

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

FORM N

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

JOHN MCARA

Appellant

INVESTORS COMMITTEE

Respondent

ALGER & ASSOCIATES INC.

Receiver Respondent

THOMAS PEARSON, CHRISTOPHER PEARSON

(not parties to the Appeal)

DAVID PIZZOLATO, JOANNE KROG, ALTON HALLIDAY, HEIDIE FIRTH,
HARVEY BARRETT, 1043930 ALBERTA LTD.

(not parties to the Appeal)

SONIA EBANKS, ETENRIT INSTITUTE INC., TW CLEANING SERVICES

(not parties to the Appeal)

JANET COMTE

(not parties to the Appeal)

EDYTA CZARNECKI and 924888 ALBERTA LTD.

(not parties to the Appeal)

CIVIL NOTICE OF INTENTION TO VARY

1. APPEAL FROM: Judgment Order Decision

PORTION BEING APPEALED (R.511):

Whole, or

Only specific part(s)

If specific part(s), indicate which part(s):

The Respondent and the Receiver Respondent seek a dismissal of the Appellant's Appeal. However, in the event that the Appellant's Appeal is successful, the Respondent and the Receiver Respondent seek to vary the decision of the learned Justice and paragraph 7 of the Order, with respect only to the applicability of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the *Statute of Fraudulent Conveyances*, 1571 (U.K.), 13 Eliz. c. 5 (the *Statute of Elizabeth*).

PROVIDE A BRIEF DESCRIPTION OF THE ISSUES:

The Respondent and the Receiver Respondent seek a dismissal of the Appellant's Appeal. In the alternative, if the Appeal is allowed, the Respondent and the Receiver Respondent seek to vary the decision of the learned Justice and paragraph 7 of the Order with respect to the following issues:

1. Did the learned Justice err in failing to grant a Receiving Order in Bankruptcy with respect to Titan Investments Limited Partnership?
2. Did the learned Justice err in finding that there was no standing to make a claim that redemptions made to the Overpaid Investors constitute fraudulent preferences within the meaning of Section 95 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in accordingly declining to decide that claim?
3. Did the learned Justice err in finding that the redemptions made to the Overpaid Investors did not constitute fraudulent preferences pursuant to the *Statute of Fraudulent Conveyances*, 1571 (U.K.), 13 Eliz. c. 5 (the *Statute of Elizabeth*)?

OF THE THREE OPTIONS BELOW, INDICATE WHERE THE ORDER ORIGINATED:

COURT OF QUEEN'S BENCH

File number: 0401-19905

Location: Judicial District of Calgary

Justice: Mr. Justice G.C. Hawco

On appeal from a Queen's Bench Master or Provincial Court Judge? Yes No

(If you are appealing an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required.)

ADMINISTRATIVE TRIBUNAL

Specify Tribunal:

APPEAL OF A DECISION BY A BOARD

Specify Board:

2. PARTICULARS OF JUDGMENT, ORDER OR DECISION APPEALED FROM:

Date pronounced: August 19, 2005

Date entered: September 7, 2005

Date served: September 7, 2005

Attach a copy pursuant to R.506(2). If a copy is not attached, provide reason:

(Upon the judgment or order becoming available, the Appellant shall forthwith file a copy with the Registrar.)

3. IF THE ORDER ORIGINATED IN THE COURT OF QUEEN'S BENCH, CHECK ONE OF THE FOLLOWING, TO INDICATE THE TYPE OF ORDER THAT IS UNDER APPEAL:

- Interim order made
- In chambers
- During trial

Specify nature of order:

- Final order or refusal to grant final order before trial (e.g. summary judgment, striking pleadings, etc.)
- Judgment after trial

4. (A) IS THIS APPEAL ABOUT PROCEDURE OR CUSTODY OR ACCESS ONLY UNDER PART J. OF THE CONSOLIDATED PRACTICE DIRECTIONS? YES NO

IF YES, CHECK APPLICABLE BOXES:

- Error correcting only Yes No
- Involves new law Yes No

4. (B) IS THIS A FAMILY LAW APPEAL? YES NO

IF YES, CHECK APPLICABLE BOXES:

- Divorce
 - Error correcting only Yes No
 - Involves new law Yes No
- Maintenance Only
 - Child support Spousal support Spousal and child support
 - Error correcting only Yes No
 - Involves new law Yes No
- Maintenance Arrears
 - Child support Spousal support Spousal and child support
 - Error correcting only Yes No
 - Involves new law Yes No
- Matrimonial property
 - Error correcting only Yes No
 - Involves new law Yes No
- Adoption
 - Error correcting only Yes No
 - Involves new law Yes No
- Guardianship

