



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**  
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File Ref.: 79294/12

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 11, 2018  
**NAME OF JUSTICE WHO MADE THIS ORDER:** Madam Justice 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. ; **AND UPON** having read the First Report of the Receiver dated June 4, 2018 (the "**First Report**"), filed, and the Affidavit of Service of Shelina Hasham sworn June 6, 2018; filed; **AND UPON** hearing counsel for the Receiver, counsel for Maynards Financial Limited Partnership ("**Maynards**"), counsel for Caterpillar Financial Services Limited ("**CFSL**") 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.
2. Capitalized terms used but not defined herein have the meanings given to them in the receivership order (the "**Receivership Order**") granted on May 8, 2018 by the Honourable Mr. Justice C.M. Jones unless otherwise stated.

## APPROVAL OF CONDUCT

3. The actions, conduct and activities of the Receiver to June 4, 2018, as outlined in the First Report, are hereby approved
4. 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

5. The sale procedure (the "**Sale Procedure**") attached hereto as Appendix "A", is hereby approved.
6. 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 (as defined in the Sale Procedure) under the Sale Procedure.
7. The Receiver shall be at liberty to apply for an Order vesting title to the purchased assets in the Successful Bidder in accordance with the Sale Procedure.
8. CFSL may apply to the Court for the release of any of CFSL's property (the "**CFSL Equipment**") that CFSL has priority over the security of Maynards registered against such CFSL Equipment. Any such application may also seek to exclude the CFSL Equipment from the priorities set out in paragraphs 17 and 20 of the Receivership Order. Alternatively, the Receiver may consent to the release of the CFSL Equipment, including on any terms that are agreed upon between CFSL and the Receiver.

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

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

**GENERAL**

11. 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.
12. 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 Procedure 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 Procedure.
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)