

Action No.: 0401-19905
Deponent: John McAra
Sworn: May 5, 2005

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT 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, JOHN MCARA, of the City of Calgary, in the Province of Alberta, make oath and say that:

1. I am an investor in Titan Investments Limited Partnership ("Titan"). As such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I do verily believe the same to be true.
2. I have withdrawn more money from Titan than I invested in it. As such, I am a respondent to the application brought by Alger & Associates Inc. (the "Receiver") and the Investors Committee, (as created and defined by the Order granted by this Honourable Court on January 21, 2005) originally returnable on March 30, 2005. I understand from a review of the Notice of Motion and Affidavit materials filed by the Receiver and Investors Committee in respect of that application that there are approximately 86 individuals and companies who are also respondents to that application (the "Respondents").
3. I want to ensure that the interests of all Respondents are taken into consideration by the Receiver and this Honourable Court in matters relating to the assets, property and undertaking of

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Titan, the other companies under the control of the Receiver in these proceedings, David Compte and the Compte family trust.

4. In order to coordinate the large number of Respondents and to allow the Receiver and Investors Committee to efficiently communicate with the Respondents, it is necessary and appropriate to create a Respondents Committee and to appoint legal counsel to represent that Respondents Committee.
5. To ensure that the interests of the Respondents are protected, the Respondents Committee should have the authority to review and approve the expenses, fees and disbursements of the Receiver.
6. Pursuant to the Order creating the Investors Committee, the legal fees of the Investors Committee are paid by the estates controlled by the Receiver. The affect of this Order is to create an unfairness detrimental to the Respondents and give to the Investors Committee a large and unfair litigation advantage in these proceedings.
7. I propose that the following present and past direct or indirect investors in Titan be appointed as members of the Respondents Committee:
 - (a) John McAra;
 - (b) Rick Cooke;
 - (c) David Pizzolato.
8. It is intended that the Respondents Committee would contain up to seven members, and that the Respondents Committee would create a protocol to govern its affairs, including a mechanism to fill any vacancies in the Respondents Committee.
9. It is intended that any Respondents who wish to retain their own legal counsel or otherwise not be represented by the Respondents Committee could retain their own legal counsel or represent their own interests.

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10. I am advised by David LeGeyt, and do verily believe that in Court on March 30, 2005, Mr. LeGeyt requested that counsel to the Investors Committee and counsel to the Receiver provide Mr. LeGeyt with a list of the Respondents so that Fraser Milner Casgrain LLP could commence efforts to organize the Respondents with a view to avoiding duplication and cost and adding efficiency to these proceedings. I am further advised by Mr. LeGeyt, and do verily believe, that in open Court both counsel to the Receiver and Investors Committee indicated they would provide such a list to Mr. LeGeyt. Furthermore, attached to this my Affidavit and marked as Exhibit "A" is a letter from Mr. LeGeyt dated March 30, 2005 to counsel to the Receiver and Investors Committee requesting that information.

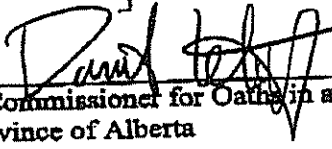
11. Notwithstanding the representations of counsel to the Receiver and Investors Committee, and notwithstanding Mr. LeGeyt's letter of March 30, 2005, no response was forthcoming. Attached to this my Affidavit and marked as Exhibit "B" are further letters from Mr. LeGeyt to counsel for the Receiver dated April 5 and April 7, 2005 once again requesting the necessary information.

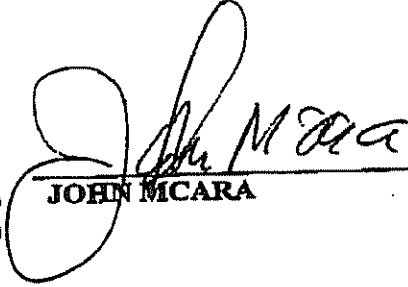
12. I am advised by David LeGeyt, and do verily believe that counsel to the Receiver never did respond to any of Mr. LeGeyt's requests. However, counsel to the Investors Committee did provide contact information for all Titan investors to Fraser Milner Casgrain LLP by e-mail on April 12, 2005 at 6:49 p.m.. This contact information did not differentiate between who was a Respondent and who was not.

13. Attached to this my Affidavit and marked as Exhibit "C" is a letter from the Receiver's counsel to Mr. LeGeyt indicating the Receiver's intention to seek remedies against the Respondents on the basis of legal doctrines not described in the Notice of Motion presently scheduled to be heard on May 11, 2005.

14. I make this Affidavit in support of an Order (i) appointing and creating the Respondents Committee as set out herein, (ii) adjourning the hearing presently scheduled for May 11, 2005, (iii) and such further and other relief as this Honourable Court deems just.

Sworn before me in the City of Calgary,)
in the Province of Alberta, the 9)
day of May, 2005.)


