

COURT FILE NUMBER 1801-06578

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF MAYNARDS FINANCIAL LIMITED  
PARTNERSHIP by its general partner  
MAYNARDS CAPITAL INC.

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

DOCUMENT **THIRD REPORT OF FTI CONSULTING  
CANADA INC., IN ITS CAPACITY AS  
COURT APPOINTED RECEIVER AND  
MANAGER OF CLAYTON CONSTRUCTION  
CO. LTD.**

**February 4, 2019**

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**RECEIVER’S THIRD REPORT**

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## INTRODUCTION

1. On May 8, 2018 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the current and future assets, undertakings and properties (the “**Property**”) of Clayton Construction Co. Ltd. (“**Clayton**” or the “**Company**”) pursuant to an Order of this Honourable Court (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the business of the Company, to market any, or all of the Assets including advertising and soliciting offers to purchase the Assets and to make such arrangements or agreements as deemed necessary by the Receiver.
3. On June 11, 2018, an order (the “**Sales Procedure Order**”) was granted approving the Receiver’s proposed sales process (“**Sales Process**”), a summary of which was included in the first report of the Receiver dated June 4, 2018 (“**First Report**”).
4. On August 1, 2018, an order (the “**AVO**”) was granted approving the sale transaction (the “**Transaction**”) contemplated by the asset purchase agreement (the “**Sale Agreement**”) between the Receiver and Maynard’s Capital Inc. (“**Maynards**”), dated July 24, 2018. A redacted copy of the Sale Agreement was attached to the second report of the Receiver dated July 24, 2018 (the “**Second Report**”) at Appendix E and a non-redacted copy of the Sale Agreement was Confidential Appendix F to the Second Report.
5. The Receiver’s reports and other publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/clayton> (the “**Receiver’s Website**”).
6. The purpose of this report (the “**Third Report**”) is to inform the Court of the following:

- (a) the activities of the Receiver since the Second Report;
  - (b) the Receiver's receipts and disbursements from the Date of Appointment to February 1, 2019; and
  - (c) a summary of the Receiver's final administrative tasks relating to the Receivership Proceedings.
7. The Receiver is requesting the following relief from this Honourable Court:
- (a) an order approving the activities of the Receiver since the Receiver's Second Report;
  - (b) approval of the Receiver's receipts and disbursements from the Date of Appointment to February 1, 2019;
  - (c) approval of the fees and expenses of the Receiver and the Receiver's Counsel; and
  - (d) discharge of the Receiver and termination of the Receivership Proceedings upon the completion of the Receiver's remaining administrative tasks relating to these Receivership Proceedings.

## **TERMS OF REFERENCE**

8. In preparing this Third Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
9. Except as described in this Third Report:

- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Third Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
10. Future-oriented financial information reported or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
11. The Receiver has prepared this Third Report in connection with the Receiver's Application returnable February 11, 2019. This Third Report should not be relied on for other purposes.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. All capitalized terms that are used but not defined herein are intended to bear their meanings as defined in the Receiver's First Report and Second Report.

## **CURRENT STATUS OF THE RECEIVERSHIP PROCEEDINGS**

### **Sale of the Purchased Assets**

13. As indicated previously, on August 1, 2018 the Court approved the Sale Agreement and granted the AVO.
14. Accordingly, on August 10, 2018, the Receiver and Maynards closed the Transaction and transferred all of the Purchased Assets to Maynards pursuant to the AVO.

15. Pursuant to the Sale Agreement, the purchase price for the Purchased Assets was satisfied primarily by way of Maynards existing debt. The Receiver did receive a cash deposit of 10% of the purchase price (the “**Maynards Deposit**”), which will provide the Receiver with sufficient cash to pay all Priority Claims (as defined below).

