

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

GMAC COMMERCIAL CREDIT CORPORATION – CANADA

Applicant

- and -

**TCT LOGISTICS INC.
AND THE COMPANIES LISTED ON SCHEDULE “A” HERETO**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 47(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B-3 AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

**MOTION RECORD
(Returnable March 27, 2008)**

**GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, ON M5B 2M6**

**Joseph Pasquariello (LSUC#: 37389C)
Tel: (416) 979-2211
Fax: (416) 979-1234**

**Solicitors for KPMG Inc., in its capacity as the
Interim Receiver of the Respondents**

INDEX

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

GMAC COMMERCIAL CREDIT CORPORATION – CANADA

Applicant

- and -

**TCT LOGISTICS INC.
AND THE COMPANIES LISTED ON SCHEDULE “A” HERETO**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 47(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B-3 AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

INDEX

Document	Tab
Notice of Motion dated March 12, 2008	A
Twenty-Seventh Report of the Interim Receiver dated March 11, 2008	B
Appendix 1 – Interim Receivership Order	1
Appendix 2 – Steelworkers Settlement	2
Appendix 3 – Carrier Trust Claim Order	3
Appendix 4 – Final Statement of Receipts and Disbursements	4
Appendix 5 – Twenty-Sixth Report (without exhibits)	5
Appendix 6 – Escrow Funds Release	6
Appendix 7 – Morneau Sobeco Letter	7
Draft Settlement Approval Order	C
Draft Discharge Order	D

SCHEDULE "A"
TCT LOGISTICS INC. RELATED COMPANIES

TCT Logistics Inc.
TCT Acquisition No. 1 Ltd.
Atomic TCT Logistics Inc.
Atomic TCT Logistics (Alberta) Inc.
TCT Canada Logistics Inc.
Inter-Ocean Terminals (B.C.) Ltd.
Atomic Transport Incorporated
TCT Warehousing Logistics Inc.
TCT Warehousing Logistics No. 2 Inc.
R.R.S. Transport (1998) Inc.
TCT Acquisition No. 2 Ltd.
Tri-Line Expressways Ltd. (a successor to Tri-Line Expressways Ltd. and TCT Acquisition
No. 3 Ltd.)
Tri-Line Expressways, Inc.
2984008 Canada Inc.

High-Tech Express & Distribution Inc.
606965 British Columbia Ltd.
606966 British Columbia Ltd.

TAB A

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

GMAC COMMERCIAL CREDIT CORPORATION – CANADA

Applicant

- and -

**TCT LOGISTICS INC.
AND THE COMPANIES LISTED ON SCHEDULE “A” HERETO**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 47(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B-3 AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43**

**NOTICE OF MOTION
(Returnable March 27, 2008)**

KPMG Inc. (“KPMG”), in its capacity as court-appointed Interim Receiver (in such capacity, the “Interim Receiver”) of the property, assets and undertaking of TCT Logistics Inc. and the companies listed on Schedule “A” hereto (collectively, the “Companies”), will make a motion to a Judge presiding over the Commercial List, on the 27th day March, 2008, or such later date as the Court may specify, at 10:00 a.m., or as soon thereafter as this motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING THE MOTION: This motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

- (a) abridging the time for, and validating the service of, this Notice of Motion and the materials filed in support of this Motion;

