



No. S-224806
Vancouver Registry
Estate No. 11-254412

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
PREMIUM COMFORT HEATING & AIR CONDITIONING LTD.

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada Inc., in its capacity as Court-appointed receiver of Premium Comfort Heating & Air Conditioning Ltd. (the "**Applicant**" or the "**Receiver**")

To: The Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, BC on April 17, 2024 at 9:45 a.m. for the orders set out in Part 1 below.

The Applicant estimates that the application will take 25 minutes.

This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Receiver seeks a "**Fee Approval and Discharge Order**", substantially in form attached as **Schedule "A"**, which shall:

- (a) approve the activities of the Receiver as well as its fees and disbursements of the Receiver and its legal counsel, Blake, Cassels and Graydon LLP ("**Blakes**") in these receivership proceedings;
- (b) authorize and direct the Receiver to distribute the net proceeds of the Premium Comfort Heating & Air Condition Ltd. ("**Premium Comfort**") estate (the "**Estate**") to certain stakeholders; and
- (c) discharge the Receiver in these receivership proceedings.

2. The Receiver also seeks an order unsealing the Confidential Supplement to the First Report of the Receiver dated August 12, 2022 (the "**Confidential Supplement**"), substantially in the form attached as **Schedule "B"**, as well as such further and other relief as counsel may advise.

Part 2: FACTUAL BASIS

Activities of the Receiver

1. On June 15, 2022, the Receiver was appointed over the business and assets of Premium Comfort by Order of this Court (the "**Receivership Order**"). Premium Comfort's primary business was providing plumbing, heating, and air condition services to corporate and individual customers in and around Kelowna, B.C.

2. The activities of the Receiver since its appointment are described in detail in the First Report of the Receiver dated August 12, 2022 (the "**First Report**"), and the Second Report of the Receiver dated March 15, 2024 (the "**Second Report**"), and collectively with the First Report, the "**Receiver's Reports**"). These activities include:

- (a) attending at Premium Comfort's premises in Kelowna and securing the Property (as defined in the First Report);
- (b) obtaining additional information in respect of Premium Comfort's business and the Property;
- (c) retaining Blakes to act as legal counsel;
- (d) attending to statutory notices in accordance with the *Bankruptcy and Insolvency Act* (Canada);
- (e) facilitating and administering the filing of claims on behalf of 34 employees who were determined to have claims under the *Wager Earner Protection Program Act* (Canada) ("**WEPPA**");
- (f) soliciting auction proposals with respect to Premium Comfort's vehicle fleet, inventory and equipment;
- (g) retaining Maynards Industries II Canada Ltd. ("**Maynards**") to dispose of Premium Comfort's vehicle fleet;
- (h) retaining Dodds Bros. Auctions Ltd. ("**Dodds**") to dispose of Premium Comfort's remaining inventory and equipment;
- (i) completing transactions with respect to Premium Comfort's vehicle fleet, inventory and equipment following the engagement of Maynards and Dodds;
- (j) collecting certain amounts from the accounts receivable owed to Premium Comfort;
- (k) facilitating a payroll audit and goods and services tax audit by the Canada Revenue Agency (the "**CRA**");
- (l) vacating the leased premise previously occupied by Premium Comfort;

- (m) attending to correspondence with various investors, creditors, lessors and other stakeholders; and
- (n) preparing the Receiver's Reports.

3. Blakes, in its capacity as independent legal counsel to the Receiver, advised the Receiver on all legal aspects of the activities described in the Receiver's Reports.

4. In connection with these activities, the Receiver has incurred professional fees and disbursements from the period of June 14, 2022 to January 31, 2024 in the amount of \$144,605, including taxes and disbursements.

5. In advising the Receiver in connection with these activities, Blakes has incurred professional fees and disbursements from the period of June 14, 2022 to January 31, 2024 in the amount of \$39,811, including taxes and disbursements.

Distributions to Stakeholders

6. In order to conclude its mandate in these proceedings, the Receiver seeks an order authorizing and directing it to distribute the proceeds from the Estate to stakeholders in accordance with their legal priority entitlements.