### **Priority Claims**

16. Throughout the Receivership Proceedings, the Receiver has received certain claims asserting priority over the Maynards Loan. The Sale Agreement included a provision wherein the Maynards Deposit held by the Receiver would be utilized to satisfy any claims in priority to the Maynards Loan (the “**Priority Claims**”).
17. The Sale Agreement further provided that in the event the Maynards Deposit was insufficient to satisfy the Priority Claims, Maynards would provide the Receiver with additional funds to satisfy the Priority Claims in full.
18. After reviewing the claims received, the Receiver has determined that there are three Priority Claims, detailed as follows:
  - (a) Canada Revenue Agency (the “**CRA**”) – the CRA has submitted a deemed trust claim relating to unremitted employee source deductions in the amount of \$476,245. The Receiver discussed the quantum of the claim with Clayton’s former accounting staff who agreed with the claim amount;
  - (b) Ford Credit Canada – the Sale Agreement included two vehicles financed by Ford Credit Canada. After consulting with its legal counsel, the Receiver was satisfied that Ford Credit Canada had perfected its security in priority to the Maynards Loan. The amount outstanding on the two vehicle loans totaled \$44,617; and

- (c) County of Vermilion River – the Sale Agreement included a parcel of land located in the County of Vermilion River. In order to facilitate the title transfer to Maynards, unpaid property taxes in the amount of \$8,729 were required to be paid.
19. The Receiver has since paid out the Priority Claims and as of the date of this Third Report has not been made aware of any other claims that would rank ahead of the Maynards Loan.

**Final Administrative Matters**

20. With the closing of the Transaction, the Receiver has now completed all of the operational tasks relating to these Receivership Proceedings and has realized on all of the Company's assets.
21. The Receiver is currently holding cash on hand, in the amount of \$26,528 which will be used for the remaining administrative tasks and to pay accrued but unpaid professional fees.
22. The Receiver's remaining tasks in these Receivership Proceedings are the following:
- (a) Completing administrative and account matters pertaining to the Company's accounts and the Receivership accounts;
  - (b) completing the final GST returns of the Receiver;
  - (c) completing statutory reports, including those required by the Superintendent of Bankruptcy; and
  - (d) the payment of final professional fee invoices (collectively, the **"Remaining Tasks"**).

## SUMMARY OF RECEIPTS AND DISBURSEMENTS

23. Receipts and Disbursements from the Date of Appointment to February 1, 2019, are summarized as follows:

<b>Schedule of Receipts and Disbursements</b>	
<b>As of February 1, 2019</b>	
<b>Receipts</b>	
Receivership Revenue	796,425
Maynards Deposit	550,000
Receiver's Borrowings	390,000
April 24 Auction Proceeds	115,569
AR Collections	58,672
Transfer from Pre-Receivership Account	37,810
Other Receivables	21,080
<b>Total - Receipts</b>	<b>1,969,556</b>
<b>Disbursements</b>	
Distribution for Priority Claims	529,591
Employee Costs	508,450
Operating Expenses	257,365
Equipment Repairs	184,193
Distribution to Lender	115,569
Rent and Utilities	39,500
Insurance	12,430
Net Provincial and Federal Taxes	1,675
Other Disbursements	889
Receiver's Fees	206,866
Legal Fees	76,501
Trustee's Fees	10,000
<b>Total - Disbursements</b>	<b>1,943,028</b>
<b>Net Cash on Hand</b>	<b>26,528</b>

- (a) Receivership Revenue – amounts collected from the On-Going Work performed by the Receiver;
- (b) Maynards Deposit – 10% cash deposit paid by Maynards to the Receiver in accordance with the Sale Agreement;



- (c) Receiver's Borrowings – amounts borrowed pursuant to Receiver's Certificates in accordance with the terms of the Receivership Order;
- (d) April 24 Auction Proceeds – amounts received directly by Maynards relating to equipment sold at an auction held on April 24, 2018 (as discussed in the First Report);
- (e) AR Collections – outstanding accounts receivable at the Date of Appointment that have subsequently been collected by the Receiver;
- (f) Transfer from Pre-Receivership Account – funds transferred from the Company's bank accounts at the Date of Appointment;
- (g) Other Receivables – collection of insurance payouts relating to stolen vehicles and refunds of security deposits;
- (h) Distribution for Priority Claims – amounts paid to the CRA, Ford Credit Canada and the County of Vermilion River to satisfy the Priority Claims;
- (i) Employee Costs – costs relating to employee's hourly wages and other compensation;
- (j) Operating Expenses – costs incurred relating to general operations of the Company (i.e. fuel costs, hotel costs, etc.);
- (k) Equipment Repairs – costs relating to the repairs of Clayton Equipment for the purposes of enhanced recoveries to the estate;
- (l) Distribution to Lender – amount paid to Maynards relating to equipment sold at an auction held on April 24, 2018;

