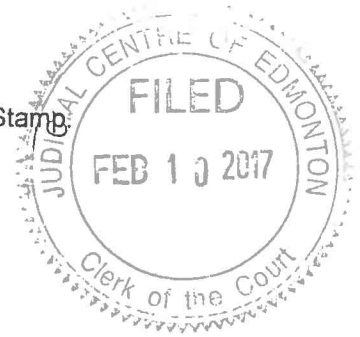


Clerk's Stamp:



COURT FILE NUMBER

1603 16074

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

THE TORONTO DOMINION BANK

DEFENDANTS

TARTAN CONTROLS INC., TARTAN COMPLETION  
SYSTEMS INC., TARTAN CONTROLS CORP. and  
MILES MCGILLIVRAY *also known as*  
*Miles McGillivray*

DOCUMENT

APPLICATION FOR ORDER APPROVING SALE  
AND VESTING ORDER (PERSONAL PROPERTY)  
AND TEMPORARY SEALING ORDER (TCC)

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

Brian W. Summers  
Dentons Canada LLP  
2900 Manulife Place  
10180 – 101 Street  
Edmonton, Alberta T5J 3V5  
Phone: 780.423.7312 Fax: 780.423.7276  
File No.: 174886-46/BWS

### NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	Tuesday, February 14, 2017
Time	2:00 pm
Where	Edmonton, Law Courts Building
Before Whom	The Honourable Mr. Justice R. P. Belzil

Go to the end of this document to see what you can do and when you must do it.

### Remedy claimed or sought:

- 1 (a) An Order abridging the time for service of notice of this Application to the time actually given and an Order deeming service upon the parties served as good and sufficient service;

- (b) an Order Approving Sale and Vesting Order, and approving the Receiver's dealing with the TCC Property, as set out in the Receiver's Second Report dated February 10, 2017 ("the Second Report"). The terms of the Order sought in this respect are set out in the form of Order which is attached as Schedule "A" hereto. Alternatively, the Receiver seeks such other terms that the Court may direct;
- (c) an Order declaring that Division 4 Part 6 of the *Rules of Court* does not apply to this Application, and that the Confidential Appendices to the Report be temporarily sealed until the proposed sale as outlined in the Second Report is closed in accordance with its terms, or until further Order of this Court. The terms of the Order sought in this respect are also set out in the form of Order attached as Schedule "A" hereto;
- (d) Alternatively, a direction that the Confidential Appendices do not have to be filed with the Clerk of Court unless or until the proposed sale is closed or until further orders of this Court;
- (e) Alternatively, a temporary Restricted Court Access Orders pursuant to Rule 6.28 of Alberta *Rules of Court* sealing the contents of the Confidential Appendices until the proposed sales are closed or until further order of this Court;
- (f) Such further or other relief as may be requested of the Court by the Receiver.

**Grounds for making this application:**

**Sale and Vesting Order**

- 2 On September 28, 2016, the Court of Queen's Bench of Alberta (the "Court") granted an order (the "**Order**") appointing PricewaterhouseCoopers Inc. ("PWC" or the "Receiver") as receiver and manager of Tartan Controls Inc. ("**TCI**") and Tartan Controls Corp. ("**TCC**") (collectively, the "**Companies**") of all of the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever and where ever situate pursuant to an application made by the Plaintiff, The Toronto Dominion Bank ("TD").
- 3 The Order authorized the Receiver to:
  - (a) Market any or all of the real and personal property of the Companies (and to solicit offers in respect of such property or any part or parts thereof), in accordance with Paragraph 3(k) thereof;
  - (b) Negotiate the terms and conditions of a sale of the property of the Companies in accordance with Paragraph 3(k) thereof;
  - (c) Sell, convey, transfer, lease or assign the property of the Companies or any part or parts thereof out of the ordinary course of business with the approval of this Honourable Court in accordance with Paragraph 3(l)(ii) thereof; and
  - (d) Apply for any Vesting Orders necessary to convey the property of the Companies or any part or parts thereof to a purchaser free and clear of any liens and encumbrances in accordance with Paragraph 3(m) thereof.