A Commissioner for Oaths in and for the)
Province of Alberta)



JOHN MCARA

DAVID LEGEYT
A Commissioner for Oaths and Notary Public
in and for the Province of Alberta
My Commission expires at the
Pleasure of the Lieutenant-Governor



FRASER MILNER CASGRAIN LLP

David LeGeyt
(403) 268-3075
david.legeyt@fmc-law.com

March 30, 2005

VIA FACSIMILE

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, AB T2P 4K7

Fleming LLP
1500, 736 - 6th Avenue S.W.
Calgary, AB T2P 3T7

THIS IS EXHIBIT "A"
referred to in the Affidavit of
John McInra
I was before me on the
day of May 2005
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

DAVID LEGEYT
A Commissioner for Oaths and Notary Public
in and for the Province of Alberta
My Commission expires at the
Pleasure of the Lieutenant-Governor

Attention: Frank R. Dearlove

Attention: Clive O. Llewellyn

Dear Sirs:

**Subject: Accounts held by Stephen Kurtz, Kristy Kurtz, Stephen & Kristy Kurtz,
1071874 Alberta Ltd. and Kurtz Farms re: Titan Investments Limited
Partnership
File No. 520567-1**

Further to our attendance in Court this morning, please provide me with a current copy of your mailing list so that I can determine which counsel I need to "quarterback" with respect to the possible cross-examinations of Messrs. Costello and Axsen and for the purpose of framing the issue which may or may not be heard on May 11, 2005.

Please also provide me with a copy of your list containing the contact information for all limited partners not represented by counsel at this time.

Thank you.

Yours truly,

FRASER MILNER CASGRAIN LLP

David LeGeyt

DLG:gw
c.c. Stephen & Kristy Kurtz (via e-mail)
1301238_1.DOC



Notary Public
John McAr...
Sworn...
Day of...
A COMM...
IN AND FOR THE PROVINCE OF ALBERTA

FRASER MILNER CASGRAIN LLP

DAVID LEGEY
A Commissioner for Oaths and Notary Public
in and for the Province of Alberta
My Commission expires at the
Pleasure of the Lieutenant-Governor

David LeGeyt
(403) 268-3075
david.legeyt@fmc-law.com

April 5, 2005

VIA FACSIMILE

Fleming LLP
1500, 736 - 6th Avenue S.W.
Calgary, AB T2P 3T7

Attention: Clive O. Llewellyn

Dear Sir:

**Subject: Stephen Kurtz, Kristy Kurtz, Stephen & Kristy Kurtz, 1071874 Alberta Ltd.
and Kurtz Farms re: Titan Investments Limited Partnership
File No. 520567-1**

I am attempting to organize the Titan limited partners who have been paid more than their initial investment and so are the respondents in the pending application.

Please provide me with a list of the names of the those parties, along with a mailing address, fax number, telephone number, e-mail address, and any other contact information which the Receiver has for each of them.

I would appreciate receiving this information as soon as possible.

Yours truly,

FRASER MILNER CASGRAIN LLP

David LeGeyt

DLG:gw
1307554_1.DOC



FRASER MILNER CASGRAIN LLP

David LeGeyt
(403) 268-3075
david.legeyt@fmc-law.com

April 7, 2005

VIA FACSIMILE

Fleming LLP
1500, 736 – 6th Avenue S.W.
Calgary, AB T2P 3T7

Attention: Clive O. Llewellyn

Dear Sir:

Subject: Stephen Kurtz, Kristy Kurtz, Stephen & Kristy Kurtz, 1071874 Alberta Ltd. and Kurtz Farms re: Titan Investments Limited Partnership File No. 520567-1

I am writing further to my correspondence of earlier in the week wherein I requested from you a list of the Titan limited partners who profited from their investment, along with contact information for each of those limited partners.

As stated in my previous correspondence, I am attempting to organize that group of investors with a view to proceeding on May 11, 2005. Your failure to deliver me that list of paid investors along with their contact information may well jeopardize the May 11, 2005 hearing date as I need to communicate with that group of limited partners well in advance of the hearing.

I look forward to your prompt response to my request.

Yours truly,

FRASER MILNER CASGRAIN LLP

David LeGeyt

DLG:gw
c.c. Frank R. Dearlove, Bennett Jones LLP (via facsimile)
1307554_1.DOC

FLEMING LLP

Barristers and Solicitors

Clive O. Llewellyn

Barrister and Solicitor

403.266-7629

cllewellyn@flemingllp.com

Our File: 31560

THIS IS EXHIBIT "C"
referred to in the Affidavit of
John McCre...
Sworn before me this ...
Day of May 2005

direct line
e-mail

ACCY: DAVID LEGEYT
A Commissioner for Oaths and Notary Public
in and for the Province of Alberta
My Commission expires at the
Pleasure of the Lieutenant-Governor

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, Alberta
T2P 4K7

Attention: Frank Dearlove
Via Fax: 265-7219

April 18, 2005

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

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:

- (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.

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

COL/hb

C: Attached List

Action No. 0401-19905
Deponent: John McAra
Sworn: May 5, 2005

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

FRASER MILNER CASGRAIN LLP
Barristers and Solicitors
30th Floor, Fifth Avenue Place
237 - 4th Avenue S.W.
Calgary, Alberta
T2P 4X7

Solicitor: David W. Mann/David LeGeyt
Telephone: (403) 268-7097/(403) 268-3075
Facsimile: (403) 268-3100
File: S20567-1

CLERK OF THE COURT
MAY - 6 2005
CLERK OF THE COURT