



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: 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 Tuesday, July 28, 2015 at 9:45am for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order permitting the Receiver to serve this Application and the Third Report of the Receiver dated July 13, 2015 (the “**Third Report**”) and the by posting a copy of this Application and the Third 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 Third Report to the secured creditors listed on the Service List at the email addresses used in past communications with the Receiver.

2. An order approving the Receiver's fees and disbursements and the Receiver's counsel fees and disbursements as outlined in the Third Report.
3. An order authorizing the Receiver to pay the net proceeds of the receivership realization as follows:
 - (a) first, to all costs, charges and expenses in connection with realization and enforcement of the assets (including any outstanding fees and disbursements of the Receiver and its legal counsel);
 - (b) second, *pro rata* to Group B Debenture Holders (as defined below) and Michael Brenner to a collective maximum amount of \$2,164,131;
 - (c) third, to Michael Brenner for the balance of his claim;
 - (d) fourth, to Veg Herb;
 - (e) fifth, *pro rata* to the Group B Debenture Holders for the balance of their claim;
 - (f) sixth, *pro rata* to the Group A Debenture Holders (as defined below); and,
 - (g) the surplus to be held by the Receiver pending further assessment and determination of the relative priorities of the secured claims.
4. The Receiver may also seek such further and other relief as counsel may advise and this Honourable Court may grant.

Part 2: FACTUAL BASIS

5. Contech was in the business of designing, manufacturing and marketing environmentally friendly products for pets and gardens. Contech's business had various components, including pet care, animal repellants, insect and rodent repellants, garden beds and sandboxes and Christmas tree stands.
6. 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.
7. 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.

8. 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.
9. 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.
10. Shortly after the Receivership Order, the Receiver began the sales process to sell the Assets.
11. On April 29, 2015, this Honourable Court approved a sale to Scotts Canada Ltd. (“**Scotts**”) of the majority of the Assets for total proceeds of \$4,850,000 (the “**Scotts Sale**”). The Scotts Sale closed on May 6, 2015.
12. On May 19, 2015, this Honourable Court approved a sale to VegHerb, LLC (“**VegHerb**”) of the “Frame It All” assets for total proceeds of \$771,905 (the “**VegHerb Sale**”), including a credit bid reducing the debt that Contech owed to VegHerb by \$675,000. The VegHerb sale closed on May 26, 2015.
13. The Receiver accepted an offer to sell to Good Limited (“**L2G**”) the True-Dose inventory for \$5,000. The sale to L2G closed on May 28, 2015.
14. The Receiver accepted an offer to sell to CSTechUS Inc. (“**CSTechUS**”) the Pro-Collar and Pro-Cone inventory and intellectual property for USD \$11,402.43. The sale to CSTechUS closed on June 23, 2015.
15. The Receivership Order permitted the Receiver to conclude sales out of the ordinary course of business, provided the consideration did not exceed \$50,000 for a single transaction and \$200,000 for all such transactions. Accordingly, Court approval was not required for the sale to L2G.
16. On May 19, 2015, this Honourable Court authorized a distribution to HSBC Bank Canada, Business Development Bank and First West Credit Union (collectively, the “**Banks**”) as the first ranking secured creditors of Contech. On May 21, 2015, the

Receiver made a final distribution to the Banks. This distribution fully repaid the amounts owed to the Banks.

17. Following the sales to Scotts, VegHerb, L2G and CSTechUS, the Receiver has sold all of the Assets. The Receiver continues to collect outstanding accounts receivable. This collection of accounts receivable is the final piece of recovery in these proceedings.
18. The Receiver estimates that the net proceeds of available for distribution to the remaining secured creditors will be approximately \$2.71 million to \$3.13 million, subject to the collection of the remaining accounts receivable.
19. The Receiver has reviewed and considered the security interests asserted by various parties. The details of this review and analysis are set out in the Third Report, section 6.
20. The Receiver determined that based on the registration of security that secured creditors with perfected security interests are:
 - (a) the group of debenture holders that registered their interests in the British Columbia Personal Property (the “PPR”) between July 27, 2011 and July 26, 2012 (the “**Group A Debenture Holders**”);
 - (b) VegHerb, which registered its interest on February 22, 2013; and,
 - (c) the group of debenture holders that registered their interests on February 19, 2014 (the “**Group B Debenture Holders**”)(collectively, the “**Registered Creditors**”).
21. VegHerb had a purchase money security interest over the Frame-It-All Inventory. This inventory was sold to VegHerb in the VegHerb Sale, which extinguished VegHerb’s purchase money security interest. VegHerb’s remaining claim is that of an ordinary secured creditor.
22. The Receiver acknowledges that there is also a registration in the PPR that was registered after the Group B Debenture Holders and that there may also be creditors with security interests that have not registered their interest in the PPR. These interests are subordinate to the interests of the Registered Creditors and given the

funds available for distribution, the Receiver did not consider it cost-effective or appropriate to assess their relative priorities further.

