

COURT FILE NUMBER 2101-06388

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.

APPLICANT FTI CONSULTING CANADA INC., in its capacity as the Court-appointed Receiver of ALBERTA FOOTHILLS PROPERTIES LTD.

ENTERED



DOCUMENT **APPLICATION (DISCHARGE OF RECEIVER)**

C\$50.00
OM
July 18, 2023
Justice Sidnell

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4311
Fax: 403.508.4349
Attention: Ryan Zahara/Kaitlin Ward
File: 0052752.00004

NOTICE TO RESPONDENTS: Service List attached hereto as **Schedule "A"**.

This application is made against you. You are the 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: July 18, 2023
Time: 10:00 a.m.
Where: Calgary Courts Centre, 601 – 5th Street SW, Calgary, Alberta
via WebEx
Before Whom: The Honourable Justice E.J. Sidnell

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

Remedy Claimed or Sought:

- Capitalized terms not otherwise defined herein shall have the meaning given to them in the Fifth Report dated July 10, 2023 (the **"Fifth Report"**) of FTI Consulting Canada Inc., in its capacity as the court-appointed receiver and manager (**"FTI"** or the **"Receiver"**) of all current and future assets, undertakings and property of Alberta Foothills Properties Ltd. (the **"Debtor"** or **"AFPL"**).

2. The Receiver respectfully seeks the following from this Honourable Court:
- (a) An Order substantially in the form of **Schedule “B”** hereto:
 - (i) abridging, if necessary, the time for service of this application (the **“Application”**) and materials in support thereof, and declaring service of the same to be good and sufficient;
 - (ii) discharging the Receiver as receiver and manager of AFPL;
 - (iii) approving the Receiver’s activities, including the fees and disbursements of the Receiver and its legal counsel, as set out in paragraphs 23-25 of the Fifth Report;
 - (iv) approving the Receiver’s receipts and disbursements as outlined at paragraph 21 in the Fifth Report;
 - (v) approving the proposed distribution as outlined in paragraph 39 of the Fifth Report and approving the proposed Holdback, as outlined and defined at paragraph 37, in the Fifth Report;
 - (vi) authorizing the Receiver to destroy the Debtor’s corporate books and records if not claimed by any of the current or former directors of the Debtor within 30 days of the Receiver providing written notice of the same; and
 - (vii) granting such further and other relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

A. Background of Receivership

3. On May 17, 2021 (the **“Appointment Date”**), pursuant to the Order of the Honourable Justice K.M. Eidsvik (the **“Receivership Order”**), FTI was appointed as receiver and receiver-manager of all the assets, undertakings and properties of AFPL. AFPL’s primary asset was approximately 145 acres of bare land located at NW 16-20-29 W4M in Okotoks, Alberta, located on the southeast corner of the intersection of Highway 7/2A and Highway 783 (the **“Lands”**).

4. Prior to the Receiver's appointment, the Lands were listed for sale for approximately 15 months, but ultimately failed to sell and AFPL was subsequently placed into receivership.

a. First Changes to Land Use Designation

5. On May 28, 2021, the Receiver gave notice of its appointment to the Town of Okotoks (the "**Town**").
6. On June 14, 2021, the Town introduced Bylaw 20-21 to rescind the Wind Walk Area Structure Plan Bylaw (the "**ASP Bylaw**") in place with respect to the Lands. In addition, on June 28, 2021, the Town introduced Bylaw 19-21 to redesignate the Lands from Traditional Neighbourhood District and Neighbourhood Core District to Agriculture and Land Holdings (the "**Land Use Bylaw**", and together with the ASP Bylaw, the "**Proposed Bylaws**").
7. On June 15, 2021, after soliciting proposals from several listing agents, the Receiver engaged NAI Advent with an exclusive mandate to sell the Lands.
8. On June 21, 2021, the Town provided notice of the Proposed Bylaws to the Receiver.
9. The Receiver and the Town agreed to seek advice and direction from the Court (the "**Application for Advice and Direction**") as to whether the Proposed Bylaws contravened the terms of the Receivership Order, including the stay of proceedings. The Receiver decided to defer the sales process and the Town agreed to defer a final reading of the Proposed Bylaws until the Application for Advice and Direction was heard and determined.
10. On September 21, 2021, the Honourable Justice C.M. Jones heard the Application for Advice and Direction and determined that without any extant right for AFPL to develop the Lands, there was no basis to stay the Town from enacting the Proposed Bylaws. On October 25, 2021, the Town formally enacted the Proposed Bylaws, redesignating the Lands to urban or agricultural holding lands and rescinding the Wind Walk Area Structure Plan.

b. Marketing Process

11. Following the decision of Justice Jones, on November 16, 2021, the Receiver sought revised listing proposals from six listing agents. In consultation with AFPL's primary secured creditor, ATB Financial ("**ATB**"), the Receiver selected the proposal submitted by Avison Young Commercial Real Estate Services, LP ("**Avison Young**").

