

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SEARS HOMETOWN AND)
OUTLET STORES, INC.) C.A. No. 2019-0798-JTL
SHAREHOLDERS LITIGATION,)

**ORDER VACATING THE SCHEDULING ORDER AND CANCELLING THE
SETTLEMENT HEARING**

1. On December 29, 2022, defendants Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, RBS Partners, LP, Transform Holdco LLC, and Hometown Midco LLC (collectively, “Non-Settling Defendants”) filed a Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings relating to Defendant Transform Merger Corporation, which merged into debtor Sears Hometown Stores, Inc.

2. On February 10, 2023, plaintiffs and Josephine Linden, Alberto Franco, and John Tober (collectively, “Settling Defendants”) filed a Stipulation and Agreement of Compromise, Settlement, and Release Between Lead Plaintiffs and the Settling Defendants (“Settlement Stipulation”). *See* Dkt. 205. Section 11 of the Settlement Stipulation contemplates the cooperation of the debtor in the bankruptcy to provide plaintiffs and the settlement administrator a list of registered holders of Sears Hometown and Outlet Stores, Inc. (“Hometown and Outlet”) common stock as set forth on Hometown and Outlet’s stockholder register as of October 23, 2019 (“Merger Records”).

3. On March 6, 2023, the court granted the parties’ scheduling order which, among other things, (i) approved the form of notice, and (ii) scheduled a settlement hearing for May 9, 2023 (the “Scheduling Order”). *See* Dkt. 223.

4. On March 15, 2023, plaintiffs wrote to the Settling Defendants and the Non-Settling Defendants requesting the Merger Records pursuant to Section 11 of the Settlement Stipulation.

5. On March 17, 2023, plaintiffs followed up on their March 15 request. Later that day, plaintiffs' counsel received an email from counsel for the Non-Settling Defendants reminding plaintiffs that Sears Hometown Stores, Inc. ("Hometown") was a debtor in a federal bankruptcy proceeding, which has been converted to a Chapter 7 liquidation, and that a trustee, Jeffrey Burtch, had been appointed and currently has control of all of Hometown and Outlet books and records. Mr. Burtch advised he was represented by counsel and directed plaintiffs to speak with his counsel directly.

6. On March 23, 2023, plaintiffs' counsel spoke with Mark Felger of Cozen O'Connor, counsel for the bankruptcy trustee. He stated the estate has possession of Hometown and Outlet's books and records, but they do not have a sense of where the information can be found. Mr. Felger advised that he would forward plaintiffs' request to debtor's counsel. He also requested that plaintiffs contact counsel for the Non-Settling Defendants to request more information about where these particular records might be held. Later that same day, counsel for the Non-Settling Defendants explained that as previously disclosed, Transform assigned its rights and obligations under the Merger Agreement to Hometown Midco LLC.

7. Counsel for the Non-Settling Defendants further explained that the general counsel for Hometown had left the company in 2022, and that, due to the bankruptcy, all

communications with the debtor would need to go through the Chapter 7 trustee or its counsel.

8. Counsel for the Non-Settling Defendants represents that they were unsure of whether they could quickly obtain an answer concerning the Merger Records. Still, counsel for the Non-Settling Defendants committed to reaching out to their other client, Transform Holdco, to determine whether they have any information about where the Merger Records are held.

9. On March 27, 2023, plaintiffs' counsel spoke with settlement administrator A.B. Data, Ltd. and requested assistance with obtaining the Merger Records from Depository Trust & Clearing Corporation (the "Clearing Corporation") as of October 23, 2019. That same day, A.B. Data, pursuant to the Scheduling Order, proceeded to provide notice to all banks, brokers, and nominees.

10. On March 29, 2023, A.B. Data obtained from the Clearing Corporation a "list of payees" but advised later that day, after further review and analysis, it appeared that in order to complete the notice process, it will still require a list of Hometown and Outlet stockholders of record as of October 23, 2019.

11. On April 3, 2023, plaintiffs' counsel were advised by Non-Settling Defendants' counsel that they had spoken with Computershare, Hometown and Outlet common stock transfer agent before the merger, and sent Computershare requests for information on April 3 and on April 6. Counsel has represented that they have not received this requested information, as of April 14, 2023.

12. On April 6, 2023, plaintiffs filed their Opening Brief in Support of Partial Settlement and an Award of Expenses. *See* Dkt. 229.

13. On April 10, 2023, plaintiffs' counsel separately contacted representatives of Computershare to assist with obtaining the Merger Records, but have not received them as of the date of this letter.

14. By letter dated April 14, 2023, the parties informed the court that without the Merger Records, A.B. Data cannot complete the Notice process pursuant to the Scheduling Order.

15. It is hereby ordered that the Scheduling Order is vacated and the settlement hearing scheduled for May 9, 2023 is canceled. Plaintiffs' counsel will contact the court about scheduling a settlement hearing once they have the ability to send notice.

/s/ J. Travis Laster
Vice Chancellor Laster

April 18, 2023