

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

IN THE MATTER OF:

TITAN INVESTMENTS LIMITED PARTNERSHIP,
TITAN GENSPAR 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

For the purposes of this application, these respondents admit the facts as alleged by the receiver. They submit that the case can be analyzed by the application of pure logic and basic legal definitions without reference to intricate details of case law based on borderline situations. By the simple application of pure logic we can reason through it without undue complexity. Our analysis follows 4 progressive steps, to wit:

1. Jurisdiction

The Court has no jurisdiction to grant a money judgement on a Notice of Motion Procedure. The plaintiff should file a Statement of Claim and, if so advised, then apply for a summary judgement under Rule 159.

This is not a mere formality but a matter of substance. An order granted on motion can be varied by anyone or the plaintiff can later re-apply if unsuccessful at first. There is no res judicata and no finality. Also, only a judgement is enforceable by full execution process. An order resulting from a motion can only be enforced by contempt steps, and if its a money judgement then Rule 703(1)a prohibits even that so the plaintiff is left with no remedy.

If the receiver feels people owe it money, he should do what all creditors do and file a lawsuit, ie., a Statement of Claim.

Furthermore, the jurisdiction of this Honourable Court to grant a judgement against third parties for money on a motion in a receivership is questionable.

2. Merits of Applicant's Argument

The applicant's position is based on a misapprehension. Both the Fraudulent Preferences Act and the Statute of Elizabeth 1571 assume a debtor-creditor relationship. They are premised on that. But that is not the case here. The parties were co-investors, the terms of the partnership and agreement must be looked at. It's not a debtor-creditor situation. Those Acts are inapplicable. Equally, the Bankruptcy and Insolvency Act is inapplicable as section 95 refers to "creditors" or those holding funds in trust for "creditors".

3. Mistake of Fact

There is no evidence that Mr. Comte made a mistake. We don't know why he sent what he did to whom he did. If anything, it appears to have been deliberate. So the mistake of fact cases are inapplicable too.

4. Unjust Enrichment

There is a juridical reason for the enrichment, namely that the manager of the Partnership chose, for whatever reasons subjectively existed in his own mind, to distribute the funds in this fashion and he was authorized to make that distribution. If disappointed investors have any complaint it is against him or his estate for not fairly carrying out his duties. They have no property interest in the money and no claim to it when it is in someone else's hands.

For all of which reasons it is respectfully submitted that the pending Notice of Motion should be dismissed with costs, including travel costs for this counsel who comes from Edmonton as do his clients.

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Estimated time for my argument 10mins
plus responses to Court's questions
and applicant's arguments