- (b) accepting and approving the Twenty-Seventh Report of the Interim Receiver dated March 11, 2008 (the "Twenty-Seventh Report"), including the Final Statement of Receipts and Disbursements as set out in Appendix 4 thereto, and approving the actions and activities of the Interim Receiver as described in the Twenty-Seventh Report;
- (c) accepting and approving an arrangement reached between the Interim Receiver and the successor to TransForce Inc. ("TransForce") in respect of certain monies held in escrow by Heenan Blaikie LLP ("Heenan Blaikie") in relation to a sale of assets by certain of the Companies to TransForce prior to the appointment of the Interim Receiver and the release relating thereto;
- (d) approving the destruction of various documents and materials stored by the Companies at off-site storage facilities located in Calgary, Alberta and Winnipeg, Manitoba;
- (e) approving a settlement agreement dated as of December 4, 2007 among the Interim Receiver and KPMG, in its capacity as trustee in bankruptcy of each of the estates of the Companies (in such capacity, the "Trustee"), and 3E Logistique Inc., and its division, Spectrum Supply Chain Solutions ("Spectrum"), a copy of which will be delivered to this Honourable Court on a sealed basis (the "KPMG/Spectrum Settlement"), and the transactions contemplated therein;
- (f) approving a settlement agreement dated as of December 4, 2007 among the United Steelworkers, Local 1-500, formerly, The Industrial Wood & Allied Workers of Canada, Local 700 (the "Union"), the Interim Receiver and

Trustee, and Spectrum, a copy of which is attached as Appendix 2 to the Twenty-Seventh Report (the "Steelworkers Settlement" and together with the KPMG/Spectrum Settlement, the "Settlement Agreements"), and the transactions contemplated therein;

- (g) declaring that none of Spectrum, KPMG, the Interim Receiver and the Trustee is an employer for purposes of the *Pension Benefits Act* (Ontario) (the "PBA") with respect to the Non-Contributory Pension Plan for the Hourly-Rated Employees of Livingston Distribution Centres Inc. (Ontario location), CRA Registration #0492363 (the "Pension Plan");
- (h) releasing KPMG, the Interim Receiver, the Trustee, the Union, Spectrum, the Superintendent of Financial Services of Ontario (the "Superintendent") and Morneau Sobeco Limited Partnership Inc. ("Morneau Sobeco") and each of their respective agents, employees, professional advisors and applicable actuaries from all liabilities, costs, losses and claims in respect of the Pension Plan;
- (i) sealing the KPMG/Spectrum Settlement until further Order of this Honourable Court or, without such an Order, until the filing of a certificate by the Interim Receiver confirming that the transactions contemplated by the Settlement Agreements (collectively, the "Settlement Transactions") have closed to the satisfaction of the Interim Receiver;
- (j) discharging and releasing the Interim Receiver and all of its directors, officers, partners, employees, agents, attorneys and solicitors (collectively, the "Releasees") from any and all claims, obligations, liabilities, responsibilities

and/or duties in respect of all acts or omissions of the Releasees, or any of them, in the performance or intended performance of the Interim Receiver's mandate or any activity related thereto;

- (k) declaring that, notwithstanding the discharge of the Interim Receiver, nothing shall affect, vary, derogate from, or amend any of the protections conferred upon the Interim Receiver and counsel to the Interim Receiver, as the case may be, at law or pursuant to the Order of the Honourable Mr. Justice Ground dated January 24, 2002 (the "Interim Receivership Order"), including, without limitation, all of the protections conferred by paragraphs 8, 16, 17 and 18 of the Interim Receivership Order; and
- (l) for such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Interim Receivership Order, the Interim Receiver was appointed as the Interim Receiver of the Companies.
2. The Interim Receiver was appointed under very urgent circumstances upon the application of GMAC Credit Commercial Corporation – Canada, now GMAC Commercial Finance Corp. – Canada ("GMAC"), the Companies' principal creditor, who, at the time, was owed over \$71 million.
3. Since the date of the Interim Receiver's last report to this Honourable Court, the Interim Receiver, the Trustee and GMAC have agreed to release any claims they may have in connection with \$100,000 plus accrued interest (the "Escrow Funds") held by Heenan Blaikie in escrow in relation to potential purchase price adjustments to a

purchase of assets by its client, TransForce, from certain of the Companies prior to the Interim Receiver's appointment in exchange for a release of claims (the "Release") by TFI Transport 2 L.P. ("TFI Transport"), the successor of TransForce.

