



No. S-152303  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**BETWEEN:**

**HSBC BANK CANADA**

**PLAINTIFF**

**AND:**

**CONTECH ENTERPRISES INC., BUSINESS DEVELOPMENT BANK OF CANADA, LAUREL RAYANI, CARY GREGORY, JANET GREGORY, JULIEN SELLGREN, JANET SHANNON, MARK GRAMBART, BURMAN AND BURMAN CORP., MICHAEL BRENNER, ANDERS TREIBERG, ELISABETH TREIBERG, MINZAR HOLDINGS LTD., 0872951 B.C. LTD., FIRST WEST CREDIT UNION, VEGHERB, LLC, SADLER FARMS LTD., PAUL HOOPER, MARIANNE HOOPER, BC ADVANTAGE FUNDS (VCC) LTD., ECL HOLDINGS LTD., ST. PATRICK HOLDINGS LTD., BWF HOLDINGS LTD. and DENMAN ISLAND CHOCOLATE LTD.**

**DEFENDANTS**

**NOTICE OF APPLICATION**

**Name of Applicant:** Deloitte Restructuring Inc. (the “**Receiver**”) in its capacity as Receiver and Manager of Contech Enterprises Inc. (“**Contech**”)

**On Notice To:** Scotts Canada Ltd. (“**Scotts**”)

**And To:** The parties listed on the Service List attached as Schedule “A”

TAKE NOTICE that an application will be made by the Applicant to the presiding Judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on April 29, 2015 at 9:45am for the Orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order abridging the time for service such that the within application is properly returnable on April 29, 2015;
2. An order permitting the Receiver to serve this Application and the First Report of the Receiver dated April 24, 2015 (the “**First Report**”) by posting a copy of this Application and the First Report on the creditors’ information website maintained by the Receiver (<http://www.insolvencies.deloitte.ca/en-ca/Pages/Contech.aspx>) and by

emailing a copy of the Application and the First Report to the parties on the Service List at the email addresses used in past communications with the Receiver;

3. An order approving the Purchase and Sale Agreement between Scotts and the Receiver dated April 15, 2015 (the “PSA”) attached as Appendix D to the First Report;
4. An order vesting clear title to Purchased Assets (as defined below) in Scotts; and,
5. Such other relief as counsel may advise and this Honourable Court may grant.

**Part 2: FACTUAL BASIS**

6. Contech is in the business of designing, manufacturing and marketing environmentally friendly products for pets and gardens. Contech’s business has various components, including pet care, animal repellants, insect and rodent repellants, garden beds and sandboxes and Christmas tree stands.
7. On December 23, 2014, Contech filed a proposal to its creditors under the *Bankruptcy and Insolvency Act* (the “BIA”) appointing the Receiver as Proposal Trustee. In January 2015, the proposal was approved by Contech’s creditors and was further approved by this Honourable Court.
8. On March 6, 2015, the British Columbia Court of Appeal set aside the Order approving the proposal and, as a result, Contech was automatically deemed bankrupt.
9. On March 11, 2015, HSBC Bank Canada (“HSBC”) appointed the Receiver as receiver by instrument pursuant to a general security agreement dated September 29, 2011 granted by Contech in favour of HSBC.
10. On March 20, 2015, by Order of the Honourable Madam Justice Ross (the “Receivership Order”), the Receiver was appointed over all of the assets, undertakings and properties of Contech (the “Assets”). The Assets included inventory, accounts receivable, cash and intellectual property for the each of the divisions of Contech’s business, along with real property leases in various locations.
11. The Receivership Order authorizes the Receiver to:

