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4-16-3 11:17AM: STEWART McKELVEY →

Merrick Holm#16/20

2003 NO.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

COURT OF APPEAL

IN THE MATTER OF the Court
Appointed Receivership of Hickman
Equipment (1985) Limited ("Hickman Equipment")

AND IN THE MATTER OF the
Bankruptcy and Insolvency Act

AND IN THE MATTER OF the
Application of General Motors Acceptance
Corporation of Canada Limited ("GMAC") for
an Order approving payment to GMAC by the Receiver
of the remaining amount owing to GMAC by
Hickman Equipment

BETWEEN:

JOHN DEERE LIMITED
AND JOHN DEERE CREDIT INC.

APPELLANTS

AND:

GENERAL MOTORS ACCEPTANCE
CORPORATION OF CANADA LIMITED

RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE THAT the Appellants appeal from the Decision of the Honourable Mr. Justice Hall dated the 4th day of April, 2003 in proceedings in the Supreme Court, Trial Division, in the matter of the Bankruptcy and Insolvency Act, bearing number 2002 011 0352, court sub-file 7:34; AND THAT the grounds of the proposed appeal are:

1. The learned trial judge erred in law and in mixed fact and law in finding that the term "Vehicles" as used in par. 1 of the Security Agreement (Leasing), was intended by the parties to the Security Agreement (Leasing) to mean (1) all of the inventory of Hickman Equipment consisting of construction equipment (including but not limited to loaders,

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- excavators, and bulldozers); and (2) motor vehicles, earth moving and paving equipment and any related items of equipment or attachments or accessions thereto;
2. The learned trial judge erred in law and in mixed fact and law in failing to apply the ordinary meaning of "vehicles" to interpret the term "Vehicles" in the Security Agreement (Leasing);
 3. The learned trial judge erred in law, in fact and in mixed fact and law in his failure to conclude that, since certain units in the inventory of Hickman Equipment *were* in the nature of vehicles (with reference to the ordinary meaning), including articulated dump trucks and Terex trucks, a proper interpretation of the term "Vehicles" in the Security Agreement (Leasing) in accordance with its ordinary meaning, would provide and promote a sensible commercial result and would be consistent with the commercial interests of the parties;
 4. The learned trial judge erred in law and in mixed fact and law in finding that the Security Agreement (Leasing) is not limited to creating a security interest only in Vehicles that were financed by GMAC;
 5. The learned trial judge erred in law and in mixed fact and law in failing to decide whether or not the security interest created by the Security Agreement (Leasing) is limited to only those Vehicles which the Respondent can identify as being held exclusively for lease or leased to the public by Hickman Equipment as at the date of bankruptcy; and
 6. Such further and other grounds as the Appellant may adduce and the Court of Appeal may allow to be heard.

THE APPELLANTS THEREFORE SEEK the following relief or disposition:

7. that the finding of the learned trial judge that the term "Vehicles" as used in par. 1 of the Security Agreement (Leasing), was intended by the parties to the Security Agreement (Leasing) to mean (1) all of the inventory of Hickman Equipment consisting of construction equipment (including but not limited to loaders, excavators, and bulldozers);

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- and (2) motor vehicles, earth moving and paving equipment and any related items of equipment or attachments or accessions thereto **BE SET ASIDE**;
8. that the finding of the learned trial judge that the Security Agreement (Leasing) is not limited to creating a security interest only in Vehicles that were financed by GMAC **BE SET ASIDE**; and
9. that an order be made that the term "Vehicles" when used in the Security Agreement (Leasing) has the ordinary meaning of "vehicles" which does not include construction equipment of various types; and
10. that an order be made that the security interest created by the Security Agreement (Leasing) is limited to Vehicles that were financed by GMAC; and
11. that an order be made that the security interest created by the Security Agreement (Leasing) is limited to only those Vehicles which the Respondent can identify as being held exclusively for lease or leased to the public by Hickman Equipment as at the date of bankruptcy.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 14th day of April 2003.


MICHAEL F. HARRINGTON, Q.C.
STEWART MCKELVEY STIRLING SCALES
Solicitors for the Appellants
whose address for service is:
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TO: SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
Court of Appeal
Duckworth Street
P.O. Box 937
St. John's, NL A1C 5M3
Attn: Registry

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
Trial Division
Duckworth Street
P.O. Box 937
St. John's, NL A1C 5M3
Attn: Registry

AND TO: Mr. Thomas R. Kendell, Q.C.
MCINNES COOPER
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Mr. J. Vernon French, Q.C.
French, Dunne & Associates
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and Culcase Financial Services
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Curtis, Dawe
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Cedarapids Inc. and
Tramac Equipment Finance Limited
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