



No. S128887 Vancouver Registry

Tercon Investments Ltd. et al.

THIRD REPORT OF THE RECEIVER

February 26, 2013

No. S128887
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c.B-3, AS AMENDED and SECTION 39 OF THE *LAW AND EQUITY*
ACT,
R.S.B.C. 1996 C.253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioner

**TERCON INVESTMENTS LTD., TERCON A.C. LTD.,
TERCON EQUIPMENT LTD., TERCON CONSTRUCTION LTD.,
TERCON MINING LTD., TERCON ENTERPRISES LTD.,
TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,
TERCON EQUIPMENT ALASKA PARTNERSHIP; AND
TERCON ALASKA LTD.**

Respondents

**THIRD REPORT TO THE COURT SUBMITTED BY
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

INTRODUCTION

1. On December 14, 2012 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, “**Tercon**” or the “**Company**”) pursuant to the order of Mr. Justice Sewell (the “**Receivership Order**”) granted upon the petition of Dumas Holdings Inc. (“**DHI**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act R.S.C. 1985 c. B-3 as amended* (the “**BIA**”) and section 39 of the *Law and Equity Act, as amended*. A copy of the Receivership Order is attached as **Appendix A** to the First Report.
2. As described in the First Report, the Asset Purchase and Sale Agreement dated as of December 21, 2012, was entered into, subject to Court approval, between the Receiver as Vendor and Ritchies Bros. Auctioneers (Canada) Ltd. (“**RB Canada**”) and Ritchies Bros. Auctioneers (America) Inc. (“**RB America**”, RB Canada and RB America together being “**Ritchie Bros**”) as Purchasers (the “**APA**”) with respect to the Equipment and Miscellaneous Property of Tercon (as such terms are defined in the APA).
3. On January 15, 2013, Mr. Justice Sewell granted an Order (the “**Approval and Vesting Order**”) *inter alia* approving the APA and the Return Protocol, as defined in the First Report.
4. On January 21, 2013, Mr. Justice Sewell granted the following Orders:
 - (i) An Order, *inter alia*, providing for the setting up of certain reserves by the Receiver from proceeds of realization and authorizing the distribution of funds in excess of the reserves to HSBC (the “**Distribution Order**”); and

- (ii) An Order, *inter alia*, authorizing and directing the Receiver, unless otherwise agreed with HSBC and DHI, to file assignments in bankruptcy for and on behalf of each of the Tercon companies and providing for the co-ordination of the Receivership Proceedings and the bankruptcy proceedings (the “**Bankruptcy Co-Ordination Order**”).
5. The purpose of this, the Receiver’s Third Report, is to provide information to the Court with respect to:
- (i) The status of the “recognition proceedings” commenced in Alaska under Chapter 15 of the US Bankruptcy Code (the “**Chapter 15 Proceedings**”);
 - (ii) The closing of the sale of Equipment and Miscellaneous Property pursuant to the APA;
 - (iii) The results of the Receiver’s investigation into the transfer of Property from Tercon Equipment Ltd. (“**TEL**”) to Tercon Equipment Alaska Partnership (“**TEAP**”) as described in paragraph 31 of the affidavit of Mr. Steven Chambers filed in support of the application for the Receivership Order (the “**Alaskan Equipment Transfer**”); and
- and to request the granting by the Court of an Order:
- (iv) Authorizing the Receiver to cause Tercon Construction Ltd. to issue an application for a bankruptcy order against TEL (the “**Bankruptcy Application**”);
 - (v) Partially lifting the stay of proceedings under the Receivership Order to allow the filing of the Bankruptcy Application; and

- (vi) Authorizing the Receiver to cause Tercon Equipment Limited to consent to the issuance of the Bankruptcy Order pursuant to the Bankruptcy Application upon the consent of HSBC Bank Canada, as Agent (“**HSBC**”) and Dumas Holdings Inc. (“**DHI**”), or further order of the Court.

