

Clerk's stamp:

COURT FILE NUMBER	1403-10990
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ROYAL BANK OF CANADA
DEFENDANTS	SPRAGUE ROSSER CONTRACTING CO. LTD., SPRAGUE ROSSER DEVELOPMENTS INC., PACIFIC FEDERATION EQUITY GROUP INC., JEFFREY JESSAMINE, DANIEL EDWARDS AND MATTHEW MACKAY
DOCUMENT	<u>AFFIDAVIT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500, 855 – 2nd Street S.W. Calgary, AB T2P 4J8 Attn: Ryan Zahara Telephone/Facsimile: 403-260-9628/403-260-9700 Email: ryan.zahara@blakes.com File Ref.: 42185/44

AFFIDAVIT OF REMO IACOVOZZI

Sworn on October 16, 2014.

I, Remo Iacovozzi, of the Town of Brossard in the Province of Quebec, SWEAR AND SAY THAT:

1. I am a Supervisor, Finance Sales with Komatsu Financial (Canada) Ltd. ("**Komatsu**") and as such have personal knowledge of the matters herein deposed to, except where stated to be based upon information, in which case I do verily believe the same to be true.
2. I have reviewed the books and records of Komatsu in respect of the matters hereinafter deposed to and make this Affidavit in part based on that review.
3. I am authorized to make this Affidavit on behalf of and with full authority of Komatsu.

The Conditional Sales Contracts

4. Pursuant to a series of Conditional Sales Contracts (“CSCs”) dated December 14, 2012, March 25, 2013, and April 30, 2014, Komatsu leased the following equipment to Edmonton Heavy Equipment Rentals Ltd. (“**Edmonton Heavy**”):

	Contract #	Model	SN
1.	334-0030681-000	D51PX-22	B12641
2.	334-0030681-001	HM400-3	3076
3.	334-0030681-002	HM400-3	3139
4.	334-0030681-003	HM400-3	3075
5.	334-0030681-004	HM400-3	3140
6.	334-0030681-005	D155AX-7	90035
7.	334-0030681-006	D155AX-7	90117
8.	334-0030681-007	D275AX-5E0	30248
9.	334-0030681-008	HM400-3	3301
10.	334-0030681-009	HM400-3	3300

(collectively, the “**Komatsu Equipment**”).

Attached hereto and collectively marked as Exhibit “A” are copies of the CSCs.

5. Komatsu registered its interests in the Komatsu Equipment in the Alberta Personal Property Registry (the “**PPR**”) as instrument numbers 12121728511, 13032835799, 13032835862, 13032835196, 13032834911, 13032834307, 14051428036, 14051424999, 14051427807, and 14051425518, as amended. Attached hereto and marked collectively as Exhibit “B” are copies of Komatsu’s PPR registrations with respect to the Komatsu Equipment.
6. It was a term, among others, of the Additional Terms and Conditions of all of the CSCs that Edmonton Heavy would not:
- ...sell, lease or otherwise dispose of, or give up possession of, all or any of the Collateral or any interest therein...
7. Notwithstanding the foregoing clause, Edmonton Heavy, in breach of the CSCs allowed SR use and possession of the Komatsu Equipment. The CSCs are all currently in default

and Komatsu has the right to take possession of all or any of the Komatsu Equipment under the terms of the CSCs.

8. The principals of Sprague Rosser Contracting Co. Ltd. (“**SR**”) are substantially the same principals as Edmonton Heavy. Attached hereto and marked as Exhibit “C” are copies of the corporate registry searches of SR and Edmonton Heavy.
9. Edmonton Heavy registered its interest in certain pieces of the Komatsu Equipment against SR in the PPR.
10. As of October 15, 2014 there is currently approximately \$3,505,757.98 owing to Komatsu under the terms of the CSCs with interest accruing at a per diem interest rate of \$411.91.

Receivership of SR

11. On July 31, 2014, Alvarez & Marsal Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of SR pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench of Alberta. Komatsu did not become aware of the involvement of SR until the appointment of the Receiver. Komatsu understood that it was dealing exclusively with Edmonton Heavy and that no other party had possession of the Komatsu Equipment.
12. On August 1, 2014, the monthly payments of Edmonton Heavy to Komatsu under the CSCs were returned due to insufficient funds being available. Edmonton Heavy has not made any of its ongoing payments for the Komatsu Equipment under the CSCs since August 1, 2014.
13. On August 19 and 21, 2014, counsel for Komatsu wrote to counsel for the Receiver requesting a return of the Komatsu Equipment. Counsel for the Receiver replied on August 21, 2014 and advised that it was the Receiver’s position that as the Komatsu Equipment was sub-leased by Edmonton Heavy to SR that the stay of proceedings prevented Komatsu from enforcing under the terms of the CSCs to obtain a return of the

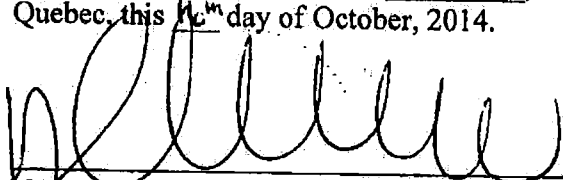
Komatsu Equipment. Attached hereto and marked collectively as Exhibit "D" are copies of the correspondence between counsel for the Receiver and counsel for Komatsu.

14. On August 25, 2014, counsel for Komatsu again wrote to counsel for the Receiver requesting a return of the Komatsu Equipment and for copies of any sub-leases for the lease of the Komatsu Equipment between SR and Edmonton Heavy. Counsel for Komatsu took the position that SR did not have an interest in the Komatsu Equipment as all of the CSCs as between Edmonton Heavy and Komatsu were in default. Attached hereto and marked as Exhibit "E" is a copy of the correspondence between counsel for the Receiver and counsel for Komatsu.
15. The Komatsu Equipment is currently in the possession of the Receiver. Komatsu would like to enforce its security against Edmonton Heavy, which to my knowledge is not currently subject to any stay of proceedings, and the Komatsu Equipment in order to recover the amounts outstanding under the CSCs.

Release and Prospective Sale of the Komatsu Equipment

16. Komatsu has attempted to negotiate a return of the Komatsu Equipment from the Receiver. The Receiver has advised that it is only prepared to release any interest it might have in the Komatsu Equipment if funds from the sale of such equipment is held in trust until an application on notice to the creditors of SR is made to distribute those funds.
17. Edmonton Heavy has now arranged for a sale of the Komatsu Equipment but that sale cannot proceed until the Receiver agrees or the Court orders a release of the Komatsu Equipment to Komatsu.
18. I make this Affidavit in support of an Application by Komatsu seeking, amongst others, the following relief:
 - (a) the return of the Komatsu Equipment; and
 - (b) a declaration that SR has no interest in the Komatsu Equipment.

SWORN BEFORE ME at Brossard,
Quebec, this 16th day of October, 2014.


Notary Public in and for the Province of
Quebec


[REMO IACOVOZZI]