- (m) Rent and Utilities – amounts paid relating to office and shop rent and utilities;
- (n) Insurance – amounts paid relating to insurance premiums;
- (o) Net Provincial and Federal Taxes – Provincial Sales Taxes collected by the Receiver and paid to the Government of Saskatchewan and net Goods and Services Tax, received and remitted by the Company;
- (p) Other Disbursements – miscellaneous costs relating to the Receivership Proceedings (i.e. fees to the Official Receiver, bank charges etc.);
- (q) Receiver’s Fees – Receiver’s fees and disbursements in respect of the Receivership Proceedings;
- (r) Legal Fees – Receiver’s counsel’s fees and disbursements in respect of the Receivership Proceedings; and
- (s) Trustee’s Fees – amounts distributed to Trustee for administration of bankruptcy proceedings for the Company.

24. As at February 1, 2019 the Receiver held \$26,528 in cash.

## **APPROVAL OF FEES**

25. Invoices rendered by the Receiver from the Date of Appointment to January 31, 2019, total \$206,866, exclusive of GST (the “**Receiver’s Fees**”). The invoices pertaining to the Receiver’s Fees will be made available to the Court upon request at the application.

26. Invoices rendered by the Receiver's counsel from the Date of Appointment to January 31, 2019 total \$76,501 exclusive of GST (the "**Receiver's Counsel's Fees**"). The invoices pertaining to the Receiver's Counsel's Fees will be made available to the Court upon request at the application.
27. The Receiver and Receiver's counsel anticipate issuing a final invoice not to exceed the remaining cash on hand of \$26,528 (the "**Final Fees**") in connection with unbilled work completed through February 2019, plus additional time attending to the Remaining Tasks.
28. The Receiver is of the opinion that the Receiver's Fees, the Receiver's Counsel's Fees and the Final Fees are appropriate and reasonable in the circumstances.

## **BOOKS AND RECORDS**

29. The Receiver has sent a letter dated January 22, 2019 to the former directors of the Company requesting a response prior to February 21, 2019, as to their intentions to claim the Books and Records from the Receiver.
30. The Receiver used the addresses listed on an Alberta Corporate Registry search as the addresses for which to notify these directors.
31. The Receiver is seeking this Honourable Court's authorization to destroy any and all of the Books and Records not claimed by former directors of the Company by February 21, 2019.

## **TERMINATION OF RECEIVERSHIP PROCEEDINGS AND DISCHARGE OF THE RECEIVER**

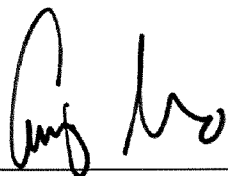
32. As described earlier in this Third Report, with the exception of the Remaining Tasks, the Receivership Proceedings are complete. Accordingly, the Receiver is seeking an Order terminating the Receivership Proceedings and discharging the Receiver upon the Receiver filing a receiver's certificate confirming that it has completed the Remaining Tasks.

## **RECOMMENDATIONS**

33. The Receiver respectfully requests that this Honourable Court grant the following relief:
- (a) approving the Receiver's actions and conduct as reported in this Third Report;
  - (b) approving the Receiver's receipts and disbursements as described in this Third Report;
  - (c) approving the Receiver's Fees the Receiver's Counsel's Fees and the Final Fees; and
  - (d) discharging the Receiver and terminating these Receivership Proceedings upon the filing of a receiver's certificate confirming the Receiver has completed the Remaining Tasks.

All of which is respectfully submitted this 4<sup>th</sup> day of February 2019.

FTI Consulting Canada Inc. in its capacity as  
Receiver and manager of the assets  
undertakings and properties of  
Clayton Construction Co. Ltd.



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Craig Munro

Managing Director