

Action No.: 0401-19905

**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.~~** see

**IN THE MATTER OF THE JUDICATURE ACT, RSA 2000, c.J-2, and RULES 467 and  
468 OF THE ALBERTA RULES OF COURT**

**BEFORE THE HONOURABLE )  
JUSTICE *Sam J. Lovecchio* )  
IN CHAMBERS**

**AT THE COURT HOUSE IN CALGARY,  
ALBERTA, on Friday,  
THE 24th DAY OF December, 2004**

*21st Monday see*

**INTERIM ORDER**

**UPON THE EX PARTE APPLICATION** of the Applicant Croft Axsen representing various of the investors in the **TITAN INVESTMENTS LIMITED PARTNERSHIP**; AND UPON having read the Affidavit of Croft Axsen sworn December 24, 2004; AND UPON IT APPEARING THAT the President and Director of Titan Genpar Inc., the general partner Titan Investments Limited Partnership has admitted to a fraud and theft of Partnership property, in his suicide note.

**AND UPON IT APPEARING** that it is just and convenient and in the interests of the Investors in the Titan Investments Limited Partnership that a Receiver and Manager be appointed;

**IT IS HEREBY ORDERED THAT:**

1. Alger and Associates Inc. ("Alger") be and is hereby appointed receiver and manager ("Receiver"), without posting security, of all present and future assets, property and undertakings of

**Titan Investments Limited Partnership** and its general partner **Titan Genpar Inc** (both together referred to herein as "Titan"), and **Evolution Capital Management Ltd.** (referred to herein as "Evolution") ~~and of the Estate of David Comte deceased~~ (referred to herein as "Comte") and all together referred to herein as **Titan/Evolution /Comte** with the authority to manage and operate and investigate the assets, property and undertakings of **Titan/Evolution /Comte** (the "Assets").

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2. **Titan/Evolution /Comte** and all of its present and former partners, directors, officers, employees, agents and members or estate beneficiaries or successors, any other persons acting on its instructions including, without limitation, any accountants or legal counsel thereto, and all other persons having notice of this Order (all of whom are collectively referred to as the "Affected Persons"), shall forthwith grant access to and deliver possession of the Assets of every nature and kind whatsoever, wheresoever situate, to the Receiver including, without limitation:

- (a) any and all of the books, securities, records, documents, accounts, contracts, deeds, papers, records, computer records and information related in any way to the Assets;
- (b) any and all budgets, accounting records, computer records, computer programmes, computer tapes, computer disks, leases and agreements related in any way to the Assets;
- (c) any and all information and documents relating to patents, trademarks, copyrights and other intellectual property rights owned, licensed or used by **Titan/Evolution /Comte**, whether registered in the name of **Titan/Evolution /Comte**, or otherwise;
- (d) any and all data storage media and programmes containing any such information;
- (e) any other records of every kind and nature relating to the Assets or the operations carried on by **Titan/Evolution /Comte**; (all that referred to above being collectively

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referred to as the "Information"); and

- (f) all monies, cheques, postdated cheques and remittances of any kind and nature, whenever and howsoever arising in respect of the Assets, and to provide or permit the Receiver to make, retain and take away copies thereof, and to allow the Receiver immediate, continued and unrestricted access to the Assets;

and all Affected Persons shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver; provided that, in the case of any of the foregoing, in the hands of professional advisors to any of ~~Titan/Evolution /Comte~~, who are Affected Persons (including legal counsel to or accountants of ~~Titan/Evolution /Comte~~) the Receiver shall leave a copy of any such information, if capable of being copied, with such Affected Person, who shall continue to treat all such information as confidential provided however that such Affected Persons shall not be entitled to claim a lien ranking in priority to use of the Assets by the Receiver. If any of the Information is stored or otherwise contained on the computer or other electric system of information storage, and if the Receiver has not otherwise been given timely access to the Information, ~~Titan/Evolution /Comte~~, and all Affected Persons shall forthwith give unfettered access thereto to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Information whether by way of printing the Information onto paper or making copies of computer disks or such other manner of retrieving and copying the Information as the Receiver in its discretion deems expedient. ~~Titan/Evolution /Comte~~, and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Information as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access or other codes as may be required to gain access to the Information.

