

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **WEDNESDAY, the 29th DAY OF**
JUSTICE CAMERON) **AUGUST, 2006**

B E T W E E N:

GENERAL MOTORS CORPORATION

Applicant

- and -

TIERCON INDUSTRIES INC.

Respondent

O R D E R

THIS MOTION, made by Zeifman Partners Inc. (the "**Receiver**") in its capacity as court appointed receiver and manager of the property, assets and undertaking of Tiercon Industries Inc. appointed pursuant to section 101 of the *Courts of Justice Act* for an order substantially in the form of the draft order annexed to the notice of motion herein approving the Ninth Report of the Receiver dated June 6, 2006 (the "**Ninth Report**") and the Post-Filing Claims Process described therein was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the notice of motion and the Ninth Report, dated June 6, 2006;

AND ON HEARING the submissions of counsel for the Receiver, counsel for the parties Galanda, counsel for General Motors Corporation ("**GM**"), and counsel for the Agent, and reviewing the written costs submissions of the parties:

1. **THIS COURT ORDERS** that Galanda shall pay the Receiver partial indemnity costs, fixed in the amount of \$3,500.00, inclusive of GST and disbursements.
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COURT FILE NO.: 05-CL-5854

DATE: 20060829

SUPERIOR COURT OF JUSTICE - ONTARIO
(Commercial List)

RE: GENERAL MOTORS CORPORATION v. TIERCON INDUSTRIES, INC.

BEFORE: Justice Cameron

COUNSEL: Jeffrey C. Carhart and Margaret R. Sims, for Zeifman Partners Inc., in its capacity as the Court Appointed Receiver and Manager of all the property and assets and undertaking of Tiercon Industries Inc.

Ronald B. Moldaver, Q.C., for Galanda and Blackridge Properties Inc.

Rachelle F. Moncur, for General Motors Corporation

Paul G. Macdonald, for Royal Bank of Canada, National Bank of Canada, Bank of Nova Scotia and Comerica Bank

HEARD: July 19, August 8 and 11, 2006 (In Writing)

COSTS ENDORSEMENT

[1] In my endorsement dated July 11, 2006, I approved the Post-Filing Claims Process of Zeifman Partners, the Receiver of Tiercon, at the instance of General Motors.

[2] Galanda and Blackridge opposed the motion insofar as it denied the right to (a) await the decision on liability, quantum and indemnity before filing its appeal; (b) participate in the litigation respecting the scope of the indemnity.

[3] I determined that liability and damages be determined before considering liability on the indemnity.

[4] Further, the Banks chose to reimburse the Receiver rather than pay the landlord directly.

[5] The Receiver submitted a bill of costs on a partial indemnity basis for that portion of the costs related to Galanda's late objection totalling \$4,187.50 plus GST at 6% of \$246.25.

[6] Galanda seeks an assessment of costs by a claims officer. This is denied; the costs are sufficiently small to dispose of them expeditiously.

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[7] Galanda sought a Referee rather than a "Claims Officer". I rejected the proposal as being unduly cumbersome and would delay a timely and cost effective resolution of the claim.

[8] Galanda correctly notes that Mesbur J. ordered that the claims review process be returnable for a decision by the court.

[9] In the circumstances, I fix the Receiver's costs at \$3,500 plus GST.


CAMBRON J.

DATE: August 29, 2006