

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF

**TITAN INVESTMENTS LIMITED PARTNERSHIP, TITAN GENPAR INC., AND  
EVOLUTION CAPITAL MANAGEMENT LTD., AND THE ESTATE OF DAVID  
COMTE, DECEASED, AND THE COMTE FAMILY TRUST AND PREDATOR  
HOLDINGS LTD.**

**IN THE MATTER OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2,  
AND RULES 467 AND 468 OF THE ALBERTA RULES OF COURT**

---

**BRIEF AND AUTHORITIES OF TIM AND JO-ANNE OKE, OMNI  
PROFESSIONAL SERVICES CORP., TW CLEANING SERVICES,  
ETENRIT INSTITUTE INC. AND SONIA EBANKS**

Chambers Application

Scheduled for Wednesday, the 11th day of May, 2005 at 9:00 a.m.  
before The Honourable Mr. Justice LoVecchio

---

McLeod & Company<sub>LLP</sub>  
3rd Floor, 14505 Bannister Rd SE  
Calgary, Alberta T2X 3J3  
Shane B. King  
Counsel for the named Respondents  
Telephone: 254-3849  
Fax: 271-1769

TABLE OF CONTENTS

I. INTRODUCTION ..... Page 1

II. ISSUES ..... Page 1

III. FACTS AND ARGUMENT ..... Page 2

    A. The Respondents Committee's legal costs should form  
    a charge against the Assets; ..... Page 2

    B. The May 11, 2005 hearing date should be adjourned; and ..... Page 3

    C. There should be a case management meeting on May 11, 2005. .... Page 3

IV. CONCLUSION ..... Page 6

## I INTRODUCTION

1. This Brief is filed by the named Respondents, in support of the application of those investors in the Titan Investments Limited Partnership ("Titan Partnership") that have recovered more than their original investment in the Titan Partnership (the "Paid Investors"). The Paid Investors are seeking an Order:

(a) Creating a Respondents Committee of Paid Investors, and appointing its members;

(b) Directing that any legal fees, disbursements and other charges which may be incurred by the proposed Respondents Committee shall form a charge against the assets, to be paid out of the gross proceeds from the assets collected by Alger & Associates Inc. (The "Receiver") from time to time, subject to taxation, in priority to any charge held by or any other interest of any person in any of the assets, such charge to rank *pari passu* with the charge against the assets in favour of the Investors Committee, but subject to the first charge of the Receiver for its expenses, proper fees and disbursements;

(c) Adjourning *sine die* the hearing of the application brought by the Investors Committee and the Receiver scheduled to be heard on May 11, 2005; and

(d) Directing that a case management meeting occur on May 11, 2005 commencing at 10:00 am, for the further delineation of issues and scheduling the necessary steps to bring those issue before the Court in an efficient and organised manner.

## II ISSUES

2. Should the legal fees, disbursements and other charges of the proposed Respondents Committee form a charge against the assets, to be paid out of the gross proceeds from the assets collected by the Receiver?

3. Should the May 11, 2005 hearing date be adjourned?

4. Should there be a case management meeting on May 11, 2005?

### III FACTS AND ARGUMENT

#### A The Respondents Committee's legal costs should form a charge against the Assets

5. In its Brief at paragraph 6, counsel for the Investors Committee argues that "the funds collected by the Receiver at this time are 'the property of the Unpaid Partners'". The Receiver in fact seeks all Paid Partners to return all of their money to the Receiver, who will then return to them their proportion of the original investment, with the currently Unpaid Partners also receiving their payouts based on the payout schedule as determined by the Receiver. All Partners are to share in the collected funds. As such, to state that the funds are "the property of Unpaid Partners" is untrue.

Brief of the Investors Committee, paragraph 6

6. Further at paragraph 6 of its Brief, counsel for the Investors Committee states that the "Overpaid Investors are not entitled to those funds". This, again, is untrue, as the funds in question are the rightful property of all of the partners in the Titan Partnership. In paragraph 7 of its Brief, counsel for the Investors Committee further states that:

The purpose of this joint application is to allow the Receiver to re-distribute these funds to all investors in the Titan Partnership in a fair and equitable manner" [emphasis mine].

