



No. S-128887
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Dumas Holdings Inc.

Petitioner

AND

Tercon Investments Ltd., Tercon A.C. Ltd., Tercon
Equipment Ltd. Tercon Construction Ltd., Tercon Mining
Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP
Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment
Alaska Partnership and Tercon Alaska Ltd.

Respondents

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada Inc., in its capacity as the Court-appointed Receiver of the assets, undertaking and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd.

To: Respondents

TAKE NOTICE that an application will be made by the applicant, FTI Consulting Canada Inc., (the “**Receiver**”) to The Honourable Mr. Justice Sewell at the Vancouver Courthouse at 800 Smithe Street, Vancouver, British Columbia on Thursday April 11, 2013 at 9:15 a.m. for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. That the time for service of this Notice of Application and supporting materials is hereby abridged so that this Application is properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.

2. That the Receiver is seeking orders substantially in the form attached hereto as Appendix “I” and such further and other relief as this Honourable Court may consider appropriate.

Part 2: FACTUAL BASIS

1. Pursuant to an Order pronounced by The Honourable Mr. Justice Sewell on December 14, 2012 (the “**December 14 Order**”), FTI Consulting Canada Inc. was appointed as Receiver of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd. (“**TEL**”), Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership (“**TEAP**”) and Tercon Alaska Ltd. (collectively referred to as the “**Debtors**”).

2. On January 15, 2013, The Honourable Mr. Justice Sewell granted an Order (the “**January 15 Order**”) approving the sale of certain assets of the Debtors to Ritchie Bros. Auctioneers (Canada) Inc. and Ritchie Bros. Auctioneers (America) Inc. (together, “**Ritchie Bros**”) as contemplated by the Asset Purchase and Sale Agreement dated December 21, 2012 (the “**APA**”).

3. On January 21, 2013, The Honourable Mr. Justice Sewell granted the following Orders:

- (a) an Order (the “**Distribution Order**”) authorizing the Receiver to establish a reserve in respect of proceeds of property in the Receiver’s possession and authorizing the Receiver to distribute certain proceeds to HSBC Bank Canada, as Lead Arranger, Bookrunner and Administrative Agent under the Senior Security Credit Agreement dated February 28, 2012 (“**HSBC**”); and
- (b) an Order (the “**Bankruptcy Co-ordination Order**”) authorizing and directing the Receiver, unless otherwise agreed with HSBC and Dumas Holdings Inc. (“**DHI**”) to file assignments in bankruptcy for and on behalf of the Tercon companies and providing for the co-ordination of the receivership proceedings and bankruptcy proceedings.

4. On February 28, 2013, The Honourable Mr. Justice Sewell granted an Order (the “**Tercon Bankruptcy Application Order**”) authorizing FTI Consulting Canada Inc., in its capacity as receiver of Tercon Construction Ltd., to file an application for a Bankruptcy Order against Tercon Equipment Ltd.

5. On March 21, 2013, The Honourable Mr. Justice Sewell granted an Order (the “**Claims Procedure Order**”) approving a procedure for the submission, evaluation and adjudication of claims against the Debtors or against the bonds issued by Trisura Guarantee Insurance Company (“**Trisura**”) in relation to certain projects of the Debtors.

6. The Distribution Order provides, at paragraph 3(h), for a reserve (the “**TEAP Reserve**”) equal to (i) the amount of the proceeds received by the Receiver, determined pursuant to the terms of the APA, from the sale of any Property (as defined in the December 14 Order) that was transferred from TEL to TEAP (the “**Alaska Property**”) pursuant to a purchase and sale agreement dated December 6, 2012 (the “**Alaska Property Agreement**”), less (ii) the amount of the Equipment Lien Reserve (as defined in the Distribution Order) held in respect of Registered Liens (as defined in the Distribution Order) that have been registered against the Alaska Property.

7. The TEAP Reserve was established to protect potential interests of certain creditors pending investigation of the transfer of the Alaska Property from TEL to TEAP (the “**Alaskan Property Transfer**”) pursuant to the Alaska Property Agreement and an assessment of whether the proceeds of realization of the Alaska Property may be available to the unsecured creditors of the estate of TEL if the Alaskan Property Transfer could be voided by a trustee in bankruptcy of TEL.

8. The Receiver has determined that the Alaskan Property Transfer and the TEAP Reserve are not relevant to the parties holding Registered Liens against the Alaska Property, as reserves for those claims are already provided for within the Equipment Lien Reserve.