TERMS OF REFERENCE

- 6. In preparing this report, the Receiver has relied upon unaudited financial information of Tercon, Tercon’s books and records, certain financial information prepared by Tercon and discussions with Tercon personnel and others. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 7. The information and advice described in this Report as being provided to the Receiver by its counsel, Borden Ladner Gervais LLP (the “**Receiver’s Canadian Counsel**”) and The Law Office of Cabot Christianson, P.C. (the “**Receiver’s US Counsel**”) and, together with Receiver’s Canadian Counsel, the “**Receiver’s Counsel**”) has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.
- 8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or in the Receiver’s previous Reports.

STATUS OF THE CH. 15 PROCEEDINGS

9. No objections to the Receiver's pending motions in the Ch. 15 Proceedings were filed by the objection deadline of February 15, 2013. On February 19, 2013, Judge Ross of the US Bankruptcy Court in Alaska (the "**US Court**") granted the following Orders:

- (i) An Order (the "**Recognition Order**"):
 - (a) Recognizing the Receivership as Foreign Main Proceedings pursuant to section 1517 of the US Bankruptcy Code;
 - (b) Providing that all provisions of Section 1520 of the US Bankruptcy Code (the "**USBC**") apply in the Chapter 15 cases including, without limitation, the stay under Section 362 and the provisions of Section 363 of the USBC throughout the duration of the Chapter 15 Proceedings or until otherwise ordered by the US Court; provided, however, that (i) the rights of all parties to seek to modify the imposition of the stay under section 362 are preserved, (ii) imposition of the stay under section 362 is merely for the convenience of the parties to continue their ongoing discussions, and (iii) entry of the order shall not prejudice any party's arguments regarding the applicability of the stay, including any arguments that the stay should be modified or vacated *nunc pro tunc* to the date of Ex Parte Order Imposing Interim Stay;
- (ii) An Order recognizing and approving the Approval and Vesting Order and giving it full force and effect in the United States (the "**AVO Recognition Order**"); and

- (iii) An Order recognizing and approving the Distribution Order and giving it full force and effect in the United States (the “**Distribution Recognition Order**”).
10. The stay of proceedings under section 362 of the USBC operates, *inter alia*, to prevent registrations to perfect or preserve a security interest, an action that is expressly permitted as a “carve out” to the stay of proceedings under the Receivership Order. The proviso in respect of the section 362 stay of proceedings was added to the Recognition Order at the request of HSBC and DHI in order to preserve rights to enable parties to seek to vary the stay provisions of the Recognition Order and the Ex Parte Order Imposing Interim Stay so that the carve-out in respect of perfection of security is consistent in the Receivership Proceedings and the Ch. 15 Proceedings.

COMPLETION OF THE TRANSACTIONS UNDER THE APA

11. Closings in respect of the majority of the Canadian assets subject to the APA occurred on February 7, 2013. Closing in respect of the Alaskan assets occurred on February 19, 2013. A final closing is expected to occur on or before March 6, in respect of a small number of remaining pieces of Equipment under the APA.
12. The APA included certain equipment that was owned by AC&T, a non-filing partnership of Tercon (the “**AC&T Assets**”). The AC&T Assets were removed from the sale pursuant to the terms of the APA but were sold to Ritchie Bros under the same terms pursuant to a separate agreement entered into between Ritchie Bros and Tercon A.C. Ltd. in its capacity as General Partner of AC&T, acting by its Receiver. Closing in respect of the AC&T Assets occurred on February 7, 2013.

13. The Purchase Price in respect of the Equipment under the APA was \$12,043,000. Of this amount, \$11,208,200 has been realized by Tercon, \$636,500 has been realized by AC&T and a purchase price reduction of \$141,400 has been taken in accordance with the provisions of the APA. \$56,900 remains in respect of possible future closings.
14. Pursuant to the APA, the Miscellaneous Property Purchase Price is to be paid by Ritchie Bros within 21 days of the sale of the Miscellaneous Property and receipt of Gross Proceeds in respect thereof. The sale of the Miscellaneous Property by Ritchie Bros is planned for auction sales scheduled to take place on March 5, 7, 8, 27 and May 16, 2013.

