



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 Tuesday March 5, 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 "I" 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 "**December 14 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., 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 referred to as the "**Debtors**").

2. On January 15, 2012, 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. During the Receiver's review of claims put forth by Equipment Lessors, the Receiver determined that there was value in excess of the amount owing under the relevant leases for ten pieces of equipment (the "**Buy-Out Equipment**").

4. The Receiver has agreed, with the prior consent of HSBC Bank Canada, as agent ("**HSBC**"), to the buy-out of the Buy-Out Equipment from the respective Equipment Lessors pursuant to the terms of (i) a bill of sale dated February 22, 2013 between Emkay Canada Leasing Corp. and the Receiver (the "**Emkay Agreement**"), and (ii) a bill of sale dated February 22, 2013 between North Central Rental and Leasing, a division of Butler Machinery Co. and the Receiver (the "**Butler Agreement**" and together with the Emkay Agreement, the "**Buy-Out Provisions**").

5. The Receiver has entered into an asset purchase and sale agreement dated February 26, 2013 (the "**February 26 APA**") with Ritchie Bros. Auctioneers (Canada) Inc. and

Ritchie Bros. Auctioneers (America) Inc. (together, “**Ritchie Bros**”), pursuant to which, the Buy-Out Equipment will be sold to Ritchie Bros. The terms of the February 26 APA are substantially consistent with the terms of the APA previously approved by the Supreme Court of British Columbia pursuant to the January 15 Order.

6. HSBC has agreed with the views of the Receiver that, given the purchase by Ritchie Bros of all of the Tercon Equipment subject to the APA, the nature of the Buy-Out Equipment, and the cost of marketing, it would be unlikely that any other party would pay substantially more than Ritchie Bros for the Buy-Out Equipment. As such, the Receiver did not actively market the Buy-Out Equipment.

7. The Receiver received one competing offer for the Buy-Out Equipment that are subject to the Emkay Agreement; however, this offer was inferior to the offer received from Ritchie Bros.

8. Each of the Buy-Out Provisions and the February 26 APA are subject to Court approval.

9. The transactions contemplated in the February 26 APA would generate net realizations of approximately \$88,400.

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Part 3: LEGAL BASIS

1. Rules 8-1, 10-2 and 13-5 of the *Rules of Court*; and
2. the inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Fourth Report of the Receiver dated February 26, 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 20 minutes.

Date: February 28, 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

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In the Supreme Court of British Columbia

Between

Dumas Holdings Inc.

Petitioner

and

Tercon Investments Ltd., and others

Respondents

NOTICE OF APPLICATION

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