9. The Distribution Order also provides, at paragraph 3(e), for a reserve (the “**Lien and Trust Reserve**”) with respect to funds received by the Receiver in respect of any Tercon Project (as defined in the Distribution Order), the aggregate of the amounts of all claims for

liens that have been preserved in accordance with applicable lien legislation or that may constitute trust funds pursuant to applicable lien legislation.

10. Certain Lien Claims (as defined in the Receiver's Seventh Report) (collectively, the "**Alaskan Lien Claims**") were registered against the Fort Knox property in Alaska. The Receiver have reviewed, pursuant to the provisions of the Claims Procedure Order, the documents provided by the claimants (collectively, the "**Alaskan Lien Claimants**") of the Alaskan Lien Claims, and is satisfied that the quantum of each Alaskan Lien Claim, including interest and fees (each, an "**Accepted Lien Amount**"), aside from the claim by N.C. Machinery Co. which has yet to provide documentation in support of the entire amount claimed.

11. An amount equal to USD \$4,176,581.31, as accounts receivable owing by Fairbanks Gold Mining Inc. ("**FGMI**"), is payable to the Receiver (the "**FGMI Receivable**").

12. FGMI and the Receiver have come to arrangement whereby FGMI will pay the FGMI Receivable, less USD \$1.5 million to the Receiver. The USD \$1.5 million amount is to be held in escrow to be released to pay the Accepted Lien Amounts upon satisfaction of certain conditions precedent, including (i) the granting of the Order sought, (ii) delivery in escrow of lien discharge certificates, and (iii) with respect to the N.C. Machinery Co. claim, the Receiver being satisfied that its claim is adequately proven.

Part 3: LEGAL BASIS

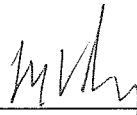
1. Rules 8-1, 10-2 and 13-5 of the *Rules of Court*; and
2. the inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Eight Report of the Receiver dated April 4, 2013;
2. the pleadings and proceedings had and taken herein; and
3. such further and other material as counsel may advise and the Court may permit.

The applicant estimates that the application will take 30 minutes.

Date: April 5, 2013



Signature of Magnus C. Verbrugge

applicant lawyer for applicant
FTI Consulting Canada Inc.

<p><i>To be completed by the court only:</i></p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
--

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters 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

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED and SECTION 39 OF THE *LAW AND EQUITY ACT*,
R.S.B.C. 1996 C. 253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioner

AND:

**TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,
TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES
LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) 11/04/2013
)
MR. JUSTICE SEWELL)

THE APPLICATION of FTI CONSULTING CANADA INC., in its capacity as Court-appointed Receiver (the "**Receiver**") of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, the "**Debtors**") coming on for hearing at Vancouver, British Columbia, on the 11th day of April, 2013; AND ON HEARING Magnus Verbrugge, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed, including the Eighth Report of the Receiver dated April 4, 2013 (the "**Eighth Report**")¹;

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Eighth Report.

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application and supporting materials is hereby abridged and properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with;
2. Pursuant to paragraph 7 of the Order pronounced on January 21, 2013 (the “**Distribution Order**”), the Receiver is hereby authorized to make payments to HSBC Bank Canada from monies previously held in accordance with and pursuant to the Distribution Order by the Receiver as the TEAP Reserve; and
3. The Receiver is hereby authorized to pay, once determined by the Receiver to be adequately proven, each of the Accepted Lien Amounts from the FGMI Receivable upon the receipt by the Receiver, or its counsel, from the Alaskan Lien Claimant of a certificate of discharge or other similar certificate with respect to the Alaskan Lien Claimant’s Alaskan Lien Claim.

THE APPROVAL OF COUNSEL SET OUT IN SCHEDULE “A” OF THIS ORDER, OTHER THAN COUNSEL FOR FTI CONSULTING CANADA INC., IS HEREBY DISPENSED WITH:

Signature of Magnus C. Verbrugge

Party Lawyer for

FTI Consulting Canada Inc., in its capacity as receiver of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd.

BY THE COURT

REGISTRAR

SCHEDULE A - LIST OF COUNSEL

No. S128887
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED and SECTION 39 OF THE *LAW*
AND EQUITY ACT, R.S.B.C. 1996 c. 253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioner

AND:

TERCON INVESTMENTS LTD., AND OTHERS

Respondents

ORDER MADE AFTER APPLICATION

BORDEN LADNER GERVAIS LLP

1200 Waterfront Centre

200 Burrard Street

P.O. Box 48600

Vancouver, British Columbia

V7X 1T2

Telephone: (604) 687-5744

Attn: Edward J.T. Wang

Client No. 028285/000003

