



COURT FILE NO. 1801 - 06578

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS MAYNARDS FINANCIAL LIMITED PARTNERSHIP, BY ITS GENERAL PARTNER, MAYNARDS CAPITAL INC.

RESPONDENTS CLAYTON CONSTRUCTION CO. LTD., GLENN ALLAN CLAYTON, AND JOHN JAMES CLAYTON

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
 BLAKE, CASSELS & GRAYDON LLP  
 3500, 855 – 2nd Street S.W.  
 Calgary, Alberta T2P 4J8  
 Attention: Ryan Zahara/James Reid  
 Telephone: 403-260-9628/403-260-9731  
 Facsimile: 403-260-9700  
 Email: [ryan.zahara@blakes.com](mailto:ryan.zahara@blakes.com)  
[james.reid@blakes.com](mailto:james.reid@blakes.com)  
 File Ref.: 79294/12

**NOTICE TO RESPONDENT**

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

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

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

Date Monday, June 11, 2018

Time 3:00 p.m.

Where Calgary Courts Centre

Before Whom Honourable Madam Justice K.M. Eidsvik

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

**Remedy claimed or sought:**

1. FTI Consulting Canada Inc., in its capacity as the court-appointed receiver and manager (the "**Receiver**") of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") of Clayton Construction Co. Ltd. (the "**Debtor**"), seeks an order (the "**Order**"), substantially in the form attached hereto as Schedule "A", among other things:
  - (a) abridging the time for service of this application (the "**Application**"), if necessary, and declaring that this Application is properly returnable and that further service of this Application, other than to those listed on the Service List attached hereto as Schedule "B" is hereby dispensed with;
  - (b) approving the sale procedure (the "**Sale Procedure**") attached as Appendix "A" to the Order;
  - (c) confirming the priority of the Receiver's Charge and the Receiver's Borrowings Charge (as defined below);
  - (d) approving the increase in the Receiver's Borrowings Charge from \$250,000 to \$500,000;
  - (e) approving the actions, conduct and activities of the Receiver to June 4, 2018, as outlined in the first report of the Receiver dated June 4, 2018 (the "**First Report**");
  - (f) approving the Receiver's statement of receipts and disbursements for the period from May 8, 2018, to June 1, 2018, as set out in the First Report; and
  - (g) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this Application:**

*Charges*

2. On May 8, 2018, the Receiver was appointed over all of the Property pursuant to the receivership order granted by the Honourable Mr. Justice C.M. Jones (the "**Receivership Order**"). All capitalized terms used but not defined herein have the meanings given to them in the First Report.
3. Pursuant to paragraph 17 of the Receivership Order, the Receiver and its counsel were granted a charge against the Property for their reasonable fees and disbursements (the "**Receiver's Charge**").
4. Pursuant to paragraph 20 of the Receivership Order, the Receiver was authorized to borrow up to \$250,000 which is secured by a fixed and specific charge against the Property (the "**Receiver's Borrowings Charge**").
5. For the reasons set out in more detail in the First Report, including the working capital needs in respect of the On-Going Work and the Equipment Repairs (each as defined in the First Report), the Receiver requires additional funds to continue carrying out the administration of the receivership.
6. Additionally and for clarity, the Receiver requests confirmation that the Receiver's Charge and the Receiver's Borrowings Charge apply to all of the Property on the terms set out in the Receivership Order.

*Sale Procedure*

7. Pursuant to sections 3(k) and (l) of the Receivership Order, the Receiver is authorized to, among other things, market any or all of the Property and sell the Property or any parts thereof with the approval of this Court.
8. As set out in the First Report, the Sale Procedure is designed to obtain the highest and best value for the Property in the circumstances.
9. The Sales Procedure requires the Receiver to return to this Honourable Court to obtain an order approving a sale and the vesting of any of the Property to a successful bidder.

*Miscellaneous*

10. The Receiver has acted reasonably and in good faith during the administration of the receivership and its actions, conduct and activities, as well as its receipts and expenditures, should be approved.

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

11. The Receiver intends to rely upon the following materials:
  - (a) the Receivership Order, filed;
  - (b) the First Report, filed;
  - (c) such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable acts and regulations:**

12. The Receiver will rely upon and refer to the following during the making of the Application:
  - (a) The BIA;
  - (b) the *Alberta Rules of Court*, AR 124/2010, as amended; and
  - (c) such further and other statutes and regulations as counsel may advise and this Honourable Court may permit.

