

Mar-04-03 09:15am From
 001 04 2003 09:15am FROM: PWC FAS

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T-476 P.003/007 F-936
 1-057 P.003/007 F-255

2003 01H 0023

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
 COURT OF APPEAL**

**IN THE MATTER OF the Receivership of
 Hickman Equipment (1985) Limited**

**AND IN THE MATTER OF the Application by
 General Motors Acceptance Corporation
 of Canada, Limited ("GMAC") for payment
 to GMAC of the proceeds from the sale by
 the Receiver of four Terex Trucks.**

HICKMAN, Re GMAC

BETWEEN:

**GENERAL MOTORS ACCEPTANCE
 CORPORATION OF CANADA, LIMITED**

APPELLANT

AND,

CIT FINANCIAL LTD.

FIRST RESPONDENT

AND:

**JOHN DEERE LIMITED and JOHN DEERE
 CREDIT LIMITED**

SECOND RESPONDENT

AND:

CANADIAN IMPERIAL BANK OF COMMERCE

THIRD RESPONDENT

AND:

**ABN-AMRO BANK CANADA and ABN AMRO
 LEASING**

FOURTH RESPONDENT

AND:

ROYAL BANK OF CANADA

FIFTH RESPONDENT

AND:

TRIMAC EQUIPMENT LTD.

SIXTH RESPONDENT

AND:

HICKMAN LEASING LIMITED

SEVENTH RESPONDENT

AND:

GROUP HOLDINGS LIMITED

EIGHT RESPONDENT

AND:

**PRICEWATERHOUSECOOPERS INC, as
 Trustee in Bankruptcy and Receiver of
 Hickman Equipment (1985) Limited**

NINTH RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE THAT the Appellant appeals from the order of the Honourable Mr. Justice Hall filed on 28 February, 2003, in the proceedings of the Supreme Court of Newfoundland and Labrador bearing No. 2002 01 T0352, Court sub-file No. 7:21, being a final determination with respect the Appellant's entitlement to the proceeds from Receiver's sale of four Terex Trucks:

filed March 3, 2003

Mar-04-03 09:15am From:
MAR-04-2003 09:45am FROM: LINDA COOPER

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AND THAT the grounds of the proposed appeal are:

- (1) The learned applications judge erred in law and fact in dismissing the applicant's claim for proceeds with respect to Receiver's sale of the four Terex Trucks in finding that GMAC was not a secured creditor with respect to the four Terex Trucks;
- (2) The learned applications judge erred in law and fact in finding that leases by Hickman Leasing to Hickman Equipment were a transfer of the collateral covered by the leases from Hickman Leasing to Hickman Equipment;
- (3) The learned applications judge erred in law and fact in failing to find that the entering into of leases by Hickman Leasing was a transaction in the ordinary course of business of the lessor, and as such the provisions of section 31 of the Personal Property Security Act, S.N.L. 1998, c. P-7.1, apply;
- (4) The learned applications judge erred in law in finding that in order for GMAC's Global registration to be effective with regard to the Terex Trucks, GMAC ought to have filed a financing statement to disclose Hickman Equipment as the "new" debtor;
- (5) The learned applications judge erred in law in failing to find that GMAC had satisfied the registration requirements mentioned in paragraph 4 above, by virtue of its existing registration disclosing Hickman Equipment as the debtor for "all of the present and after acquired personal property" of Hickman Equipment;
- (6) Such other grounds upon which this Honourable Court may permit Counsel to be heard.

Mar-04-03 09:16am From-
McINNES COOPER

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AND THAT the Appellant will ask that the decision appealed from be reversed and varied as follows:

1. THAT the proceeds from the sale of the following units be paid by the Receiver to General Motors Acceptance Corporation of Canada, Limited:

<u>Stock No.</u>	<u>Make</u>	<u>Serial No.</u>	<u>O/S Balance</u>
C001115	Terex Truck	A7761187	\$241,164.00
C001113	Terex Truck	A7761196	\$247,816.80
C001114	Terex Truck	A7761186	\$241,164.00
C001112	Terex Truck	A7761195	\$247,816.80
Total to be paid to General Motors Acceptance Corporation of Canada, Limited			<u>\$977,961.60</u>

2. THAT costs be awarded to the Appellant on appeal and below.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 3rd day of March, 2003.


Thomas Kendell, Q.C.
~~McINNES COOPER~~
Solicitors for the Appellant, General Motors
Acceptance Corporation of Canada, Limited,

Whose Address for Service is:

P. O. Box 5939
Fifth Floor, The Baine Johnston Centre
10 Fort William Place
St. John's, Newfoundland, A1C 5X4

Mar-04-03 09:16am From-
MAR-04-2003 09:16AM FROM=MLINNES COOPER

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TO:

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