

**Form 27**  
[Rule 6.3 and 10.52(1)]

Clerk's stamp:

COURT FILE NUMBER	<b>1403-10990</b>
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	<b>CALGARY</b>
APPLICANT	<b>KOMATSU FINANCIAL (CANADA) LTD.</b>
PLAINTIFF	<b>ROYAL BANK OF CANADA</b>
DEFENDANT	<b>SPRAGUE ROSSER CONTRACTING CO. LTD., SPRAGUE ROSSER DEVELOPMENTS INC., PACIFIC FEDERATION EQUITY GROUP INC., JEFFREY JESSAMINE, DANIEL EDWARDS AND MATTHEW MACKAY</b>
DOCUMENT	<b><u>APPLICATION</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>BLAKE, CASSELS &amp; GRAYDON LLP 3500, 855 – 2<sup>nd</sup> 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</b>

**NOTICE TO RESPONDENT**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Registrar.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>October 23, 2014</u>
Time	<u>10:00 a.m.</u>
Where	<u>Calgary Court Centre</u>
Before Whom	<u>The Honourable Justice Strekaf</u>

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. Komatsu Financial (Canada) Ltd. ("**Komatsu**") is seeking an Order, substantially in the form attached hereto as Schedule "A":

(a) deeming service of this Application good and sufficient, and abridging time for notice of this Application to the time actually given, if necessary;

(b) granting Komatsu immediate possession of the following equipment:

	<b>Contract #</b>	<b>Model</b>	<b>SN</b>
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

(the "**Komatsu Equipment**") which is currently in the possession of Alvarez & Marsal Canada Inc. the receiver and manager (the "**Receiver**") of Sprague-Rosser Contracting Co. Ltd. ("**SR**");

(c) declaring that SR does not have an interest in the Komatsu Equipment;

(d) requiring the Receiver to make the Komatsu Equipment available to Komatsu so that it may take possession and dispose of same as it sees fit; and

(e) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this application:**

2. The grounds upon which Komatsu relies in making the within application are as follows:

- (a) pursuant to a series of conditional sales contracts dated December 14, 2012, March 25, 2013, and April 30, 2014 (the “**CSCs**”) Komatsu sold the Komatsu Equipment to Edmonton Heavy Equipment Rentals Ltd. (“**Edmonton Heavy**”);
- (b) Komatsu registered its interests in the Komatsu Equipment in the Alberta Personal Property Registry as instrument numbers 12121728511, 13032835799, 13032835862, 13032835196, 13032834911, 13032834307, 14051428036, 14051424999, 14051427807, and 14051425518, as amended;
- (c) as at October 14, 2014, there was \$3,505,757.98 owing to Komatsu under the CSCs;
- (d) the Receiver was appointed over the property of SR on July 31, 2014 in the receivership proceedings (the “**Receivership Proceedings**”) commenced by the Royal Bank of Canada;
- (e) Edmonton Heavy entered into an agreement (the terms of which are not known to Komatsu) with SR for the use the Komatsu Equipment in breach of the CSCs;
- (f) the principals of SR are also the principals of Edmonton Heavy;
- (g) it was a condition of the CSCs that Edmonton Heavy would not lease, provide an interest in or give possession of the Komatsu Equipment to any other party;
- (h) Edmonton Heavy registered its interest in the certain pieces of Komatsu Equipment against SR in the Personal Property Registry;
- (i) SR and the Receiver do not hold a legal right to possession of the Komatsu Equipment;
- (j) Edmonton Heavy has negotiated a prospective sale of the Komatsu Equipment to a third party; and

- (k) such further relief as counsel may request and this Honourable Court may deem just.

**Material or evidence to be relied on:**

- 3. Komatsu intends to rely upon the following materials:
  - (a) the affidavit of Remo Iacovozzi, sworn October 16, 2014, filed; and
  - (b) the materials and orders filed in the Receivership Proceedings; and
  - (c) such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

- 4. Komatsu will rely upon and refer to the *Alberta Rules of Court* during the making of the Application.

**Applicable Acts and regulations:**

- 5. Komatsu will rely upon and refer to the following during the making of the Application:
  - (a) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.