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

13. None.

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

14. Oral submission by counsel at the Application before the Honourable Madam Justice K.M. Eidsvik on June 11, 2018.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant 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 at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**

Form of Order

(see attached)

COURT FILE NO. 1801 - 06578  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANTS MAYNARDS FINANCIAL LIMITED PARTNERSHIP, BY  
ITS GENERAL PARTNER, MAYNARDS CAPITAL INC.  
RESPONDENTS CLAYTON CONSTRUCTION CO. LTD., GLENN ALLAN  
CLAYTON, AND JOHN JAMES CLAYTON

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
BLAKE, CASSELS & GRAYDON LLP  
3500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4J8  
Attention: Ryan Zahara/James Reid  
Telephone: 403-260-9628/403-260-9731  
Facsimile: 403-260-9700  
Email: [ryan.zahara@blakes.com](mailto:ryan.zahara@blakes.com)  
[james.reid@blakes.com](mailto:james.reid@blakes.com)  
File Ref.: 79294/12

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 11, 2018

**NAME OF JUSTICE WHO MADE THIS ORDER:** K.M. Eidsvik

**LOCATION OF HEARING:** Calgary, Alberta

**UPON** the application (the "**Application**") of FTI Consulting Canada Inc., in its capacity as receiver (the "**Receiver**") of Clayton Construction Co. Ltd. (the "**Debtor**"); **AND UPON** having read the First Report of the Receiver dated June 4, 2018 (the "**First Report**"), filed; **AND UPON** hearing counsel for the Receiver, counsel for Maynards Financial Limited Partnership and any other interested parties appearing at the hearing of the within Application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

## **SERVICE**

1. The time for service of the notice of Application for this order is hereby abridged and service thereof is deemed good and sufficient.

## **APPROVAL OF CONDUCT**

2. The actions, conduct and activities of the Receiver to June 4, 2018, as outlined in the First Report, are hereby approved
3. The Receiver's statement of receipts and disbursements to June 1, 2018, as set out in the First Report, are hereby approved.

## **APPROVAL OF SALE PROCEDURE**

4. The sale procedure (the "**Sale Procedure**") attached hereto as Appendix "A", is hereby approved.
5. The Receiver is already authorized and directed to implement the Sale Procedure and do all things as are reasonably necessary to conduct and give full effect to the Sale Procedure and carry out its obligations thereunder, including seeking approval of this Court as soon as reasonably practicable following the selection of a Successful Bid under the Sales Procedure.
6. The Receiver shall be at liberty to apply for an Order vesting title to the purchased assets in the Successful Bidder in accordance with, and as defined in, the Sales Procedure.

## **INCREASE TO RECEIVER'S BORROWINGS CHARGE AND CONFIRMATION OF CHARGES**

7. The Receiver's Borrowings Charge is hereby increased to \$500,000.
8. The Receiver's Charge and Receiver's Borrowings Charge are hereby confirmed over all of the Property.

## **GENERAL**



9. Service of this Order shall be deemed good and sufficient by serving same on the persons listed on the Service List attached as Schedule "B" to the Application and by posting a copy of this Order on the Receiver's website established in respect of these proceedings.
10. No other persons are entitled to be served with a copy of this Order. Service of this Order shall be deemed good and sufficient regardless of whether service is effected by PDF copy attached to an email, facsimile, courier, personal deliver or ordinary mail.

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Justice of the Court of Queen's Bench  
of Alberta

## APPENDIX "A" – Sale Procedure

Pursuant to an order (the "**Receivership Order**") of the Court of Queen's Bench of Alberta (the "**Court**") dated May 8, 2018, FTI Consulting Canada Inc. was appointed as receiver (the "**Receiver**") over the property, assets and undertakings (collectively, the "**Property**") of Clayton's Construction Ltd. (the "**Company**") in Court File No. 1801-06578 (the "**Receivership Proceedings**").

The Receiver is looking sell all of the assets, property and undertakings of the Company in accordance with the terms and conditions set forth herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "**Sale Procedure**").

The Receiver obtained the sale procedure approval order (the "**SP Order**") on June 11, 2018 that approved these Sale Procedures and the marketing of the Property.

### Sale Procedure

1. The sale process will be carried out by the Receiver in accordance with this Sale Procedure and the SP Order. In addition, the closing of any transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale, including additional Court filings. In the event that there is a disagreement or clarification required as to the interpretation or application of these Sale Procedure or the responsibilities of the Receiver hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions, upon application of the Receiver with a hearing on no less than 3 Business Days' notice.
2. The Receiver shall prepare a list of persons who may constitute Potential Bidders and shall distribute to each such person: (a) a teaser (the "**Teaser**") describing the opportunity to acquire the Property; and (b) a copy of the SP Order (including the Sale Procedure).
3. The Receiver may require a form of required Confidentiality Agreement acceptable to the Receiver to be entered into by the bidders.
4. Any offer for less than all of the Property will be considered in combination with other offers, if any, received for other such Property.
5. The Teaser will be distributed by the Receiver by not later than June 13, 2018.
6. The sale of the Property and the Business will be on an "**as is, where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its Representatives, except to the extent set forth in the relevant definitive agreement(s) with the Successful Bidder(s).