- (a) market any or all of Contech's property, including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver in its discretion may consider appropriate;
  - (b) to sell, convey, transfer, lease or assign Contech's Property or any portions thereof out of the ordinary course of business with the approval of this Honourable Court where the purchase price exceeds \$50,000; and,
  - (c) to apply for a vesting order or such other orders as necessary to convey Contech's property, or any part or parts thereof, to a purchaser or purchasers, free and clear of any liens or encumbrances.
12. The facts relevant to this Application are set out in the Receiver's First Report and will be only briefly addressed in this Notice of Application. For a comprehensive summary of the facts relevant to this Application, the Receiver relies on the First Report.
13. Prior to its appointment as receiver and manager, the Receiver monitored Contech's affairs during the proposal period beginning in December 2014 and later as trustee in bankruptcy.
14. Following its appointment as receiver by instrument, the Receiver determined that Contech continuing operations appeared to be in the best interests of creditors in order to maximize value. The Receivership Order made March 20, 2015 permitted the Receiver to continue Contech's operations on a limited basis while pursuing a sales process. The sales process is described in the First Report, part 6, pages 8 to 11.
15. Shortly after the Receivership Order, the Receiver began the sales process. In order to solicit offers for the purchase of Contech's businesses and assets, the Receiver:
- (a) identified strategic and financial parties through the Receiver's professional network, Contech's network (customers, suppliers, competitors and owners of previously sold Contech divisions) as advised by senior management;
  - (b) solicited further potential purchasers through announcement of the sale in The Province newspaper and the Insolvency Insider industry e-newsletter;

- (c) prepared and circulated an information memorandum for all of Contech's assets;
  - (d) prepared non-disclosure agreements to be executed by potential purchasers prior to obtaining access to an electronic data-room and the information memorandum;
  - (e) established and maintained an electronic data room in order for potential purchasers to conduct due diligence; and,
  - (f) prepared an information package outlining the sales process and describing Contech's assets on an "as is, where is" basis (the "**Information Package**").
16. The assets included in the Information Package consisted of equipment, inventory, accounts receivable, intangibles, office furniture and computer equipment. These assets were allocated in separate lots to maximize the realizable value of the tendered assets in the event an acceptable en-bloc offer was not received. Prospective purchasers were given the option of making offers on one or more lots of assets.
17. The Receiver sent the non-disclosure agreement to 44 prospective purchasers, of which 34 parties returned signed copies and received the Information Memorandum and access to the data room.
18. By the non-binding offer deadline (April 6, 2015), eight parties delivered non-binding offers. There were four non-binding offers for substantially all of the Contech assets, including a non-binding offer from Scotts, with the remaining four offers being for selected parcels of assets.
19. Three of the prospective purchasers visited the site and met with Contech management to view the assets being offered for sale. All prospective purchasers had the opportunity to visit the site and meet with Contech management.
20. By the binding offer deadline (April 15, 2015), five parties delivered binding offers. There were two offers for substantially all of the Contech assets (the "**En Bloc Offers**"). One of the En Bloc Offers was from Scotts. The remaining three offers were for selected parcels of assets.

21. The Receiver determined that if it accepted one of the two En Bloc Offers, it could continue to pursue the three offers for specific assets to the extent those specific assets were not included in the En Bloc Offer.
22. The Receiver determined that the offer from Scotts was preferable to the other En Bloc Offer because:
  - (a) Scotts' parent company is a highly credible strategic buyer;
  - (b) the Scotts offer was superior to the other En Bloc Offer both on terms and on price, and also allowed for a higher potential aggregate return that may be generated from the sale of specific parcels and, accordingly, represented the greatest return to creditors;
  - (c) the Receiver will continue to operate Contech in order to maximize realization of the remaining assets; and,
  - (d) based on the other offers received in the sales process, the Receiver is of the view that the consideration offered by Scotts is fair and reasonable.
23. As a result, the Receiver accepted the Scotts offer and entered into the PSA, pursuant to which:
  - (a) Scotts agreed to purchase certain divisions of Contech's business, and all inventory, accounts receivable and intellectual property associated with those divisions (the "**Purchased Assets**") for a total purchase price of \$4,850,000. The divisions to be acquired are the Tanglefoot and Phero Tech Business, the Industrial Business and the Animal Repellant Business, as those terms are defined in the PSA;
  - (b) Scotts would pay a deposit of \$500,000 to the Receiver upon delivery of the executed PSA;
  - (c) Scotts agreed to assume a liability owed by Contech to Simon Fraser University ("**SFU**"), including to pay a debt of \$150,000 owed by Contech to SFU and to assume, pay, discharge, honour and perform all liabilities and obligations to SFU arising after the closing date with respect to the Purchased Assets; and,

