

Action No. 0401-19905  
Deponent: Tim Oke  
Date Sworn: May 6, 2005

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

**AFFIDAVIT**

I, Tim Oke, of the City of Airdrie, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. Together with my wife, Jo-Anne Oke, I was an investor in Titan Investments Limited Partnership, ("Titan"), and as such I have personal knowledge of the matters hereinafter deposed to, except whereso stated to be based upon information and belief, and whereso stated I do verily believe same to be true.
2. We have withdrawn more money from Titan than we have invested in it. As such, we are Respondents to the application brought by Alger & Associates Inc., (the "Receiver") and the Investors' Committee as set out and defined in the Order granted by this Honourable Court on January 21, 2005. I understand that there are over 80 individuals and corporations who make up the whole of the Respondents.
3. I want to ensure that my interests, as well as those of my wife and all of the Respondents, are taken into consideration by the Receiver and by this Honourable Court in all matters relating to the

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assets, estate, property, operations and receivership of Titan (the "Assets"), which are currently controlled by the Receiver.

4. I support the application of the formation of a Respondents' Committee in order to coordinate the large number of Respondents and to allow the Receiver and the Investors' Committee to efficiently communicate with the Respondents.

5. I support the appointment of legal counsel to represent the Respondents' Committee. Further, as the legal expenses of the Investors' Committee and the Receiver are coming out of the Assets controlled by the Receiver, I support the payment of the legal expenses of the Respondents' Committee to come out of the Assets controlled by the Receiver, in order that all parties are treated equitably and fairly in this matter.

6. In order to ensure that the interests of all parties are protected, I further support the proposition that all legal expenses for the Investors' Committee, the Respondents' Committee and the Receiver shall be reviewed by each of the other parties prior to the payment of same out of the Assets controlled by the Receiver.

7. I further support the appointment of John McAra, Rick Cooke and David Pizzolato as the members of the Respondents' Committee.

8. I have been advised by my Solicitor, Shane B. King, and do verily believe, that the proposed counsel for the Respondents' Committee is the firm of Fraser Milner Casgrain<sub>LLP</sub>, ("Fraser") and I support this representation.

9. I have further been advised by my Solicitor, Shane B. King, and do verily believe, that Fraser had attempted to obtain from counsel for the Receiver and the Investors' Committee the complete list of Respondents, and that it took approximately two weeks to secure this information, the particulars of which are outlined in the Affidavit of John McAra, sworn May 5, 2005, currently

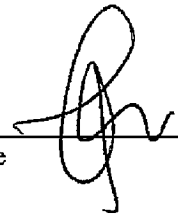
unfiled. This led to a delay in the making of this application, and as such, the application set for May 11, 2005 should be adjourned.

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

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FLEMING LLP

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**FLEMING** LLP  
Barristers and Solicitors

**FAXED**

THIS IS EXHIBIT "A"  
referred to in the Affidavit of  
TIM OKE  
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 403.266-7629  
e-mail [clivellwyn@flamingllp.com](mailto:clivellwyn@flamingllp.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;

- (c) Adjudging and declaring that all tax information slips provided by the Titan Partners to the Limited Partners in prior years were inaccurate, and providing the Receiver to re-issue accurate tax information and slips once known;
- (d) Adjudging and declaring the accurate financial position of the Titan Partnership.
- (e) Adjudging and declaring that the operations and all activities undertaken by David Comte in relation to Evolution Capital Management Ltd. ("Evolution") constituted a fraud on Evolution and on the Titan Partnership;
- (f) Adjudging and declaring that all salaries and bonuses paid by the Partnership to Evolution, David Comte and Janet Comte were unwarranted, unearned, incorrect, and a fraud, with leave to enter judgment for such sums once the amounts are obtained;
- (g) Adjudging and declaring that all salaries and bonuses paid by Evolution to David Comte and Janet Comte were unwarranted;
- (h) Adjudging and declaring that there were no profits in the Titan Partnership after January 1, 2001 to the date of Receivership;

The foregoing items (a) to (h) in the Notice of Motion essentially entail obtaining a finding by the Court regarding the actual financial status and operations of the Titan Partnership, and dealings by David Comte, Evolution Capital Management Ltd., and entities related to David Comte with the Partnership, all based on the Receiver's investigations and conclusions, as set forth in the Receiver's Reports..