3. No creditor of ~~Titan/Evolution /Comte~~, or any person having any relationship with ~~Titan/Evolution /Comte~~ may exercise any right, or any alleged or purported right, of set-off,

recoupment, combination of accounts, cross claims or other similar claims with respect to its accounts with **Titan/Evolution /Comte**, except with leave of this Court and subject to such terms as this Court may order.

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4. No legal actions, administrative, proceedings, self-help remedies, challenges to any agreement or any other acts or proceedings including, without limitation, the issuance of any requirement to pay, any lessor's rights to distrain or terminate any lease or any proceedings under the Employment Standards Code or any federal, provincial, or municipal statute, regulation or bylaw concerning any tax liability or obligation, any pension liability or obligation or any liability or obligation in respect of the environment shall be taken or commenced or continued against the Receiver, **Titan/Evolution /Comte**, or the Assets, except with leave of this Court on not less than three clear days' notice to the Receiver and the Applicant and then only on such terms as this Court may order, or upon written consent of the Receiver.

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5. Without limiting the generality of any other provision of this Order, and to the extent that **Titan/Evolution /Comte** may continue to carry on operations in a premises, or otherwise occupy or possess a premises, all persons, firms and corporations are hereby restrained and enjoined from disturbing or interfering with utilities or services, including without limitation the furnishing of gas, heat, electricity, water, telephone or any other utilities of like kind, furnished up to the present date to **Titan/Evolution /Comte**, and such parties are hereby restrained and enjoined from cutting off, disconnecting or altering any such utilities or services to the Receiver except with the consent of the Receiver or with leave of this Honourable Court on not less than three clear days' notice to the Receiver and the Applicant, and then only on such terms as this Court may order.

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6. Without limiting the generality of any provision of this Order, no person claiming any interest in the Assets, or any part or parts thereof, shall be at liberty to exercise any rights in respect of such interest, including any right to repossession of the Assets, or any part or parts thereof, except with the prior written consent of the Receiver or in accordance with any further Order of this

Honourable Court being first had and obtained on at least two clear days' notice to the Receiver and the Applicant.

7. The Receiver shall be at liberty and is hereby empowered and authorized to preserve, protect and insure the Assets pending further order of the Court.

8. The Receiver be and is hereby fully and exclusively authorized and empowered to institute and prosecute all actions, suits, applications or proceedings in and before both the Courts and administrative tribunals and bodies as may in its judgment be necessary or desirable to properly protect, preserve, dispose, realize upon, all or any part of the Assets, or recover monies improperly distributed, and likewise to defend all actions, suits, applications and proceedings instituted against **Titan/Evolution /Comte**, the Assets or the Receiver, and to appear in and conduct the prosecution or defence of any such actions, suits, applications or proceedings now pending in any Court or administrative body by or against **Titan/Evolution /Comte**, or hereinafter instituted against **Titan/Evolution /Comte**, or the Receiver, the prosecution or defence of which, in the judgment of the Receiver, may be necessary for the proper protection, preservation, disposition and realization or recovery of the Assets, and the administration of the Receivership, and the authority hereby conferred shall extend to such appeals as the Receiver shall deem proper and advisable in respect of any order, judgment or decision pronounced in any such action, suit, application or proceeding.

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9. Without limiting the generality of any provisions of this Order, the Receiver shall be at liberty, if in its opinion it is necessary or desirable for the purpose of receiving, preserving, protecting the Assets and performing any of its duties and powers hereunder, but without obligation to do so:

- (a) to carry on or cease carrying on the operations of **Titan/Evolution /Comte**, upon such terms and for such period or periods of time as deemed necessary by the Receiver and to do or perform all acts in the name of or on behalf of **Titan/Evolution /Comte**, as are necessary or incidental to the conduct of such operations;

