



COURT FILE NUMBER **1801-05326**
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Calgary
PLAINTIFF **ATB FINANCIAL**
DEFENDANTS **GEMINI CORPORATION AND GEMEC SERVICES LTD.**
DOCUMENT **APPLICATION RE: SALE APPROVAL AND VESTING ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File No.: 301498.00003

NOTICE TO RESPONDENT(S):

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: September 17, 2018

Time: 3:30 p.m.

Where: Calgary Court Centre, 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7

Before Whom: The Honourable Justice C.M. Jones

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. An Sale Approval and Vesting Order, substantially in the form attached as **Schedule “A”**, ordering, *inter alia* the approval of the Purchase and Sale Agreement between the Receiver and 2129156 Alberta Ltd. in respect of the Purchased Assets (the “**PSA**”); and
2. A Sealing Order in the form attached hereto as **Schedule “B”**, ordering, *inter alia*, the sealing of the Confidential Supplemental to the First Report dated September 11, 2018 (the “**Confidential Supplemental Report**”).

Grounds for making this application:

The grounds for making this application are set out more fully in the first report of the Receiver dated September 11, 2018 (the “**First Report**”), but can be summarized as follows:

(A) Background

3. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the First Report.
4. Effective April 19, 2018, pursuant to an order of the Honourable Madame Justice B.E.C. Romaine granted in these proceedings (the “**Receivership Order**”), FTI Consulting Canada Inc. was appointed receiver (the “**Receiver**”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of Gemini Corporation and Gemec Services Ltd. (collectively, the “**Debtor**”) in the within action (the “**Receivership Proceedings**”).
5. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtor and to take possession and control of the Property of the Debtor and any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

(B) Receiver's Activities

6. The Receiver's actions and activities up to the date of this Application, as described in the First Report are lawful, proper, and consistent with its powers under the Receivership Order.

(C) Purchase and Sale Agreement

7. The Receiver believes that the transaction contemplated in the PSA is the best offer available and will garner the greatest recovery to the creditors in the Receivership Proceedings.

(D) Approval of Sale and Vesting of Purchased Assets

8. The Receiver believes it is appropriate for the Court to approve the PSA and grant an order vesting the Purchased Assets in the Purchaser free and clear of all claims, liens and encumbrances.

(E) Sealing Order

9. The Receiver is concerned that if the confidential information respecting the PSA is disclosed to third parties prior to the closing of the sale of the Purchased Assets, the disclosure could materially jeopardize the sale or, if the sale does not close, could materially jeopardize any subsequent sales process or the value that the Receiver could obtain from the sale of the Purchased Assets in a subsequent process. As such, the Receiver is respectfully of the view that it is appropriate that this Honourable Court grant the Receiver's request for a sealing of the Confidential Supplemental Report.

Material or evidence to be relied on:

10. The First Report of the Receiver dated September 11, 2018.
11. The Confidential Supplemental to the First Report of the Receiver dated September 11, 2018.

12. Affidavit of Service.
13. The other pleadings and materials filed in this Action and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

14. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*.
15. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

16. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
17. *Judicature Act*, R.S.A. c. J-2.
18. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

19. Not applicable.

How the application is proposed to be heard or considered:

20. Before the presiding Honourable Justice C.M. Jones in Commercial Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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"

SALE APPROVAL AND VESTING ORDER

COURT FILE NUMBER **1801-05326**

COURT COURT OF QUEEN’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

**IN THE MATTER OF THE RECEIVERSHIP OF
GEMINI CORPORATION AND GEMEC SERVICES
LTD.**

PLAINTIFF ATB FINANCIAL

DEFENDANTS GEMINI CORPORATION AND GEMEC SERVICES LTD.