Those declarations (a to h) will, among other things:

1. Enable the Partnership to obtain judgments against David Comte, Evolution, and related entities (we believe it to be unnecessary to obtain a judgment at this time against Janet Comte who appears to be fully cooperating), to form the basis for the recovery of money by the Partnership from the Estate of David Comte and Evolution;
2. Form the basis for the recovery of taxes paid by Evolution and David Comte and Janet Comte;
3. Confirm the Receiver's determination of the actual financial status of the Partnership;
4. Allow the Receiver to accurately re-state the financial affairs of the Partnership for CRA purposes; and
5. Permit an accurate determination of what distributions ought to have been made to each partner once the tax recoveries, if any, are received.

With respect to paragraphs (i) and (j) of the Notice of Motion, being:

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- (i) Approving the repayment formula attached as Exhibit D to the Affidavit of Michael Costello, filed, ("the Re-distribution Schedule");
- (j) Adjudging and directing that the investors who owe funds pursuant to the Re-distribution Schedule pay to the Receiver the amounts payable by them thereunder on or before April 30, 2005, failing which the Receiver and/or Investors Committee shall be entitled to judgment against those parties for the amounts unpaid by them under the Re-distribution Schedule.

the legal issues reflect the "unpaid" limited partners' claim to recovery of the overpayments made to the "paid" limited partners based upon the arguments of "fraudulent preference." The Receiver supports such application, it being clear from the Receiver's investigations and review of the financial affairs of the Titan Partnership that as a result of the payments made to the "paid" investors, equivalent payments were not possible to the remaining "unpaid" investors. The Receiver's assessment is that the payments made to the "paid" investors (and in particular, but not limited to those payments made in the fourth quarter of 2004 just prior to the suicide of David Comte, and during the Alberta Securities Commission investigation) had the effect of preferring the recipients.

The Receiver, on behalf of the Partnership, raises the further legal issue that the monies were paid by the Partnership as a result of the fraud and deceit of David Comte upon the Partnership. Those payments, being overpayments, were unwarranted under the Partnership Agreements, and were a conversion of the monies by David Comte for the benefit of the recipients, or were otherwise paid by mistake of the Partnership albeit arising from the intentional fraudulent acts of David Comte. The Receiver considers these monies to be an unjust enrichment to the recipients, to the detriment of the Partnership (and ultimately to the detriment of the remaining limited partners).

There are two distinct claims:

1. The claim of the remaining "unpaid" limited partners who assert recovery under the "preference" and;
2. The claim of the Partnership, who as a result of the fraud of David Comte unbeknownst to the Partnership, converted the overpayments for the benefit of the recipients or otherwise made the mistake in making the payments, resulting in the overpayments being made to the recipients;

While the Receiver understands and supports the claims being brought by the remaining unpaid limited partners on the basis of fraudulent preference, the Receiver reserves the right to argue in separate legal argument the claim to recover the overpayments based on the fraudulent conversion, and based upon the mistake, all arising from the fraudulent and deceitful actions of David Comte, all of which actions benefited the recipients resulting in unjust enrichment and may result in the remedy of constructive and resulting trust in favour of the partnership.

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In the event the claim being asserted by the "unpaid" partners is successful, it will not be necessary for the Receiver to make the Receiver's submissions on behalf of the Partnership. For this reason, it is the intention of the Receiver to reserve, and leave to further argument only if necessary, the Receiver's claims to recovery against the paid investors.

With respect to the relief sought by the Receiver on items (a) to (h) above, we understand that you wish to examine the Receiver on the Receiver's affidavit and on the Receiver's Reports in respect of the Receiver's investigation into the affairs of the partnership. Subject, of course, to the outcome of such examinations, we anticipate that there ought not be serious objection to the relief being sought by the Receiver in that regard, since the relief being sought is a judicial declaration of the facts determined by the Court appointed Receiver.

Lastly, with respect to item (k) of the Notice of Motion, being

(k) Directing that the Receiver may make further distributions in compliance with the Re-distribution Schedule without further Court approval,

insofar as the residual monies in Titan Partnership must be distributed to the remaining "unpaid" investors, at the present time, providing that such distribution does not ultimately result in any investor receiving a payment which would put that investor in a position preferential to the monies received by any other investor, including "paid" investors, the Receiver believes it appropriate to make an interim distribution to these remaining investors, intending to leave a sufficient reserve for the requirements of the Receivership.

I look forward to your response.

Yours truly,

FLEMING LLP



CLIVE O. LLEWELLYN

Barrister and Solicitor

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C: Attached List

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*McLeod & Company* <sup>LLP</sup>

*Barristers and Solicitors*

Third Floor, 14505 Bannister Road S.E.

Calgary, Alberta

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Attention: Shane B. King

Tel: 254-3849

Fax: 271-1769

File No.: 43-54928-6/SBK

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