- 4 Pursuant to the Order, the Receiver undertook a formal marketing and sale process (with respect to the TCI Property) which included making contact with approximately 96 parties from across North America including four Auctioneers to request auction proposals, attending to site visits by interested parties and posting an information package on the Receiver's website for this insolvency proceeding.
- 5 Interested parties were provided with an information package and a form of offer and terms and conditions of sale. The Receiver allowed three weeks for marketing and due diligence, with the submission of offers to be received by December 7, 2016 (the "Bid Deadline").
- 6 By the Bid Deadline, two en bloc offers and two offers on individual lots were received and three auction proposals.
- 7 The offer from Eastar Premium Pipe Inc. ("**Eastar**") was the highest offer received. This offer included all assets of the Companies, including the assets of TCI in Canada ("**TCI Property**") and the assets of TCC in the United States ("**TCC Property**").
- 8 Eastar submitted a letter of intent ("LOI") on December 6, 2016 which was finalized on January 11, 2017.
- 9 Following the signing of the LOI, an Asset Purchase Agreement was entered into between the Receiver and Eastar with respect to the TCI Property effective January 31, 2017 ("**TCI APA**"). The Receiver and Eastar also negotiated a form of agreement for the purchase of the TCC Property ("**TCC APA**") and this was signed on February 10, 2017.
- 10 The Receiver has received a non-refundable deposit from Eastar.
- 11 The closing of the transaction under the TCC APA is contingent upon an Order being granted by this Court approving the sale and authorizing the Receiver to complete the transaction; and is also contingent upon an order or orders being granted by the United States Bankruptcy Court recognizing the original receivership order and the Order Approving Sale and Vesting Order which is the subject of this application.

#### **Sealing Order**

12. The Confidential Appendices contain confidential information of a commercial nature which, if disclosed to third parties prior to the closing of the sale set out herein, could materially jeopardize the sale, or if the sale does not close, could materially jeopardize the value that the Receiver is subsequently able to obtain from the sale of the TCC Property, and as such, it is appropriate that the Court dispense with filing the Confidential Appendices with the Clerk of the Court until the transaction under the TCC APA has closed, or to grant an interim sealing order in relation thereto.

#### **Material or evidence to be relied on:**

13. (a) The First Report and Second Report, filed;
- (b) Confidential Appendices, unfiled;
- (c) Such further and other material as legal counsel for the Receiver may advise and this Honourable Court may permit.

**Applicable rules:**

14. (a) Rule 6.3;  
(b) Rule 6.28;  
(c) Rule 13.5(2); and  
(d) Such further and other authority as counsel may advise and this Honourable Court may permit

**Applicable acts and regulations:**

15. N/A

**Any irregularity complained of or objection relied on:**

16. N/A

**How the application is proposed to be heard or considered:**

17. in person in open Chambers.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to reply on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's Stamp:

COURT FILE NUMBER	1603 16074
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	THE TORONTO DOMINION BANK
DEFENDANTS	TARTAN CONTROLS INC., TARTAN COMPLETION SYSTEMS INC., TARTAN CONTROLS CORP. and MILES MCGILLIVRAY
DOCUMENT	SALE APPROVAL AND VESTING ORDER (PERSONAL PROPERTY) AND TEMPORARY SEALING ORDER (TCC)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Brian W. Summers Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Phone: 780.423.7312 Fax: 780.423.7276 File No.: 174886-46/BWS
DATE ON WHICH ORDER WAS PRONOUNCED:	Tuesday, February 14, 2017
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Mr. Justice R. P. Belzil
LOCATION:	EDMONTON

UPON the application of PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver (the "**Receiver**") of Tartan Controls Corp. ("**TCC**") and all of TCC's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**TCC Property**") under the Receivership Order granted by the Honourable Justice S.D. Hillier dated September 28, 2016 (the "**Receivership Order**"), for an Order (i) approving the sale transaction (the "**TCC Transaction**") contemplated by the Asset Purchase Agreement effective February 9, 2017 (the "**TCC Sale Agreement**") between the Receiver as receiver of TCC, and not in its personal or corporate capacity, and Eastar Premium Pipe Inc. (the "**Purchaser**"); (ii) vesting in the Purchaser all of the right, title and interest of TCC in and to the assets described therein ("**Purchased Assets**") free and clear of all Claims (as defined below) and (iii) granting related relief; AND UPON reviewing the First Report of the Receiver dated February 6, 2017 (the "**First Report**") and the Second Report of the Receiver dated February 10, 2017 (the "**Second Report**"), AND UPON hearing from counsel for the Receiver and counsel for other

interested persons; AND UPON it appearing that the sale of the Purchased Assets under the TCC Sale Agreement is in the best interests of the creditors of TCC; AND UPON noting that an order restricting access to the unfiled Confidential Appendices being the TCC Sale Agreement and the Receiver's Estimated Realization Analysis with respect to TCC Property (which are collectively called "Confidential Appendices") is appropriate in these circumstances; AND UPON noting that the benefits of an order restricting access to these aforementioned documents before closing of the sale outweigh the deleterious effects on the right to free expression;

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED THAT:

#### SERVICE

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient upon all interested persons and no other person is required to have been served with notice of this application, and time for service is abridged to that actually given.