7. As is set out in the Second Report, all property from the Estate has been realized upon and the Receiver currently holds \$220,163 cash on hand (the "**Estate Proceeds**").

8. As is also set out in the Second Report, the Receiver seeks to distribute the Estate Proceeds (less a holdback of \$15,000 for administering the Estate to its completion) in the following amount and priority:

- (a) \$137,096 to the CRA in satisfaction of a priority deemed trust claim;
- (b) \$30,070 to Service Canada in satisfaction of a priority claim for employee wages and compensation under *WEPPA*; and
- (c) any remaining Estate Proceeds to Ford Credit Canada Company, the Bank of Nova Scotia, and GM Financial Canada Leasing Ltd, three vehicle lessors, on a prorated basis based on the gross proceeds realized from the sale of their respective collateral.

Part 3: LEGAL BASIS

Approval of Fees and Activities

9. The Receivership Order authorizes the Receiver and its counsel to pass their accounts from time to time and, for this purpose, refers such accounts to this Court to be heard on a summary basis.

Receivership Order, para. 21

10. This Court has referenced with approval the following relevant considerations when considering whether the fees of a court-appointed officers in insolvency proceedings are fair and reasonable in the circumstances:

- (a) the nature, extent, and value of the assets;
- (b) complications and difficulties encountered by the court officer;
- (c) degree of assistance provided by petitioner;
- (d) time spent by the court officer;
- (e) the court officer's knowledge, experience, and skill;
- (f) the court officer's diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results of the court officer's efforts; and
- (i) cost of comparable services when performed in a prudent and economical manner.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188 at para 23 [*Redcorp*], citing *Bank of Montreal v. Nican Trading Co.* (1990), 1990 CanLII 454 (BC CA).
Re Nortel Networks Corporation et al, 2017 ONSC 673 at para. 14 [*Nortel*]

11. Similar factors are considered on the assessment of the legal accounts of counsel to the court officer, including:

- (a) the time expended;
- (b) the complexity of the proceeding;
- (c) the degree of responsibility assumed by the lawyers;
- (d) the amount of money involved, including the amount of proceeds after payments to the creditors;
- (e) the degree and skill of the lawyers involved;
- (f) the results achieved; and
- (g) the client's expectations as to the fee.

Redcorp at para 33.

12. In applying the above factors, it is not necessary for the Court to go through the supporting documentation for the fees "line by line" to determine what the appropriate fees are.

The value provided should pre-dominate the consideration of what a fair and reasonable amount is appropriate.

Nortel at para. 21.

13. To provide the court with a proper evidentiary basis for assessing the fees subject to the approval application, the accounts subject to the approval application should:

- (a) be verified by affidavit;
- (b) contain sufficient evidence to permit the court to conclude that the fees incurred for services rendered were at the standard rate of charges of the receiver and of the receiver's counsel; and
- (c) provide a sufficient description of the services rendered to permit the court to determine whether the liability for fees was "properly incurred".

Redcorp at paras 26 and 32

14. In the circumstances, the Receiver submits:

- (a) that its professional fees and disbursements were properly incurred;
- (b) the services were performed by the Receiver in a prudent and economical manner and that the resulting fees charged by the Receiver are fair and reasonable in all of the circumstances;
- (c) the work completed by the Receiver was delegated to the appropriate professionals within FTI with the appropriate seniority and appropriate hourly rates; and
- (d) the Receiver's fees in this matter are consistent with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity.

15. Similarly, the Receiver submits:

- (a) Blakes' professional fees and disbursements were properly incurred at Blakes' standard rates;
- (b) the services were performed by Blakes in a prudent and economical manner and the resulting fees charged by Blakes are fair and reasonable in all of the circumstances;
- (c) the work completed by Blakes was delegated to the appropriate professionals within Blakes with the appropriate seniority and hourly rates;
- (d) Blakes' fees in this matter are consistent with the market for similar firms with the capacity to handle a file of comparable size and complexity; and

- (e) Blakes' invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.