- (d) Scotts shall not assume any other Contech liabilities, other than the liability to SFU.
24. HSBC and First West Credit Union (“FWCU”) hold the first and second priority security interests over the Purchased Assets, and the proposed sale to Scotts. The proposed purchase price will fully repay the debt to HSBC and FWCU.
25. In assessing the proposed sale to Scotts, the Receiver considered:
- (a) the Scotts offer and the PSA provides for greater recovery than the other En Bloc Offer or any combination of offers for specific parcels of assets;
  - (b) the purchase price is fair and reasonable based on the market response and the offers received, particularly in light of the time constraints imposed by Contech’s limited liquidity;
  - (c) the Scotts offer and the PSA provide for a closing within a short period of time, which will reduce the Receiver’s ongoing costs associated with securing and monitoring the Purchased Assets; and,
  - (d) the support of the two priority secured creditors.
26. The within application is urgent. The PSA requires that the Receiver “immediately upon execution” make an application to this Honourable Court for an Order approving the PSA and vesting title to the Purchased Assets in Scotts. The PSA further requires that the Receiver shall have obtained the Approval and Vesting Order on or before April 30, 2015.
27. In addition to the sales process, the Receiver’s activities since its appointment have included:
- (a) arranging for Contech’s bank accounts to be frozen and opening new bank accounts under the Receiver’s name in Canada;
  - (b) taking possession of books and records and updating accounting records for accounts receivable, accounts payable and inventory;
  - (c) entering into discussions and negotiations with landlords with respect to ongoing occupation for each of Contech’s facilities;

- (d) arranging for continued general liability and product insurance to be in effect through to June 30, 2015 at all of Contech's locations in Canada and for continued insurance coverage at Contech US Inc. ("**Contech US**");
- (e) communicating with stakeholders and interested parties, including creditors, CRA, Service Canada, suppliers, customers and employees;
- (f) negotiating sales of finished goods inventory on an "as is, where is" basis;
- (g) negotiating with major suppliers and major customers with respect to accommodation agreements;
- (h) managing day-to-day operations at Contech's head office, and regularly attending at its other sites and facilities;
- (i) consolidating Contech's operations to reduce costs, improve cash flow, and improve realizations to the estate;
- (j) winding down Contech's operations in Vista, California; and,
- (k) establishing and maintaining the Receiver's website to inform creditors and all other stakeholders of the proceedings, Orders, reports, and other relevant information.

### **Urgency**

28. To maximise recovery for all stakeholders, the Receiver asks that this application be heard on or before April 30, 2015. Delaying the application until May 2015 will increase the receivership costs and interest accrued on secured debt, thereby reducing the recovery for all stakeholders.
29. The Receiver also notes that the PSA contains a provision requiring that the Receiver use its best efforts to obtain an approval and vesting order as expeditiously as possible, and further provides that the Receiver shall have obtained this order on or before April 30, 2015.

### **Notice**

30. The Receiver seeks leave of this Court to permit service of this Application and the First Report by posting a copy to the creditors information website maintained by the

Receiver in this matter and by emailing a copy to the secured parties that have corresponded with the Receiver by email in the past. The Receiver will deliver this Application and the First Report to those email addresses. Where the Receiver does not have email addresses for secured parties, it will use its best efforts to obtain such addresses and to deliver this Application and the First Report to those addresses.

31. The Receiver submits that this method of service will be effective, timely and efficient, in addition to being effected at a lower cost than personal service.

