

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]



THE HONOURABLE MR.
JUSTICE CUMMING

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TUESDAY, THE 8th
DAY OF MAY, 2012

BETWEEN:

CALLIDUS CAPITAL CORPORATION

Applicant

- and -

CARCAP INC. and CAR EQUITY 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.

DISCHARGE ORDER

THIS MOTION, made by BDO Canada Limited ("**BDO**") in its capacity as the court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of CarCap Inc. ("**CarCap**") and Car Equity Loans Corp. (with CarCap, the "**Debtors**") for an order:

- (a) approving the activities of the Receiver as set out in the third report of the Receiver dated April 27, 2012 (the "**Third Report**");
- (b) approving the fees and disbursements of the Receiver and its counsel;
- (c) approving certain distributions out of the proceeds available in the estate of the Debtors;

- (d) approving the holdback of certain funds in the estate of the Debtors, for the purpose of completing the administration of the within proceedings;
- (e) discharging BDO as Receiver of the undertaking, property and assets of the Debtors, upon completion of the within proceedings; and
- (f) releasing BDO from any and all liability, as set out in paragraph 12 of this order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and the appendices thereto; and, on hearing the submissions of counsel for the Receiver, Callidus, TD Bank and Eric Inspektor; and, on the consent of such parties:

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated so that the motion is properly returnable today.

2. **THIS COURT ORDERS** that capitalized terms used in this order shall have the meaning ascribed to them in the Third Report unless otherwise defined herein.

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to TD Bank the amount of \$487,236.00, as partial payment of the secured obligations owing to TD Bank by the CarCap.

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to Callidus the amount of \$279,156.66, as final payment of the secured obligations owing to Callidus by the Debtors, which amount includes \$94,862.99 on account of legal fees paid by Callidus to Bennett Jones LLP with respect to issues relating to CarCap (the "**Bennett Jones Fees**"). It is further ordered that if:

- (a) on any future assessment of the Bennett Jones Fees the amount of such fees is reduced; or

(b) Bennett Jones LLP otherwise consents to a reduction to the Bennett Jones Fees, the amount of such reduction shall be paid by Bennett Jones LLP to TD Bank, on account of the secured obligations owing to TD Bank by the CarCap, without recourse by any party to Callidus for any amount required to be paid by Bennett Jones LLP to TD Bank.

Eric Inspektor, on his own behalf or, as well, with the consent hereby provide by the Receiver, on behalf of CarCap Inc., may apply to this Court for directions with respect to the proposed assessment on proper notice to Bennett Jones LLP.

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to BDO Canada Limited, in its capacity as trustee of bankruptcy of CarCap Inc. (in such capacity, the “Trustee”), the amount of \$22,600.00, for the purpose of funding a fee retainer in respect of the Trustee’s administration of the bankruptcy of CarCap Inc. and as partial payment of the secured obligations owing to TD Bank by the CarCap.

6. **THIS COURT ORDERS** that the Receiver’s fees and disbursements incurred for the period February 16, 2012 through April 15, 2012, as more particularly described in the Receiver’s fee affidavit (appended to the Third Report as Appendix “X”), be and are hereby approved in the aggregate amount of \$132,068.14, including applicable taxes of \$15,193.68.

7. **THIS COURT ORDERS** that the fees and disbursements incurred by Fasken Martineau DuMoulin LLP, as independent counsel to the Receiver, for the period February 1, 2012 through April 24, 2012, as more particularly described in the counsel’s fee affidavit (appended to the Third Report as Appendix “Y”), be and are hereby approved in the aggregate amount of \$174,208.75, including applicable taxes of \$20,001.06.

8. **THIS COURT ORDERS** that, after payment of distributions and the fees and disbursements herein approved, the Receiver be and is hereby authorized to holdback the balance of the funds remaining in the estate of the Debtors; and, that the Receiver be and is hereby authorized and directed to pay out of such funds the fees and disbursements of the Receiver (including the fees and disbursements of its counsel) through the completion of the administration of the within receivership proceedings (the “**Final Administration Costs**”), as contemplated in the Third Report.

9. **THIS COURT ORDERS** that, after payment of Final Administration Costs the Receiver shall pay the monies remaining in its hands, if any, to TD Bank.

10. **THIS COURT ORDERS** that the Receiver’s final statement of receipts and disbursements (appended to the Third Report as Appendix “W”) and the Receiver’s cash flow statement (appended to the Third Report as Appendix “P”) be and are hereby approved.

11. **THIS COURT ORDERS** that the Receiver’s activities, as described in the Third Report, be and are hereby approved.

12. **THIS COURT ORDERS** that upon payment of the amounts set out herein, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Third Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.

13. **THIS COURT ORDERS AND DECLARES** that BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for gross negligence or wilful misconduct on the Receiver's part.

May 8, 2012 Peter A. Cumming J.

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LE / DANS LE REGISTRE NO.:

MAY 08 2012
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Court File No. CV-11-9498-00CL

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Proceeding commenced at TORONTO

DISCHARGE ORDER

FASKEN MARTINEAU DuMOULIN LLP
333 Bay Street – Suite 2400
Toronto, Ontario M5H 2T6

Aubrey E. Kauffman [LSUC No. 118829N]
R. Graham Phoenix [LSUC No. 52650N]
Tel: (416) 366 8381
Fax: (416) 364 7813

Solicitors for BDO Canada Limited., in its
capacity as Receiver