

Merrick Holm

4/17/03 11:56 PAGE 12/25 Merrick Holm

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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**

**AND IN THE MATTER OF the  
Bankruptcy and Insolvency Act**

**AND IN THE MATTER OF the  
Application of John Deere Limited  
and John Deere Credit Inc. in respect  
of the Transition Issue**

<b><u>BETWEEN:</u></b>	<b>JOHN DEERE LIMITED AND JOHN DEERE CREDIT INC.</b>	<b>APPELLANTS</b>
<b><u>AND:</u></b>	<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	<b>RESPONDENT</b>

**NOTICE OF APPEAL**

**TAKE NOTICE THAT** the Appellants appeal from the Decision of the Honourable Mr. Justice Hall dated the 4<sup>th</sup> day of April, 2003 in proceedings in the Supreme Court, Trial Division, in the matter of the Bankruptcy and Insolvency Act, hearing number 2002 OIT 0352, court sub-file 7:36; **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 financing statement of Canadian Imperial Bank of Commerce ("CIBC") dated November 29, 2001, registered in the Personal Property registry as Registration No. 1403243 (the "transition financing statement") is not seriously misleading by reason of its failure to reference the Supplemental Debentures dated February 19, 1990; April 17, 1997; August

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Merrick Holm

4/17/03 11:56 PAGE 13/25

Merrick Holm

SENT BY:

Received 04/16/2003 11:42AM in 04:36 on line [2] for CMACDONALD \* Pg 8/20  
4-16-03 11:15AM ; STEWART McKELVEY -

Merrick Holm:# 8/20

- 2 -

6, 1997; and July 15, 1998, each of which was separately registered under prior registration law and which created a security interest collectively securing an obligation up to 20 million dollars (collectively the "Supplemental Debentures") and is, therefore, "effective to transition the prior law registrations by CIBC" not only of the 3 million dollar Debenture dated January 15, 1985 (the "Debenture"), but also the Supplemental Debentures;

2. In making the finding described in paragraph 1 of this Notice of Appeal, the learned trial judge erred in law, in fact and in mixed fact and law:
  - (a) in misinterpreting and misapplying the definition of "security interest" contained in section 2 (pp) of the Personal Property Security Act (the "PPSA") and correspondingly, the reference to "prior security interest" in sections 74 and 75 of the PPSA and section 26 of the regulations under the PPSA (the "PPSR");
  - (b) in finding not only that the Supplemental Debentures, taken with the Debenture, constituted one debenture but also in finding there to be only one "security interest" for purposes of continuance of the prior security interests under the PPSA;
  - (c) in finding that CIBC is not required to comply with the mandatory provisions of section 26 of the PPSR in respect of the prior security interests in the Supplemental Debentures in order to continue the registered and perfected status of the prior security interests in, and the priority of, the Supplemental Debentures;
  - (d) in finding that failure by a secured party, such as CIBC, to comply with the mandatory provisions of section 26 of the PPSR is capable of cure;
  - (e) in finding that the drafters of the PPSA did not intend that a reasonable searcher who is directed by a transition financing statement to a particular security document registered under prior registration law would, both prior to and after 13 December 2001, seek to and obtain a copy of the security document as registered under prior registration law from the pre-PPSA registries, including the Registry of Deeds and the Registry of Bills of Sale and Conditional Sales;

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Merrick Holm

4/17/03 11:56 PAGE 14/25

Merrick Holm

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4-16-3 11:15AM : STEWART McKELVEY -