4. The Release is the most efficient manner to deal with the issues surrounding the Escrow Funds and is in the best interest of the Companies' estate.
5. At the time of the Interim Receiver's appointment, approximately 13,000 boxes of documents and materials had been stored by the Companies at off-site storage facilities located in Calgary, Alberta and Winnipeg, Manitoba (collectively, the "Documents"). The Documents have been maintained in storage throughout the receivership as a precautionary measure in the event that they may have become relevant during these proceedings.
6. Nearly six years have passed since the Interim Receiver was appointed and the Documents have not proven to be relevant and it is anticipated that none of the former directors of the Companies have an interest in retrieving and/or maintaining the Documents.
7. Pursuant to the powers granted to it under the Interim Receivership Order, in early 2002, the Interim Receiver marketed the assets of the Companies and completed various sales transactions, including a sale by the Interim Receiver of its right, title and interest in certain assets of the warehousing business of the Companies to Spectrum (the "Spectrum Sale").
8. Almost one month following the completion of the Spectrum Sale and this Honourable Court's approval of same in April 2002, the Union, which represented employees at

one of the Companies' premises located at 137 Horner Avenue, Toronto, Ontario, commenced applications before the Ontario Labour Relations Board (the "OLRB Applications") against Spectrum, certain of the Companies and the Interim Receiver in relation to the Spectrum Sale.

9. The OLRB Applications resulted in protracted litigation proceedings before this Honourable Court, the Ontario Court of Appeal and the Supreme Court of Canada, which granted a judgment on July 26, 2006 which held that the Union was entitled to proceed with its OLRB Applications.
10. In December 2006, the parties entered into a memorandum of settlement to settle the Union's claims under the OLRB Applications, and ultimately resulted in the Interim Receiver, the Trustee, the Union and Spectrum entering into the Settlement Agreements.
11. The Settlement Agreements resolve all material issues and claims that exist between the Union, Spectrum, the Interim Receiver and the Trustee.
12. The Steelworkers Settlement provides that the Interim Receiver and Spectrum shall jointly pay the sum of \$475,000 to the Union in full and final settlement of all outstanding claims of the Union under the OLRB Applications and is subject to the following key conditions: (a) approval by this Honourable Court; (b) confirmation by this Honourable Court that none of the Interim Receiver, the Trustee, KPMG, Spectrum or the Union shall have any liability to the Pension Plan; and (c) a letter from Morneau Sobeco, who was appointed by the Superintendent as the administrator of the Pension Plan, confirming that it has no intention of taking proceedings against

- the Interim Receiver, the Trustee, KPMG, Spectrum or the Union for any amounts owing to the Pension Plan.
13. The KPMG/Spectrum Settlement provides for the settlement of all outstanding claims between the Interim Receiver, the Trustee and KPMG, on the one hand, and Spectrum, on the other, regarding the Union's claims under the OLRB Applications and the joint payment of the \$475,000 that is required under the Steelworkers Settlement.
 14. Neither the Interim Receiver nor Spectrum have made any payments into the Pension Plan during the course of these receivership proceedings and neither the Interim Receiver nor Spectrum is aware of any basis for it to have become liable for any deficit obligations under the Pension Plan.
 15. Morneau Sobeco has confirmed under a letter dated February 27, 2008, a copy of which is attached as Appendix 7 to the Twenty-Seventh Report, that it does not intend to take any proceedings against the Interim Receiver, the Trustee, KPMG or Spectrum for a finding that either of them is an "employer" under the PBA or against the Union to compel payment of any funds that are paid under the Steelworkers Settlement to the Pension Plan.
 16. The Interim Receiver, Trustee and Spectrum have agreed to keep confidential the terms of the allocation of the settlement payment to be made under the Steelworkers Settlement so as to avoid prejudice to their respective positions in the OLRB Applications in the event that the Settlement Transactions do not close.
 17. The completion of the Settlement Agreements is in the best interest of the Companies' estate.

