

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)
JUSTICE HOY)
TUESDAY, THE 22nd
DAY OF NOVEMBER, 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 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) 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.

was heard this day at 361 University Ave., Toronto, Ontario.

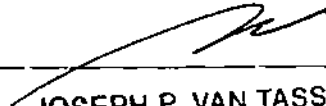
ON READING the Seventh Report of the Receiver dated November 11, 2005 (the "Seventh Report") and the Order of Justice Lederman date October 31, 2005 (the "Auction Approval Order"), and on hearing the submissions of counsel for the Agent, counsel for the

Receiver and counsel for Galanda Properties Inc. and Blackridge Properties Inc., no one else appearing, other than counsel for General Motors, although duly served as appears from the affidavit of service of Wilma Leo dated November 10, 2005, filed, and subject to the endorsements attached hereto made November 15 and 22, 2005;

1. **THIS COURT ORDERS** that the time for service of the notice of motion 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 and the motion record herein is hereby validated in all respects and deemed sufficient for all purposes.

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

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*.



JOSEPH P. VAN TASSEL
REGISTRAR

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.

NOV 24 2005

RECEIVED



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

GENERAL MOTORS CORPORATION
Applicant

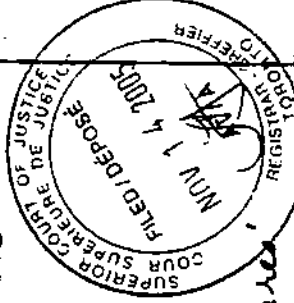
and
Respondent
TIERCON INDUSTRIES INC.

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 handland. Galanda.



The handland opposed the inclusion of ^{the 5} 'general' of assets discussed at para 12 of the Receiver's 7th report (Bulk storage silos; Cranes; chillers and cooling towers; compressed air system; trans formers) 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 handland does not dispute that trade fixtures are part of the Senior lender's security and can be removed.

It became apparent that the real issue, and the handland'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

~~rebuild all of the tenant's trade fixtures~~
restore the damaged premises to the state that existed prior to the eviction of the trade fixtures (para 5 of the memo) 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
BCE Place, Suite 4400
Bay Wellington Tower, 181 Bay Street
Toronto, Ontario
M5J 2T3

Paul G. Macdonald LSUC#: 23129M
Tel: (416) 865-7167
Brett G. Harrison LSUC#: 44336A
Tel: (416) 865-7932
Fax: (416) 865-7048

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. ^{of assets}

The parties were in agreement that the extent of the ^{Rever's} repair obligations, ^{in connection w/ 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 are not dealt w/ today) is urgent, however. ^{Council} ~~if~~ for the Senior lenders advises 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. ^{of 4.3M}

Mr. Carhart ^{proposes} ~~advises~~ that the net minimum Guarantee, under the auction agreement with Maynards not be distributed, pending resolution of the scope of the Rever'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's fees
& repair obligations. The Senior lenders
support the inclusion of the 4 genes
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,
& the Receiver's proposal is acceptable
to it.

^{of sale of}
^{assets} Order accordingly to issue in the form
on which I have endorsed my fiat.

^{of proceeds}
including the 4 genes of assets in the
auction, providing for no distribution of
proceeds ^{without the consent of the landlord or further court order} until the scope of the Receiver's
repair obligations in relation to the removal
of the 4 genes of assets has been
determined, and providing that, ^{unless otherwise consented to by the} such
repair costs shall be paid before ^{handl[ing] or otherwise ordered}
any amounts shall be distributed ^{by the}
to the Senior lenders from the ^{court}

sale of assets by Maynards.

For greater certainty,

The Senior lender may bring a
motion ^{for an order} ~~prohibiting~~ permitting payment
of proceeds to it before determination

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.

Dix and her
(104)

~~November 22~~

November 22, 2005

Mr. Moldaver QC.

Mr. Carhart for Receiver.

Mr. MacDonald for Senior lenders.

This endorsement is made at a 9³⁰ initiated
by counsel for the ~~Additional~~ Sr. lender
to correct portions of my Nov 15, 2005
endorsement.

I indicated therein that the Sr. lenders will
derive the benefit of the auction proceeds.
In fact, a portion of those proceeds will

be derived from assets over which
GE has a first charge, & which pursuant
to Hederman J's order of Oct 31, 2005 just
(Tab 2A of this motion record) are to be
paid to GE. The amount payable is
defined in Hederman J's order as
the Ophiom Amount.

The net Minimum Guaranteed is
not \$4.3M; it is ^{greater than that} an amount ^{greater}
~~to be paid~~ by the net return
to the Receiver ~~of~~ from the GE assets.

My order does not restrict
distributions or payments, ^{out of the proceeds of sale} except ^{from}
distributions to the Sr. lenders. ^{the} Maynard's
Auction

The order on which I endorsed

Alexander J
(HOY)

on November 15
my fiat is also
subject to this

endorsement.

I have "marked up" &
initialed to Nov 15
an order in this

record to reflect the
existence of this order. Counsel
have advised that the form of order I signed
on Nov 15 has not been issued & entered.

GENERAL MOTORS CORPORATION
Applicant

and
TIERCON INDUSTRIES INC.
Respondent

Court File No: 05-CL-5854

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

ORDER

McMILLAN BINCH MENDELSON LLP
Barristers and Solicitors
BCE Place, Suite 4400
Bay Wellington Tower, 181 Bay Street
Toronto, Ontario
M5J 2T3

Paul G. Macdonald LSUC#: 23129M
Tel: (416) 865-7167
Brett G. Harrison LSUC#: 44336A
Tel: (416) 865-7932
Fax: (416) 865-7048

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