### **Bid Deadline**

7. From the date of the SP Order until the Bid Deadline, the Receiver, in accordance with the terms of the SP Order, will solicit bids from bidders and, from the date of its designation as a bidder until the Bid Deadline, each bidder will have the opportunity to make a bid to the Receiver.

8. Each bidder must deliver its bid to the Receiver so as to be received by the Receiver not later than **5:00 p.m. (Calgary Time) on July 6, 2018** (the "**Bid Deadline**").

### **Selection Criteria**

9. The Receiver will identify the highest or otherwise best bid(s) received (each such bid, the "**Successful Bid**"). The bidder(s) who made the Successful Bid(s) are the "**Successful Bidder(s)**". The Receiver will notify the other bidders of the identities of the Successful Bidder(s).
10. The Receiver has the right to go back to any bidders prior to the selection of the Successful Bid in order to clarify or seek further information in respect of any of the bids received and may set a further deadline for the submissions of any amended or subsequent bids prior to the selection of a Successful Bid.
11. The Receiver will finalize the definitive agreement(s) in respect of any Successful Bidder(s), conditional upon approval of the Court, by no later than 5:00 p.m. (Calgary Time) on July 20, 2018 or such later date or time as the Receiver may determine appropriate in consultation with the Successful Bidder(s).

### **Deposits**

12. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account. If there are Successful Bid(s), the Deposit(s) paid by each Successful Bidder whose Successful Bid is approved at the Approval Hearing shall be applied to the Purchase Price to be paid by that Successful Bidder upon closing of the approved Successful Bid and will be non-refundable. The Deposits of other bidders not selected as a Successful Bidder shall be returned to such bidders within five (5) Business Days after the date on which their bid is no longer irrevocable in accordance with these Sale Procedures. If there are no Successful Bid(s), all Deposits shall be returned to the respective bidder(s) within two (2) Business Days of the date upon which these Sale Procedures are terminated.
13. In each case where:
  - (a) a Successful Bidder breaches any of its obligations under a Definitive Agreement;
  - (b) a bidder breaches its obligations under the terms of these Sale Procedure; or
  - (c) a bidder fails to complete the transaction contemplated by its bid:

the Deposit provided by the applicable party will be forfeited to the Receiver as liquidated damages and not as a penalty. The Receiver shall apply any forfeited Deposit in a manner the Receiver sees fit.

### **Approvals**

14. The Receiver:
- (a) may reject, in its sole discretion, at any time any bid that is:
    - (i) inadequate or insufficient;
    - (ii) not in conformity with the these Sale Procedure or any orders of the Court applicable to the Property; or
    - (iii) contrary to the best interests of the estate, and its stakeholders as determined by the Receiver, acting reasonably.
  - (b) may accept any bid, in its sole discretion, if that bid is not in conformity with this Sale Procedure provided that such bid is in the best interests of the estate and its stakeholders, as determined by the Receiver, acting reasonably; and
  - (c) may terminate or cease this Sale Procedure at any time if it determines, acting reasonably, that it is in the best interests of the estate and its stakeholders.

### **Notice**

15. The addresses used for delivering documents to the Receiver as prescribed by the terms and conditions of these Sale Procedure are set out in Appendix "A" hereto. All bids and/or associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier. Interested potential bidders requesting information about the qualification process, including a form of Purchase Agreement, and information in connection with their due diligence, should contact the Receiver at the contact information contained in Appendix "A".

### **No Amendment**

16. There will be no amendments to these Sale Procedure not contemplated herein without the approval of the Court, on notice to the service list in the Receivership Proceedings, subject to such non-material amendments as may be determined to by the Receiver.

### **Further Orders**

17. The Receivership Order, SP Order, the Sale Procedure, and any other Orders of the Court made in the Receivership Proceedings relating to the Sale Procedures shall exclusively govern the process for soliciting and selecting Successful Bids.
18. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
19. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.
20. Each bidder, upon being declared as such under the Sale Procedure, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the

Court in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the Sale Procedures and the Sale Process.

21. At any time during the Sale Procedure, the Receiver may apply to the Court for advice and directions with respect to the discharge of its obligations and duties herein.

