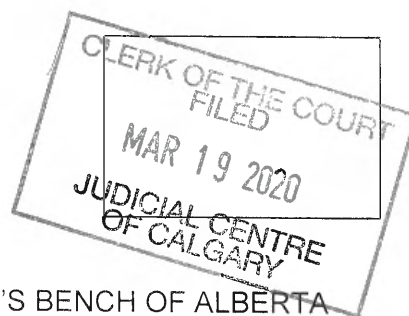


Clerk's Stamp:



COURT FILE NUMBER

2001-04485

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF

CALGARY

PLAINTIFF

SANDTON CREDIT SOLUTIONS MASTER FUND IV, LP

DEFENDANT

ACCEDE ENERGY SERVICES LTD., ACCEDE FIRE & SAFETY LTD., 1537723 ALBERTA INC. and ACCESS VALVE LTD.

DOCUMENT

NOTICE OF APPLICATION

CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

**Cassels Brock & Blackwell LLP**  
Suite 3810, Bankers Hall West  
888 3 Street SW  
Calgary, Alberta T2P 5C5

Attention: Jeffrey Oliver  
Phone: 403-351-2921  
Facsimile: 403-648-1151

File No.: 45366-3

**NOTICE TO RESPONDENTS:**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: March <sup>20</sup>~~19~~, 2020

Time: By way of desk application

Where: Calgary, Alberta

Before Whom: The presiding Justice *Horner*

Go to the end of this document to see what you can do and when you must do it.

**Remedy claimed or sought:**

1. An Order substantially in the form attached hereto as Schedule "A":
  - (a) if necessary, abridging the time for service of this Application and supporting materials, to the time actually given and deeming service of notice of this Application and supporting materials good and sufficient;
  - (b) appointing FTI Consulting Canada Inc. as receiver and manager over all of the current and future assets, undertakings and properties of Accede Energy Services Ltd., Accede Fire & Safety Ltd., 1537723 Alberta Inc. and Access Valve Ltd.;
  - (c) awarding costs of this Application; and
  - (d) granting such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Credit Facilities and Security****ATB Facilities**

2. On January 26, 2016, Accede Energy and ATB Financial ("**ATB**") entered into an Amended and Restated Commitment Letter (as amended, the "**ATB Credit Agreement**") whereby ATB extended credit facilities and related services to Accede Energy (the "**ATB Facilities**").
3. The following security was granted to ATB in respect of the obligations under or pursuant to the ATB Credit Agreement (collectively, the "**ATB GSAs**"):
  - (a) general security agreement dated April 30, 2014, charging all of Accede Energy's present and after-acquired personal and real property;
  - (b) general security agreement dated April 30, 2014, charging all of Accede Fire's present and after-acquired personal and real property;
  - (c) general security agreement dated February 3, 2015, charging all of 153's present and after-acquired personal and real property; and
  - (d) general security agreement dated April 30, 2014, charging all of Access Valve's present and after-acquired personal and real property.
4. The Guarantors also provided the following guarantees (collectively, the "**ATB Guarantees**" and together with the ATB Credit Agreement and the ATB GSAs, the "**ATB Loan Documents**"):
  - (a) unlimited and continuing guarantee granted by Accede Fire dated April 30, 2014;
  - (b) unlimited and continuing guarantee granted by 153 on February 3, 2015; and
  - (c) unlimited and continuing guarantee granted by Access Valve on April 30, 2014.

5. ATB's security interest granted by the ATB GSAs was perfected through the filing of financing statements registered in the Alberta Personal Property Registry.

#### CWB Facilities

6. On January 22, 2016, Accede Energy and Canadian Western Bank ("**CWB**") entered into a Commitment Letter and a Demand Noted dated January 28, 2016 (collectively and as amended, the "**CWB Credit Agreement**") whereby CWB extended credit facilities and related services to Accede Energy (the "**CWB Facility**").
7. As security for the performance of its obligations under the CWB Credit Agreement, Accede Energy granted a general security agreement dated January 5, 2016, charging all of Accede Energy's present and after-acquired personal property (the "**CWB GSA**" and collectively with the CEB Credit Agreement, the "**CWB Loan Documents**").
8. CWB's security interest granted by the CWB GSA was perfected through the filing of financing statements registered in the Alberta Personal Property Registry.

#### Assignments, Defaults and Forbearance Agreements

##### Initial Defaults and Demands

9. The Obligors (or anyone of them) defaulted under the terms of the ATB Loan Documents and the CWB Loan Documents by, among other things:
  - (a) failing to comply with subsections 7(o), 10(a), (c), (d) and (e) of the ATB Credit Agreement;
  - (b) failing to comply with Section 14(f) of the ATB Credit Agreement; and
  - (c) failing to comply with section 5.1 of the CWB Credit Agreement;
 (collectively, the "**Previous Events of Default**").
10. On May 19, 2016, ATB issued a demand of repayment of indebtedness owing under the ATB Facilities to each of the Obligors, together with corresponding notices under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (collectively, the "**2016 Notices**").

##### Assignment Agreements and Forbearance Agreements

11. On August 4, 2016, as amended on October 14, 2016 and October 31, 2016, the Obligors and ATB entered into a Forbearance Agreement (the "**First Forbearance Agreement**") pursuant to which ATB agreed to forbear from advancing its legal rights and remedies for a specific period of time.
12. On December 23, 2016, ATB and Sandton entered into an Assignment and Conveyance Agreement (the "**ATB Assignment Agreement**") pursuant to which ATB assigned to Sandton all of its right, title, estate and interest in and to the ATB Loan Documents and the First Forbearance Agreement to Sandton.