Brief of the Investors Committee, paragraphs 6 and 7

7. By its own argument, counsel for the Investors Committee is stating that these funds in question belong to all of the Investors in the Titan Partnership, which flies in the face of its preceding paragraph, that "the funds collected by the Receiver at this time are 'the property of the Unpaid Partners'".

8. It is not fair and equitable that the fees of the Unpaid Investors be borne by all investors, including the Paid Investors, which is the argument at paragraph 8 of the Brief by counsel for the Investors Committee. This will result in an inequity whereby all Investors pay for the recovery of monies to be received by and to benefit solely the Unpaid Investors.

Brief of the Investors Committee, paragraph 8

9. Counsel for the Investors Committee argues that the legal fees for a group of creditors will be paid out of the estate of a bankrupt when the applicant establishes that the legal work to be done by the applicant is work that will either benefit the estate, or is necessary for the management and preservation of the assets of that estate. It is important to note that no determination has been made that the Investors Committee are Creditors by the meaning of the *Fraudulent Preferences Act*, and in fact it is argued, *infra*, that the Investors Committee are not Creditors, by the meaning of the *Fraudulent Preferences Act*.

Brief of the Investors Committee, paragraphs 6 and 7

*Fraudulent Preferences Act*

10. It is the submission of these named Respondents that the work of counsel for the Investors Committee does not benefit the estate, but solely benefits the Investors Committee. If counsel for the Investors Committee truly seeks to do that which is fair and equitable, then it is submitted that both the Investors Committee and the proposed Respondents Committee ought to be treated equally and equitably by being on equal footing pursuant to having their legal fees paid out of the estate.

**B The May 11, 2005 hearing date should be adjourned, and**

**C There should be a case management meeting on May 11, 2005**

11. There has been no evidence led as to the requirement or necessity for the Motion of the Receiver and the Investors Committee to be heard on an urgent basis. There has been no evidence led that the Paid Investors have, are or will dispose of their assets so as to require an immediate hearing of this matter.

12. The purpose of the Respondents Committee was to avoid the duplicity of work on behalf of the over 80 individual Respondents. By moving forward at this time, we are jeopardizing this attempt at saving time and money, and are actually forcing the duplicity of work. This, in turn, will decrease the total pool of funds available in the ultimate distribution of the Assets of the Titan Partnership.

13. The aforementioned named Respondents have given instructions based on the successful application for the formation of a Respondents Committee. If this does not go ahead, their instructions may change. As such, this Action should be adjourned in order that all Respondents may clarify instructions with their counsel.

14. In his letter dated, April 18, 2005, counsel for the Receiver outlines a possibility of future actions, if the original Motion brought by the Investors Committee is unsuccessful.

Affidavit of Tim Oke, paragraph 10 and Exhibit "A" thereto

15. The goal of all parties is to ensure that there is the greatest pool of funds available to all Investors in the settlement of the Assets of the Titan Partnership. One reason for the application for an adjournment is to save Court time and legal fees. It is a more beneficial use of Court time and resources that all possible actions and all possible defences are put forth in one hearing. This will further limit the ultimate amount of legal work to be done, which will in turn satisfy the ultimate desire, goal and need all Investors of increasing the amount of Assets available to be distributed to the Unpaid Partners, and, if determined, limit the ultimate obligation of the Paid Partners.

16. Certain investors have made or received withdrawals or payments from the Titan Partnership from time to time during the period of their involvement with Titan, some going as far back as 2002 or earlier. In order to be a fraudulent preference, pursuant to the *Fraudulent Preferences Act*, R.S.A. 2000 c. F-24 (the "*Fraudulent Preferences Act*"), the payment must have been made:

by a person at a time when the person is in insolvent circumstances or is unable to pay the

person's debts in full or knows that the person is on the eve of insolvency.