INVESTIGATION OF TRANSFER OF EQUIPMENT FROM TEL TO TEAP

15. The Distribution Order provided for the creation of the TEAP Reserve, as defined in the Distribution Order, to be held pending further Order of the Court. The provision of the Distribution Order providing for the creation of the TEAP Reserve was included at the request of N.C. Machinery Inc. in response to questions raised by them regarding the validity of the transfer of certain equipment from TEL to TEAP that was disclosed in the affidavit of Steven Chambers sworn December 13, 2012 (the “**Chambers Affidavit**”) and filed by DHI in connection with the application for the appointment of the Receiver (the “**Alaska Equipment**”).
16. The Receiver has undertaken a review of background to the Alaskan Equipment Transfer in order that the Receiver, stakeholders and the Court have further information to that contained in the Chambers Affidavit to consider the issue of the TEAP Reserve. The review consisted of a review of certain of the books and records of the Debtors, interviews with Steven Chambers, inquiries of former employees of the Debtors and the review and consideration of other documents provided to the Receiver by third parties.

17. The results of the Receiver's review are described in the memorandum prepared by the Receiver's Counsel, attached hereto as Appendix A. In summary:
- (i) TEAP was established in a manner that was consistent with the tax advice of PricewaterhouseCoopers LLP for a tax efficient structure for equipment to be used on the Kinross project based in the US;
 - (ii) Internal documents are consistent with the creation of TEAP for the purpose of leasing the equipment to Tercon Alaska Limited ("TAL") and the transfer of the Alaska Equipment to facilitate that process;
 - (iii) Mr. Chambers is a person with direct knowledge of the transfer and is able to explain all aspects of the transfer and locate documentation relating to inquiries regarding the transfer;
 - (iv) TEAP carried on business in Alaska and is the Tercon entity that issued purchase orders, was named in supplier invoices and, prior to the receivership, was paying its accounts from its own bank account;
 - (v) No documents have been located that suggest that TEL was carrying on business in Alaska or holding itself out as the owner of the Alaska Equipment. On the contrary, it explicitly represented to its primary secured creditor that it did not have operations or property in Alaska;
 - (vi) The Purchase and Sale Agreement between TEL and TEAP (the "TEAP APA") was dated December 6, 2012 with an effective date of March 1, 2012. The books and records of TEL and TEAP support the proposition that the Alaskan Equipment Transfer took place in March 2012;
 - (vii) The TEAP APA defines the purchase price for the transfer of the Alaska Equipment as:

“In consideration for the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement, the Purchaser hereby assumes all such rights and obligations and agrees to be bound by, observe and perform all of the terms and conditions to be observed and performed by the Vendor under each of the Guarantee and Security Agreement as if it were an original signatory thereto (the “Purchase Price”).”

- (viii) There appears to be no reasonable basis for a position that a transfer of the Alaska Equipment from TEL to TEAP was done to hinder, defeat, delay or defraud creditors.

THE NEED FOR THE BANKRUPTCY APPLICATION BY FEBRUARY 28, 2013

- 18. Based on the review of security undertaken by the Receiver’s Counsel, HSBC and DHI have perfected security interests against the assets of TEAP (an Alaskan company) located in Alaska by virtue of registrations under the U.S. Uniform Commercial Code (the “UCC”). HSBC and DHI also have validly perfected security interests against the assets of TEL (a British Columbia company) located in Canada by virtue of registrations under the *Personal Property Security Acts* (the “PPSA”) of British Columbia and Alberta. HSBC and DHI had not made UCC registrations against TEL prior to the Receivership Proceedings.
- 19. The issue of whether the provisions of the UCC (or other Alaska statutes) or the BC PPSA determine perfection and priority amongst competing interests in the Alaska Equipment has not been determined. It is possible that the Court may need to decide the priority issue if there is a dispute between the various competing interests to the assets of TEL located in Alaska, if any.

