



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 Friday, December 13, 2013 at 9:00 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 “T” 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 “**Receivership 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., Tercon Construction Ltd. (“**TCL**”), Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited (“**MRC**”), FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership 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 (the “**TEAP 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 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.

5. On April 11, 2013, The Honourable Mr. Justice Sewell granted an Order (the “**April 11 Order**”) authorizing the Receiver to make payments to HSBC from monies previously held in accordance with and pursuant to the Distribution Order by the Receiver as the TEAP Reserve.

6. On September 9, 2013, The Honourable Mr. Justice Sewell granted an Order, *inter alia*, amending paragraphs 5, 6 and 23 of the Distribution Order to substitute DHI (on account of its claims, including its subrogated or assigned claims) for HSBC, amending paragraph 2 of the April 11 Order to substitute DHI (on account of its claims, including its subrogated or assigned claims) for the Agent, making certain declarations as to claims in these proceedings being trust claims or not, authorizing the payment of certain employee claims and authorizing the Receiver to distribute certain proceeds being held by the Receiver.

7. The Receiver is seeking an order for, *inter alia*, approval of the Dividend Assignment Agreement attached as Appendix F to the Tenth Report of the Receiver dated December 3, 2013 (the “**Tenth Report of Receiver**”), approval of the Plan Distribution Assignment Agreement attached as Appendix G to the Tenth Report of Receiver, discharging the Receiver and terminating the Receivership proceedings on filing by the Receiver of a certificate of completion.

### **Part 3: LEGAL BASIS**

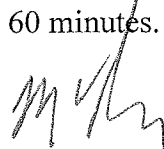
1. Rules 8-1 and 10-2 of the *Supreme Court Civil Rules of Court, Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, *Bankruptcy and Insolvency Rules* and *Builders Lien Act SBC 1997 C.45*; and
2. the inherent jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

1. Tenth Report of the Receiver dated December 3, 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 60 minutes.

Date: 04/Dec/2013



\_\_\_\_\_  
Signature of Magnus C. Verbrugge

applicant  lawyer for applicant  
FTI Consulting Canada Inc.

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

## 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

APPENDIX I

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., 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**

**DISCHARGE ORDER**

BEFORE THE HONOURABLE )  
MR. JUSTICE SEWELL ) 13/DEC/2013  
)

THE APPLICATION of FTI Consulting Canada Ltd., 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 13<sup>th</sup> day of December, 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 Tenth Report of the Receiver dated December 3, 2013 (the "**Tenth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver, as set out in the Tenth Report, are hereby approved.
2. The activities of the Receiver, as set out in the Eighth Report, are hereby approved.
3. The Dividend Assignment Agreement dated December 3, 2013 attached as Appendix "F" to the Tenth Report is hereby approved.
4. The Plan Distribution Assignment Agreement dated December 3, 2013 attached as Appendix "G" to the Tenth Report is hereby approved.
5. Subject to the terms of paragraph 43 of the Claims Procedure Order dated March 21, 2013, the Receiver is authorized to pay all funds remaining in the Bonded Project Reserve to Dumas Holdings Inc.
6. Upon the Receiver filing a certificate certifying that it has completed the matters described in paragraph 44 of the Tenth Report, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtors, provided that notwithstanding its discharge herein, (a) the Receiver shall be entitled to perform any and all matters that may be incidental to the completion of the administration of the receivership herein and any other matters that the Receiver considers to be necessary or desirable for the completion or the termination 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 FTI Consulting Canada Inc., in its capacity as Receiver.
7. FTI Consulting Canada Inc. is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI Consulting Canada Inc. while acting in its capacity as Receiver herein, including without limitation, any liability in relation to the activities described in the Reports

filed with the Court. Without limiting the generality of the foregoing, FTI Consulting Canada Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

8. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

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

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Signature of Magnus 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

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REGISTRAR



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IN THE SUPREME COURT OF BRITISH  
COLUMBIA

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BETWEEN:

**DUMAS HOLDINGS INC.**

Petitioner

- and -

**TERCON INVESTMENTS LTD., TERCON A.C. LTD.,  
TERECON 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

- and -

**IN THE MATTER OF THE RECEIVERSHIP OF  
TERCON INVESTMENTS LTD., TERCON A.C. LTD.,  
TERECON 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.**

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**DISCHARGE ORDER**

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200 Burrard Street  
P.O. Box 48600  
Vancouver, BC V7X 1T2  
Telephone: (604) 687-5744  
Attn: Magnus Verbrugge  
Client/Matter: 028285/03

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No. S-128887  
Vancouver Registry

In the Supreme Court of British Columbia

Between

Dumas Holdings Inc.

Petitioner

and

Tercon Investments Ltd., and others

Respondents

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**NOTICE OF APPLICATION**

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**MCV**

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