

2002 01 NO. T 4808

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

**BETWEEN: CAROLYN HYNES-PEDDLE
in her own right** **APPLICANT/INTENDED
FIRST PLAINTIFF**

**AND: REBEKAH PEDDLE, an Infant
by her Guardian ad Litem
CAROLYN HYNES-PEDDLE** **APPLICANT/INTENDED
SECOND PLAINTIFF**

AND: HICKMAN EQUIPMENT (1985) LIMITED **RESPONDENT/
INTENDED
FIRST DEFENDANT**

AND: ROBERT DINN **RESPONDENT/INTENDED
SECOND DEFENDANT**

ORDER

Before the Honourable Mr. Justice Hall

UPON IT APPEARING that the Applicants have requested leave to issue a Statement of Claim against the First Defendant, Hickman Equipment (1985) Limited AND UPON HEARING Trevor N. Bridger, Counsel for the Applicants/First Plaintiff and the Second Plaintiff; AND UPON HEARING Anna Locke, Counsel for the Court Appointed Receiver and Trustee in Bankruptcy for the Estate of Hickman Equipment (1985) Limited;

IT IS THIS DAY ORDERED THAT Section 69.3(1) of the Bankruptcy and Insolvency

Filed Dec 13/02

Act does not apply to prevent the Applicants/Plaintiffs from commencing the said proceeding against the Intended First Defendant in the Supreme Court of Newfoundland and Labrador, Trial Division for damages incurred by the Applicants/Intended Plaintiffs as a result of the alleged negligence of the said Hickman Equipment (1985) Limited or its servants, agents or employees in respect of the Statement of Claim in proceeding 2002 01 No. T 4808;

AND IT IS FURTHER ORDERED THAT pursuant to Section 69.4 of the Bankruptcy and Insolvency Act, it is declared that Sections 69 to 69.3(1) no longer operate with respect to the Applicants'/Intended Plaintiffs' proceedings against the Respondent/Intended First Defendant on the grounds the Applicants are 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 Applicants/Plaintiffs are hereby authorized to issue and continue proceedings against the Respondent, 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 Respondent to the Applicants/Intended Plaintiffs, and provided that any judgment and/or award of costs which the Applicants/Intended Plaintiffs may be awarded as against the Intended First Defendant may be satisfied only by resort to such liability insurance coverage of the Intended First Defendant as may be available to satisfy such judgment and/or award, and further that in no event may any claim be made by the Applicants in respect of any such judgment and/or



award of costs against the Estate of Hickman Equipment (1985) Limited in bankruptcy;

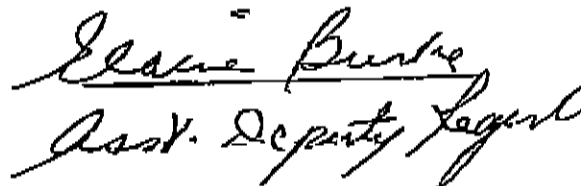
AND IT IS FURTHER ORDERED THAT said lifting of the aforesaid stays shall in no way be interpreted so as to give the Applicant any advantage or claim with respect to the distribution of the assets of the Estate of the Intended First Defendant. Rather, the Intended Plaintiffs shall be subject to the general rule applicable to unsecured creditors;

AND IT IS FURTHER ORDERED THAT the Applicants/Plaintiffs may proceed with a Third Party action against Hickman Equipment (1985) Limited in proceeding 2002 01 T. 4808.

AND IT IS FURTHER ORDERED THAT before any funds resulting from the said action are disbursed that the parties return to this Court for instructions on the disbursement of said funds.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this

13th day of December, 2002.


Asst. Deputy Registrar