20. HSBC and DHI had not made UCC registrations against TEL prior to the Receivership Proceedings. DHI and HSBC made UCC registrations in respect of TEL on January 26, 2013 and January 28, 2013, respectively. However, these registrations were made after the granting of the Interim Stay Order in the Ch. 15 Proceedings.
21. As noted earlier in this report the stay of proceedings under section 362 of the USBC operates, *inter alia*, to prevent registrations to perfect or preserve a security interest, an action that is expressly permitted under the Receivership Order. The proviso in respect of the section 362 stay of proceedings was added to the Recognition Order at the request of HSBC and DHI in order to enable parties to seek to vary the stay provisions of the Recognition Order and the Ex Parte Order Imposing Interim Stay so that the carve-out in respect of perfection of security is consistent in the Receivership Proceedings and the Ch. 15 Proceedings.
22. The BIA provides for, *inter alia*, a one year look back period to challenge certain transactions carried out between parties who are not dealing at arm's length. TEL and TEAP are not dealing with each other at arm's length pursuant to the BIA when the transfer of the Alaska Equipment occurred as of March 1, 2012. As a result, the relevant "look-back" period pursuant to certain provisions of the BIA in relation to the Alaskan Equipment Transfer will only be engaged if a "date of the initial bankruptcy event" in relation to TEL occurs on or before February 28, 2013.

23. The Bankruptcy Co-ordination Order authorizes the Receiver to file assignments in bankruptcy for each of the Tercon companies, unless otherwise agreed with HSBC and DHI. HSBC and DHI do not want the Receiver to proceed with filing the assignments in bankruptcy until such time as they have had an opportunity to pursue certain options open to them to clarify the issues arising from the Alaskan Equipment Transfer. These options may include, without limitation, obtaining a determination that they have a validly perfected security interest in the Alaska Equipment regardless of whether it is owned by TEL or TEAP, the Court addressing any issues relating to the Alaska Equipment Transfer or seeking to amend the Ch. 15 stay to allow for the perfection of their security in Alaska. Filing of an assignment in bankruptcy in respect of TEL before that time may prejudice the interests of HSBC and DHI.
24. The filing of the Bankruptcy Application on or prior to February 28, 2013 without proceeding with the hearing on the Bankruptcy Application until the above-noted issues are resolved would preserve the look-back period, thereby protecting the potential interests of other creditors, without prejudicing the interests of HSBC and DHI.
25. Given the impact of the proposed course of action by the Receiver on the interests of various stakeholders in the Receivership Proceedings, the Receiver seeks the Court's authorization to proceed as outlined above.

The Receiver respectfully submits to the Court this, its Third Report.

Dated this 26th day of February, 2013.

FTI Consulting Canada Inc.

in its capacity as receiver of

Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd.,

Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd.,

Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd.,

Tercon Equipment Alaska Partnership and Tercon Alaska Ltd.

and not in its personal or corporate capacity



Nigel D. Meakin
Senior Managing Director



Jeff Rosenberg
Managing Director

Appendix A

Memorandum Regarding Transfer of Assets to TEAP

BACKGROUND TO OPERATIONS OF TERCON EQUIPMENT ALASKA PARTNERSHIP (“TEAP”) AND TRANSFER OF EQUIPMENT FROM TERCON EQUIPMENT LIMITED (“TEL”) TO TEAP. THE FOLLOWING INFORMATION HAS BEEN PROVIDED TO THE RECEIVER UPON INQUIRY AND PURSUANT TO DOCUMENTS PROVIDED TO THE RECEIVER. THE SOURCE OF THE INFORMATION IS IN BRACKETS FOLLOWING EACH ITEM.

