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T-349 P.004/006 F-101

2003 01 T 3135

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

## IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

APRIL DUNNE

APPLICANT

AND:PRICEWATERHOUSECOOPERS INC.,  
TRUSTEE IN BANKRUPTCY

FIRST RESPONDENT

AND:SHOWTECH, A DIVISION OF  
HICKMAN EQUIPMENT (1985)  
LIMITED, IN BANKRUPTCY

SECOND RESPONDENT

AND:

SUNDANCE SALOON LIMITED

THIRD RESPONDENT

ORDER

THIS MATTER HAVING BEEN COME ON BEFORE THE HONOURABLE

*Justice Thompson*UPON HEARING*Jeff Penney*

Solicitor for the Applicant;

AND UPON HEARING*Anna Koeke*Solicitor for the Court appointed Receiver and  
Trustee in Bankruptcy for the Estate of Hickman Equipment (1985) Limited;AND UPON HEARING the Application and reviewing the supporting documents;

Filed Aug 12/03

**IT IS HEREBY ORDERED THAT** Section 69.3(1) of the Bankruptcy and Insolvency Act does not apply to prevent the Applicant from commencing an action against the Second Respondent in the Supreme Court of Newfoundland and Labrador, Trial Division, for liability to or damages incurred by the Applicant as a result of the alleged negligence of the said Showtech, a division of Hickman Equipment (1985) Limited, or its servants, agents or employees;

**AND IT IS FURTHER ORDERED THAT** pursuant to <sup>69.3(1)</sup> Section 69.4 of the Bankruptcy and Insolvency Act, it is declared and Sections 69 to 69.3(1) no longer operate with respect to the Applicant's proceedings against the Second Respondent on the grounds the Applicant is likely to be naturally prejudiced by the continued operation of those sections, or, in the alternative, the grounds that it is equitable to make such a declaration;

**AND IT IS FURTHER ORDERED THAT** the Applicant is hereby authorized to issue and continue proceedings against the Second Respondent, Showtech, a Division of Hickman Equipment (1985) Limited, in its own name and at its own risk and expense, for the purpose only of determining any liability of the Second Respondent to the Applicant and damages owing to the Applicant therefrom, and provided that any judgment and/or award of costs which the Applicant may be awarded as against the Second Respondent may be satisfied only by resort to such liability insurance coverage of the Second Respondent as may be available to satisfy such judgment and/or award, and further that in no event may any claim be made by the Applicant in respect of any such judgment and/or award of costs against the estate of the Second Respondent in bankruptcy;

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**AND IT IS FURTHER ORDERED THAT** said lifting of the aforesaid stays shall in no way be interpreted so as to give the Applicant any advantage or claim with respect to the distribution of the assets of the estate of the Second Respondent. Rather, the Applicant shall be subject to the general rules applicable to unsecured creditors;

**AND IT IS FURTHER ORDERED THAT** the Applicant may proceed with an action against Showtech, a Division of Hickman Equipment (1985) Limited.

**DATED AT** St. John's, in the Province of Newfoundland and Labrador, this 12<sup>th</sup> day of August, 2003.

*Eileen Burke*  
Asst. Deputy Registrar