

SUPREME COURT OF NOVA SCOTIA

Citation: CNH Capital Canada Ltd. v. Canadian Imperial Bank of Commerce,
2012 NSSC 149

Date: 20120507

Docket: Hfx. No. 276006

Registry: Halifax

Between:

CNH Capital Canada Limited

Plaintiff

v.

Canadian Imperial Bank of Commerce

Defendant

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Judge: The Honourable Justice Charles E. Haliburton

Heard: February 7, 2012, in Halifax, Nova Scotia

**Final Written
Submissions:** February 6, 2012

Subject: summary judgment on evidence, undisclosed principal, rights of succession within partnership.

Summary: An inter-creditor agreement was executed 20 years ago between CIBC and an agent for a partner ship [the undisclosed principal]. Both were secured creditors of the farm equipment dealership. Over the intervening years the participants within the partnership changed with CNH ultimately the only remaining partner. CNH now claims enforcement of the ICA to recover money paid out to CIBC by the receiver. The ICA assigned priority in certain assets to the bank, and other assets

to the partnership.

Issue: Was CIBC bound by the ICA when the other principal was not disclosed? Is CNH the successor to that undisclosed principal?

Result: The ICA prioritized the principals respective interests in the assets of the farm equipment dealer. The partnership financed the inventory of equipment [whole goods] while the bank provided operating credit. The assets intended to be secured to each creditor was “of the essence” not the identity of the creditors. CIBC is bound by the ICA.

The succession of partners and the rights of the remaining partner are governed by the partnership agreement. There is in evidence no genuine issue raised as to the succession of partners and the rights of CNH to enforce the rights they claim.

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