



This is the 1<sup>st</sup> Affidavit  
of May Chong in this case and  
was made on January 10, 2013  
No. S-128887  
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Dumas Holdings Inc.

Petitioner

And:

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


**AFFIDAVIT**

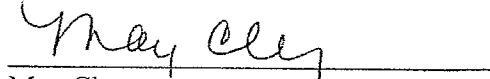
I, May Chong, Assistant, of 1200 Waterfront Centre, 200 Burrard Street,  
Vancouver, British Columbia, V7X 1T2, SWEAR THAT:

1. I am an Assistant, employed by Borden Ladner Gervais LLP, and as such I have personal knowledge of the facts deposed to in this Affidavit except those facts which I say are based upon information and belief and as to those facts I truly believe them to be true.
2. Attached and marked as **Exhibit "A"** to my Affidavit is a true copy of a revised Return Protocol for Equipment Lessors ("Equipment Return Protocol") which, I understand, takes into account comments received from HSBC Bank Canada.

3. Attached and marked as **Exhibit "B"** to my Affidavit is a true copy of a blacklined copy of the Equipment Return Protocol as compared to that which was attached as Appendix B to the First Report of the Receiver.

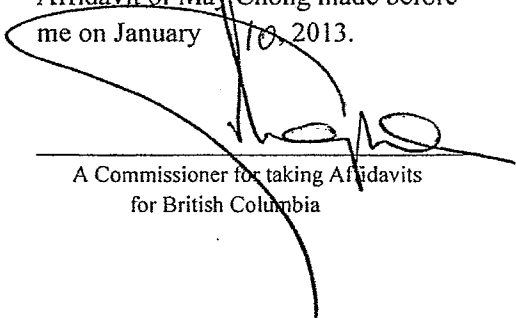
SWORN BEFORE ME in the City of )  
Vancouver, in the Province of British )  
Columbia, on this 10<sup>th</sup> day of January, 2013 )

  
\_\_\_\_\_  
A Commissioner for taking Affidavits for )  
British Columbia )

  
\_\_\_\_\_  
May Chong

**GEOFFREY THOMPSON**  
**BARRISTER & SOLICITOR**  
900 Waterfront Centre, 200 Burrard Street  
P.O. Box 48600, Vancouver, Canada V7X 1T2  
(604) 640-4151

This is Exhibit "A" referred to in the  
Affidavit of May Chong made before  
me on January 10, 2013.



A Commissioner for taking Affidavits  
for British Columbia

## Return Protocol for Equipment Lessors (“Equipment Return Protocol”)

### Arrangements with Equipment Lessors

1. To the extent not already provided, all third-party lessors or financiers of specific pieces of equipment currently in the possession of Tercon (“**Equipment Lessors**”) will provide the Receiver with copies of the leases, security agreements, financing arrangements and other supporting documents, including particulars of all registrations made under the applicable *Personal Property Security Act* or *Uniform Commercial Code* (the “**Equipment Documentation**”) for all personal property in the possession of the Receiver that the Equipment Lessor claims (the “**Claimed Equipment**”), forthwith upon the request of the Receiver. Not more than ten (10) days of the later of (i) the date of the approval of this Equipment Return Protocol (the “**Approval Date**”) and (ii) the date of receipt of the Equipment Documentation, the Receiver will advise each Equipment Lessor whether (a) it is satisfied with the validity and enforceability of the security held by the Equipment Lessor (each an “**Accepted Claim**”) or (b) whether the Receiver requires further information from the Equipment Lessor. The Receiver shall provide HSBC Bank Canada, as Agent (the “**Agent**”) with copies of all documentation it receives from Equipment Lessors in relation to Claimed Equipment.

2. The Receiver shall notify the Agent of any claim to Claimed Equipment that is, in the opinion of the Receiver, an Accepted Claim, and the Agent shall have three (3) business days after such notice to advise the Receiver if the Agent objects to the return of the Claimed Equipment to the Equipment Lessor for any reason, including that the claim of the Equipment Lessor is not valid, enforceable or a priority claim against the Claimed Equipment (the “**Objection**”).

