



THE HONOURABLE
JUSTICE HOY

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

) WEDNESDAY, the 14th DAY OF
) OCTOBER, 2005

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 Galanda Properties Inc. and Blackridge Properties Inc. (together "Galanda") pursuant to the Notice of Motion dated June 7, 2005 for, *inter alia*, possession of premises subject to the lease between Galanda and Tiercon Industries Inc. (the "Landlord's Motion"), this cross-motion made by Zeifman Partners Inc. in its capacity as the Court appointed receiver and manager of all of the property and assets and undertaking of Tiercon Industries Inc. (the "Receiver") pursuant to the Notice of Motion dated June 22, 2005 for, *inter alia*, a declaration that it can remain in occupation and possession of the Plant (as defined in the Second Report of the Receiver, dated June 22, 2005 (the "Second Report")) (the "Receiver's Cross-Motion"), and this cross-motion made by Royal Bank of Canada, in its capacity as agent (in such capacity, the "Agent") for The Bank of Nova Scotia, National Bank of Canada, Comerica Bank and Royal Bank of Canada (collectively, the "Senior Lenders") pursuant to the Notice of Motion dated June 24, 2005 for a declaration that, should Galanda obtain relief

sought by it, the Agent is entitled to exercise a contractual right of access to the Plant (the "Agent's Cross-Motion"), were heard on the 17th day of August, 2005 at the Courthouse, at 393 University Avenue, in the City of Toronto.

ON READING the Affidavit of John Bambery sworn April 15, 2005, the Affidavit of Galliano Tiberini sworn June 6, 2005, the Affidavit of John Bambery sworn June 21, 2005, the Affidavit of Tony Zaspalis sworn June 22, 2005, the Second Report, the Affidavit of Galliano Tiberini sworn June 27, 2005, the transcript of the cross examination of Galliano Tiberini conducted on July 21, 2005, the transcript of the cross examination of Tony Zaspalis conducted on July 21, 2005 and the transcript of the cross examination of John Bambery conducted on July 21, 2005;

AND UPON HEARING submissions for counsel for the parties Galanda, the Receiver, General Motors Corporation ("GM") and the Agent and reading the *facta* delivered, and upon delivery of written endorsement of the Court on September 7 2005 *inter alia* dismissing the Landlord's Motion, and reviewing the written costs submissions of the parties;

1. **THIS COURT ORDERS** that Galanda shall pay GM partial indemnity costs, fixed in the amount of \$15,000.00, inclusive of GST and disbursements.
2. **THIS COURT ORDERS** that Galanda shall pay the Receiver partial indemnity costs, fixed in the amount of \$25,000.00, inclusive of GST and disbursements, and, pending the hearing of the appeal in this matter, the Receiver may pay occupation rent into Court of up to the sum of \$25,000.00 due under the lease between Galanda and Tiercon Industries Inc.

3. THIS COURT ORDERS that Galanda shall pay the Senior Lenders partial indemnity costs, fixed in the amount of \$25,000.00, inclusive of GST and disbursements.



JOSEPH P VAN TASSEL
REGISTRAR

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PER/PAR:

