

GENERAL MOTORS CORPORATION  
Applicant

and

TIERCON INDUSTRIES INC.  
Respondent

Court File No: 05-CL-5854

Nov. 15/05

November 15, 2005

Mr. MacDonald & Mr. Harrison  
for the Senior Lenders

Mr. Carhart for the Receiver

Ms. Moncur for GM.

Mr. Moldaver, Q.C. for the landlord, Galanda.

The landlord opposed the inclusion of <sup>the 5</sup> 'general' of assets described at para 12 of the Receiver's 7<sup>th</sup> report (Bulk storage silos; Cranes; chillers and cooling towers; compressed air system; transformers) in the auction sale by Maynards because it says they are not 'tenant fixtures' or 'trade fixtures'; rather, it says, they are true fixtures.

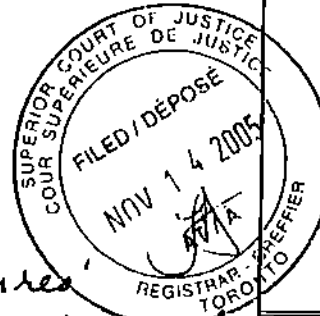
The landlord does not dispute that trade fixtures are part of the Senior Lenders' security and can be removed.

It became apparent that the real issue, and the landlord's real concern, is the extent of the Receiver's obligation to repair damage occasioned to the premises by the removal of the fixtures, and whether the Receiver is obligated to

~~remove all of the tenant's trade fixtures~~

restore the demised premises to the state

that existed prior to the installation of the trade fixtures (para 5 of the lease) or to remove



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD  
(Returnable November 15, 2005)

McMILLAN BINCH MENDELSON LLP  
Barristers and Solicitors  
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Solicitors for Royal Bank of Canada, National  
Bank of Canada, Bank of Nova Scotia and  
Comerica Bank

all of the trade fixtures, if it removes any, as the Tenant is required to do upon termination of the lease. <sup>of the assets in issue</sup>

The parties were in agreement that <sup>the</sup> ~~the~~ <sup>Reverer's</sup> ~~in connection w/ the removal~~ extent of the <sup>Reverer's</sup> repair obligations, (including the issue of whether all trade fixtures must be removed) should be left for another day.

The issue of whether Maynard can sell 4 of the 5 genres in dispute (the transformers are not dealt w/ today) is urgent, <sup>Council</sup> however. ~~if~~ for the Senior lenders advise that Maynards will not provide a minimum price guarantee for these assets unless it is advised today that they are included in the auction package.

Mr. Carhart <sup>proposes</sup> ~~states~~ that the net minimum Guarantee, <sup>of \$4.3M</sup> under the auction agreement with Maynards not be distributed, pending resolution of the scope of the Reverer's repair obligations w/ respect to the 4 genres of assets in issue. This is satisfactory to the

Senior lenders. I note that the Senior lenders will derive the

Benefit of the auction proceeds,  
subject to costs of sale & receiver fees  
& repair obligations. The Senior Bondholders  
support the inclusion of to 4 years  
in the sale, even though there has been  
no determination of the scope of the  
Receiver's related repair obligations, and  
hence no ability to weigh proceeds of sale  
against related repair costs.  
Mr. Moldauer has sought instructions,  
& the Receiver's proposal is acceptable  
to it.

Order accordingly to issue in the form  
on which I have enclosed my first.  
including to 4 years of costs in the

action, providing for no distribution of  
proceeds, until the scope of the Receiver's  
repair obligations in relation to removed  
of the 4 years of costs has been  
determined, and providing that, such  
repair costs shall be paid before  
any amounts shall be distributed  
to the Senior Bondholders from the  
sale of assets by Mortgagees.  
For greater certainty,  
the Senior Bondholders may bring a  
motion ~~providing~~ for an order  
of proceeds to it before determination

understanding consented  
to by the  
handling  
or otherwise  
ordered  
by the  
court

of sale of  
assets  
by mortgagees

of the scope of the repair obligation,  
subject to an ~~obligation~~ obligation to  
reimburse the Receiver, or pay the  
landlord the amount determined,  
up to the amount distributed to it,  
as the case may be - Indeed,  
I expect that such a motion will  
be brought.