#### APPROVAL OF THE ACTIVITIES OF THE RECEIVER

2. The manner in which the Receiver has dealt with the TCC Property as set out in the Second Report is hereby approved.
3. The actions, conduct and activities of the Receiver in respect of the TCC Property as outlined in the Second Report.

#### DEFINED TERMS

4. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the TCC Sale Agreement.

#### APPROVAL OF TRANSACTION

5. The TCC Transaction is hereby approved, and the execution of the TCC Sale Agreement by the Receiver is hereby authorized, approved and ratified, and it is hereby declared that the TCC Sale Agreement and any other agreements delivered in connection with the TCC Sale Agreement are validly executed and commercially reasonable.
6. The Receiver is hereby authorized and directed to conclude the TCC Transaction on the terms as set out in the TCC Sale Agreement and to take all such steps and execute all such documents as may reasonably be necessary to complete the transactions contemplated therein substantially in accordance with its terms, subject to such amendments as the parties thereto may approve which do not materially and adversely alter the TCC Transaction.

#### VESTING OF PURCHASED ASSETS

7. Upon delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the right, title and interest of TCC in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, without further instrument of transfer or assignment, vest in the Purchaser, absolutely and forever, free and clear of and from any and all claims, estate,

right, title, interest, and liens by, through or under any of TCC, including but not limited to, claims, hypothecs, interests, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory, registered or otherwise), options, agreements, disputes, debts, debentures, easements, covenants, caveats, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of TCC whether or not they have attached or been perfected, registered or filed, whether secured, unsecured, registered or otherwise, whether by payment, set or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as the "**Claims**"), and whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "**Claimants**"), including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with notice of this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceedings, including, without limiting the generality of the foregoing:

- (a) Any encumbrances or charges created by the Receivership Order including, without limitation, the Receiver's Charge (as defined in the Receivership Order) and Receiver's Borrowings Charge (as defined in the receivership Order); and
- (b) All charges, security interests or Claims evidenced by registration, filing or publication pursuant to the Personal Property Security Act, RSA 2000, c P-7 (the "**PPSA**") or any other personal registry system,

for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Purchased Assets and all charges, security interests and claims evidenced by registrations pursuant to the PPSA are expunged, vacated, and otherwise unconditionally ordered removed, discharged and terminated as against the Purchased Assets, in each case effective as of the applicable date and time of the Receiver's Certificate.

- 8. For greater certainty, the Purchased Assets described in the TCC Sale Agreement and listed on Schedule "B" hereto shall exclude the Excluded Assets as defined in the TCC Sale Agreement.
- 9. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.
- 10. No further authorization or approval or any other action by any authority or regulatory body in Canada exercising jurisdiction over the Purchased Assets shall be required for the closing and post-closing implementation of the TCC Transaction contemplated in the Sale Agreement.



### **RECOGNITION ORDER FROM THE UNITED STATES OF AMERICA**

11. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order. More specifically, and not to limit the generality of the foregoing, this Court respectfully requests an order allowing and authorizing the Receiver to take all steps necessary to complete the TCC Transaction and thereupon to vest all right, title and interest of TCC in the Purchased Assets in the Purchaser, free and clear of any interest whatsoever.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by any person claiming by or through or against TCC or the Receiver.
13. TCC and all persons or entities who claim by, through or under TCC in respect of the Purchased Assets shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all estate, right, title, interest, royalty, rental, equity of redemption, or Claim in respect of or to the Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of the Purchased Assets, or any artifacts or any certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.

### **CANCELLATION OF SECURITY REGISTRATION**

14. Upon delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, the appropriate Governmental Authorities (as defined below) are hereby directed to register such transfers, assignments, interest authorizations, discharges, discharge statements of conveyances, as may be required to convey clear title to the Purchased Assets to the Purchaser.
15. In order to affect the discharges and transfers described above this Court requests that the Governmental Authorities each take such steps as are necessary to give effect to the terms of this Order and the TCC Sale Agreement authorized herein. Presentment of this Order and a copy of the Receiver's Certificate shall be the sole and sufficient authority of the Governmental Authorities to make and register the said transfers and cancel and discharge the registrations of Claims and any encumbrances on the Purchased Assets.

### **NET PROCEEDS**

16. From and after the delivery of the Receiver's Certificate, any and all Claims of any Claimants in any or all of the Purchased Assets shall vest in the place and in the stead thereof in and to the net sale proceeds of the sale of the Purchased Assets, in the same priorities as existed prior to the granting of this Order, after payment in full of all reasonable costs, charges and expenses, including without limitation, all professional fees and disbursements incurred by the Receiver on a solicitor and his own client full indemnity basis, in connection with the



Receivership Order or the TCC Transaction, and subject to the priority of the Court ordered charges provided in the Receivership Order.

17. From and after the delivery of the Receiver's Certificate, the Purchaser shall have no liability of any kind whatsoever to any Claimants in respect of any Claims they may have against the TCC or the Purchased Assets.
18. The TCC Transaction shall not be void or voidable at the instance of Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") or any other applicable federal or provincial legislation, and the TCC Transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
19. Nothing in this Order shall prejudice any person's *in personam* claim against TCC.
20. The Receiver is hereby authorized and directed to:
  - (a) perform the covenants in the TCC Sale Agreement substantially in accordance with their terms and conditions, subject to such amendments as the Receiver and the Purchaser may approve which do not materially and adversely alter the Transaction, including without limitation, reasonable extensions of the closing date; and
  - (b) execute all deeds and documents, and to take all such steps as may be necessary or advisable in the sole discretion of the Receiver to consummate the TCC Transaction.

#### **SEALING ORDER**

21. The Confidential Appendices in the Report (being Appendices A and C) shall immediately be sealed by the Clerk of the Court, kept confidential and not form part of the public record, and not be available for public inspection unless and until filing of the Receiver's Certificate evidencing the closing the Transaction pursuant to this Order, or otherwise ordered by this Court, upon seven days' notice to all interested parties.
22. The Clerk of the Court is hereby directed to place the sealed Confidential Appendices separate and apart from all other contents of the Court file in a sealed envelope attached to a notice that sets out the title to these proceedings, the aforementioned description of the documents contained therein and a statement that the contents of the envelope are sealed pursuant to this Order.

#### **MISCELLANEOUS MATTERS**

23. Service of this Order may be effected upon those persons (directly or through legal counsel) who were served with a copy of the Application for this Order by facsimile or electronic mail, and such service shall constitute good and sufficient service. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
24. Service on any other person is hereby dispensed with.

25. The Receiver is at liberty to reapply for further advise, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

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J.C.C.Q.B.A.

**Schedule "A"**

TO THE SALE APPROVAL AND VESTING ORDER (PERSONAL PROPERTY) GRANTED BY THE  
HONOURABLE JUSTICE R. P. BELZIL DATED FEBRUARY 14, 2017

**RECEIVER'S CERTIFICATE**

COURT FILE NUMBER	1603 16074
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANT	PRICEWATERHOUSECOOPERS INC. in its capacity as Receiver of TARTAN CONTROLS INC. and TARTAN CONTROLS CORP.
DOCUMENT	RECEIVER'S CERTIFICATE (TCC)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Brian W. Summers Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Phone: 780.423.7312 Fax: 780.423.7276 File No.: 174886-46/BWS

**RECITALS**

A. Pursuant to an Order of the Honourable Justice S.D. Hillier of the Court of Queen's Bench of Alberta, Judicial District of Edmonton (the "**Court**") dated September 28, 2016, PricewaterhouseCoopers Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Tartan Controls Inc. ("**TCI**") and Tartan Controls Corp. ("**TCC**"), (collectively the "**Company**").

B. Pursuant to an Order of the Court dated February 14, 2017, the Court approved the Asset Purchase Agreement of purchase and sale made as of February 9, 2017 (the "**TCC APA**") between the Receiver and Eastar Premium Pipe Inc. ("**Eastar**") or its nominee purchaser (the "**Purchaser**"), and provided for the vesting in the Purchaser of TCC's right, title and interest in and to the assets of TCC described in the APA (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 9 of the APA have been satisfied or waived by the Receiver and the Purchaser; and (iii) the TCC Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the TCC APA;
2. The conditions to Closing as set out in section 9 of the APA have been satisfied or waived by the Receiver and the Purchaser (or its nominee);
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ on \_\_\_\_\_, 2017.

**PRICEWATERHOUSECOOPERS INC.**, in its capacity as  
Receiver of the undertaking, property and assets of  
Tartan Controls Inc. and Tartan Controls Corp. and  
not in its personal capacity.

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**Schedule "B"**

TO THE SALE APPROVAL AND VESTING ORDER (PERSONAL PROPERTY) GRANTED BY THE  
HONOURABLE JUSTICE R.P. BELZIL DATED FEBRUARY 14, 2017

**PURCHASED ASSETS**