12. On January 8, 2022, the Receiver entered into an Exclusive Commercial Listing Agreement with Avison Young. Starting on January 31, 2022, Avison Young began the marketing process (the “**Marketing Process**”) by launching a listing with respect to the Lands and directly emailing over 700 pre-qualified potential buyers. Avison Young contacted numerous local and out-of-province investors or developers to promote the listing. Eight parties signed confidentiality agreements to access a virtual data room and two parties submitted letters of intent and proposals. The Receiver ultimately selected the proposal submitted by TOM Capital Associates Ltd. (“**TOM Capital**”).
13. On October 14, 2022, the Receiver and TOM Capital executed an Asset Purchase Agreement (the “**TOM Capital APA**”) and on November 7, 2022, Justice Jones granted a sale approval and vesting order respecting the TOM Capital APA (the “**SAVO**”).

c. Second Changes to Land Use Designation

14. On December 12, 2022, the Receiver received notice from the Town advising that a first reading of Bylaw 19-22 was scheduled for December 12, 2022 with a public hearing to follow on January 9, 2023. Bylaw 19-22 proposed amending the Municipal Development Plan under Bylaw 02-21 to redesignate the Lands a second time from Future Residential to Future Employment Lands.
15. On January 9, 2023, the Receiver submitted its written opposition to Bylaw 19-22 on the basis that it would significantly impact the nature of the Lands and the TOM Capital APA, which had not yet closed. Despite opposition from the Receiver and neighbouring landowners, on January 9, 2023, the Town proceeded with the second and third readings of Bylaw 19-22 and formally enacted Bylaw 19-22.
16. On January 11, 2023, after receiving notice that the Town enacted Bylaw 19-22, TOM Capital terminated the TOM Capital APA. Avison Young approached several parties who expressed interest in the Lands throughout the Marketing Process and advised of the change in the land use designation.

d. Final Sale of the Lands

17. On March 30, 2023, the Receiver and Three M Acquisitions Inc. ("**Three M**") executed an asset purchase agreement that was subsequently assigned by Three M to Big Rock Foothills Holdings Ltd. (the "**Three M APA**").
18. On May 10, 2023, the Honourable Justice C.J. Feasby granted an Amended Sale Approval and Vesting Order, which amended the original SAVO by replacing the name of the purchaser.
19. The Three M APA has now closed and the Receiver has received the full purchase price for the Lands (the "**Sale Proceeds**"). Having realized the value of the Lands for the benefit of AFPL's secured creditors, the Receiver has fulfilled its mandate under the Receivership Order and is bringing this Application for an order discharging the Receiver and approving the Receiver's proposed distribution of Sale Proceeds.

B. Approval of Activities and Fees of the Receiver to Date

20. All of the actions and fees of the Receiver and its legal counsel in the course of the administration of the receivership of AFPL as described in the Fifth Report are reasonable and appropriate in the circumstances.

C. Receipts and Disbursements

21. As outlined in the Fifth Report, the Receiver has prepared a Statement of Receipts and Disbursements from the date of the Receivership Order to July 10, 2023 (the "**R&D**"), which is outlined at paragraph 21 of the Fifth Report. As indicated in the R&D, the Receiver is holding approximately \$1.9 million of cash in trust.
22. The amounts as outlined in the R&D are reasonable and appropriate in the circumstances and the Receiver is seeking approval of those amounts by the Court.

D. Proposed Distribution

23. As outlined in the Fifth Report, the secured indebtedness owing to AFPL's primary secured creditor, ATB, is approximately \$13.8 million (as of May 11, 2021) plus accruing interest and costs.