*Fraudulent Preferences Act, Section \*\*, Tab \**

17. The definition of insolvent person, which is set out in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*Bankruptcy and Insolvency Act*"), and applies to this situation pursuant to Section 12 of the *Fraudulent Preferences Act*, is as follows:

"Insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations in the ordinary course of business as they generally come due;
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

*Bankruptcy and Insolvency Act, Section 2, Tab \**

*Fraudulent Preferences Act, Section 12, Tab \*\**

18. The definition of a creditor is also set out in the *Bankruptcy Act*, as follows:

"Creditor" means a person having a claim, unsecured, preferred by virtue of priority under section 136 or secured, provable as a claim under this Act.

*Bankruptcy and Insolvency Act, Section 2, Tab \**

19. Some withdrawals or payments have been made at different intervals of time. As such, for these withdrawals or payments to be a fraudulent preference, the timing of same and the determination of the insolvent circumstances of the Titan Partnership at that particular time must be ascertained. To do so would require a full accounting of the Assets of the Titan Partnership at the time of the withdrawals or payments. As such it is respectfully submitted that an adjournment is necessary to allow this to take place.

20. Also in order to be a fraudulent preference, it is respectfully submitted that the preference must be within one year of the ultimate bankruptcy. As many of the withdrawals or payments were made in 2002 or earlier, it is submitted by these Respondents that there must be a full accounting of all withdrawals and payments to ensure that it falls within the requisite timeline. In order to do this, an adjournment must be granted.

21. It is further submitted that grounds for an adjournment are the CRA decisions. As these appear to have been made, the circumstances of all parties, including the Estate, Janet Comte and the Titan Partnership, as well as all Investors, has or may have changed. This, in turn, should change the Re-distribution Schedule, which could further amend the circumstances of individual Investors' instructions to counsel. As such, it is submitted that the Action of the Receiver and the Investors Committee should be adjourned until the updated Re-distribution Schedule is determined and individual Investors can give updated instructions to their counsel.

22. To make an Order for case management would clearly delineate the issues in this case, as well as set out proper timelines for the movement of this matter, including the investigations into the periodic payments or withdrawals, and allow all counsel to seek full and clear instructions from their respective clients, or to allow the Respondents Committee, if formed, the ability to put forth a consolidated argument on behalf of all Paid Investors.

#### **IV CONCLUSION**

23. These named Respondents respectfully submit that:

(a) The application for an Order directing that the legal fees, disbursements and other charges of the proposed Respondents Committee form a charge against the Assets and be paid out of the gross proceeds from the Assets collected by the Receiver;

(b) The application of the Receiver and the Investors Committee should be adjourned;

(c) The application for case management should be granted;

(d) Costs of this application should be awarded to the named Respondents.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of May, 2005.

McLEOD & COMPANY LLP

Per: 

Shane B. King

Counsel for the named Respondents

**TABLE OF AUTHORITIES  
OF TIM AND JO-ANNE OKE,  
OMNI PROFESSIONAL SERVICES CORP.,  
TW CLEANING SERVICES,  
ETENRIT INSTITUTE INC. AND SONIA EBANKS**

<u>TAB</u>	<u>DESCRIPTION</u>
1.	Brief of the Investors Committee, paragraphs 6, 7 and 8
2.	<i>Fraudulent Preferences Act</i> , R.S.A. 2000, c. F-24
3.	Affidavit of Tim Oke, paragraph 10 and Exhibit "A" thereto
4.	<i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c.B-3

## II. ISSUES

3. Should the legal fees, disbursements and other charges of the proposed Respondents Committee form a charge against the assets, to be paid out of the gross proceeds from the assets collected by the Receiver?
4. Should the May 11, 2005 hearing date be adjourned?
5. Should there be a case management meeting on May 11, 2005?