3. In the absence of an Objection from the Agent, the Receiver will notify the Equipment Lessor that the Receiver will release the Claimed Equipment for collection by the relevant Equipment Lessor or whether the Receiver will exercise any buy-out or redemption option.

4. The Receiver shall have no liability to any Equipment Lessor with respect to any of the Claimed Equipment, other than to provide storage of the Claimed Equipment during the Storage Period (as defined below).

5. Equipment Lessors that have received a notice that the Receiver will release Claimed Equipment pursuant to an Accepted Claim (and no Objection has been delivered pursuant to paragraph 2 hereof) shall have ten (10) days from the date of notification of their Accepted Claim from the Receiver to enter into arrangements in writing that are satisfactory to the Receiver and the Equipment Lessor, each acting reasonably, with respect to: (i) the sale of the Claimed Equipment and the entitlement to any proceeds of sale of the Claimed Equipment if the Equipment Lessor wishes the Receiver to arrange sale of the Claimed Equipment; (ii) the temporary storage of the Claimed Equipment, including the period of storage, if any, after the Approval Date (the “**Storage Period**”); or (iii) the removal of the Claimed Equipment from the Delivery Location (“**Removal**”). In the event that satisfactory arrangements are not made within such time, the Equipment Lessor shall be deemed to have elected for the Removal of all such the Claimed Equipment.

### **Removal of Claimed Equipment**

6. In the event that any Claimed Equipment is subject to a Removal, such Removal shall be completed by the Equipment Lessor in accordance with applicable law within ten (10) days of the agreement, or the deemed election, with respect to the Removal, unless otherwise agreed by the Receiver (the "**Removal Period**"). All Removals must be completed during the Removal Period and carried out during regular business hours for the Delivery Location in accordance with a schedule agreed with the Receiver.

7. In the event that Claimed Equipment is not removed from the Delivery Location within the Removal Period and satisfactory arrangements are not made with the Receiver for the continued storage of the Claimed Equipment for a Storage Period, the Equipment Lessor shall be liable to the Receiver for a *per diem* storage fee of \$[250]/day for each piece of equipment for each and every calendar day, commencing with the date after Removal Period and continuing as long as the Claimed Equipment remains at the Delivery Location (the "**Storage Fees**"). The Storage Fees shall be a claim against the Claimed Equipment, enforceable as a lien at common law and pursuant to the *Repairers Lien Act* (BC).

8. All lien claims against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim shall be unaffected by the return of the Claimed Equipment. However, such lien claims shall not be entitled to any claim against any proceeds of the Property in the hands of the Receiver and the Receiver shall have no liability to any party asserting a lien against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim.

9. Where any Claimed Equipment has been returned to, or recovered by, an Equipment Lessor, the Equipment Lessor will forthwith amend any motor vehicle or other registrations made with respect to the Claimed Equipment to delete any reference to the Tercon Debtors.

### **Sale of Claimed Equipment**

10. In the event that the Equipment Lessor and the Receiver agree to the terms of sale of the Claimed Equipment, the Receiver may apply for vesting orders, at the expense of the Equipment Lessor, in respect of such sale to provide that the Claimed Equipment is sold free and clear of any claims, liens or encumbrances.