Merrick Holm:# 9/20

- 3 -

- (d) in failing to properly interpret section 19 of the PPSA, and in failing to recognize that not all reasonable searchers who are relying for legitimate purposes on the PPSA Register have the status under section 19 to make demands for documents and information thereunder;
- (g) in finding that a reasonable searcher, seeing reference in a transition financing statement only to one registration under prior registration law, would be put on notice to make inquiries of a secured party under section 19 of the PPSA as to whether there exists any other security interest at the time of the inquiry or any other prior law registrations;
- (h) in failing to find that a reasonable searcher can rely on the PPSA register and the information contained therein;
- (i) in failing to find that the onus is on a registrant, such as CIBC, to make registrations which are not misleading and which do not contain material omissions;
- (j) in failing to find that the failure to include any reference in the transition financing statement to the Supplemental Debentures is seriously misleading to the reasonable searcher on the basis of an objective test; and,
- (k) in failing to find that as a consequence of referencing only the Debenture in the mandatory section of its transition financing statement, and also by choosing to reference only the Debenture in the optional "Additional Information" portion of the transition financing statement, CIBC should be estopped from denying as against any reasonable searcher that the Debenture is the only prior security interest continued by the transition financing statement;
3. The learned trial judge erred in law, in fact and in mixed fact and law in determining, in effect, that a prior security interest can be amended or supplemented after transition under the PPSA such that the prior security interest, as amended or supplemented, obtains a higher priority ranking or tacking as against other prior security interests which were

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Merrick Holm

4/17/03 11:56 PAGE 15/25

Merrick Holm

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4-16-03 11:16AM ; STEWART MCKELVEY -

Merrick Holm:#10/20

- 4 -

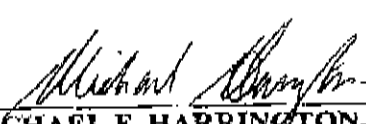
registered in accordance with prior registration law and properly continued under the PPSA; and

4. 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:**

5. that the finding of the learned trial judge that the transition financing statement is not seriously misleading by reason of its failure to reference the Supplemental Debentures and is, therefore, "effective to transition the prior law registrations by CIBC" not only of the Debenture but also of the Supplemental Debentures **BE SET ASIDE**; and
6. an order be made that the transition financing statement cannot be relied upon by CIBC as against other creditors, including the Appellant, to assert priority of the security interests created by the Supplemental Debentures as of the effective date of their registration under prior law, and that the earliest date of perfection, which can be claimed by CIBC in relation to the security interest created in the Supplemental Debentures, is January 25, 2000 (being the earliest date of a CIBC filing under the PPSA).

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

  
MICHAEL F. HARRINGTON, Q.C.  
STEWART MCKELVEY STIRLING SCALES  
Solicitors for the Appellants  
whose address for service is:  
Suite 1100, Cabot Place  
100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5V3

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Merrick Holm

4/17/03 11:56

PAGE 16/25

Merrick Holm

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4-16-3 :11:16AM i STEWART MCKELVEY -

Merrick Holm:#11/20

- 5 -

**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. Geoff Spencer**

**BENSON, MYLES**  
 Solicitors for the Respondent  
 whose address for service is:  
 Suite 900, Atlantic Place  
 P.O. Box 1538, Stn. C  
 St. John's, NL A1C 5N8

**Mr. Thomas R. Kendall, Q.C.**  
**MCINNES COOPER**

Solicitors for the General Motors  
 Acceptance Corporation  
 whose address for service is:  
 10 Fort William Place  
 P.O. Box 5939  
 St. John's, NL A1C 5K8

**Mr. R. Harry Learmonth, Q.C.**  
**Learmonth, Dunne & Clarke**

Solicitors for Ingersoll Rand  
 whose address for service is:  
 8<sup>th</sup> Floor, Fortis Building  
 139 Water Street  
 P.O. Box 700, Stn. C  
 St. John's, NL A1C 5L4

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Merrick Holm

4/17/03 11:56 PAGE 17/25

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4-16-3 :11:16AM : STEWART McKELVEY →

Merrick Holm:#12/20

- 6 -

**Mr. Gregory M. Smith  
Curtis, Dawe**  
Solicitors for ABN-AMRO,  
Royal Bank of Canada,  
Cedarapids Inc. and  
Tramac Equipment Finance Limited

whose address for service is:  
11<sup>th</sup> Floor, Fortis Building  
139 Water Street  
P.O. Box 337, Stn C  
St. John's, NL A1C 5J9

**Mr. Gregory W. Dickie  
White, Ottenheimer & Baker**  
Solicitors for CIT Financial  
whose address for service is:  
Bainc Johnston Centre  
10 Fort William Place  
P.O. Box 5457  
St. John's, NL A1C 5W4

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