## III. FACTS AND ARGUMENT

### A. The Respondents Committee's legal costs should not form a charge on the Assets

6. The Receiver's Second Report states at 8.4.2 on page 26 that the funds collected by the Receiver at this time are "the property of the Unpaid Partners", meaning the property of those investors in the Titan Partnership that have not received payment of their principal investments with the Titan Partnership, or of "profits" on that principal investment. Those funds are the gross proceeds of the assets of Titan Partnership, Titan Genpar Inc, Evolution Capital Management Ltd, The Estate Of David Comte, Deceased, The Comte Family Trust and Predator Holdings Ltd. that have been collected by the Receiver (collectively, the "Assets"). The funds rightfully belong to the Unpaid Investors. The Overpaid Investors are not entitled to those funds, as they have already been paid the full amount of their principal investments, plus additional false profits.

Affidavit of Croft Axsen, sworn May 6, 2005.

7. The application to be made by the Receiver and the Investors Committee on May 11, 2005 is for an Order directing the Overpaid Investors to pay to the Receiver the amounts payable by them pursuant to the revised Re-Distribution Schedule attached as Exhibit "H" to the Receiver's Second Report, failing which the Receiver and/or the Investors Committee shall be entitled to judgment against those Overpaid Investors for the amounts unpaid by them under the revised Re-Distribution Schedule. The purpose of this joint application is to allow the Receiver to re-distribute these funds to all investors in the Titan Partnership in a fair and equitable manner that redresses the effects of the fraud upon the investors in Titan Partnership.

Notice of Motion of the Receiver and Investors Committee, filed March 18, 2005.

8. By directing that the legal fees, disbursements and other charges incurred by the Investors Committee form a charge against the Assets, and that they be paid out of the gross proceeds of the Assets in priority to any other charge or interest in any of the Assets, subject to the first charge of the Receiver for its expenses, fees and disbursements as approved by the Investors Committee, this Honourable Court has ensured that the legal costs of the Investors Committee are borne by all of the investors (and at this stage, where the Assets collected are rightfully the property of the Unpaid Investors, by all of the Unpaid Investors), rather than by the small group of investors appointed as members of the Investors Committee, in bringing the application for an Order permitting a fair and equitable re-distribution of funds to all investors in the Titan Partnership. This is fair and equitable to all of the investors.

Affidavit of Croft Axsen, sworn January 17, 2005, para. 9.

9. An Order directing that the legal fees, disbursements and other charges of the proposed Respondents Committee form a charge upon the Assets would permit the proposed Respondents Committee of Overpaid Investors to use the funds rightfully belonging to the Unpaid Investors to oppose the fair and equitable re-distribution of funds to all investors in the Titan Partnership, and would simply encourage the Overpaid Investors to prolong matters even further than they already have to use up all of the Assets by incurring professional fees, resulting in a professional feeding-frenzy funded solely by those who have suffered a significant financial loss already, the Unpaid Investors.

Affidavit of Croft Axsen, sworn May 6, 2005, para. 14.

10. Canadian Courts have held that a Court will only grant an Order that the legal fees of a group of creditors be paid out of the estate of a bankrupt when the applicant establishes that the legal work to be done by the applicant is work that will either benefit the estate, or is necessary for the management and preservation of the assets of that estate. In *Eron Mortgage Corp. (Trustee of) v. Eron Mortgage*, [1998] B.C.J. No. 282 (B.C.S.C.) (QL) at para. 36, the Court held:



Province of Alberta

## **FRAUDULENT PREFERENCES ACT**

Revised Statutes of Alberta 2000  
Chapter F-24

Effective January 1, 2002

© Published by Alberta Queen's Printer

Queen's Printer Bookstore  
Main Floor, Park Plaza  
10611 - 98 Avenue  
Edmonton, AB T5K 2P7  
(780) 427-4952  
Fax (780) 452-0668

E-mail: [qp@gov.ab.ca](mailto:qp@gov.ab.ca)  
Shop on-line at <http://www.gov.ab.ca/qp>