18. The Settlement Agreements are the result of protracted litigation that has spanned over five years and have the support of the main stakeholders in these proceedings, namely, the Union, Spectrum and GMAC. The Settlement Agreements will also: (a) avoid further proceedings before the OLRB; (b) resolve the claims of the Union under the OLRB Applications in a timely and cost-efficient manner; and (c) get funds into the hands of the Union members in relatively short order following this Honourable Court's approval of the Settlement Agreements.
19. Recovery from the estates of the Companies has not been and will not be sufficient to re-pay GMAC on its secured claims and GMAC is expected to suffer a shortfall in excess of \$30 million in these proceedings. Accordingly, there is no one with an economic interest in the outcome of this motion apart from the immediate parties to the Settlement Agreements, TFI Transport and GMAC.
20. All of the Interim Receiver's duties and responsibilities have been substantially fulfilled.
21. There are no further activities, except as set out herein, contemplated on the part of the Interim Receiver.
22. Circumstances exist that make the Orders sought by the Interim Receiver appropriate.
23. All interested parties have been served with the materials in respect of this motion.
24. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure* (Ontario).
25. Section 137(2) of the *Courts of Justice Act* (Ontario).

26. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE RELIED UPON
AT THE HEARING OF THE MOTION:**

- (a) the Interim Receivership Order;
- (b) the Twenty-Seventh Report and all Appendices thereto; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

March 12, 2008

GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, ON M5B 2M6

Joseph Pasquariello (LSUC#: 37389C)
Tel: (416) 979-2211
Fax: (416) 979-1234

Solicitors for KPMG Inc., in its capacity as the
Interim Receiver of the Respondents

TO: THE SERVICE LIST

TCT LOGISTICS INC. ET AL.
SERVICE LIST

1.	406621 BC Ltd. DBA Reflections Paint & Body 19045 – 94 th Avenue Surrey, BC V4N 3S4 Tel: (604) 888-6912 Fax: (604) 888-7397	
2.	438076 Ontario Limited O/A Quality Collision Centre 12 Clark Blvd. Brampton, ON L6W 1X3	
3.	902528 Alberta Ltd. Box 3220, Station B Calgary, AB T2M 4L7 Tel: (403) 240-1992	
4.	902528 Alberta Ltd. c/o Warren Tettensor 1413 2 nd Street SW Calgary, AB T2W 4Y1 Attention: Joseph B. Amantea	
5.	ABN AMRO Bank Canada 79 Wellington W., 15 th Floor, Maritime Life Tower P.O. Box 114, TD Centre, Toronto, ON M5K 1G8 Tel: (416) 367-0850 Fax: (416) 367-1485	
6.	ABN AMRO Bank Canada ABN AMRO Leasing 5515 North Service Road Burlington, ON L7L 6G4 Tel: (905) 331-2000 Fax: (905) 331-2020	

7.	<p>Advantage Engineered Products Ltd. Advance Engineered Products Ltd. 5502 - 56th Ave. SE Calgary, AB T2C 4M6</p> <p>Tel: (403) 720-4888 Fax: (403) 720-4850</p>	
8.	<p>Aird & Berlis LLP BCE Place, Suite 1800, Box 754 181 Bay St. Toronto, ON M5J 2T9</p> <p>Attention: Edmund Smith Tel: (416) 865-7730 Fax: (416) 863-1515</p>	<p>Solicitors for Atlas Supply Chain Services Limited</p>
9.	<p>Aird & Berlis BCE Place, Suite 1800, Box 754 181 Bay St. Toronto, ON M5J 2T9</p> <p>Attention: Larry Crozier Tel: (416) 865-7761 Fax: (416) 863-1515</p>	<p>Solicitors for Cananwill Canada Limited</p>
10.	<p>Airtrades 616 Albert De Niverville Dorval, PQ H4Y 1G6</p>	
11.	<p>Andlauer Transportation Services Inc. (ATS) 110 Iron Street Etobicoke, ON M9W 5L9</p> <p>Attention: Marcus Pryce-Jones, VP of Sales</p>	
12.	<p>Antler Express Ltd. 16839 130 Avenue Edmonton, AB T5L 4K6</p> <p>Attention: Gerry Gras</p>	

