeding against Sears;
 - (b) An Order appointing Tonn as representative Plaintiff in respect of the Class Members;
 - (c) General damages;
 - (d) Special damages;
 - (e) Punitive damages;

- (f) Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c.79 and amendments and Regulations thereto;
- (g) Costs pursuant to s.37 of the *Class Proceedings Act*, RSBC 1996, c.50; and
- (h) Such further and other relief as the Class Members may advise and/or to this Honourable Court may seem fit and just.

Part 3: LEGAL BASIS

Class Proceedings

1. Tonn, on behalf of the Class Members, pleads and relies upon the *Class Proceedings Act*, RSBC 1996, c.50.
2. Tonn is an appropriate representative of the Class Members.
3. The Class Members as individuals cannot match the resources of Sears. The claims of each Class Member would not be economical to pursue individually. The Class Members, and each of them, would be denied access to justice in the absence of a class proceeding.
4. Sears is sufficiently large and well-resourced that an individual lawsuit would be unlikely to significantly impact its behavior. This Class Proceeding will either produce a voluntary change in Sears' behaviour or result in a Court Order compelling the same. A punitive damage award is necessary to express society's condemnation of Sears' conduct and to achieve both specific and general deterrence.
5. The alternative to a class proceeding is a multiplicity of proceedings raising the same and/or similar factual and legal issues. This would be inefficient, prone to inconsistent findings and would not make effective use of judicial resources.

Wrongful Dismissal

6. At common law, it was an implied term of the Sears Employment Contracts that the Class Members were entitled to reasonable notice or payment in lieu of reasonable notice of termination.
7. The Sears Termination was effected without notice or payment in lieu of notice, entitling the Class Members to damages for breach of contract at common law.
8. At common law, the Sears Termination entitles the Class Members to special damages for all resulting out of pocket expenses.

Punitive Damages

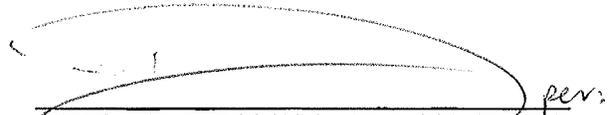
9. At common law, it was an implied term of the Sears Employment Contracts that Sears owed the Class Members duties of good faith and honesty in its dealings with them.
10. Sears' conduct leading up to, during, and after the sale of its home services division to SHS, including the transfer of the Class Members' employment, was a breach of its duties of good faith and honesty owed to the Class Members, which renders Sears liable to pay punitive damages.

Plaintiff's address for service:	700 - 1006 Beach Avenue Vancouver, BC V6E 1T7
Place of trial:	Vancouver, BC
The address of the registry is:	Vancouver Law Courts 800 Smith Street Vancouver, BC V6Z 2E1

Dated: 17/Feb/2015



A.R. Ayliffe and C.D. Drinovz
Fraser Valley Employment Law,
Lawyers for the Plaintiff, Leonard Tonn



B.W. Curtis, D.D. McWhinnie and M. Sheard
TevinGleadle Employment Law Strategies,
Lawyers for the Plaintiff, Leonard Tonn

Rule 7-1 (1) of the *Supreme Court Civil Rules* states:

1. Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim pursuant to the *Class Proceedings Act* in damages for wrongful dismissal.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- a motor vehicle accident
- personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflicts of law
- none of the above
- do not know

Part 4:

Class Proceedings Act, RSBC 1996, c.50.
Court Order Interest Act, RSBC 1996, c.79.