

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

IN THE MATTER OF

TITAN INVESTMENTS LIMITED PARTNERSHIP, and 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

**AMENDED NOTICE OF MOTION**

TAKE NOTICE that a joint Application will be made by counsel for Alger & Associates Inc., as Receiver and Manager, and by Counsel for the Investors Committee before the ~~presiding Justice~~ in Chambers, at the Court House at 611 - 4<sup>th</sup> Street S.W., in the City of Calgary, in the Province of Alberta, on Wednesday, the 30<sup>th</sup> day of March, 2005, at the hour of 9:00 o'clock in the forenoon, ~~which application has been adjourned and is now scheduled to be heard on Thursday, the 30<sup>th</sup> day of June 2005, at the hour of 10:00 o'clock in the forenoon~~ or so soon thereafter as counsel may be heard:

- (a) adjudging and declaring that the creation, operation and all activities undertaken in relation to the Titan Investments Limited Partnership ("Titan Partnership") constitutes 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 slips once known;
- (d) adjudging and declaring of the accurate financial position of the Titan Partnership as of September 30, 2004;
- (e) adjudging and declaring that the operations and all activities undertaken by David Comte in relation to Evolution Capital Management Ltd. ("Evolution") constitutes a fraud on Evolution and on the Titan Partnership;
- (f) adjudging and declaring that all fees and bonuses paid 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 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;
- (i) approving the repayment formula attached as **Exhibit H** to the **Receiver's Second Report dated April 14, 2005** ("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;

- (k) directing that the Receiver may make further distributions in compliance with the ~~interim distribution schedule attached as Exhibit T to the Receiver's Second Report dated April 14, 2005 (the Interim Distribution Schedule)~~ without further Court approval; ~~^~~

~~(l) adjudging the Titan Partnership bankrupt and granting a Receiving Order in respect of the property of the Titan Partnership, in accordance with the Petition for Receiving Order in respect of the property of the Titan Partnership filed on January 28, 2005; and~~

~~(m)~~ such further and other relief as this Court sees fit.

AND FURTHER TAKE NOTICE that in support of the within Application will be read the Affidavits of Michael Costello and Croft Axsen, filed herein, the Receiver's First Report, ~~the Receiver's Second Report which updates the Affidavit of Michael Costello sworn March 18, 2005, and any subsequent Reports prepared by the Receiver~~ the Pleadings, and such further and other materials as counsel may advise and this Honourable Court may direct.

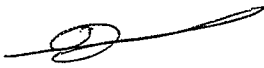
AND FURTHER TAKE NOTICE that the Joint Applicants intend to rely on ~~the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3~~ the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24, and the *Statute of Fraudulent Conveyances, 1571* (U.K.), 13 Eliz. c. 5, 1571.

AND FURTHER TAKE NOTICE that the grounds for the within Application are:

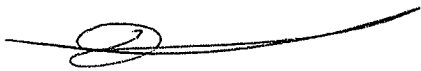
- (a) distributions made by the Titan Partnership to certain of its investors were made without regard to the actual underlying value of those investors' units in the limited partnership;
- (b) the distributions were made at time when the Titan Partnership was in insolvent circumstances or knew it was on the eve of insolvency;
- (c) there was no *bona fide* consideration for the distributions;
- (d) as a result of the distributions, other investors in the Titan Partnership have been injured, delayed, prejudiced or postponed;
- (e) the Applicants wish to ensure that the assets of the Titan Partnership, after consideration of the recoveries obtained by the Receiver, are re-distributed to all investors in the Titan Partnership in the fairest manner in which to redress the effects of the fraud upon the investors.

DATED at the City of Calgary, in the Province of Alberta, this 18<sup>th</sup> day of March, 2005, and amended at the City of Calgary, in the Province of Alberta, this day of June, 2005.

**FLEMING LLP**

Per:   
for Clive O. Lewellyn  
Solicitors for the Receiver

**BENNETT JONES LLP**

Per:   
Frank R. Dearlove  
Solicitors for the Investors  
Committee

TO: ALL PARTIES ON THE TITAN PARTNERSHIP SERVICE LIST  
AND TO: CLERK OF THE COURT

ACTION NO: 0401-19905

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