13.	John Anweiler 606965 British Columbia Ltd. 900 Waterfront Centre 200 Burrard St. P.O. Box 48600 Vancouver, BC V7X 1T2	
14.	John Anweiler 606966 British Columbia Ltd. 900 Waterfront Centre 200 Burrard St. P.O. Box 48600 Vancouver, BC V7X 1T2	
15.	John Anweiler Inter-Ocean Terminals (B.C.) Ltd. 1200 Waterfront Centre 200 Burrard St. P.O. Box 48600 Vancouver, BC V7X 1T2	
16.	Apex Motor Express 1011 Wilson Avenue Downsview, ON M3K 1G4 Attention: Sheila Salter, Credit Manager	
17.	Apex Motor Express 61 Administration Road Concord, Ontario L4K 2R8 Attention: Sheila Salter, Credit Manager	
18.	Arley's Rocky Transport 13008 163 St. NW Edmonton, AB T5V 1L6	
19.	Associates Commercial Corporation of Canada Ltd. Associates Leasing (Canada) Ltd. 200 - 10525 170th Street Edmonton, AB T5P 4W2 Tel: (780) 489-7575 Fax: (780) 486-2824	

20.	Atlas Cold Logistics 5255 Yonge St. S. #900 Toronto, ON M2N 5P8 Attention: Elizabeth Knox, Accounting Manager	
21.	B.A.C. Trailer Ltd. 14840 – 134 th Ave. Edmonton, AB T5L 4T4	
22.	Bank of Nova Scotia General Counsel Department 40 King Street West, 8th Floor Toronto, ON M5H 1H1 Attention: Timothy E. Storus Tel: (416) 933-1406 Fax: (416) 866-7767	Solicitors for Bank of Nova Scotia
23.	Barat Management Services Inc. 6600 Goreway Drive, Unit E Mississauga, ON L4V 1S8 Attention: Dave Hardy President	
24.	Barlow Truck & Diesel Services 3514B 73 Avenue SE Calgary, AB T2C 1N5	
25.	Baxter Harris Neonakis 1741 Brunswick Street, Suite 430 Halifax, NS B3J 3X8 Attention: Jennifer L. Power Tel: (902) 425-3500 Fax: (902) 425-6663	Solicitors for Javelin Construction Limited
26.	Bennett Jones LLP Barristers and Solicitors Suite 3400, First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4 Attention: Justin Fogarty Tel: (416) 777-4859 Fax: (416) 863-1716	Solicitors for Spectrum Supply Chain Solutions Inc.

27.	<p>Bennett Jones LLP Barristers and Solicitors Suite 3400, First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4</p> <p>Attention: Laurel C. Broten Tel: (416) 777-4863 Fax: (416) 863-1716</p>	
28.	<p>Bennett Jones LLP Barristers and Solicitors 4500 Bankers Hall East 855 - 2nd Street S.W. Calgary, AB T2P 4K7</p> <p>Attention: Karen M. Horner Tel: (403) 298-3149 Fax: (403) 265-7219</p>	
29.	<p>Bison Freightline Wainwright Ltd. 802 - 1st Avenue Wainwright, AB T9W 1C4</p> <p>Attention: Keith Steele</p>	
30.	<p>Bison Plumbing and Heating 350 William Avenue Winnipeg, MB R3A 0H8</p> <p>Attention: Boris Milinkovic</p>	
31.	<p>Blake, Cassels & Graydon LLP 199 Bay Street, Suite 2800 Box 25, Commerce Court West Toronto, ON M5L 1A9</p> <p>Attention: Lisa Corne Tel: (416) 863-2958 Fax: (416) 863-2653</p>	Solicitors for CIT Financial Ltd.