A. Setting up TEAP

- Tercon Alaska Ltd. (“**TAL**”) is a wholly-owned subsidiary of Tercon Investments Ltd. which is incorporated under the laws of Alaska, USA and has its registered office in Juneau, Alaska. TAL provides surface mining services to customers in Alaska. (Chambers Affidavit sworn December 13, 2012)
- TAL was awarded a contract with Kinross Gold Corporation (“**Kinross**”) for work on the Fort Knox open pit gold mine in Alaska in late 2011. TAL required equipment to service the Kinross contract. Tercon considered structuring a tax-efficient captive leasing company to lease equipment to TAL. (Chambers)
- Tercon was advised by PricewaterhouseCoopers (“**PwC**”) that, if a B.C. partnership was set up to operate in Alaska (the “**Partnership**”), there would not be any income tax concerns with respect to the proposed leasing of equipment to TAL as part of the Partnership’s rental business in Alaska. For U.S. tax purposes, although the Partnership would be considered a Canadian corporation, since the equipment would be used in the U.S., the related lease revenue to the lessor would be considered U.S.-source income and would not cause the Partnership any tax issues. For Canadian tax purposes, because the equipment was being leased for use in the U.S., there would also be no requirement for the Partnership to withhold Canadian non-resident tax from the lease payments. The Partnership would be required to file an election with the IRS regarding its choice to be taxed as a corporation. (email from PwC to Tercon re TEAP, dated March 9, 2012)
- On January 22, 2012, Brad Gardner (Tercon) circulated an email to, among others, Steve Chambers, with the list of equipment to be moved to Fort Knox. (email from Gardner to Chambers dated January 2, 2012)
- On February 10, 2012, a Partnership Agreement was entered into between TEL and Tercon Mining Ltd. with respect to the creation of the Partnership and carrying on business under the name “Tercon Equipment Alaska Partnership.” The Partnership was registered in the partnership registry of British Columbia on February 10, 2012. The “Partnership Business” was indicated in the Partnership Agreement to be “heavy equipment leasing and repair, and such other business activities as the Managing Partner may determine.” (TEAP Partnership Agreement, B.C. Partnership records)

- TEAP's registered office was in Kamloops, B.C. TEAP was 99.9% owned by TEL and was established by the Tercon Group exclusively for projects located in Alaska. (Chambers Affidavit)

B. TEAP/TAL Business Relationships

- As of February 28, 2012, HSBC and the Tercon Debtors (among others) entered into the Credit Agreement. (HSBC Credit Agreement)
- Section 6 of the Credit Agreement contains the representations and warranties of each Obligor. Section 6.3 provides that:

“On the date hereof, the property and assets of each of the Obligors are located in those jurisdictions specified in Schedule 6.3 and in no other jurisdiction, other than tangible Collateral in transit to or from such locations. Set out in Schedule 6.3 are the following:

- a) the legal description of all real property owned by any Obligor;
 - b) a list of all locations leased by any Obligor, as lessee; and
 - c) a list of all other locations in or on which any property or assets owned by any Obligor and located in Canada or the United States is located.”
- Schedule 6.3 to the Credit Agreement indicates that the operations of TEL are in British Columbia. No operations of TEL are mentioned with respect to Alaska. The operations of TEAP are indicated to be in Alaska. (HSBC Credit Agreement)
 - On February 27, 2012, HSBC filed a UCC financing statement against TAL and TEAP in Alaska. HSBC did not file a UCC financing statement against TEL at that time. (UCC Certificates for TAL, TEAP and TEL)
 - There is a single insurance policy for all equipment. TEAP was added as an insured party on February 24, 2012. (Certificate of Insurance and Endorsement No. 5)
 - TAL completed a credit application for N.C. Machinery (along with Tercon Construction) on February 24, 2012. (N.C. Machinery Affidavit delivered pursuant to call from claims re Registered Liens)

C. The Transfer of the Alaska Equipment

- The production equipment that is currently owned by TEAP (the “**Alaska Equipment**”) was acquired from TEL in March 2012, although title was not formally transferred at that time. (Chambers Affidavit)
- A balance sheet trial balance was calculated in March 2012 for each of TEAP and TEL. The trial balance for TEAP (which discloses no assets in February 2012) indicates that approximately \$17.6 million worth of equipment has been entered onto its books in March 2012. For the same period (February and March 2012), the TEL balance sheet indicates a decrease of approximately \$28 million for equipment (the tax costs of the transferred equipment). (Balance sheet trial balance for TEAP and TEL for February and March, 2012)
- A summary of the transferred equipment was prepared in March 2012 (the “**Equipment Summary**”). (Equipment Summary, provided by Chambers)
- On December 6, 2012, TEAP and TEL executed an agreement of purchase and sale (the “**Purchase and Sale Agreement**”), effective as of March 1, 2012, in which TEAP has agreed to assume all of TEL’s obligations under the applicable general security agreement and Guarantee (as defined below) as if it were an original signatory thereto. By virtue of the Purchase and Sale Agreement, TEAP is now a guarantor of the Tercon Indebtedness. (Chambers Affidavit)
- Substantially all of the equipment listed on Schedule “A” to the Asset Purchase Agreement is listed in the Equipment Summary.
- Rental charges were calculated and charged between TAL and TEAP. Equipment hours are entered into “Explorer” system, which generates records for TAL and TEAP in Tercon information systems regarding rental charges.