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

#### **Short Leave**

32. Pursuant to Rule 8-5 of the *Supreme Court Civil Rules*, this Honourable Court may order that a main application be heard on short notice, thereby abridging the time for service of the application. The Receiver submits that this is an urgent application: as time passes costs continue to accrue, and the PSA to be considered by the Court contains a provision that the approval and vesting order be obtained on or before April 30, 2015.

#### **Service**

33. Pursuant to Rule 4-4 of the *Supreme Court Civil Rules*, this Honourable Court may order service by alternate means where it is impracticable to serve a document by personal service. The Receiver submits that service of this Application and the First Report by posting the materials to the Receiver's website and by emailing copies to secured creditors is the most effective and efficient means of service. The Receiver submits that personal service for a hearing on or before April 30, 2015 is not practicable. The proposed method of service would also be significantly less expensive.

#### **Approval of Sale**

34. The Court may appoint a receiver to take possession of an insolvent person's property, exercise any control that the court considers advisable over that property and to take any other action that the court considers advisable.



35. A receiver has the obligation to act honestly and in good faith, and to deal with the property of an insolvent person in a commercially reasonable manner.

BIA s. 247.

36. In considering a proposed sale, the Court considers:

- (a) whether the receiver made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and,
- (d) whether there has been unfairness in working out of the process.

*Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.) at Para 16.

37. The Receiver submits that it has made sufficient effort to obtain the best price and that it has not acted improvidently. The Receiver's solicitation efforts resulted in over 30 parties accessing the data room to conduct due diligence. As a result of this process, eight parties submitted non-binding offers and five parties submitted binding offers. The Receiver submits that this market response reflects that the sales process was conducted over an appropriate and sufficient time period.

38. The Receiver is of the view that the sales process was fair and reasonable given the following:

- (a) the sale was publicly advertised;
- (b) all bidders had the same access to information and to management, if required;
- (c) all bidders were granted the same amount of time to conduct their due diligence; and,
- (d) the timeline was fair given the assets of Contech and in light of the limited liquidity of Contech, the Receiver determined that a long period of active receivership and a longer sales process was impractical.

39. In assessing the Scotts offer and selecting it as the preferred offer, the Receiver considered:
- (a) that the Scotts offer represented the greatest aggregate recovery, as compared to the other offers received, including combinations of those offers;
  - (b) that Scotts' parent company is a highly credible strategic
  - (c) Scotts' ability to close the transaction within a short period of time, which would reduce the Receiver's ongoing costs and expenses in securing and monitoring the assets; and,
  - (d) the support of the two creditors with security over the Purchased Assets.
40. Based on the above considerations, the Receiver determined that the offer from Scotts and the PSA represent the highest and best offer for the Purchased Assets and according seeks an Order from this Honourable Court approving the PSA and vesting clear title to the Purchased Assets in Scotts.

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

- 41. The Receivership Order granted on March 20, 2015;
- 42. The Receiver's First Report dated April 24, 2015; and,
- 43. Such other material as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take 15 minutes.

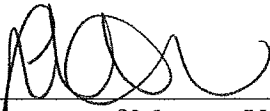
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 24, 2015

  
 \_\_\_\_\_  
 Signature of Magnus Verbrugge  
 applicant  lawyer for applicant(s)

