

No. S128887 Vancouver Registry

Tercon Investments Ltd. et al.

SIXTH REPORT OF THE RECEIVER

March 11, 2013

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

**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

**SIXTH REPORT TO THE COURT SUBMITTED BY
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

INTRODUCTION

1. On December 14, 2012 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) 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, “**Tercon**” or the “**Company**”) pursuant to the order of Mr. Justice Sewell (the “**Receivership Order**”) granted upon the petition of Dumas Holdings Inc. (“**DHI**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act R.S.C. 1985 c. B-3 as amended* (the “**BIA**”) and section 39 of the *Law and Equity Act, as amended*.
2. As described in the First Report, the Asset Purchase and Sale Agreement dated as of December 21, 2012, was entered into, subject to Court approval, between the Receiver as Vendor and Ritchies Bros. Auctioneers (Canada) Ltd. (“**RB Canada**”) and Ritchies Bros. Auctioneers (America) Inc. (“**RB America**”, RB Canada and RB America together being “**Ritchie Bros**”) as Purchasers (the “**APA**”) with respect to the Equipment and Miscellaneous Property of Tercon (as such terms are defined in the APA).
3. On January 15, 2013, Mr. Justice Sewell granted an Order (the “**Approval and Vesting Order**”) *inter alia* approving the APA and the Return Protocol, as defined in the First Report.
4. On January 21, 2013, Mr. Justice Sewell granted the following Orders:
 - (i) An Order, *inter alia*, providing for the setting up of certain reserves by the Receiver from proceeds of realization and authorizing the distribution of funds in excess of the reserves to HSBC (the “**Distribution Order**”); and

- (ii) An Order, *inter alia*, authorizing and directing the Receiver, unless otherwise agreed with HSBC and DHI, to file assignments in bankruptcy for and on behalf of each of the Tercon companies and providing for the co-ordination of the Receivership Proceedings and the bankruptcy proceedings (the “**Bankruptcy Co-Ordination Order**”).

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

- 6. To date, the Receiver has filed five reports on various aspects of the Receivership. Each of the reports, and the orders made in the Receivership proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/tercon>.

- 7. The purpose of this, the Receiver’s Sixth Report, is to inform the Court of:
 - (i) The Receiver’s instruction to the Bowra Group Inc. (the “**Trustee**”) to file assignments in bankruptcy for each of the Canadian Debtors other than TEAP and TEL; and

to request the granting by the Court of:

 - (ii) an order authorizing the Receiver to pay to the Trustee an additional amount of \$10,000 plus HST as a third party deposit.

TERMS OF REFERENCE

8. In preparing this report, the Receiver has relied upon unaudited financial information of Tercon, Tercon's books and records, certain financial information prepared by Tercon and discussions with Tercon personnel and others. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
9. The information and advice described in this Report as being provided to the Receiver by its counsel, Borden Ladner Gervais LLP (the "**Receiver's Canadian Counsel**") and The Law Office of Cabot Christianson, P.C. (the "**Receiver's US Counsel**" and, together with Receiver's Canadian Counsel, the "**Receiver's Counsel**") has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or in the Receiver's previous Reports.

THE ASSIGNMENTS IN BANKRUPTCY

11. Paragraph 1 of the Bankruptcy Co-Ordination Order states:

“The Receiver be and is hereby authorized and directed, unless otherwise agreed with HSBC Bank Canada, as Agent (“HSBC”) and Dumas Holdings Inc. (“DHI”), to file an assignment in bankruptcy for and on behalf of each 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. (the “Canadian Debtors”), with The Bowra Group Inc. named as trustee in bankruptcy (the "Bankruptcy Proceedings").”

12. At the request of HSBC and DHI, the Receiver agreed to defer the filing of the assignments in bankruptcy while HSBC and DHI considered what steps, if any, they may take in respect of issues relating to the TEAP Reserve provided for by the Distribution Order.
13. HSBC and DHI have now asked that assignments in bankruptcy be filed for each of the Canadian Debtors other than TEL and TEAP. Accordingly, in accordance with the provisions of the Bankruptcy Co-Ordination Order, the Receiver has now instructed the Trustee to file assignments in bankruptcy for each of the Canadian Debtors other than TEL and TEAP.

THE ADDITIONAL DEPOSIT

14. Paragraph 12 of the Bankruptcy Co-Ordination Order states:

“The Receiver is authorized to pay to the Trustee a third party deposit in the amount of \$10,000.00, plus HST (the “Deposit”), and to execute a guarantee in writing, limited in liability to the amount of the Deposit, of the taxed costs of the administration of the Estates (the “Guarantee”) such Deposit and Guarantee to be in accordance with Directive 16 issued by the Superintendent of Bankruptcy.”

15. The Bankruptcy Co-Ordination Order provides, *inter alia*, for the extension of time for the holding of the first meeting of creditors to be held pursuant to section 102 of the BIA following the commencement of the bankruptcies of the Tercon companies, subject to further order of the Court.
16. The Official Receiver has informed the Trustee that an extension of time for the first meeting of creditors is acceptable, so long as it is convened following the claims bar date, once one is set by the Court. The Trustee is concerned that costs of the bankruptcies may be higher than originally contemplated and has asked for the Deposit to be increased to \$20,000 plus HST.
17. The Receiver has consulted with HSBC and DHI, neither of whom has expressed any concern with the increase in the Deposit. Accordingly, the Receiver now seeks an Order authorizing the payment of the additional \$10,000 plus HST in respect of the Deposit.

The Receiver respectfully submits to the Court this, its Sixth Report.

Dated this 11th day of March, 2013.

FTI Consulting Canada Inc.
in its capacity as receiver 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.
and not in its personal or corporate capacity



Nigel D. Meakin
Senior Managing Director



Jeff Rosenberg
Managing Director