

2002 01 T 3252
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION
IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

SUNDANCE SALOON LIMITED

APPLICANT

AND:

PRICEWATERHOUSE COOPERS INC.,
COURT APPOINTED RECEIVER AND
TRUSTEE IN BANKRUPTCY

FIRST RESPONDENT

AND:

DERRICK PICCOTT

SECOND RESPONDENT

AND:

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

THIRD RESPONDENT

ORDER

THIS MATTER HAVING BEEN COME ON BEFORE THE HONOURABLE MR.
JUSTICE ORSBORN

UPON HEARING Peter O'Flaherty, Solicitor for the Applicant and UPON HEARING Anna Locke, 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;

IT IS HEREBY ORDERED THAT Section 69.3(1) of the Bankruptcy and Insolvency Act does not apply to prevent the Applicant from commencing the said Third Party

Filed Sept 13/02 Bp

proceeding against the Third Respondent in the Supreme Court of Newfoundland and Labrador, Trial Division for liability or damage 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 in respect of the Statement of Claim in proceeding 2002 01T 0464;

AND IT IS FURTHER ORDERED THAT pursuant to 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 Third Party proceedings against the Third 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 Third Party proceedings against the Third 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 Third Respondent to the Applicant in the proceeding 2002 01T 0464, and provided that any judgement and/or award of costs which the Applicant may be awarded as against the Third Respondent may be satisfied only by resort to such liability insurance coverage of the Third Respondent as may be available to satisfy such judgement and/or award, and further that in no event may any claim be made by the Applicant in respect of any such judgement and/or award of costs against the estate of the Third Respondent 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 Third Respondent. Rather, the Applicant shall be subject to the general rules applicable to unsecured creditors.

AND IT IS FURTHER ORDERED the Applicant may proceed with a Third Party action against Showtech, a division of Hickman Equipment (1985) Limited in the proceeding 2002 01T 0464;

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 St. John's, Province of Newfoundland and Labrador, this 4 day of September, 2002.

Eleanor Smith
Asst. Deputy Registrar