***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

**Schedule "A" - Service List**

<p><b>Deloitte Restructuring Inc.</b> 2800 – 1055 Dunsmuir Street Vancouver, BC V7X 1P4</p> <p>Attn: Huey Lee</p> <p><i>Receiver of Contech Enterprises Inc.</i></p>	<p><b>Borden Ladner Gervais LLP</b> 1200 - 200 Burrard Street, P.O. Box 48600 Vancouver, BC V7X 1T2</p> <p>Attn: Magnus Verbrugge</p> <p><i>Counsel for the Receiver</i></p>
<p><b>Lawson Lundell LLP</b> 1600 - 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attn: Kimberley Robertson</p> <p><i>Counsel for HSBC Bank Canada</i></p>	<p><b>Kornfeld LLP</b> 1100 – 505 Burrard Street (Box 11) Vancouver, BC V7X 1M5</p> <p>Attn: Douglas Hyndman</p> <p><i>Counsel for Business Development Bank of Canada</i></p>
<p><b>Fasken Martineau DuMoulin LLP</b> 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attn: Kibben Jackson</p> <p><i>Counsel to Contech Enterprises Inc. and Mark Grambart</i></p>	<p><b>Miller Thomson LLP</b> #1000 - 840 Howe Street Vancouver, BC V6Z 2M1</p> <p>Attn: Brent Clark</p> <p><i>Counsel for First West Credit Union</i></p>
<p><b>Shields Harney</b> #602 - 732 Broughton Street Victoria, BC V8W 1E1</p> <p>Attn: Gregory Harney</p> <p><i>Counsel for Vegherb, LLC</i></p>	<p><b>Laurel Rayani</b> 128 Eberts Street Victoria, BC V8S 3H7</p>
<p><b>Janet Gregory</b> 1160 Baltimore Pike Gettysburg, Pennsylvania 17325</p>	<p><b>Julien Sellgren</b> 1996 West 13<sup>th</sup> Avenue Vancouver, BC V6J 2H6</p>
<p><b>Janet Shannon</b> 2090 Stonchewer Place Victoria, BC V8S 2Z7</p>	<p><b>Cary Gregory</b> 1160 Baltimore Pike Gettysburg, Pennsylvania 17325</p>

<p><b>Burman and Burman Corp.</b>  c/o Its Registered Office  895 Strangcrest Place  Victoria, BC V8Y 1J7</p>	<p><b>Michael Brenner</b>  2741 Dallaire Avenue SW  Calgary, AB T3E 7T1</p>
<p><b>Anders Treiberg</b>  474 Smelt Bay Road, Box 248  Mansons Landing, BC VOP 1K0</p>	<p><b>Elisabeth Treiberg</b>  474 Smelt Bay Road, Box 248  Mansons Landing, BC VOP 1K0</p>
<p><b>Minzar Holdings Ltd.</b>  c/o Its Registered Office  900 - 1175 Douglas Street  Victoria, BC V8W 2E1</p>	<p><b>0872951 B.C. Ltd.</b>  c/o Its Registered Office  #305 - 2692 Clearbrook Road  Abbotsford, BC V2T 2Y8</p>
<p><b>Sadler Farms Ltd.</b>  c/o Its Registered Office  1800 - 401 West Georgia Street  Vancouver, BC V6B 5A1</p>	<p><b>Paul Hooper</b>  207 Mary Hill Road  Victoria, BC V9C 3Z2</p>
<p><b>Marianne Hooper</b>  207 Mary Hill Road  Victoria, BC V9C 3Z2</p>	<p><b>BC Advantage Funds (VCC) Ltd.</b>  c/o Its Registered Office  2900 - 550 Burrard Street  Vancouver, BC V6C 0A3</p>
<p><b>ECL Holdings Ltd.</b>  c/o Its Registered Office  7th Floor - 1175 Douglas Street  Victoria, BC V8W 2E1</p>	<p><b>St. Patrick Holdings Ltd.</b>  c/o Its Registered Office  26 Bastion Square  Third Floor - Burnes House  Victoria, BC V8W 1H9</p>
<p><b>BWF Holdings Ltd.</b>  c/o Its Registered Office  #305 - 2692 Clearbrook Road  Abbotsford, BC V2T 2Y8</p>	<p><b>Denman Island Chocolate Ltd.</b>  c/o Its Registered Office  4321 Denman Road  Denman Island, BC V0R 1T0</p>

## 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
- other

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No. S-152303  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**HSBC BANK CANADA**

**PLAINTIFF**

**AND:**

**CONTECH ENTERPRISES INC.  
BUSINESS DEVELOPMENT BANK OF  
CANADA and others**

**DEFENDANTS**

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**NOTICE OF APPLICATION**

**MCV/LCH**

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