24. As a result of the cash held in trust by the Receiver, as reflected on the R&D, the Receiver recommends that the Court approve a distribution to ATB in the amount of \$1,895,000 (the “**Distribution**”). As outlined in the R&D, this will leave an approximate \$47,069 holdback of funds to complete any outstanding matters in respect of these proceedings.
25. Once the administration of the within Receivership Proceedings is complete and the Receiver files the Receiver’s Completion Affidavit (as defined in paragraph 40 of the Fifth Report), the Receiver shall distribute any residual Holdback funds to ATB.
26. The Debtor’s corporate books and records are currently located at an off-site storage facility. The Receiver is also seeking the Court’s approval to destroy the remaining corporate books and records, except those required by statute, and unless they are claimed by any of the current or former directors of the Debtor within 30 days of the Receiver providing written notification of the same. Upon making the Distribution, the Receiver shall have no further need to retain these books and records.

Material or Evidence To Be Relied Upon:

- (a) The First Report of the Receiver, dated August 31, 2021;
- (b) The Second Report of the Receiver, dated September 29, 2021;
- (c) The Third Report of the Receiver, dated November 1, 2022;
- (d) The Fourth Report of the Receiver, dated May 4, 2023;
- (e) The Fifth Report of the Receiver, dated July 10, 2023;
- (f) The Receivership Order granted by Justice K.M. Eidsvik on May 27, 2021;
- (g) All pleadings, reports, affidavits and other materials filed in this action; and
- (h) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 6.3, 6.9 and 11.27 of the *Alberta Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, including, but not limited to, section 243.

How the Application is Proposed to be Heard or Considered:

- (a) Via WebEx hearing before the Honourable Justice E.J. Sidnell.

WARNING TO THE RESPONDENT:

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 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" – Service List

COURT FILE NUMBER: 2101-06388

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.

APPLICANT FTI CONSULTING CANADA INC., in its capacity as the Court-appointed Receiver of ALBERTA FOOTHILLS PROPERTIES LTD.

SERVICE LIST

(Updated July 10, 2023)

PARTIES	ROLE / REPRESENTATION
<p>FTI Consulting Canada Inc. (Receiver) 1610, 520 - 5 Ave SW Calgary, Alberta T2P 3R7</p> <p>Deryck Helkaa Email: deryck.helkaa@fticonsulting.com</p> <p>Dustin Olver Email: dustin.olver@fticonsulting.com</p> <p>Brett Wilson Email: brett.wilson@fticonsulting.com</p>	<p><i>Counsel to FTI Consulting Canada Inc.</i></p> <p>MLT Aikins LLP 2100 Livingstone Place 222 - 3rd Avenue SW Calgary, Alberta T2P 0B4</p> <p>Ryan Zahara Email: rzahara@mltaikins.com</p> <p>Kaitlin Ward Email: kward@mltaikins.com</p>
<p>ATB Financial Suite 600, 585 8th Avenue SW Calgary, Alberta T2P 1G1</p> <p>Trina Holland Email: tholland@atb.com</p> <p>John Sullivan Email: jsullivan@atb.com</p> <p>Alexandra Dudek Email: adudek@atb.com</p>	<p><i>Counsel to ATB Financial</i></p> <p>Fasken Martineau DuMoulin LLP 3400, 350 - 7th Avenue SW Calgary, Alberta T2P 3N9</p> <p>Arif Chowdhury Email: achowdhury@fasken.com</p> <p>Desmond Mitic Email: dmitic@fasken.com</p>

<p>Alberta Foothills Properties Ltd.</p>	<p><i>Counsel to Alberta Foothills Properties Ltd.</i></p> <p>Miles Davison LLP 900, 517 - 10th Avenue SW Calgary, Alberta T2R 0A8</p> <p>Terry Czechowskyj, Q.C. Email: tczech@milesdavison.com</p>
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<p>771981 Alberta Ltd.</p>	<p><i>Counsel to 771981 Alberta Ltd.</i></p> <p>Borden Ladner Gervais 1900, 520 - 3rd Avenue S.W. Calgary, Alberta T2P 0R3</p> <p>Paul S. Taylor Email: pataylor@blg.com</p>