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- (b) to take such actions as are deemed appropriate by the Receiver with respect to any shares or other interests held by **Titan/Evolution /Comte,** in any corporation; *se*
- (c) to sell on credit if so advised, the Assets or any part or parts thereof in the ordinary course of operations, provided that the purchase money, rent or proceeds of any such realization or transaction shall be paid to the Receiver;
- (d) to extend the time for payment of any monies due to **Titan/Evolution /Comte,** with or without security, *se*
- (e) to take such steps for the preservation and protection of the Assets, which shall include, without limiting the generality of the foregoing, the right to make payments to or to negotiate other arrangements with persons having mortgages, charges, encumbrances or liens on the Assets or on any part or parts thereof;
- (f) to take steps for the preservation and realization of the Assets which shall include, without limiting the generality of the foregoing, the right to pay the debts of **Titan/Evolution /Comte,** and to arrange or continue insurance coverage for the Assets and to make payment to the landlords and lessors from who **Titan/Evolution /Comte** may be leasing any property and assets, and to register a caveat or caution against title to any property owned by **Titan/Evolution /Comte;** *se*  
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- (g) to adopt and complete or to abandon any contracts or agreements of any nature, including leases, entered into by **Titan/Evolution /Comte,** which the Receiver, in its absolute discretion, shall consider advisable; *se*
- (h) to purchase or lease such machinery, equipment, premises or other assets as may be

necessary or desirable in the opinion of the Receiver to commence, continue, improve and enhance the operations of **Titan/Evolution /Comte**, or any part or parts thereof, or to receive, preserve, protect or realize upon the Assets or any part or parts thereof;

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- (i) to take such steps as, in the opinion of the Receiver, are necessary or appropriate to establish and maintain control over the Assets, or any part or parts thereof, including but not limited to the changing of locks and security codes, the relocating of assets to dispose of or safeguard them, the engaging of independent security personnel and the taking of physical inventory as required;
- (j) to obtain appraisals or opinions of value with respect to the Assets or any part thereof;
- (k) to receive and collect all rents or other monies now or hereafter owing or payable to **Titan/Evolution /Comte**;
- (l) to apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority and any renewals thereof for or on behalf of and, if thought desirable, in the name of **Titan/Evolution /Comte**;
- (m) to settle and pay any claims which may be made against **Titan/Evolution /Comte**, on such terms and in such manner as the Receiver deems necessary or advisable for the preservation and protection of the Assets;
- (n) to execute in the name of and on behalf of **Titan/Evolution /Comte**, all necessary bills of sale, conveyances, deeds, quit claims, releases and documents of whatsoever nature necessary or incidental to the exercise of the powers granted hereby;

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- (o) to open and maintain bank accounts and to deposit therein all funds collected in the exercise of its powers pursuant to this Order and, if so advised, to invest such funds and term deposits or other instruments from time to time;
- (p) to examine under oath any person reasonably thought to have knowledge of the affairs of **Titan/Evolution /Comte**, and any person who is or has been an accountant, lawyer, agent, broker, shareholder, officer, director or employee of **Titan/Evolution /Comte**, respecting the Assets or dealings relating to the Assets;
- (r) to apply to any Court of competent jurisdiction in any other jurisdiction, to confirm or recognize the Receiver's appointment and to assist the Receiver in the performance of its duties and obligations and the exercise of its powers in such other jurisdiction;
- (s) to take any steps, enter into any agreements or incur any obligations and do or cause to be done any or all other things which may be necessary, desirable or reasonably incidental to the exercise of the aforesaid powers, including the services of the Calgary police service or the RCMP, who are hereby ordered to assist the Receiver as reasonably requested.

10. The Receiver shall be at liberty to employ such assistants, agents, employees, auditors, advisors and counsel, including legal counsel, on such terms as it may in its discretion deem appropriate for the purpose of preserving, carrying on or closing the operations of **Titan/Evolution /Comte**, or otherwise performing its duties hereunder, and any expense which may properly be made or incurred by the Receiver in so doing shall, together with its proper fees and disbursements, be allowed to it in the passing of its accounts and shall form a first charge on the Assets in priority to any charge held by or any other interest of any person in any of the Assets, including, without restricting the generality of the foregoing, any secured creditor, preferred creditor, trust claimant, or statutory creditor. Such employment or the appointment of the Receiver shall not constitute the Receiver or the

Applicant a successor employer, and shall be without prejudice to the rights of the Receiver or the parties so employed as to the effect of this Order on their contracts of employment.

11. Nothing in this Order shall vest in the Receiver the ownership or possession of, or require the Receiver to enter into possession of any of the Assets, provided that the Receiver may and is hereby authorized, if it deems appropriate, to enter into possession of any or all of the Assets at its discretion.