13. On March 22, 2017, CWB and Sandton entered into an Assignment and Conveyance Agreement (the "**CWB Assignment Agreement**") pursuant to which CWB assigned all of its right, title, estate and interest in and to the CWB Loan Documents to Sandton.
14. On August 22, 2017, the Obligors and Sandton (as assignee in interest of ATB and CWB) entered into an Amended and Restated Forbearance Agreement (the "**Second Forbearance Agreement**") pursuant to which Sandton agreed to forbear from advancing its legal rights and remedies for a specific period of time.
15. On March 13, 2019, the Obligors and Sandton entered into a further Amended and Restated Forbearance Agreement (the "**Third Forbearance Agreement**" and collectively with the ATB Loan Documents, the CWB Loan Documents, the First Forbearance Agreement and the Second Forbearance Agreement, the "**Loan Documents**") pursuant to which Sandton agreed to further forbear from advancing its legal rights and remedies until the earlier of a Termination Event (as defined in the Third Forbearance Agreement) or December 31, 2019.

#### Additional Defaults and Demands

16. Since the 2016 Notices, Accede Energy has committed additional events of default under the Loan Documents by, among other things:
  - (a) failing to pay the indebtedness outstanding under the Loan Documents prior to December 31, 2019, pursuant to Section 2.3(c) of the Second Forbearance Agreement, as amended;
  - (b) failing to maintain EBITDA on a consolidated and aggregate basis, calculated in accordance with GAAP for a rolling 3-month period in an amount less than that contained in Schedule "G" to the Second Forbearance Agreement, as amended, contrary to section 5.8(a) of the Second Forbearance Agreement, as amended. This default arose in or around March of 2019 and has persisted to date;
  - (c) making capital expenditures in excess of \$15,000 in the calendar months of April and September 2019 without the prior written consent of Sandton contrary to Section 5.8(b) of the Second Forbearance Agreement, as amended; and
  - (d) failing to make interest payments to the Sandton from an including August of 2019, contrary to section 3.1(e) of the Second Forbearance Agreement, as amended;

(collectively, the "**Additional Events of Default**", and together with the Previous Events of Default, the "**Events of Default**").
17. As a result of the Events of Default and the expiration of the Third Forbearance Agreement, on February 14, 2020, Sandton issued a demand of repayment of indebtedness owing under the Loan Documents to each of the Obligors, together with corresponding notices under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (collectively, the "**2020 Notices**").
18. The 10-day period under the 2020 Notices has expired.

19. As at January 31, 2020, the total amount due and owing to Sandton under the Loan Documents is \$28,818,845.58, inclusive of interest up to and including January 31, 2020 but exclusive of legal fees and other chargeable fees, costs and expenses as well as interest continuing to accrue after January 31, 2020 (the "Indebtedness"). Further particulars of the Indebtedness are as follows:

Loan	Principal	Interest
ATB Loan Agreement (712-24827940300)	\$4,020,020.14	\$67,804.34
ATB Loan Agreement (712-24828188200)	\$10,838,070.34	\$199,420.49
ATB Loan Agreement (712-27487804300)	\$10,830,116.76	\$553,651.23
ATB Loan Agreement (712-27500214100)	\$183,602.33	\$34,102.99
ATB Loan Agreement (712-27554537400)	\$222,251.11	\$50,938.57
ATB Loan Agreement (712-28074807200)	\$202,910.59	\$46,472.92
ATB Loan Agreement (MasterCard Facility)	\$97,716.03	\$21,390.04
ATB Loan Agreement (Forbearance Fee)	-	\$150,000.00
CWB Loan Agreement	\$1,279,290.72	\$21,086.98
	\$27,673,978.02	\$1,144,867.56
<b>Total Principal and Interest for the ATB Loan Agreement and the CWB Loan Agreement:</b>		
	\$28,818,845.58	

### Appointment of Receiver

20. Sandton seeks the appointment of a receiver and manager over the assets, undertakings and properties of the Obligors and to realize on Sandton's security.
21. The Loan Documents provide for the appointment of a receiver.
22. Given the ongoing defaults by the Obligors under the Loan Documents, it is just and convenient to appoint a receiver over the assets of the Obligors to protect the assets underlying the ATB GSAs and the CWB GSA as well as to protect the interests of other creditors.
23. FTI Consulting Canada Inc. ("FTI") has consented to act as receiver and manager of the assets, undertakings and properties of the Obligors should a receiver be appointed.
24. The Obligors do not oppose the appointment of a receiver and manager over the assets, undertakings and properties of the Obligors.

**Material or evidence to be relied on:**

25. Statement of Claim, filed;
26. Affidavit of Robert Rice, sworn March 18, 2020;
27. The Consent to Act as Receiver executed by FTI Consulting Canada Inc.; and
28. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

29. The *Alberta Rules of Court*, AR 124/2010; and
30. Such further and other rules and counsel may advise.

**Applicable Acts and regulations:**

31. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 243 thereof;
32. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof; and
33. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

34. None.

**How the application is proposed to be heard or considered:**

35. In person.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.