## Appendix "A" – Address for Notice

### Address for Notices and Deliveries

To the Receiver:

FTI Consulting Canada Inc.  
520 5th Ave SW, Suite 1610  
Calgary AB T2P 3R7

Attention: Craig Munro/Robert Kleebaum

Email: [craig.munro@fticonsulting.com](mailto:craig.munro@fticonsulting.com) / [robert.kleebaum@fticonsulting.com](mailto:robert.kleebaum@fticonsulting.com)

**SCHEDULE "B"**

Service List

(see attached)

COURT FILE NO. 1801-06578

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS MAYNARDS FINANCIAL LIMITED PARTNERSHIP, BY ITS GENERAL PARTNER, MAYNARDS CAPITAL INC.

RESPONDENTS CLAYTON CONSTRUCTION CO. LTD., GLENN ALLAN CLAYTON, and JOHN JAMES CLAYTON

**SERVICE LIST**

<b>Party</b>	<b>Telephone</b>	<b>Fax</b>	<b>Role</b>
<b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 3500, 855 – 2 <sup>nd</sup> Street SW Calgary, AB T2P 4J8  <b>RYAN ZAHARA</b> E-mail: <a href="mailto:ryan.zahara@blakes.com">ryan.zahara@blakes.com</a>  <b>JAMES REID</b> E-mail: <a href="mailto:james.reid@blakes.com">james.reid@blakes.com</a>	   403-260-9628  403-260-9731	403-260-9700	Counsel to Receiver
<b>FTI CONSULTING INC.</b> Suite 1610, 520 - 5th Avenue SW Calgary, AB T2P 3R7  <b>CRAIG MUNRO</b> E-mail: <a href="mailto:Craig.Munro@fticonsulting.com">Craig.Munro@fticonsulting.com</a>  <b>ROBERT KLEEBAUM</b> E-mail: <a href="mailto:Robert.Kleebaum@fticonsulting.com">Robert.Kleebaum@fticonsulting.com</a>	   604-601-5699  403-454-6035	604-696-5571	Receiver
<b>FASKEN MARTINEAU DUMOULIN LLP</b> First Canadian Centre Suite 3400, 350 7th Avenue SW Calgary , AB T2P 3N9  <b>TRAVIS LYSACK</b> E-mail: <a href="mailto:tlysak@fasken.com">tlysak@fasken.com</a>  <b>MIHAI TOMOS</b> E-mail: <a href="mailto:mtomos@fasken.com">mtomos@fasken.com</a>	   403-261-5501  587-233-4107	403-261-5351	Counsel to Maynards Financial Limited Partnership



<b>Party</b>	<b>Telephone</b>	<b>Fax</b>	<b>Role</b>
<b>BISHOP &amp; MCKENZIE LLP</b> 2300, 10180 - 101 Street NW Edmonton, AB T5J 3S4  <b>JERRITT R. PAWLYK</b> E-mail: <a href="mailto:j.pawlyk@bishopmckenzie.com">j.pawlyk@bishopmckenzie.com</a>	780-420-6236  780-421-2477	780-426-1305	Counsel to Nilex Inc.
<b>GREY WOWK SPENCER LLP</b> 200 Advocate Square, 5110-51 Avenue Cold Lake, AB T9M 1P3 P.O. Box 1028  <b>LEIGHTON B.U. GREY, Q.C.</b> E-mail: <a href="mailto:lgrey@gwslp.ca">lgrey@gwslp.ca</a>	877-594-0299	780-594-0211	Counsel to Heaver Oilfield Consulting Ltd.
<b>CATERPILLAR FINANCIAL SERVICES LIMITED</b> 3457 Superior Court, Unit 2 Oakville, ON L6L 0C4			Creditor
<b>FORD CREDIT CANADA LIMITED</b> PO Box 2400 Edmonton, AB T5J 5C7			Creditor
<b>KRAMER LTD.</b> 2360 Pasqua St. N Regina, SK S4P 3A8			Creditor
<b>FINNING INTERNATIONAL INC.</b> 16901 – 109 Avenue Edmonton, AB T5P 4P6			Creditor
<b>OAKLEY MECHANICAL LTD.</b> 3916 52 St. Close Lloydminster, SK S9V 2G9			Creditor
<b>WHITEHORSE MOTORS LTD.</b> 4178 4 Ave Whitehorse, YT Y1A 1J6  <b>TINA WOODLAND</b> E-mail: <a href="mailto:tina@whitehorsemotors.com">tina@whitehorsemotors.com</a>		867-667-6246	Creditor
<b>FELDSPAR INC.</b> 5002 65 St. Lloydminster, AB T9V 2K2	780-875-2208		Contingent Creditor