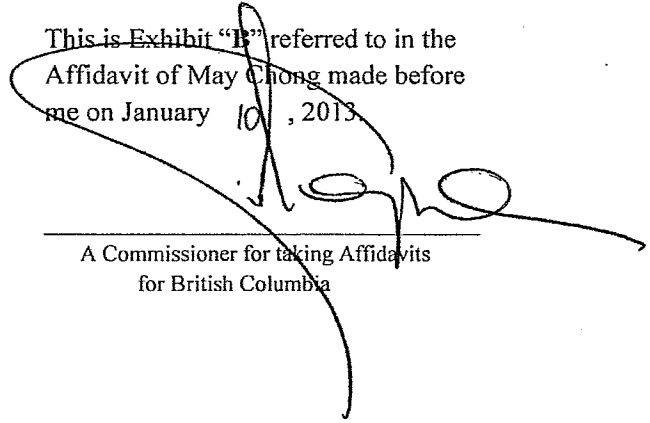
### **Miscellaneous Provisions**

11. The Receiver shall provide notice to Equipment Lessors and the Agent of any accessions or attachments to the Claimed Equipment that are the property of the Tercon Debtors and which the Receiver intends to remove from the Claimed Equipment. Equipment Lessors shall advise Receiver, forthwith after the release of any Claimed Equipment, of the particulars of any property that is attached to the Claimed Equipment that is not the property of the Equipment Lessor (the "**Third Party Property**"). Any Equipment Lessor that intends to remove or recover any Claimed Equipment shall execute and deliver to the Receiver an undertaking to return any Third Party Property that is attached to any Claimed Equipment that is returned to the Equipment Lessor, forthwith upon the demand of the Receiver.

12. Any dispute between the Equipment Lessor, and the Receiver or the Agent regarding the implementation of the terms of this Protocol or the validity of any claim to Claimed Equipment shall be determined by the British Columbia Supreme Court (the "Court") in the Receivership Proceedings, upon application of the Receiver, the Agent or the applicable Equipment Lessor.

11. The Receiver shall be entitled to seek the direction of the Court in the Receivership Proceedings in connection with the enforcement of its rights, or the determination of its obligations, pursuant to this Protocol.

This is Exhibit "B" referred to in the  
Affidavit of May Chong made before  
me on January 10, 2013.

A large, stylized handwritten signature in black ink, written over the text of the affidavit. The signature is cursive and appears to be the name of the Commissioner.

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A Commissioner for taking Affidavits  
for British Columbia

## Return Protocol for Equipment Lessors (“Equipment Return Protocol”)

### Arrangements with Equipment Lessors

1. To the extent not already provided, all third-party lessors or financiers of specific pieces of equipment currently in the possession of Tercon (“**Equipment Lessors**”) will provide the Receiver with copies of the leases, security agreements, financing arrangements and other supporting documents, including particulars of all registrations made under the applicable *Personal Property Security Act* or *Uniform Commercial Code* (the “**Equipment Documentation**”) for all personal property in the possession of the Receiver that the Equipment Lessor claims (the “**Claimed Equipment**”), forthwith upon the request of the Receiver. Not more than ten (10) days of the later of (i) the date of the approval of this Equipment Return Protocol (the “**Approval Date**”) and (ii) the date of receipt of the Equipment Documentation, the Receiver will advise each Equipment Lessor whether (a) it is satisfied with the validity and enforceability of the security held by the Equipment Lessor (each an “**Accepted Claim**”) or (b) whether the Receiver requires further information from the Equipment Lessor. ~~For Accepted Claims~~ The Receiver shall provide HSBC Bank Canada, as Agent (the “Agent”) with copies of all documentation it receives from Equipment Lessors in relation to Claimed Equipment.

2. The Receiver shall notify the Agent of any claim to Claimed Equipment that is, in the opinion of the Receiver, an Accepted Claim, and the Agent shall have three (3) business days after such notice to advise the Receiver if the Agent objects to the return of the Claimed Equipment to the Equipment Lessor for any reason, including that the claim of the Equipment Lessor is not valid, enforceable or a priority claim against the Claimed Equipment (the “Objection”).

3. In the absence of an Objection from the Agent, the Receiver will also advise whether ~~it~~ notify the Equipment Lessor that the Receiver will release the Claimed Equipment for collection by the relevant Equipment Lessor or whether ~~it~~ the Receiver will exercise any buy-out or redemption option.

~~2.4.~~ The Receiver shall have no liability to any Equipment Lessor with respect to any of the Claimed Equipment, other than to provide storage of the Claimed Equipment during the Storage Period (as defined below).