# FRAUDULENT PREFERENCES ACT

## Chapter F-24

### *Table of Contents*

- 1 Fraudulent transfers
- 2 Intent to prefer
- 3 Preferential effect
- 4 What constitutes transaction
- 5 Definition
- 6 Bona fide transactions
- 7 Payment to creditor
- 8 Restoration of security to creditor
- 9 Saving of payment to creditor
- 10 Proceedings by creditor
- 11 Proceeds of unlawfully transferred property
- 12 Bankruptcy and Insolvency Act

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Fraudulent transfers**

1 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) with intent to defeat, hinder, delay or prejudice the person's creditors or any one or more of them,

is void as against any creditor or creditors injured, delayed or prejudiced.

RSA 1980 cF-18 s1

#### Intent to prefer

2 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) to or for a creditor with intent to give that creditor preference over the other creditors of the debtor or over any one or more of them,

is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s2

#### Preferential effect

3 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) to or for a creditor and having the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them,

is, in and with respect to any action that within one year after the transaction is brought to impeach or set aside the transaction, void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s3

#### What constitutes transaction

4(1) A transaction is deemed to be one that has the effect of giving a creditor a preference over other creditors, within the meaning of

section 3, if by the transaction a creditor is given or realizes or is placed in a position to realize payment, satisfaction or security for the debtor's indebtedness to that creditor or a portion of it greater proportionately than could be realized by or for the unsecured creditors generally of the debtor or for the unsecured portion of that creditor's liabilities out of the assets of the debtor left available and subject to judgment, writ proceedings, attachment or other process.

(2) Independently of the intent with which the transaction was entered into or of whether it was entered into voluntarily or under pressure, the preferential effect or result of the impeached transaction governs, and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, avails to protect the transaction except as provided by sections 6 and 9.

RSA 1980 cF-18 s4;1994 cC-10.5 s126

#### Definition

5 In sections 2 to 4, "creditor" includes

- (a) a surety, and the endorser of a promissory note or bill of exchange, who would, on payment by the surety or endorser of the debt, promissory note or bill of exchange in respect of which the suretyship was entered into or endorsement was given, become a creditor of the person giving the preference within the meaning of sections 2 to 4, and
- (b) a cestui que trust or other person to whom liability is equitable only.

RSA 1980 cF-18 s5

#### Bona fide transactions

6 Nothing in sections 1 to 5 applies to

- (a) a bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties, or
- (b) a payment of money to a creditor, or a bona fide conveyance, assignment, transfer or delivery over of any goods, securities or property, of any kind as above mentioned, that is made in consideration of a present actual bona fide sale or delivery of goods or other property or of a present actual bona fide payment in money, or by way of security for a present actual bona fide advance of money,

if the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration for it.  
RSA 1980 cF-18 s6

**Payment to creditor**

7 When there is a valid sale of goods, securities or property and the consideration or part of it is paid or transferred by the purchaser to the creditor of the vendor under circumstances that would render the payment or transfer void if it were made by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, is void as respects the creditor to whom it is made.

RSA 1980 cF-18 s7

**Restoration of security to creditor**

8 When a payment that is void under this Act has been made and a valuable security has been given up in consideration of the payment, the creditor is entitled to have the security restored or its value made good to the creditor before or as a condition of the return of the payment.

RSA 1980 cF-18 s8

**Saving of payment to creditor****9 Nothing in this Act**

- (a) affects a payment of money to a creditor when the creditor by reason or on account of the payment has lost or been deprived of or has in good faith given up a valid security that the creditor held for the payment of the debt so paid, unless the value of the security is restored to the creditor,
- (b) affects the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not lessened in value to the other creditors because of the substitution, or
- (c) invalidates a security given to a creditor for the pre-existing debt when, by reason or on account of the giving of the security, an advance is made in money to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue the debtor's trade or business and pay the debtor's debts in full.

