

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA

In re  TERCON INVESTMENTS LTD.,  Debtors in Foreign Proceedings.	CASE NO.: A13-00015-HAR In Chapter 15 [Lead Case of Jointly Administered Cases A13-00015 through A13-00025-HAR]  <b>ORDER DENYING <i>EX PARTE</i> MOTION TO APPROVE CANADIAN COURT VESTING ORDER [ECF No. 10]</b>
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The debtors filed a motion<sup>1</sup> asking the Alaska bankruptcy court to approve an order of the Supreme Court of British Columbia to sell mostly heavy construction and mining equipment, part of which is located in Alaska.<sup>2</sup> The debtors have not to date even filed an adequate master mailing matrix or proof that they served the order for joint administration.<sup>3</sup> The motion does not per se say it is requesting *ex parte* relief, but no calendar request was filed and a proposed order was suggested, which infers that the debtors are asking for *ex parte relief*.

The affidavit supporting the motion is 124 pages, including multiple documents, which do not concisely identify the Alaska equipment or the Alaska secured creditors.<sup>4</sup>

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<sup>1</sup> Motion for Recognition and Approval of *Approval and Vesting Order*, ECF No. 10.

<sup>2</sup> An incomplete copy of the order is located at ECF No. 9, at pages 117-124.

<sup>3</sup> ECF No. 5, filed January 15, 2013.

<sup>4</sup> The supporting affidavit does contain information indicating that two secured creditors of equipment, presumably located in Alaska, are N.C. Machinery Co. and Rainer Equipment,

The interrelationship of the various debtors and related players is exceedingly complicated, but the court gets the impression that the time crunch to get approval of the sale, a \$12 million sale to Richie Bros., is principally to aid Dumas Holding, Inc. (DHI), the petitioner in the British Columbia receivership, with its lender, HSBC, and to get a forbearance under its credit facility with that bank. Which may be appropriate, but DHI is a 98% equity holder in the Tercon debtors, and the Alaska bankruptcy court wants to assure it does not elevate the interests of DHI over the legitimate concerns of Alaska creditors, who under American bankruptcy law prime equity (DHI). This is not intended to cast aspersions on DHI, but merely to say that an *ex parte* approval by this court of Justice Sewell's vesting order seems premature and not in compliance with due process.

Additionally, the vesting order proposes a protocol for the return of equipment to lessors or equipment financiers of Alaska located equipment which may not be completely workable for the Alaskan equipment. At least these lessors and financiers (not identified in the motion) should have a right, after appropriate notice, to object.

The court has advised debtors' attorney, Mr. Christianson, that it is available for a hearing to determine if this court should recognize the eleven Alaskan proceedings as Foreign Main Proceedings and find that the Centers of Main Interests (the COMIs) are in

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Inc. *See*, ECF No. 8, a table at pages 112-116, listing equipment in the approximate amount of \$500,000. Neither N.C. Machinery or Rainer Equipment appear to have been served with the motion at ECF No. 10.