~~3. — Equipment Lessors with Accepted Claims~~ 5. Equipment Lessors that have received a notice that the Receiver will release Claimed Equipment pursuant to an Accepted Claim (and no Objection has been delivered pursuant to paragraph 2 hereof) shall have ten (10) days from the date of notification of their Accepted Claim from the Receiver to enter into arrangements in writing that are satisfactory to the Receiver and the Equipment Lessor, each acting reasonably, with respect to: (i) the sale of the Claimed Equipment and the entitlement to any proceeds of sale of the Claimed Equipment if the Equipment Lessor wishes the Receiver to arrange sale of the Claimed Equipment; (ii) the temporary storage of the Claimed Equipment, including the period of storage, if any, after the Approval Date (the “**Storage Period**”); or (iii) the removal of the Claimed Equipment from the Delivery Location (“**Removal**”). In the event that



satisfactory arrangements are not made within such time, the Equipment Lessor shall be deemed to have elected for the Removal of all such the Claimed Equipment.

#### **Removal of Claimed Equipment**

~~4.6.~~ In the event that any Claimed Equipment is subject to a Removal, such Removal shall be completed by the Equipment Lessor in accordance with applicable law within ten (10) days of the agreement, or the deemed election, with respect to the Removal, unless otherwise agreed by the Receiver (the "**Removal Period**"). All Removals must be completed during the Removal Period and carried out during regular business hours for the Delivery Location in accordance with a schedule agreed with the Receiver.

~~5.7.~~ In the event that Claimed Equipment is not removed from the Delivery Location within the Removal Period and satisfactory arrangements are not made with the Receiver for the continued storage of the Claimed Equipment for a Storage Period, the Equipment Lessor shall be liable to the Receiver for a *per diem* storage fee of \$[250]/day for each piece of equipment for each and every calendar day, commencing with the date after Removal Period and continuing as long as the Claimed Equipment remains at the Delivery Location (the "**Storage Fees**"). The Storage Fees shall be a claim against the Claimed Equipment, enforceable as a lien at common law and pursuant to the *Repairers Lien Act* (BC).

~~6.8.~~ All lien claims against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim shall be unaffected by the return of the Claimed Equipment. However, such lien claims shall not be entitled to any claim against any proceeds of the Property in the hands of the Receiver and the Receiver shall have no liability to any party asserting a lien against any Claimed Equipment that is returned to an Equipment Lessor pursuant to an Accepted Claim.

~~7.9.~~ Where any Claimed Equipment has been returned to, or recovered by, an Equipment Lessor, the Equipment Lessor will forthwith amend any motor vehicle or other registrations made with respect to the Claimed Equipment to delete any reference to the Tercon Debtors.

#### **Sale of Claimed Equipment**

~~8.10.~~ In the event that the Equipment Lessor and the Receiver agree to the terms of sale of the Claimed Equipment, the Receiver may apply for vesting orders, at the expense of the Equipment Lessor, in respect of such sale to provide that the Claimed Equipment is sold free and clear of any claims, liens or encumbrances.

#### **Miscellaneous Provisions**

~~9.11.~~ The Receiver shall provide notice to Equipment Lessors and the Agent of any accessions or attachments to the Claimed Equipment that are the property of the Tercon Debtors and which the Receiver intends to remove from the Claimed Equipment. Equipment Lessors shall advise Receiver, forthwith after the release of any Claimed Equipment, of the particulars of any property that is attached to the Claimed Equipment that is not the property of the Equipment Lessor (the "Third Party Property"). Any Equipment Lessor that intends to remove or recover any Claimed Equipment shall execute and deliver to the Receiver an undertaking to return any Third Party Property that

is attached to any Claimed Equipment that is returned to the Equipment Lessor, forthwith upon the demand of the Receiver.

~~10.12.~~ Any dispute between the Equipment Lessor<sub>2</sub> and the Receiver or the Agent regarding the implementation of the terms of this Protocol or the validity of any claim to Claimed Equipment shall be determined by the British Columbia Supreme Court (the "Court") in the Receivership Proceedings, upon application of the Receiver, the Agent or the applicable Equipment Lessor.

11. The Receiver shall be entitled to seek the direction of the Court in the Receivership Proceedings in connection with the enforcement of its rights, or the determination of its obligations, pursuant to this Protocol.



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Respondents

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**AFFIDAVIT**

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