The Discharge Order Should be Granted

16. This Court has the jurisdiction to discharge the Receiver and include a provision in the order effecting that discharge that protects court-appointed receivers, who are officers and instruments of the Court, from claims arising from the discharge of their duties in that role.

Ogopogo Beach Resort Ltd. v. Happy Valley Resort Ltd.,
2010 BCSC 996 at para. 37

17. The Receiver submits that the discharge and release sought in the proposed Fee Approval and Discharge Order (which has been limited to exclude wilful misconduct or gross negligence) are appropriate and reasonable in the circumstances.

18. The Receiver further relies on the *Bankruptcy and Insolvency Act*, the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court.

Unsealing Order

19. On August 24, 2022, this Court granted a sealing order sealing the Confidential Supplement on the court file, which contained two auction agreements with Maynards and Dodds with respect to the sale of Premium Comfort's assets in these receivership proceedings. That order sealed the Confidential Supplement pending further court order.

20. Now that these receivership proceedings have concluded, the Receiver seeks an order unsealing the Confidential Supplement.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter Bychawski, made March 22, 2024;
2. Affidavit #1 of Brett Wilson, made March 20, 2024;
3. First Report of the Receiver dated August 12, 2022;
4. Second Report of the Receiver dated March 15, 2024; and
5. Such further materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

- (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
- (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 26/Mar/2024



Signature of lawyer for FTI Consulting
Canada Inc.
Claire Hildebrand

Blake, Cassels & Graydon LLP
Barristers and Solicitors
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To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

Date: _____	_____
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

No. S-224806
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IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
PREMIUM COMFORT HEATING & AIR CONDITIONING LTD.

ORDER MADE AFTER APPLICATION

FEE APPROVAL AND DISCHARGE ORDER

BEFORE) THE HONOURABLE JUSTICE _____) 17/April/2024

ON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as Court-appointed Receiver and Manager ("**FTI**" or the "**Receiver**") of the assets, undertakings and properties of Premium Comfort Heating & Air Conditioning Ltd. (the "**Debtor**") coming on for hearing at Vancouver, BC on April 17, 2024, and on hearing Claire Hildbrand, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #1 of Peter Bychawski, sworn March 22, 2024 (the "**Counsel Affidavit**"), Affidavit #1 of Brett Wilson, made March 20, 2024 (the "**Receiver Affidavit**"), the First Report of the Receiver, dated August 12, 2022 (the "**First Report**"), and the Second Report of the Receiver dated March 15, 2024 (the "**Second Report**", and collectively with the First Report, the "**Receiver's Reports**"),

THIS COURT ORDERS that:

1. The activities of the Receiver, as set out in the Receiver's Reports, are hereby approved.
2. The fees and disbursements of the Receiver and its counsel, as set out in the Second Report, the Receiver Affidavit and the Counsel Affidavit, are hereby approved.
3. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to the following parties, in the following amounts and priorities:
 - (a) \$137,096 to the Canada Revenue Agency in satisfaction of the Deemed Trust CRA Claim (as defined in the Second Report);
 - (b) \$30,070 to the Service Canada in satisfaction of the Priority WEPP Claim (as defined in the Second Report); and

- (c) any remaining funds to Ford Credit Canada Company, Bank of Nova Scotia, and GM Financial, to be distributed on a *pro rata* basis based on the gross proceeds realized from the sale of their respective collateral (as described in the Second Report).

4. Upon payment of the amounts set out in paragraph 3 hereof, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Receiver.

5. FTI is hereby released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, the Receiver is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save for and except in the event of any gross negligence or willful misconduct of FTI in its capacity as Receiver herein.

6. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

7. Endorsement of this Order by counsel appearing on this application, other than counsel to the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Claire Hildebrand
Lawyer for the Receiver

BY THE COURT.

Registrar

SCHEDULE "A"

SCHEDULE "A"

COUNSEL LIST

Counsel Name	Party Represented

BY THE COURT.

Registrar

SCHEDULE "A"

COUNSEL LIST

Parties	Counsel

SCHEDULE "B"

No. S-224806
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IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
PREMIUM COMFORT HEATING & AIR
CONDITIONING LTD.

ORDER MADE AFTER APPLIACTION

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