

CALLIDUS CAPITAL CORPORATION

Applicant

and

CARCAP INC. AND CAREQUITY LOANS CORP.

Respondents

APPLICATION UNDER Section 243(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.

Court File No. CV-11-9498-00CL

MAR 9 12

ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

Proceeding commenced at TORONTO

MOTION RECORD  
(returnable March 9, 2012)

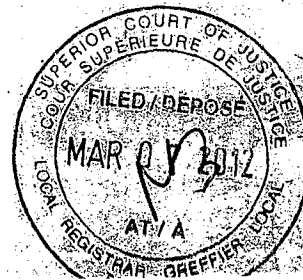
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Solicitors for BDO Canada Limited, in its  
capacity as Receiver

March 13/12  
Secondary on the  
motion record of the Inspector  
Group. Order to go in the form  
sued.

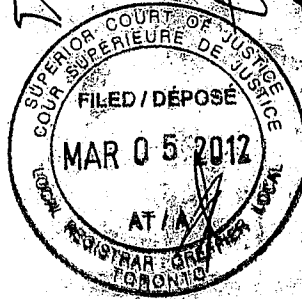
Spencer



March 9/12

March 13, 2012

The moving parties, Eric M. Inspector and P1 others (the "EI Group" or a "ELG") move for orders re the sale process of orders as to the for injunctive relief with ancillary orders including an account for cross-examination based on the structure of terms of the notice of notice, the cross-examination would relate to the goods advanced in the Notice of motion for the injunctive relief that is sought. The specific goods are that Trend Auto Lease ("TAL") and others associated with it have breached their contractual obligations to the Debtor and that they have not acted in good faith in the sale process and get p2



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

MOTION RECORD OF THE MOVING PARTIES; ERIC INSPEKTOR, HARVEY GOLDBERG, MOMIR DEJANOVIC, ALAN BIRNBAUM AND BARBARA SHUSTER, CARCAP INC. AND CAR EQUITY LOANS INC. - VOLUME 1

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File Number: 16922

the conduct of TAL was undermined  
and tainted the integrity of the sale  
process

p2

The standing of ~~the~~ EIG to move  
for the injunctive relief that it seeks  
is disputed by the Applicant, the <sup>Receiver,</sup> ~~Trustee,~~  
TD Bank and TAL

The allegations of EIG against TAL  
are elaborated in detail in ~~its~~ <sup>the</sup> factum  
of ~~the~~ EIG at paras 28 to 54. These  
allegations are denied by TAL, according  
to their counsel. TAL has filed material  
on the motion. The allegations of EIG are  
that Mr Koplan breached the Memo of  
Understanding and his Employment Agreement  
and that Mr Koplan and others of his associated  
with him breached their fiduciary duties  
and they breached the Kopter code of conduct.

These allegations would be relevant to  
the assertion of claims by the Debtor against  
TAL and the associates. However the  
Receivership Order vests these claims in  
the Receiver and also vests or gives the Receiver

4 of p 3

the exclusive power to take such proceedings

(para 31)

The EIG group submit that these allegations are also relevant to the issue they raise that the conduct of the TAC & its associates <sup>has</sup> undermined the integrity of the sale process and that TAC has not acted in good faith in the process.

Nothing in the allegations goes directly to the conduct of TAC or its associates in the sale process. TAC has not had access via the sale process to information not available to other bidders. TAC has made the highest unconditional bid.

The bid which EIG made was not a good bid. The bid they seek to purchase is for a share asset (8F. (either 9.75 million))

and it is subject to very significant conditions.

EIG submits that the alleged

interference is relevant to the integrity of the

sale process because TAC, by reason

of its involvement in the alleged

interference made a misrepresentation in

the process - specifically in respect of 9.75

para 23 (b) of the Townsend Conditions of Sale. However, none of the alleged conduct of TAL and associates would give ~~rise to~~ make the representation in that subparagraph untrue. The representation is addressed to factors which would disable the bidder from executing the APS and performing its terms.

It is also alleged that an associate of TAL, Dustin Freedman improperly disclosed to TAL certain confidential information of the Kayser Group which TAL ~~was~~ used in its bid preparation, with the result that TAL's bid was significantly low (Affidavit of E Inspector para 61) However the TAL Bid was the highest bid, as noted, higher than the bid that ELG is trying to arrange to make.

So it does not appear from the material and submissions that the allegations of ~~ELG~~, even if cross-examinations ~~disclosed by~~ go to p 5

p 4

were to provide further evidence arguably  
supportive of those allegations, would  
assist EIG in its allegation that the  
conduct of TAL and associates has  
been in bad faith in respect of the  
sale process or has undermined the  
sale process.

At a point in the submissions on the  
request for an adjournment, I asked counsel  
to focus their submissions on the question  
of standing. Counsel made such submissions  
but also made submissions on the  
substantive issues in the cross-motion.

EIG has no standing to seek to take  
proceedings on behalf of the Debtor against  
TAL etc, to the extent that that is the  
intest of the relief sought on the cross-motion.

EIG does have standing to complain about  
the manner in which the sale process  
has been conducted but nothing in the

go to p 6

material or the submissions discloses <sup>p 6</sup>  
any basis for its alleged complaints that  
regard! Accordingly, an adjournment for cross-exams  
would serve no useful purpose.

Moreover since no basis is disclosed  
for the allegations in respect of the  
inadequacy of the sale process, the  
cross-motion cannot succeed and must  
be dismissed.

From the materials and submissions  
it is apparent that no issue is raised  
against the order sought by the Receiver  
other than the issues raised by EIG  
which are dealt with above plus the  
issue as to whether this court should  
grant the provision in the draft order for  
the giving of provisional effect to the order  
to provisional execution, notwithstanding any  
appeal. For the reasons set out at para.  
69 of the Factors of the Receiver, that  
request is granted. Go to p 7

For the above reasons, order to go approving the sale to TAL contemplated by the Sale Agent as vesting the Debtor's right, title and interest in and to the Purchased Assets in the Purchaser and dismissal of the Cross-Motion.

Counsel may make submissions in writing as to costs, if that is necessary. Copies by email to my assistant would be helpful.

Spencer J.

Mr Solman seeks a stay of my order in order to appeal, with particular reference to my determination in respect of standing. The stay he seeks is only for 7 days, to enable him to bring a Notice of Appeal and a Motion for a stay to be granted by the Court of Appeal. Such a stay would effectively undercut the order for provisional execution which I made for  
 goto p 8



The reason given. To be more explicit,  
it appears to me that the effect of the  
moving party are simply directed at  
delaying and derailing this court-ordered  
sale process for no proper reason.  
Accordingly, the request is not granted.

Spencer J.