<p>The Town of Okotoks P.O. BAG 20 Okotoks, Alberta T1S 1K1</p>	<p><i>Counsel to the Town of Okotoks</i></p> <p>Caron & Partners LLP 21st Floor, Fifth Avenue Place, West Tower 2120, 237 - 4th Avenue SW Calgary, Alberta T2P 4K3</p> <p>Jennifer D. Sykes Email: jsykes@caronpartners.com</p> <p>Dean Hutchison Email: dhutchison@caronpartners.com</p>
<p>M. Holmes Holdings Limited c/o Primary Agent for Service 2205, 500 - 4th Avenue SW Calgary, Alberta T2P 2V6</p> <p>Douglas V. Allison Email: doug@allison-associates.ca Email: kathy@allison-associates.ca</p> <p>c/o Head Office 100-80 Jutland Road Toronto, Ontario M8Z 2H1</p> <p>Briand Lund Email: brian@financial-logic.com</p>	
<p>Canada Revenue Agency 220 4th Avenue SE Calgary, Alberta T2G 0L1</p> <p>Fax: 403-264-5843</p>	<p><i>Counsel to Canada Revenue Agency</i></p> <p>Department of Justice Canada Prairie Regional Office – Edmonton #300, 10423 – 101 St. NW Edmonton, Alberta T5H 0E7</p> <p>George Body Email: George.Body@justice.gc.ca</p> <p>Marlene Barrientos Email: Marlene.Barrientos@justice.gc.ca</p>

<p>Office of the Superintendent in Bankruptcy Harry Hays Building 220, 4th Avenue SE, Suite 478 Calgary, Alberta T2G 4X3</p> <p>Mark Skiba Email: mark.skiba@canada.ca Email: mark.skiba@ised-isde.gc.ca</p>	
<p>Big Rock Foothills Holdings Ltd. 1400 – 10303 Jasper Avenue NW Edmonton, Alberta T5J 3N6</p>	<p><i>Counsel to Big Rock Foothills Holdings Ltd.</i></p> <p>Ogilvie LLP 1400 Canadian Western Bank Place 10303 Jasper Avenue Edmonton, Alberta T5J 3N6</p> <p>Desiree M. Ryziuk Email: DRyziuk@ogilvIELaw.com</p>

Schedule "B" – Form of Discharge and Distribution Order

COURT FILE NUMBER 2101-06388
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATB FINANCIAL
DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.
APPLICANT FTI CONSULTING CANADA INC., in its
CAPACITY as the Court-appointed Receiver of
ALBERTA FOOTHILLS PROPERTIES LTD.
DOCUMENT **ORDER FOR FINAL DISTRIBUTION,
APPROVAL OF RECEIVER'S FEES AND
DISBURSEMENTS, APPROVAL OF
RECEIVER'S ACTIVITIES AND DISCHARGE
OF RECEIVER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT MLT Aikins LLP
2100, 222 – 3rd Ave. SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara/Kaitlin Ward
Telephone: 403-693-5420 / 4311
Facsimile: 403-508-4349
File: 0052752.00004

Clerk's Stamp

DATE ON WHICH ORDER WAS PRONOUNCED: JULY 18, 2023
LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA
NAME OF THE MASTER/JUDGE WHO MADE THIS ORDER: JUSTICE E.J. SIDNELL

UPON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertakings, property and assets of Alberta Foothills Properties Ltd. (the "**Debtor**") for an Order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities and discharge of the Receiver; **AND UPON** hearing read the Receiver's Fifth Report, dated July 10, 2023 (the "**Fifth Report**") and the Affidavit of Service of Joy Mutuku; **AND UPON** hearing

counsel for the Receiver and any other interested person; **AND UPON** being satisfied that it is appropriate to do so, **IT IS ORDERED THAT:**

Service

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Fees and Disbursements

2. The Receiver's accounts for fees and disbursements, inclusive of the Holdback, as set out in the Fifth Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel, MLT Aikins LLP, for its fees and disbursements, inclusive of the Holdback, as set out in the Fifth Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver's activities as set out in the Fifth Report and the Statement of Receipts and Disbursements as set out in paragraph 21 of the Fifth Report, are hereby ratified and approved.

Distribution

5. The Receiver is authorized and directed to make the proposed Distribution as outlined in paragraph 39 of the Fifth Report.
6. The Receiver is authorized and directed to make the Holdback as defined and outlined in paragraph 37 of the Fifth Report.
7. The Receiver is authorized and directed to destroy the Debtor's corporate books and records if not claimed by any former or current directors of the Debtor within 30 days of the Receiver providing written notice of the same.

Discharge

8. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
9. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
10. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed Trustee employed by the Receiver confirming that all matters set out in paragraph 5 of this Order have been completed, then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.
11. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

12. Service of this Order on any party not attending this application is hereby dispensed with.

Justice of the Court of King's Bench of Alberta