



COURT FILE NUMBER **1501-15223**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) **CENTURY SERVICES LP by its general partner CENTURY SERVICES INC.**

DEFENDANT(S) **CHRIS MECHANICAL SERVICES LTD., DUFFY BUILDING CORPORATION and DUFFY HOLDINGS LTD.**

DOCUMENT **APPLICATION RE: SALE APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Fasken Martineau DuMoulin LLP**
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Travis Lysak
Telephone: (403) 261- 5350
Facsimile: (403) 261-5351
Email: tlysak@fasken.com
File No.: 301127.00003

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: February 27, 2017

Time: 3:00 p.m.

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

Before Whom: 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. A Sale Approval and Vesting Order, substantially in the form attached as **Schedule “A”**, ordering, *inter alia*:
 - (a) the approval of the Receiver’s activities as set forth in the second report of the Receiver dated February 17, 2017 (the **“Second Report”**);
 - (b) approval of the Receiver’s schedule of receipts and disbursements;
 - (c) the approval of the Century APA (as that term is defined in the Second Report) in respect of the Property; and
 - (d) the approval of distributions to Employment and Social Development Canada and to 1784761 Alberta Ltd. (**“178 AB”**) as described in the Second Report.

Grounds for making this application:

The grounds for making this application are set out more fully in the Second Report, but can be summarized as follows:

(A) Background

2. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Purchase Agreement.
3. Effective December 18, 2015, pursuant to an order of the Honourable C. M. Jones granted in these proceedings (the **“Receivership Order”**), FTI Consulting Canada Inc. was appointed the receiver and manager (the **“Receiver”**), of all current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the **“Debtors’ Property”**) of Chris Mechanical Services Ltd., Duffy Building Corporation and Duffy Holdings Ltd. (collectively, the **“Debtors”**) pursuant to, among others, section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended, in the within action (the **“Receivership Proceedings”**).

4. 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 Debtors and to take possession and control of the Debtors' Property and any and all proceeds, receipts and disbursements arising out of or from the Debtors' Property, and to sell, convey, transfer, lease or assign the Debtors' Property or any part or parts thereof out of the ordinary course of business.

(B) Receiver's Activities

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

(C) Approval of Purchase Agreement

6. The Receiver believes that the Property has been adequately exposed to the market through the Tender Bid Process, as that term is defined in the Second Report.
7. The Purchase Agreement is fair and commercially reasonable in the circumstances.
8. The Receiver believes that the transaction contemplated in the Purchase Agreement is the best and highest offer available in the circumstances, represents the best realizable value for the Property and will garner the greatest recovery to the creditors in the Receivership Proceedings.

(D) Vesting of Assets

9. The Receiver believes it is appropriate for the Court to grant an order vesting the Property in the Purchaser free and clear of all claims, liens and encumbrances.

(E) Distributions

10. The Receiver is advised by its counsel that the Super Priority WEPA Claims have a super priority charge over current assets. The Receiver has collected \$58,414.90 in accounts receivable, which is a current asset. The total amount of the Super Priority

WEPPA Claims is \$35,273.80. The Receiver recommends to make a distribution to Service Canada in the amount of \$35,273.80 (the “**WEPPA Distribution**”).

11. Further, the Receiver is advised by its counsel that 178 AB Security creates a valid security interest in favour of 178 AB in the right, title and interest of the accounts receivable of Chris Mechanical Services Ltd.. The Receiver recommends to make a distribution to 178 AB in the amount of \$23,140.10, which represents the proceeds from the collection of accounts receivable after making the WEPPA Distribution.

(F) Schedule of Receipts and Disbursements

12. The Receiver is respectfully of the view that the schedule of receipts and disbursement, as set out in the Second Report, is fair and reasonable under the circumstances.
13. Further, the Receiver is respectfully of the view that the fees and disbursements incurred by the Receiver and its legal counsel are fair and reasonable under the circumstances and that they have been validly incurred in connection with the discharge of the Receiver’s obligations, which have been dutifully performed.

Material or evidence to be relied on:

14. The Second Report of the Receiver dated February 17, 2017;
15. Affidavit of Service; and
16. The other pleadings and materials filed in this Action, including the Receiver’s prior report to the Court, and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and Regulations:

19. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
20. *Judicature Act*, R.S.A. c. J-2; and
21. 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:

22. Not applicable.

How the application is proposed to be heard or considered:

23. Before the presiding 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 **1501-15223**

COURT **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

PLAINTIFF(S) **CENTURY SERVICES LP by its general partner
CENTURY SERVICES INC.**

DEFENDANT(S) **CHRIS MECHANICAL SERVICES LTD., DUFFY
BUILDING CORPORATION and DUFFY HOLDINGS
LTD.**

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE **Fasken Martineau DuMoulin LLP**
AND CONTACT **Barristers & Solicitors
3400 First Canadian Centre
350 - 7 Avenue S.W.
Calgary, AB T2P 3N9**

INFORMATION OF PARTY
FILING THIS DOCUMENT

Attention: Travis Lysak
Telephone: (403) 261-5350
Facsimile: (403) 261-5351
Email: tlysak@fasken.com
File No.: 301127.00003

APPROVAL AND VESTING ORDER

DATE ON WHICH ORDER WAS PRONOUNCED: February 27, 2017

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 Chris Mechanical Services Ltd. ("**Chris Mechanical**"), Duffy Building Corporation ("**Duffy**") and Duffy Holdings Ltd. (collectively, with Chris Mechanical and Duffy, the "**Debtors**") for an Order approving the sale transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale dated February 17, 2017 (the "**Purchase Agreement**") entered into between Duffy, by and through the Receiver, and Century Services Corp. (the "**Purchaser**"); AND UPON having read the Application, the second report of the Receiver dated February 17, 2017 (the "**Second 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 ACCOUNTS AND ACTIVITIES

3. The actions, conduct and activities of the Receiver, as reported in the Second Report, are hereby authorized and approved.
4. The Receiver's schedule of receipts and disbursements, as set out in the Second Report, is hereby approved without the necessity of a formal passing of the Receiver's accounts.