- | | | | | | |
|--------------------------|--|-------------------------------------|-----|-------------------------------------|----|
| | Error correcting only | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| | Involves new law | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| <input type="checkbox"/> | Parentage | | | | |
| | Error correcting only | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| | Involves new law | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| <input type="checkbox"/> | Protection against family violence | | | | |
| | Error correcting only | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| | Involves new law | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| <input type="checkbox"/> | Other, please specify: | | | | |
| | Error correcting only | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| | Involves new law | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| 5. | HAS THIS FILE BEEN UNDER CASE MANAGEMENT IN THE COURT OF QUEEN'S BENCH? | <input checked="" type="checkbox"/> | YES | <input type="checkbox"/> | NO |
| | If yes, case management justice: Justice S.J. LoVecchio | | | | |
| | Trial date: Not applicable | | | | |
| 6. | IS THIS CASE RELATED TO ANY CASE PRESENTLY BEFORE OR ABOUT TO BE FILED IN THIS COURT: (E.G. ARISES FROM SAME CONTROVERSY; INVOLVES SAME, SIMILAR OR RELATED ISSUES, ETC.) | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| | If yes, name of related case(s): | | | | |
| | Action or appeal number(s): | | | | |
| | Nature of relationship: | | | | |
| 7. | IS THE CONSTITUTIONAL VALIDITY OF AN ACT OR REGULATION BEING CHALLENGED AS A RESULT OF THIS APPEAL? | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| 8. | HAS MEDIATION BEEN ATTEMPTED IN THE TRIAL COURT? | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| 9. | ARE YOU WILLING TO PARTICIPATE IN JUDICIAL DISPUTE RESOLUTION WITH A VIEW TO SETTLEMENT OR CRYSTALLIZING OF ISSUES? | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| 10. | WOULD CASE MANAGEMENT BE BENEFICIAL? | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| 11. | COULD THIS MATTER BE DECIDED WITHOUT ORAL ARGUMENT? | <input type="checkbox"/> | YES | <input checked="" type="checkbox"/> | NO |
| 12. | SHOULD THE APPEAL BE EXPEDITED? | <input checked="" type="checkbox"/> | YES | <input type="checkbox"/> | NO |
| | If yes provide reason: | | | | |

The reasons are dependent on several interlocutory determinations to be made by the Court of Appeal regarding the applicability of the Appeal in relation to other investors, and whether the amount of the judgment or costs are paid into Court. The required supporting letter and proposed timetable shall be filed in due course.

13. IS THERE A STATUTORY BAN, BAN ON PUBLICATION OR AN ORDER OF THE COURT WHICH AFFECTS THE PRIVACY STATUS OF THIS FILE? YES NO

If yes, provide details including which party/parties the ban or order affects and the section the ban was granted under:

Order of Madam Justice Erb granted December 29, 2004, sealing the Affidavit of Croft Axsen sworn December 24, 2004.

14. CROSS-APPELLANTS' ESTIMATED TIME OF ARGUMENT: (IF LESS THAN 45 MINUTES): 45 minutes

15. LIST RESPONDENT(S) TO CIVIL NOTICE OF INTENTION TO VARY (APPELLANT) OR COUNSEL FOR THE RESPONDENT(S) TO CIVIL NOTICE OF INTENTION TO VARY (COUNSEL FOR THE APPELLANT):
Provide name of law firms, complete addresses, telephone and fax numbers for each.

Counsel for Respondent to Civil Notice of Intention to Vary (Appellant):

Calvin C. Robb
Robb & Evenson Professional Corporation
506, 933 - 17 Avenue SW
Calgary, AB T2T 5R6
Phone: 403-541-1600
Fax: 403-541-1604

NOTE: THE ADDRESS SET OUT IN SECTION 15 WILL BE CONSIDERED THE RESPONDENT TO CIVIL NOTICE OF INTENTION TO VARY'S (APPELLANT'S) ADDRESS FOR SERVICE UNTIL SUCH TIME AS THE RESPONDENT TO CIVIL NOTICE OF INTENTION TO VARY (APPELLANT) FILES DOCUMENTATION SPECIFYING OTHERWISE.

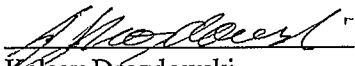
ALL PARTIES LISTED IN SECTION 15 MUST BE SERVED WITH A FILED COPY OF THE CIVIL NOTICE OF INTENTION TO VARY WITHIN THE PRESCRIBED APPEAL PERIOD. [R.510(1)]

October 3, 2005

DATE

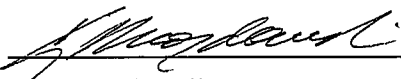
**SIGNATURE OF RESPONDENT FILING CIVIL NOTICE OF
INTENTION TO VARY OR COUNSEL**


for: Frank Dearlove


Kelsey Drozdowski

Counsel for the Investors Committee
Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, AB T2P 4K7
Telephone: (403) 298-3202
Fax: (403) 265-7219

**SIGNATURE OF RECEIVER RESPONDENT TO CIVIL NOTICE OF
INTENTION TO VARY OR COUNSEL**


for: Clive O. Llewellyn

Counsel for the Receiver and Manager, Alger & Associates Inc.
Fleming LLP
1500, 736 - 6 Ave SW
Calgary, AB T2P 3T7
Telephone: (403) 266-7629
Fax: (403) 265-6910

APPEAL NO: 0501-0271-AC

ACTION NO: 0401-19905

NOTICE TO THE RESPONDENT TO THE CIVIL NOTICE OF INTENTION TO VARY

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

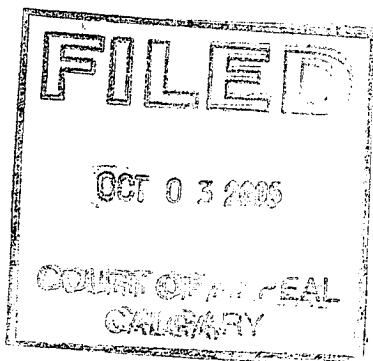
Failure to appear at the appeal hearing may also lead to an order or judgment being made against the respondent in their absence.

NOTICE TO ALL PARTIES

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometres of the office of the Registrar must be provided [R. 5(1)(b)(i)].



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