23. On August 1, 2012, the Group A Debenture Holders entered into an inter-creditor agreement pursuant to which their security would rank *pari passu* and they would share *pro rata* in any proceeds (the “**Group A Inter-Creditor**”).
24. On March 7, 2014, the Group B Debenture Holders entered into a similar inter-creditor agreement pursuant to which their security would rank *pari passu* and they would share *pro rata* in any proceeds (the “**Group B Inter-Creditor**” and, together with the Group A Inter-Creditor, the “**Inter-Creditor Agreements**”).
25. On March 7, 2014, the Group A Debenture Holders, except Michael Brenner, agreed to subordinate their security to the security of the Group B Debenture Holders (the “**Subordination**”). Michael Brenner did not subordinate his security interest to any party.
26. Based on the Subordination and the Inter-Creditor Agreements, the Group B Debenture Holders and Michael Brenner will have priority up to the amount owed to the Group A Debenture Holders (\$2,164,131).
27. Based on the PPR registrations, the Subordination and the Inter-Creditor Agreements, the Receiver has determined that the priorities among the Registered Creditors are:
 - (a) first, the Group B Debenture Holders and Michael Brenner, *pro rata*, for the amount of \$2,164,131;
 - (b) second, Michael Brenner for the balance of his claim;
 - (c) third, VegHerb;
 - (d) fourth, the Group B Debenture Holders for the balance of their claim; and,
 - (e) fifth, the Group A Debenture Holders (proceeds to be shared *pro rata*).
28. In the low-end recovery scenario, there will be insufficient funds to fully repay Michael Brenner and the Group B Debenture Holders.
29. In the high-end recovery scenario, there will be insufficient funds to fully repay VegHerb.

30. Accordingly, the Receiver does not anticipate there will be sufficient funds to make any distribution to the Group A Debenture Holders.

Advance Notice to Registered Creditors

31. The Receiver circulated the Third Report to all remaining creditors with registered security interests. Certain of the Group A Debenture Holders and the Group B Debenture Holders contacted the Receiver's counsel to raise questions and concerns. The Receiver responded to these questions directly, and considered the information provided. None of the information provided or questions raised changed the Receiver's conclusions regarding priorities and the proposed distribution.

Receiver's Fees and Disbursements

32. The Receiver's activities throughout the receivership are set out in its Reports. The Receiver relies on section 5 of the Receiver's First Report dated April 24, 2015, section 4 of the Receiver's Second Report dated May 15, 2015, section 4 of the Third Report. To briefly summarize, the Receiver's activities have included:
- (a) commencing and conducting a sales process with respect to the Assets;
 - (b) concluding various transactions in connection with the sale process, including assisting Scotts with the transition of the business operations acquired in the Scotts Sale;
 - (c) ongoing collection of Contech's accounts receivable;
 - (d) regular attendance at Contech's head office and locations to manage day-to-day operations;
 - (e) various steps and activities to maximize realizations, including consolidating Contech's operations to reduce cost structure, improve cash flow and improve realizations and winding down certain of Contech's operations;
 - (f) assessing the interests of various secured creditors, including their relative priorities; and,
 - (g) various and numerous communications with Contech's stakeholders, including secured creditors and suppliers.

33. As of July 13, 2015, the Receiver has realized approximately \$8.4 million through sale of the Assets and collection of the accounts receivable. The proceeds from the Scotts Sale were sufficient to make a distribution to the Banks to fully repay the debt owed by Contech to the Banks.
34. In connection with the receivership, and the efforts to sell assets and collect the accounts receivable, it was necessary for the Receiver to incur professional fees and legal fees. The professional fees and legal fees incurred by the Receiver are described in further detail at page 9 of the Third Report. Copies of the relevant invoices are attached as Appendices J and K of the Third Report.
35. Between March 6, 2015 and July 3, 2015, the Receiver billed fees of approximately \$597,000 and disbursements of approximately \$40,000. These fees represent approximately 1,640 hours of the Receiver's professionals.
36. Between March 10, 2015 and May 29, 2015, the Receiver's legal counsel has billed fees of approximately \$68,000 and disbursements of approximately \$1,600.
37. The Receiver is of the view that the fees and disbursement incurred by it and its legal counsel are reasonable in light of the work required, the complexity of the receivership and the recovery and realization achieved.

Notice

38. The Receiver seeks leave of this Court to permit service of this Application and the Third 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 creditors at the email addresses used in past correspondence with the Receiver.
39. 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

Service

40. 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.
41. The Receiver submits that service of this Application and the Third 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 proposed method of service would also be significantly less expensive.
42. Further, this method of service was used, with success, in respect of the applications to approve the Scotts Sale and the VegHerb Sale.

Distribution of Proceeds

43. Pursuant to the *Personal Property Security Act*, a secured party (including a receiver), may dispose of collateral, and apply the proceeds first to the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expense of enforcing the security agreement incurred by the secured party, and second to the satisfaction of the obligation secured by the security interest of the party making the disposition. The surplus, if any, is to be paid first to any creditors with perfected, but subordinate, security interests.

Personal Property Security Act, R.S.B.C. 1996 c.359 (the "PPSA"), s. 59.

44. The residual priority rules apply to determine the relative priorities among the Registered Creditors. Accordingly, their relative priority is determined based on registration in the PPR.

PPSA, s.35(1)(a).