DOCUMENT **SALE APPROVAL AND VESTING ORDER**

ADDRESS FOR **Fasken Martineau DuMoulin LLP**
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File No.: 301498.00003

APPROVAL AND VESTING ORDER

DATE ON WHICH ORDER WAS PRONOUNCED: September 17, 2018

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice C.M. Jones

UPON the application of FTI Consulting Canada Inc. (the “Receiver”), in its capacity as the court-appointed receiver of all of the assets, properties and undertakings of Gemini Corporation (“Gemini”) and Gemec Services Ltd., (collectively, with Gemini, the “Debtors”) for an Order approving the sale transaction (the “Transaction”) contemplated by the Purchase and Sale Agreement dated September 10, 2017 (the “Purchase Agreement”) entered into between Gemini, by and through the Receiver, and 2129156 Alberta Ltd. (the “Purchaser”);

AND UPON having read the Application, the First Report of the Receiver dated September 11, 2018 (the “**First Report**”), the Confidential Supplemental to the First Report of the Receiver dated September 11, 2018 (the “**Confidential Supplemental Report**”), the Affidavit of Service and other materials filed in the within proceedings; **AND UPON** hearing the submissions of counsel for the Receiver and any other interested parties appearing at the hearing of the within application, **IT IS HEREBY ORDERED THAT:**

1. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.
2. 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.

RECEIVER’S ACTIVITIES

3. The actions, conduct and activities of the Receiver, as reported in the First Report, are hereby authorized and approved.

APPROVAL OF PURCHASE AGREEMENT

4. The Transaction as contemplated by the Purchase Agreement which is attached as Appendix “A” to the Confidential Supplemental Report is hereby approved and the Purchase Agreement is determined to be commercially reasonable and the Purchase Price contained therein represents, in the present circumstances, the best possible and realizable value for the subject matter of the Transaction.

5. The Purchase Agreement and the execution and acceptance thereof by the Receiver, (including any amendments that may be agreed upon by the parties), is hereby authorized and approved and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as the Receiver considers to be necessary or desirable for the completion of the Purchase Agreement, for the assignment and conveyance of the Purchased Assets to the Purchaser and to otherwise complete the Transaction.

6. The Receiver is hereby further authorized and directed, subject to the terms and conditions of this Order and the Purchase Agreement, to take such additional steps as the

Receiver considers to be necessary or desirable for the completion of the Transaction, and for the assignment and conveyance of Gemini's right, title and interest in the Purchased Assets to the Purchaser substantially as contemplated by the terms and conditions of this Order and the Purchase Agreement, and for greater certainty, the sale of the Purchased Assets is also approved pursuant to the Receivership Order granted on April 19, 2018 (the "**Receivership Order**").

VESTING PROVISIONS

7. Effective immediately upon the delivery by the Receiver to the Purchaser of a Receiver's Certificate substantially in the form attached hereto as **Schedule "A"** confirming the closing of the Transaction contemplated by the Purchase Agreement, all legal and beneficial ownership of and title to the Purchased Assets, shall vest and is hereby vested in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens whether contractual, statutory or otherwise (including without limitation any statutory or builders' liens), executions, levies, charges, or other financial or monetary claims, taxes and arrears of taxes, executions, levies and other rights, limitations, restrictions, interests and encumbrances, whatsoever, howsoever and wheresoever created or arising whether absolute or contingent, fixed or floating, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- a. any encumbrances or charges created by the Receivership Order or any further orders granted in this action; and
- b. all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system,

(all of which are collectively referred to as the "**Encumbrances**").

For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

8. For greater certainty, the Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any entity having a Claim.

CLOSING OF THE SALE TRANSACTION

9. The closing of the Transaction shall be effected in accordance with the terms of the Purchase Agreement and such amendments to the Purchase Agreement as may be agreed to in writing between the Purchaser and the Receiver.

10. For the purposes of determining the nature and priority of Claims, the net proceeds arising out of the Purchase Agreement shall stand in the place and stead of the Purchased Assets and all Claims shall attach solely to such net proceeds with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available immediately prior to the closing of the Transaction as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the closing of the Transaction.

11. Upon the closing of the Transaction, Gemini and all persons who claim in respect of the Purchased Assets, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person other than the Receiver remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession of same to the Purchaser or its nominee.

12. If the Transaction is for any reason not completed the Receiver and the Purchaser are hereby given leave to re-apply to this Honourable Court for such variations and modifications to the within Order as may be necessary and prudent in the circumstances, including without limitation reinstatement of affected Claims.