RSA 1980 cF-18 s9

**Proceedings by creditor**

10(1) One or more creditors may, for the benefit of creditors generally or for the benefit of those creditors who have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of, or to have declared void, agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or in non-compliance with this Act or by this Act declared void.

(2) If, in an action under subsection (1), an amendment is made to the statement of claim, the amendment relates back to the commencement of the action for the purpose of the time limited by section 3.

RSA 1980 cF-18 s10

**Proceeds of unlawfully transferred property**

11(1) If a gift, conveyance, assignment or transfer of any property, real or personal, that in law is invalid against creditors, was made to a person, and that person has sold or disposed of, realized or collected the property or a part of it, the money or other proceeds or that amount, whether further disposed of or not, may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, assignment, transfer, delivery or payment was made.

(2) The right of seizure and recovery exists in favour of all creditors of the debtor.

(3) When the proceeds are of such a character as to be seizable under writ proceedings, they may be seized under the writ of any creditor and shall be distributed among creditors under the *Civil Enforcement Act*.

(4) Whether the proceeds are or are not of such a character as to be seizable under writ proceedings, an action may be brought for them or to recover the amount of them by a creditor, whether a judgment creditor or not, on behalf of that creditor and all other creditors, or any other proceedings may be taken that are necessary to render the proceeds or the amount of them available for the general benefit of the creditors.

(5) This section does not apply as against innocent purchasers of any of the property.

RSA 1980 cF-18 s11;1994 cC-10.5 s126

**Bankruptcy and Insolvency Act**

12 . This Act shall be read and construed subject to the *Bankruptcy and Insolvency Act* (Canada).

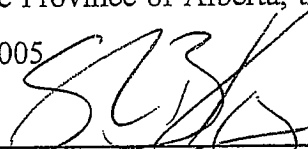
RSA 1980 cF-18 s12;1994 c23 s51

unfiled. This led to a delay in the making of this application, and as such, the application set for May 11, 2005 should be adjourned.

10. I have further been advised by my Solicitor, Shane B. King, and do verily believe, that the solicitor for the Receiver has outlined further and other remedies against the Respondents, which are not set out in the Notice of Motion currently scheduled to be heard on May 11, 2005. Attached hereto as Schedule "A" is a true copy of a letter dated April 18, 2005 from Fleming<sub>LLP</sub>, counsel for the Receiver, outlining same. As such, the Notice of Motion currently scheduled for May 11, 2005 should be adjourned until these remedies are stated and ascertained.

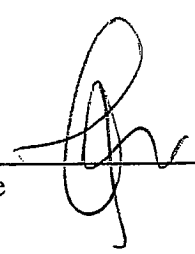
11. I make this Affidavit in support of the Order of Fraser: (a) appointing and creating the Respondents' Committee; (b) adjourning the hearing presently scheduled for May 11, 2005; and (c) such further and other relief as this Honourable Court may deem just.

SWORN BEFORE ME, at the City of  
Calgary, in the Province of Alberta, this 6th  
day of May, 2005

  
\_\_\_\_\_  
A Commissioner for Oaths in and for the

Province of Alberta.

**SHANE B. KING**  
**BARRISTER & SOLICITOR**

  
\_\_\_\_\_  
Tim Oke

# FLEMING LLP

Barristers and Solicitors

# FAXED

THIS IS EXHIBIT "A"  
referred to in the Affidavit of  
TIM OVE  
sworn before me this 6<sup>th</sup>  
day of MAY 2005

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

Clive O. Llewellyn  
Barrister and Solicitor

direct line  
e-mail

403.266-7629  
[cllewellyn@flemingllp.com](mailto:cllewellyn@flemingllp.com)

Our File: 31869

April 18, 2005

Fraser Milner Casgrain LLP  
Barristers and Solicitors  
30<sup>th</sup> Floor, Fifth Avenue Place  
237 - 4<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 4X7  
Attention: David LeGeyt  
Via Fax: 268-3100

