

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE MR. )  
JUSTICE SPENCE )  
 )  
 )  
 )

TUESDAY, THE 13th  
DAY OF MARCH, 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.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of CarCap Inc. and Car Equity Loans Corp. (collectively, the "Debtor") for an order approving the sale (the "Transaction") of the undertaking, property and assets of the Debtor (collectively "Purchased Assets") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Trend Auto Lease GP Inc. (the "Purchaser") dated February 16, 2012 and appended to the first report of the Receiver dated February 23, 2012 (the "First Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Purchased Assets, was heard March 9, and March 13, 2012 at 330 University Avenue, Toronto, Ontario.

ON READING the First Report; the Motion Record (Volumes 1 and 2), Factum and Book of Authorities of the Receiver; the Supplemental Motion Record and Factum of the Applicant; the Responding Motion Record, Supplemental Responding Motion Record, Factum and Book of Authorities of the Purchaser; and the Motion Record (Volumes 1 and 2), Supplementary Motion Record, Further Supplementary Motion Record, Further Further Supplementary Motion Record, Factum–Sales Process, Factum–Injunctive and Related Relief, Book of Authorities (Volumes 1 and 2), Further Further Further Supplementary Motion Record and Supplementary Book of Authorities of Eric Inspektor, Harvey Goldberg, Momir Dejanovic, Alan Birnbaum, Barbara Shuster (“Cross-Motion Moving Parties”) and, on hearing the submissions of counsel for the Receiver, the Applicant, The Toronto-Dominion Bank, Lodestone Investments Limited and Avi Ritter, the Purchaser, and counsel for the Cross-Motion Moving Parties, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Anna Stitt sworn February February 24, 2012 and March 7, 2012, and the affidavits of R. Graham Phoenix affirmed February 24, 2012 and March 7, 2012, filed:

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, including service on CarCap Portfolio 1 Corp., CarCap Portfolio 10 Corp., CarCap Portfolio 14 Corp. and CarCap Portfolio 16 Corp., so that the motion is properly returnable today.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution and delivery of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “Receiver’s Certificate”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens,

executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Mesbur dated December 14, 2011; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser ~~or the Purchaser's Designate~~ all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees and the personal information pertaining to the lessees and borrowers of CarCap Inc. and Car Equity Loans Corp. The Purchaser ~~or the Purchaser's Designate~~ shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).


9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. THE COURT ORDERS AND DECLARES that this Order is subject to provisional execution notwithstanding any appeal.

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

MAR 13 2012

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**Schedule A – Form of Receiver’s Certificate**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**CARCAP INC. and CAR EQUITY LOANS CORP.**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Madam Justice Mesbur of the Ontario Superior Court of Justice (the "Court") dated December 14, 2011, BDO Canada Limited was appointed as the receiver (the "Receiver") of the undertaking, property and assets of CarCap Inc. and Car Equity Loans Corp. (collectively, the "Debtor").

B. Pursuant to an Order of the Court dated March 13, 2012, the Court approved the agreement of purchase and sale made as of February 16, 2012 (the "Sale Agreement") between the Receiver and Trend Auto Lease GP Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity as  
court-appointed Receiver of the undertaking,  
property and assets of CarCap Inc. and Car  
Equity Loans Corp., and not in its personal  
capacity**

Per:

\_\_\_\_\_  
Name:

Title:

**CALLIDUS CAPITAL CORPORATION**  
Applicant

- and -

**CARCAP INC. AND CAR EQUITY LOANS CORP.**  
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**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.**

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**Proceeding commenced at TORONTO**

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**APPROVAL AND VESTING ORDER**

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