12. Any liability of the Receiver whatsoever (other than in respect of any form of gross negligence and wilful misconduct) and whether in its personal capacity or in its capacity as Receiver and whether arising out of or from its appointment or the exercise of its powers hereunder, including without limitation arising in connection with environmental laws, labour laws or health laws, shall be limited in the aggregate to the Net Realized Value of the Assets in the possession of the Receiver from time to time. "Net Realized Value of the Assets" shall be the cash proceeds actually received by the Receiver from the operation and disposition of the Assets, after deducting all costs and expenses of the Receiver and the fees and disbursements of its counsel, and any monies borrowed or other indebtedness incurred by the Receiver pursuant to this Order and all interest thereon paid out of such proceeds, and any distribution of such proceeds. The Receiver shall have no personal or corporate liability as a result of its appointment or as a result of its performance of its duties hereunder save and except for liability arising as a result of the gross negligence or willful misconduct of the Receiver.

13. The Receiver is hereby empowered to pay out of the monies coming into its hand such debts of Titan/Evolution ~~/Comte~~, as have priority over the claims of secured creditors of Titan/Evolution ~~/Comte~~, including payments in respect of the Receiver's proper fees and disbursements including interim accounts, and such debts as in its judgment may be required to be paid in order to properly maintain or carry on the operations and undertaking of Titan/Evolution ~~/Comte~~, or to maximize the net realizable value of the Assets.

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14. The Receiver is hereby empowered to borrow from the Applicant or such other source of funding as may be obtained, such money from time to time as it may consider necessary or desirable including any monies borrowed or to be borrowed for expenses incurred by the Receiver while operating by virtue of its appointment hereunder, not exceeding the principal sum of \$100,000.00 which may, but need not be borrowed, as and by way of revolving credit (provided that the said principal sum of \$100,000.00 shall not, absent further Order of this Court, be exceeded at any one time) at such rate or rates of interest as it deems advisable and for such period or periods as it may be able to negotiate for the purposes of protecting, safeguarding, preserving and realizing upon the Assets or for any other purpose authorized hereby.

15. As security for such borrowings, and for every part thereof, the whole of the Assets shall stand charged by way of a fixed and specific charge for payment of the money so borrowed, together with interest thereon, and in priority to all creditors of ~~Titan/Evolution/Comte~~, including, without restricting the generality of the foregoing, all secured, trust, preferred or unsecured creditors of ~~Titan/Evolution/Comte~~, subject, however, to the right of the Receiver to indemnify itself out of the Assets in respect of any costs, charges and expenses properly incurred by it and its remuneration as this Court may from time to time allow.

16. The Receiver is hereby authorized and empowered, in its sole and absolute discretion and without further order of this Court, to cause ~~Titan/Evolution/Comte~~ to make a bankruptcy proposal or an assignment in bankruptcy, to consent for and on behalf of ~~Titan/Evolution/Comte~~, to the making of a Receiving Order against it and the Receiver and the Applicant may take such other proceedings under the Bankruptcy and Insolvency Act (Canada) as the Receiver and the Applicant may deem appropriate, or in accordance with such other Order of this Court.

17. The Applicant shall receive its solicitor and client costs of this Application, to be paid from the assets, pari passu with the Receiver's priority and charge.

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18. Any person affected by this Order may, on three clear days notice to the Receiver, or on the same notice where application is brought by the Receiver, apply to have some or all of this Order varied or struck, such application to be brought in the Province of Alberta, Judicial District of Calgary.

19. This Court requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada, whether provincial or federal, and any court or any judicial or administrative body of the United States of America and the states or other subdivisions of the United States of America and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

~~20. For greater certainty, until further Order of the Court, Janet Comte, also a director of Evolution, and the spouse of David Comte deceased, and the beneficiary of his estate, is hereby enjoined from dealing with, transferring, or disposing of any of her assets, save and except for the reasonable and normal living expenses of herself and her immediate family.~~ *See*

20. Commencing the Action by an Originating Notice and service of the supporting Affidavit or Originating Notice material presented in support of this application is hereby dispensed with.

  
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J.C.Q.B.A.

*— 29th —*  
ENTERED this 24th day of December, 2004.

  
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Clerk of the Court

No. 0401 - 19905 2004

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. s e

CLERK OF THE COURT  
DEC 29 2004  
CALGARY ALBERTA

IN THE MATTER OF THE *JUDICATURE*  
*ACT*, RSA 2000, c.J-2, and RULES 467 and  
468 OF THE ALBERTA RULES OF  
COURT

ORDER

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File No.: 31869