45. However, the Group A Debenture Holders and the Group B Debenture Holders agreed to contractually alter the priorities as between them.

46. Accordingly, based on the PPSA, the Subordination and the Inter-Creditor Agreements, the priorities of the Registered Creditors are:
- (a) first, the Group B Debenture Holders and Michael Brenner, *pro rata*, for the amount of \$2,164,131;
 - (b) second, Michael Brenner for the balance of his claim;
 - (c) third, VegHerb;
 - (d) fourth, the Group B Debenture Holders for the balance of their claim; and,
 - (e) fifth, the Group A Debenture Holders (proceeds to be shared *pro rata*).

Fees and Disbursements

47. The Court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, provided the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Bankruptcy and Insolvency Act, R.S.C. 1985 c.B-3 (the "BIA") s.243(6)

48. The Receiver submits that the fees and disbursements submitted for approval are fair and reasonable. All secured creditors who would be materially affected by the order will be given reasonable notice of the Application in accordance with the Rules of Court.

Part 4: MATERIAL TO BE RELIED ON

- 49. The Receivership Order granted on March 20, 2015;
- 50. The Receiver's First Report dated April 24, 2015;
- 51. The Receiver's Second Report dated May 15, 2015;
- 52. The Receiver's Third Report dated July 13, 2015; and,
- 53. Such other material as counsel may advise and this Honourable Court may permit.

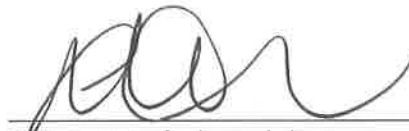
The Applicant estimates that the application will take 20 minutes.

- 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: July 13, 2015



Signature of Lisa Hiebert

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>Deloitte Restructuring Inc. 2800 – 1055 Dunsmuir Street Vancouver, BC V7X 1P4</p> <p>Attn: Huey Lee</p> <p><i>Receiver of Contech Enterprises Inc.</i></p>	<p>Borden Ladner Gervais LLP 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>Lawson Lundell LLP 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>Kornfeld LLP 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>Fasken Martineau DuMoulin LLP 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>Miller Thomson LLP #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>Shields Harney #602 - 732 Broughton Street Victoria, BC V8W 1E1</p> <p>Attn: Gregory Harney</p> <p><i>Counsel for Vegherb, LLC</i></p>	<p>Laurel Rayani 128 Eberts Street Victoria, BC V8S 3H7</p>
<p>Janet Gregory 1160 Baltimore Pike Gettysburg, Pennsylvania 17325</p>	<p>Julien Sellgren 1996 West 13th Avenue Vancouver, BC V6J 2H6</p>
<p>Janet Shannon 2090 Stonehewer Place Victoria, BC V8S 2Z7</p>	<p>Cary Gregory 1160 Baltimore Pike Gettysburg, Pennsylvania 17325</p>

<p>Burman and Burman Corp. c/o Its Registered Office 895 Strangecrest Place Victoria, BC V8Y 1J7</p>	<p>Michael Brenner 2741 Dallaire Avenue SW Calgary, AB T3E 7T1</p>
<p>Anders Treiberg 474 Smelt Bay Road, Box 248 Mansons Landing, BC VOP 1K0</p>	<p>Elisabeth Treiberg 474 Smelt Bay Road, Box 248 Mansons Landing, BC VOP 1K0</p>
<p>Minzar Holdings Ltd. c/o Its Registered Office 900 - 1175 Douglas Street Victoria, BC V8W 2E1</p>	<p>0872951 B.C. Ltd. c/o Its Registered Office #305 - 2692 Clearbrook Road Abbotsford, BC V2T 2Y8</p>
<p>Sadler Farms Ltd. c/o Its Registered Office 1800 - 401 West Georgia Street Vancouver, BC V6B 5A1</p>	<p>Paul Hooper 207 Mary Hill Road Victoria, BC V9C 3Z2</p>
<p>Marianne Hooper 207 Mary Hill Road Victoria, BC V9C 3Z2</p>	<p>BC Advantage Funds (VCC) Ltd. c/o Its Registered Office 2900 - 550 Burrard Street Vancouver, BC V6C 0A3</p>
<p>ECL Holdings Ltd. c/o Its Registered Office 7th Floor - 1175 Douglas Street Victoria, BC V8W 2E1</p>	<p>St. Patrick Holdings Ltd. c/o Its Registered Office 26 Bastion Square Third Floor - Burnes House Victoria, BC V8W 1H9</p>
<p>BWF Holdings Ltd. c/o Its Registered Office #305 - 2692 Clearbrook Road Abbotsford, BC V2T 2Y8</p>	<p>Denman Island Chocolate Ltd. c/o Its Registered Office 4321 Denman Road Denman Island, BC V0R 1T0</p>
<p>Siena Lending Group LLC 1177 Summer Street Stamford CT 06095</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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BETWEEN:

HSBC BANK CANADA

PLAINTIFF

AND:

CONTECH ENTERPRISES INC.
BUSINESS DEVELOPMENT BANK OF
CANADA and others

DEFENDANTS

NOTICE OF APPLICATION

MCV/LCH

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