APPROVAL OF PURCHASE AGREEMENT

5. The Transaction as contemplated by the Purchase Agreement which is attached as Appendix D to the Second 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, the lands legally described as:

PLAN 0714070
BLOCK 14
LOT 19
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.809 HECTARES (2 ACRES) MORE OR LESS.

6. 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 (*nunc pro tunc* if necessary) 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 Property to the Purchaser and to otherwise complete the Transaction.

7. 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 Duffy's right, title and interest in the Property 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 Property is also approved pursuant to the Receivership Order granted on December 18, 2015 (the "**Receivership Order**").

VESTING PROVISIONS

8. 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 Property, 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;
- 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; and
- c. those Claims listed in **Schedule "B"** hereto;

(all of which are collectively referred to as the “**Encumbrances**”), but subject to the permitted encumbrances listed in **Schedule “C”** hereto.

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

9. Upon the delivery of the Receiver’s Certificate, and upon the filing of a certified copy of this Order, together with any applicable registration fees:

a. the Registrar of Land Titles of Alberta (the “**Registrar**”) is hereby authorized, requested, and directed to:

- (i) notwithstanding Section 191 of the *Land Titles Act* (Alberta), transfer the Property, subject only to the Permitted Encumbrances listed in **Schedule “C”** to this Order, to Century Services Corp., or its nominee, having an address of 310, 318 11th Avenue SE, Calgary, Alberta, T2G 0Y2;
- (ii) discharge and expunge from the specified Certificates of Title for the Lands all of the registrations listed in **Schedule “B”** hereto; and
- (iii) register such transfers, discharges, discharge statements or conveyances, as may be required to convey clear title to the Lands to Century Services Corp., or its nominee, which Certificates of Title shall be subject only to the Permitted Encumbrances.

10. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

11. For greater certainty, subject only to the Permitted Encumbrances, the Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any Claimants.

CLOSING OF THE SALE TRANSACTION

12. 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.

13. 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 Property 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 Property 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.

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

15. 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.

DISTRIBUTION

16. The Receiver shall make the following distributions from the current assets of Chris Mechanical:

- a. a distribution to Employment and Social Development Canada (“ESDC”) in the amount of \$35,273.80 as a full repayment of the indebtedness owing by Chris Mechanical to ESDC respecting the Super Priority WEPPA Claims (as that term is defined in the Second Report); and

- b. a distribution to 1784761 Alberta Ltd. (“178 AB”) in the amount of \$23,140.10 as a partial repayment of the indebtedness owing by Chris Mechanical to 178 AB.

GENERAL

17. 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 lands included in the Property and the assignment and conveyance of the Property 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.

18. 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 Property 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.

19. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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

20. 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/chrismechanicalservices>.

21. 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	1501-15223
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	CENTURY SERVICES LP by its general partner CENTURY SERVICES INC.
DEFENDANT(S)	CHRIS MECHANICAL SERVICES LTD., DUFFY BUILDING CORPORATION and DUFFY HOLDINGS LTD.
DOCUMENT	Receiver's Certificate
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Fasken Martineau DuMoulin LLP Barristers & Solicitors 3400 First Canadian Centre 350 - 7 Avenue S.W. Calgary, AB T2P 3N9 Attention: Travis Lysak Telephone: (403) 261-5350 Facsimile: (403) 261-5351 Email: tlysak@fasken.com File No.: 303718.00002

RECITALS

A. Pursuant to an Order of the Honourable Justice C. M. Jones of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated December 18, 2015, FTI Consulting Canada Inc. was appointed as the receiver (the "**Receiver**") of assets, properties and undertakings of Chris Mechanical Services Ltd., Duffy Building Corporation and Duffy Holdings Ltd. (collectively the "**Debtors**").

B. Pursuant to an Order of the Court dated February 27, 2017, the Court approved the Agreement for Purchase and Sale made as of February 17, 2017 (the "**Purchase Agreement**") between the Receiver and Century Services Corp. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) that to the satisfaction of the Receiver, the set off against, and reduction of, the Indebtedness by the amount of the Purchase Price; and; (ii) that the

conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) 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 Purchaser has provided to the Receiver evidence, to the satisfaction of the Receiver, of the set off against, and reduction of, the Indebtedness by the amount of the Purchase Price;
2. 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);
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ on _____, 2017.

FTI Consulting Canada Inc., in its capacity as Receiver of the assets, properties and undertakings of Chris Mechanical Services Ltd., Duffy Building Corporation and Duffy Holdings Ltd., and not in its personal capacity.

Per: _____

Name:

Title:

Schedule "B"

Registrations to be Discharged

Instruments registered against Certificate of Title Number 101 157 789:

1. Instrument 151 079 126 - Mortgage, Century Services Corp.
2. Instrument 151 326 847 - Caveat Re: Agreement Charging Land, Caveator 1784761 Alberta Ltd.
3. Instrument 151 329 709 - Mortgage, 1784761 Alberta Ltd.

Schedule "C"

Permitted Encumbrances

- i. Instrument No. 071 615 665 - Restrictive Covenant, registered against Certificate of Title Number 101 157 789.