GENERAL

13. Notwithstanding:

- a. the pendency of these proceedings;

- b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made in respect of any of the Debtors,

the vesting of the Purchased Assets and the assignment and conveyance of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement as approved by this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable, shall not constitute or be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. No authorization or approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Purchase Agreement, other than authorizations, approvals or exemptions from requirements therefor previously obtained and currently in force, if any.

15. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SERVICE OF THIS ORDER

16. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver's website at: <http://cfcanada.fticonsulting.com/Gemini>.

17. Service of this Order on any other interested person in any other manner than set out above is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"

COURT FILE NUMBER **1801-05326**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

**IN THE MATTER OF THE RECEIVERSHIP OF
GEMINI CORPORATION AND GEMEC SERVICES
LTD.**

PLAINTIFF ATB FINANCIAL

DEFENDANTS GEMINI CORPORATION AND GEMEC SERVICES LTD.

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT **Fasken Martineau DuMoulin LLP**
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3400 First Canadian Centre
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File No.: 301498.00003

RECITALS

A. Pursuant to an Order of the Honourable Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 19, 2018 FTI Consulting Canada Inc. was appointed as the receiver (the "**Receiver**") of assets, properties and undertakings of Gemini Corporation ("**Gemini**") and Gemec Services Ltd.

B. Pursuant to an Order of the Court dated September 17, 2018, the Court approved the Purchase and Sale Agreement made as of September 10, 2018 (the "**Purchase Agreement**") between the Receiver and 2129156 Alberta Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of Gemini's right, title and interest in and to the Purchased Assets, which

vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) that the conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee);
2. The Transaction has been completed to the satisfaction of the Receiver; and
3. This Certificate was delivered by the Receiver at _____ on _____, 2018.

FTI Consulting Canada Inc., in its capacity as Receiver of the assets, properties and undertakings of Gemini Corporation and Gemec Services Ltd. and not in its personal capacity.

Per: _____

Name:

Title:

SCHEDULE "B"
SEALING ORDER

COURT NUMBER FILE **1801-05326**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF GEMINI CORPORATION AND GEMEC SERVICES LTD.

PLAINTIFF ATB FINANCIAL

DEFENDANTS GEMINI CORPORATION AND GEMEC SERVICES LTD.

DOCUMENT **SEALING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Fasken Martineau DuMoulin LLP**
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File No.: 301498.00003

DATE ON WHICH ORDER WAS PRONOUNCED: September 17, 2018

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice C.M. Jones

UPON the application of FTI Consulting Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of all of the assets, properties and undertakings of Gemini Corporation ("**Gemini**") and Gemec Services Ltd., (collectively, with Gemini, the "**Debtors**"); **AND UPON** reading the Application, the Receiver's First Report dated September 11, 2018 (the "**First Report**") and the Receiver's Confidential Supplemental to the First Report dated September 11, 2018 (the "**Confidential Supplemental Report**"); the Affidavit of Service and other materials filed in the proceedings; **AND UPON** hearing counsel for the Receiver and any other interested parties appearing at the within application, **IT IS ORDERED THAT:**

1. Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in the Frist Report.
2. 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.

SEALING

3. The Confidential Supplemental Report shall immediately be sealed by the Clerk of the Court, kept confidential and not form part of the public record, and not be available for public inspection until the Receiver's Certificate, substantially in the form attached as Schedule "A" to the Sale Approval and Vesting Order dated September 17, 2018, has been filed, or as otherwise ordered by this Court, and upon five (5) days' notice to all parties on the service list in this matter.
4. A copy of this Order shall be served on the Clerk of the Court pursuant to Rule 13.45, and notice shall be published pursuant to Rule 6.32 immediately upon filing of this Order.
5. The Clerk of the Court is hereby directed to place the Confidential Supplemental Report separate and apart from all other contents of the Court file in a sealed envelope attached to a notice that sets out the title to these proceedings, the aforementioned description of the documents contained therein, and a statement that the contents of the envelope are sealed pursuant to this Order.

SERVICE OF THIS ORDER

6. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver's website at <http://cfcanada.fticonsulting.com/Gemini>.
7. Service of this Order on any other interested person in any other manner than set out above is hereby dispensed with.
8. Any interested party may apply to have this Order amended or varied on 5 days' notice to the Receiver.

Justice of the Court of Queen's Bench of Alberta