D. Work to be done on the Alaska Equipment

- All work conducted on TEAP equipment had to be requested by the issuance of a purchase order (“**PO**”) by TEAP. Invoices are issued against PO’s and payment is made only in respect of invoices that have PO numbers referenced. (Chambers)
- No PO’s have been issued to N.C. Machinery or other contract mechanics working on the Alaska Equipment by TEL. (Chambers)

- On March 28, 2012, N.C. Machinery commences work on TEAP equipment.(NC Machinery Affidavit)
- The invoices submitted by N.C. Machinery are issued to TEAP (and a few issued to TAL). (N.C. Machinery Claim)
- TAL, as the user of the Alaska Equipment, was responsible for any damage to the Alaska Equipment. (Chambers)
- All payments in respect of invoices delivered to TEAP and TAL are made by cheques drawn on bank accounts in the name of TEAP or TAL, respectively. TEL did not pay for invoices issued in respect of the repairs or maintenance of the Alaska Equipment. (Chambers, Brad Gardner)

E. Other Equipment in Alaska

- There are several DMV registrations with respect to service vehicles in Alaska. Merchant's Short-Term Solutions ("Merchants") leased 11 vehicles to TEAP. Three of the 11 vehicles are registered under the DMV in the name of TEAP. Eight vehicles are registered in the name of Merchants. (DMV registrations for Merchants' vehicles)
- A service vehicle was leased by Emkay to TEL in February 2011. This vehicle was originally located in Alberta. Ultimately the vehicle was operated in Alaska and Emkay registered under the DMV in Alaska in the name of TEL. (Emkay claim documents)
- EMECO entered into a lease agreement with TEAP with respect to the 2004 Caterpillar 992G equipment. EMECO filed a registration under the UCC against TEL on June 21, 2012. (EMECO claim documents)
- Integrated Distribution Systems ("IDS") filed a lien under the *Repairer's Lien Act* (BC) against one piece of Alaska Equipment (and TEAP) on August 12, 2012. (IDS claim documents)
- N.C. Machinery entered into an instalment sales contract with TEAP on September 18, 2012 for the sale of the "bucket". N.C. Machinery filed a registration under the UCC against TEAP on October 23, 2012. (N.C. Machinery Affidavit)
- As at October 31, 2012, TEAP owned approximately 20 units of production equipment and 28 units of support equipment. (Chambers Affidavit)

Conclusions - Based on the information received by the Receiver in response to its inquiries and the documents and information provided to the Receiver as noted above, the following conclusions can reasonably be drawn:

- TEAP was established in a manner that was consistent with the tax advice of PWC for a tax efficient structure for equipment to be used on the Kinross project based in the US.
- Internal documents are consistent with the creation of TEAP for the purpose of leasing the equipment to TAL and the transfer of the Alaska Equipment to facilitate that process.
- Chambers is a person with direct knowledge of the transfer and is able to explain all aspects of the transfer and locate documentation relating to inquiries regarding the transfer of the Alaska Equipment.
- TEAP carried on business in Alaska and appears to be the Tercon entity that entered into arrangements with NC Machinery, IDS, Merchants, and EMECO. TEAP is the Tercon entity that is issuing PO's, being named in invoices and, prior to the receivership, paying its accounts from its own bank account.
- The Receiver has not located any documents that suggest that TEL was carrying on business in Alaska or holding itself out as the owner of the Alaska Equipment. On the contrary, it has represented to its primary secured creditor that it did not have operations or property in Alaska.
- The transfer of the Alaska Equipment occurred in the manner set out in the Chambers Affidavit.
- There is no reasonable basis for a position that a transfer of the Alaska Equipment from TEL to TEAP was done to hinder, defeat, delay or defraud creditors since HSBC had security over TEL and TEAP. A transfer would not have put the assets beyond the reach of the primary secured creditor. TEL had no control over whether HSBC perfected its security interest in Alaska against TEAP.