The order on which I have  
endorsed my fiat today is subject  
to the terms of this endorsement.

Duxand ver 9.  
(104)

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) TUESDAY, THE 15<sup>th</sup>  
JUSTICE HOY ) DAY OF NOVEMBER, 2005  
BETWEEN:

GENERAL MOTORS CORPORATION

Applicant

- and -

TIERCON INDUSTRIES INC.

Respondent

ORDER

THIS 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"), for an order, *inter alia*:

~~a) approving the sixth report of Zeifman Partners Inc., in its capacity as court-appointed Receiver and Manager (the "Receiver") of the property, assets and undertaking of Tiercon Industries Inc. ("Tiercon"), dated November 14, 2005 (the "Sixth Report");~~

2. a) authorizing the sale of the Listed Assets listed in Schedule "A" hereto (the "Listed Assets") in accordance with the auction services agreement with Maynards Industries Ltd. (the "Auctioneer") made as of October 25, 2005 (the "Auction Agreement") and the Order of Justice Lederman dated October 31, 2005; and

b) granting such further and other relief as counsel may advise and this Honourable Court may permit.

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was heard this day at 393 University Ave., Toronto, Ontario.

ON READING the <sup>Seventh</sup> ~~Sixth~~ Report of the Receiver dated November 11, 2005 (the "Seventh Report") and the Order of Justice Lederman date October 31,

2005 (the "Auction Approval Order"), and on hearing the submissions of counsel for the Agent, counsel for the Receiver and counsel for Galanda Properties Inc. and Blackridge Properties Inc., no one else appearing although duly served as appears from the affidavit of service of Wilma Leo dated November 10, 2005, filed, and subject to the endorsement made this day.

other than counsel for General Motors,

attached hereto

1. THIS COURT ORDERS that the time for service of the notice of motion. the ~~Sixth~~ <sup>Seventh</sup> Report and motion record in respect of this motion be and it is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the notice of motion and motion record herein upon any other parties, other than those served, is hereby dispensed with and that the service of the notice of motion. the ~~Sixth~~ <sup>Seventh</sup> Report and the motion record herein is hereby validated in all respects and deemed sufficient for all purposes.

~~2. THIS COURT ORDERS that the Sixth Report, and the activities of the Receiver as described in the Sixth Report, be and the same are hereby approved.~~

4.2. THIS COURT ORDERS that "Listed Assets" means the assets listed in Schedule "A" hereto.

4.3. THIS COURT ORDERS that the Listed Assets may be sold in accordance with the terms of the Auction Agreement and the Auction Approval Order and that the provisions of the Auction Approval Order shall apply to the Listed Assets *nunc pro tunc*.

Let this order stand on the above terms.

Alexandra Lee

# Schedule "A"

Quantity	Item Description
9	Bulk Storage Silos (Located Outside) All Welded Steel Construction, (2) est. 10" Diameter x 60" Height. (3) est. 10" Diameter x Est. 40" Height
1	Munk 45-Ton Double Grinder Top-Running Radio Controlled Bridge Crane S/N: 01-2954 w/ (2) 45-Ton Hoists, est. 45' Span
1	Munk 30-Ton Double Grinder Top-Running Radio and Pendant Controlled Bridge Crane S/N: 01-2956
1	Munk 20/10-Ton Double Grinder Top-Running Radio and Pendant Controlled Bridge Crane S/N: 01-2955 w/ est. 36' Span, 10-Ton and 20-Ton Hoists
1	Freeze Co. "PNL-0090 Series TIBACON-2" Cooling Tower Chilling System S/N: 00014148E w/ (5) 10HP Pumps
1	Compare Oil Water Separator
1	Water Sand Filter
1	Freeze Co. "PNL-00150 Series TIBACON-1" Cooling Tower Chilling System S/N: 00014149E
1	Freeze Co. "ALR-TC-005 Series Alarm Panel" Central Alarm System Panel S/N: D00112166E
1	Quincy "50" 50HP Air Compressor S/N: N/A
1	Berg Chilling System. Model 1T6A8 - 3(30) - 3(40). 575 volts, 60 cycle. 197 amps. S/N 1T7370-1095 and sand filter