SHANE B. KING  
BARRISTER & SOLICITOR  
Benett Jones LLP  
4500 Bankers Hall East  
855 - 2<sup>nd</sup> Street S.W.  
Calgary, Alberta  
T2P 4K7

Attention: Frank Dearlove  
Via Fax: 265-7219

Dear Sirs:

Re: Titan Limited Partnership matters

This letter follows from the Notice of Motion originally returnable March 30, 2005 filed jointly by the Receiver and the Investor's Committee, and the request by Mr. David LeGeyt to Mr. Dearlove regarding the legal issue that is to be addressed at the hearing now set for May 11, 2005.

With respect to items (a) to (h) in the Notice of Motion, the Receiver wishes to obtain an Order:

- (a) Adjudging and declaring that the creation, operation, and all activities undertaken in relation to the Titan Investments Limited Partnership ("Titan Partnership") constituted a fraud on the investors;
- (b) Adjudging and declaring that the accounting prepared by David Comte for the Titan Partnership, from time to time, was fictional and inaccurate, and a fraud on the Titan Partnership and the Limited Partners as Investors;

# Bankruptcy and Insolvency Act

## R.S.C. 1985, c. B-3

### An Act respecting bankruptcy and insolvency

#### SHORT TITLE

##### *Short title*

1. This Act may be cited as the Bankruptcy and Insolvency Act.

R.S.C. 1985, c. B-3, s. 1; S.C. 1992, c. 27, s. 2.

#### INTERPRETATION

##### *Definitions*

2. In this Act,

##### *"affidavit"*

"affidavit" includes statutory declaration and solemn affirmation;

##### *"application"*

"application", with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion;

##### *"assignment"*

"assignment" means an assignment filed with the official receiver;

##### *"bank"*

"bank" means

- (a) every bank and every authorized foreign bank within the meaning of section 2 of the Bank Act,
- (b) every other member of the Canadian Payments Association established by the Canadian Payments Act, and
- (c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association;

##### *"bankrupt"*

"bankrupt" means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

##### *"bankruptcy"*

"bankruptcy" means the state of being bankrupt or the fact of becoming bankrupt;

"child" REPEALED: S.C. 2000, c. 12, s. 8(1), effective July 31, 2000 (SI/2000-76).

"claim provable in bankruptcy",  
"provable claim" or "claim provable"

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;

"common-law partner"

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"common-law partnership"

"common-law partnership" means the relationship between two persons who are common-law partners of each other;

"corporation"

"corporation" includes any company or legal person incorporated by or under an Act of Parliament or of any province, and any incorporated company, wherever incorporated, that is authorized to carry on business in Canada or that has an office or property in Canada, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, insurance companies, trust companies, loan companies or railway companies;

"court"

"court", except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3 and subject to subsection 243(1), means the court having jurisdiction in bankruptcy or a judge thereof, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

"creditor"

"creditor" means a person having a claim, unsecured, preferred by virtue of priority under section 136 or secured, provable as a claim under this Act;

"date of the initial bankruptcy event"

"date of the initial bankruptcy event", in respect of a person, means the earliest of the date of filing of or making of

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case

(i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or

(ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal, or

(e) the application in respect of which a bankruptcy order is made, in the case of an application

other than one referred to in paragraph (d);

*"debtor"*

"debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

*"executing officer"*

"executing officer" includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor;

*"General Rules"*

"General Rules" means the General Rules referred to in section 209;

*"insolvent person"*

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

*"legal counsel"*

"legal counsel" means any person qualified, in accordance with the laws of a province, to give legal advice;

*"locality of a debtor"*

"locality of a debtor" means the principal place

- (a) where the debtor has carried on business during the year immediately preceding his bankruptcy,
- (b) where the debtor has resided during the year immediately preceding his bankruptcy, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

*"Minister"*

"Minister" means the Minister of Industry;

*"official receiver"*

"official receiver" means an officer appointed under subsection 12(2);

*"person"*