

2003 No. 01 H 0004
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

BETWEEN:

Wells Fargo Equipment Finance Company Appellant

AND:

General Motors Acceptance Corporation First Respondent

AND:

John Deere Limited and John Deere Second Respondent
Credit Inc.

AND:

CIBC Equipment Finance Limited Third Respondent

AND:

Hickman Leasing Ltd. Fourth Respondent

AND:

Canadian Imperial Bank of Commerce Fifth Respondent

AND:

PricewaterhouseCoopers Inc., as Trustee Sixth Respondent
in Bankruptcy and Receiver of Hickman
Equipment (1985) Limited

NOTICE OF APPEAL

TAKE NOTICE that the Appellant appeals from the order or decision of the Honourable Justice Hall dated the 3 day of January, 2003 in proceedings in the Supreme Court of Newfoundland and Labrador, Trial Division, bearing No. 2002 01 T 0352 and entitled:

**IN THE MATTER OF the Application
of Wells Fargo Equipment Finance Company
for possession of two pieces of equipment in
the possession of Hickman Equipment
(1985) Limited**

**AND IN THE MATTER OF the Receivership of
Hickman Equipment (1985) Limited**


AND THAT the grounds of the proposed appeal are:

1. **THAT Justice Hall erred in concluding that the perfection of the security interests of the equipment leases held by the Appellant were not properly transitioned under the provisions of the Personal Property Security Act ("PPSA"), and that the Appellant has therefore lost whatever priority over the equipment it may have held by reason of the pre-PPSA registrations;**
2. **THAT Justice Hall erred in concluding that the omission by the Appellant in its financing statements of March 21 and March 22 2000 of the required particulars of the Prior Law registrations under Regulation 26 of the Personal Property Security Regulations is seriously misleading and is not capable of being cured under s.44 of the PPSA; and**
3. **Such further and other grounds as counsel for the Appellant may advise and this Honourable Court may permit.**

AND THAT the Appellant files this Notice of Appeal for the purpose of preserving its right to appeal.

AND THAT the Appellant does not presently intend to apply to proceed with the proposed appeal until the application in the Trial Division has been completed.

DATED AT St. John's, Newfoundland and Labrador, this 13 day of January, 2003.



Richard B. Jones
Jones, Rogers LLP
Solicitors for the Appellant

ADDRESS FOR SERVICE:

c/o Learmonth, Dunne & Clarke
 22 Church Hill
 P.O. Box 700
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 A1C 5L4

To: McInnes, Cooper
 Solicitors for General Motors Acceptance Corporation
 P.O. Box 5939
 5th Floor, Baine Johnston Centre
 10 Fort William Place
 St. John's, NL, A1C 5X4
Attention: Thomas R. Kendell, Q.C.

Stewart McKelvey Stirling Scales
 Solicitors for John Deere Limited and John Deere Credit Inc.
 P.O. Box 5038
 11th Floor, Cabot Place
 100 New Gower Street
 St. John's, NL, A1C 5V3
Attention: Michael Harrington, O.C. and Maureen Ryan

White, Ottenheimer & Baker
 Solicitors for CIBC Equipment Finance Limited
 P.O. Box 5457
 6th Floor, Baine Johnston Centre
 10 Fort William Place
 St. John's, NL, A1C 5W4
Attention: Gregory W. Dickie

Cox, Hanson, O'Reilly, Matheson
 Solicitors for Hickman Leasing Ltd.
 4th Floor, Scotia Centre
 235 Water Street
 St. John's, NL, A1C 1B6
Attention: Griffith D. Roberts

Benson Myles
Solicitors for Canadian Imperial Bank of Commerce
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215 Water Street
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Attention: Geoffrey L. Spencer

Patterson Palmer
Solicitors for PricewaterhouseCoopers Inc.
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Attention: Frederick J. Constantine

Learmonth, Dunne & Clarke
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January 13, 2003

Supreme Court of Newfoundland and Labrador
Court of Appeal
297 Duckworth Street
St. John's, NL
A1C 5M3

Attention: Deputy Registrar

**Re: In the Supreme Court of Newfoundland
and Labrador
Court of Appeal
Wells Fargo Equipment Finance Company – Appellant
General Motors Acceptance Corporation – First Respondent
John Deere Limited and John Deere Credit Inc. – Second
Respondent
CIBC Equipment Finance Limited – Third Respondent
Hickman Leasing Ltd. – Fourth Respondent
Canadian Imperial Bank of Commerce – Fifth Respondent
PricewaterhouseCoopers Inc., as Trustee in Bankruptcy
and Receiver of Hickman Equipment (1985) Limited – Sixth
Respondent**

Dear Mesdames:

With reference to the above, I enclose the following:

1. Original and 3 copies of a Notice of Appeal.
2. 4 copies of the Decision of Justice Hall dated January 3, 2003.
3. Our cheque in the amount of \$60.00.

I have not requested a transcript of the proceeding in the Trial Division, because, to date, no oral evidence has been given.

When serving a copy of the Notice of Appeal, I will provide each party with a copy of this letter. If there is any objection which cannot be resolved with respect to my not having requested a transcript of the proceeding in the Trial Division, I will apply for directions.

I trust that this is satisfactory, and request that the Notice of Appeal be filed today.

Yours very truly,

Learmonth, Dunne & Clarke

Per: *R. Barry Learmonth*
R. Barry Learmonth

RBL/sm