Quantity	Item Description
1	CompAir 50hp Cyclone compare 6000, Model 6050COH, S/N V9C31961/BR
1	CompAir Model K-625A Compressor, S/N C-10890-2
2	Berg Chilling System Model WCS-70-2, 575 Volts, 60 Cycles, 80 Amps, 3 Phase, S/N W7367-1095
1	Berg Chilling System Model WCS-105-3, 575 Volts, 60 Cycles, 120 Amps, 3 Phase, S/N W7366-1095
1	<del>Federal Pioneer 1000 AMP Electrical Service Panel and Outside Transformer</del>
1	<del>Federal Pioneer Main Electrical Panel and Outside Transformer</del> <i>or</i>
1	<del>Federal Pioneer Main Electrical Panel and Outside Transformer</del>



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**ORDER**

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Solicitors for Royal Bank of Canada, National  
Bank of Canada, Bank of Nova Scotia, National  
Bank of Canada and Comerica Bank

November 15, 2005

Mr. MacDonald and Mr. Harrison for the Senior Lenders  
Mr. Carhart for the Receiver  
Ms. Moncur for GM.  
Mr. Moldaver, Q.C. for the Landlord, Galanda.

The Landlord opposed the inclusion of the 5 'genres' of assets described at para 12 of the Receiver's 7<sup>th</sup> Report (Bulk storage silos; Cranes; chillers and cooling towers; compressed air system; transformers) in the auction sale by Maynards because it says they are not 'tenant fixtures' or 'trade fixtures'; rather, it says they are true fixtures.

The Landlord does not dispute that trade fixtures are part of the senior Lenders securely and can be removed.

It became apparent that the real issue and the Landlord's real concern, is the extent of the Receiver's obligation to repair damage occasioned to the premises by the removal of the fixtures, and whether the Receiver is obligated to restore the demised premises to the state that existed prior to the installation of the trade fixtures (para 5 of the Lease) or to remove all of the trade fixtures, if it removes any, as the tenant is required to do upon termination of the Lease.

The parties were in agreement that the extent of the Receiver's repair obligations in connection with the removal (including the issue of whether all trade fixtures must be removed) should be left for another day.

The issue of whether Maynard can sell 4 of the 5 genres in dispute (the transformers and not dealt with today) is urgent, however, if counsel for the Senior for the Lenders advises that Maynard's will not provide a minimum price guarantee for these assets unless it is advised today that they are included in the auction package.

Mr. Carhart proposes that the net minimum Guarantee of \$4.3M under the auction agreement with Maynards not be distributed, pending resolution of the scope of the Receiver's repair obligations with respect to the 4 genres of assets in issue. This is satisfactory to the Senior Lenders. I note that the Senior Lenders will derive the benefit of the auction proceeds, subject to costs of sale and receiver's fees and repair obligations. The Senior Lenders support the inclusion of the 4 genres in the sale, even though there has been no determination of the scope of the Receiver's related repair obligation, and hence no ability to weigh proceeds of sale against related repair costs.

Mr. Moldaver has sought instructions, and the Receiver's proposal is acceptable to it.

Order accordingly to issue in the form on which I have endorsed my fiat including the 4 genres of assets in the auction, providing for no distribution of proceeds of sale of assets by Maynards until the scope of the Receiver's repair obligations in relation to the removal of the 4 genres of assets has been determined, and providing that unless otherwise consented to by the Landlord or

otherwise ordered by the Court. such repair costs shall be paid before any amounts shall be distributed to the Senior Lenders from the sale of assets by Maynards.

For greater certainty, the Senior Lenders may bring a motion for an order permitting payment of proceeds to it before determination of the scope of the repair obligation, subject to an obligation to reimburse the Receiver, or pay the Landlord the amount determined. up to the amount distributed to it, as the case may be – Indeed, I expect that such a motion will be brought.

The order on which I have endorsed my fiat today is subject to the terms of this endorsement.

Hoy J.