

Mar-04-03 09:15am From
MAIL TO: COOPER, HICKMAN RECI
MAIL FROM: COOPER, HICKMAN RECI

FAX 7221428

T-476 P.003/007 F-936
T-007 P.003/007 F-655

2003 01H 00 23

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

**IN THE MATTER OF the Recievership 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 Reciever of four Terex Trucks.**

HICKMAN, Re GMAC

BETWEEN:

AND:	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 09:49am FROMMUNNES COOPER

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T-057 P.004/007 F-256

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-
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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	<u>\$247,816.80</u>

Total to be paid to General Motors Acceptance Corporation of Canada, Limited **\$977,961.60**

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 3 st day of March, 2003.


 Thomas Kendall, 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

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TO-

**Gregory W. Dickie
White Ottenheimer & Baker
10 Fort William Place
St. John's, NL
Solicitors for CIT Financial Ltd.**

Maureen Ryan
Stewart McKelvey Stirling Scales
Suite 1100, Cabot Place
100 New Gower St.
St. John's, NL
Solicitors for John Deere Ltd./John Deere Credit Inc.

Geoffrey Spencer
Benson Myles
Suite 900, Atlantic Place
215 Water St.
St. John's, NL
Solicitors for Canadian Imperial Bank of Commerce

Brian Winsor
Curtis Dawe
Fortis Bld, 139 Water St.
St. John's NL
Solicitors for ABN-AMRO and Royal Bank of Canada and Trimac Equipment

Griffith Roberts
Cox Hanson O'Reilly Matheson
Scotia Centre, 401-235 Water St.
St. John's, NL A1C 1B6
Solicitors for Hickman Leasing Limited and Group Holdings Limited

Anna Locke
Patterson Palmer
Scotia Centre, 235 Water St.
P.O. Box 610, Stn. C,
St. John's, NL A1C 1S3
Solicitors for PricewaterhouseCoopers Inc.