

COURT FILE NUMBER	1703 12765
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	SERVUS CREDIT UNION LTD.
DEFENDANTS	CRELOGIX ACCEPTANCE CORPORATION, CRELOGIX PORTFOLIO SERVICES CORP., CRELOGIX CREDIT GROUP INC., KARL SIGERIST, NICHOLAS CARTER, MIKE MCKAY AND MICHAEL MILLS
DOCUMENT	APPLICATION BY ALVAREZ & MARSAL CANADA INC. IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF THE CORPORATE DEFENDANTS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Parlee McLaws LLP 1700 Enbridge Centre 10175-101 Street NW Edmonton, Alberta T5J 0H3 Attention: Jeremy Hockin, QC Telephone: (780) 423-8532 Fax: (780) 423-2870 Email: jhockin@parlee.com File: 73150-2

NOTICE TO RESPONDENTS: As listed on Schedule 'A' attached hereto

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	November 25, 2020
Time	10:00 a.m.
Where	Edmonton Law Courts
Before Whom	The Honourable Mr. Justice M.J. Lema

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order approving the activities, actions and conduct of the Receiver since the date of the last of the activities described in the Receiver's Fourth Report dated January 30, 2018 up to September 30, 2020;
2. An Order approving the Consolidated R&D of the Receiver as contained in the Sixth Report;

3. Approving without the necessity for further assessment or taxation the Receiver's professional fees for its services rendered from December 1, 2017 to September 30, 2020, together with the fees and disbursements of its counsel as set out in the Receiver's Sixth Report (collectively the "Receivership Costs");
4. Allocating the Receivership Costs in the manner recommended in the Receiver's Sixth Report, filed contemporaneously herewith;
5. Establishing a timeline for the rearguing of the Applications by the Unfunded Merchants, as defined in the Receiver's previous reports, in accordance with Commercial Practice Note No. 1;
6. Such further and other relief as may be required to give effect to the foregoing.

Grounds for making this application:

7. The Receiver was appointed by Order of this Honourable Court granted on July 6, 2017 on the application of the Plaintiff.
8. The business of the corporate Defendants involved the solicitation of applications for credit funding from a dealer network on behalf of their customers who could not pay for the goods and/or services offered by the dealer network unless credit was granted. The credit applications were graded for creditworthiness by the Defendants and bundled together for funding consideration by a series of credit unions.
9. When a credit union decided to acquire a bundle of credit applications, it would signify its approval to Crelogix and would thereafter advance funds to Crelogix to acquire the bundle of credit applications and related loan agreements and promissory notes. Crelogix would then remit the funds to the various dealers who had provided the loan applications that comprised the bundle which had been funded by the particular credit union.
10. At the time the Receiver was appointed, there were a number of credit applications and related loan agreements for which funding had not yet been provided by a credit union, or where funding had been provided by the credit union to Crelogix, the funding had not been remitted to the dealer(s) who had submitted them. The dealers who were caught in this position have been described in the proceedings to date as the "Unfunded Merchants".
11. The Receiver concluded that by virtue of the wording of the particular Merchant Agreement existing between Crelogix and the affected dealers, Crelogix had acquired the loan agreements and promissory notes from the dealer even though funding had not taken place. The Unfunded Merchants disagreed with this conclusion, and the Receiver obtained an Order from this Honourable

Court on April 13, 2018 setting out a claims process by which the Unfunded Merchants could bring application to this Honourable Court to determine their rights.

12. The Unfunded Merchants' applications were heard on July 11, 2018 by the Honourable Mr. Justice R.A. Graesser. His Lordship reserved decision and released Written Reasons for Decision on January 21, 2019 in which His Lordship determined, on a basis not argued in front of him, that the Unfunded Merchants were entitled to the loan agreements and promissory notes that had not been funded.
13. Both the Receiver and the Plaintiff appealed and the appeal was heard in April 2020.
14. On May 29, 2020, the Court of Appeal released Written Reasons for Decision in which the Receiver's and the Plaintiff's appeals were allowed and directed that the matter be returned to the Court to be re-argued.

Servus Credit Union Ltd. v. Crelogix Acceptance Corporation, 2020
ABCA 220 [**Tab 1 to the Receiver's Bench Brief**]

Court of Appeal Formal Judgment filed June 17, 2020 [**Tab 2 to the
Receiver's Bench Brief**]

15. The Receiver attempted to facilitate settlement discussions between the Plaintiff and the Unfunded Merchants, through counsel, but settlement was not achieved. It is therefore necessary, in the Receiver's opinion, to proceed with the re-argument of the issues as directed by the Court of Appeal.
16. The activities of the Receiver as described in its Fourth Report have been approved by prior Order, as have its accounts for professional services rendered, up to January 31, 2018.
17. The Receiver has proposed an allocation of its professional fees and disbursements and general estate costs as between the pools of funds under its administration as set out in its Sixth Report.

Material or evidence to be relied on:

18. The Receiver's Sixth Report, filed contemporaneously herewith, together with all previous reports.
19. Affidavit of Orest Konowalchuk, to be filed.
20. The Receivership Order granted herein on July 6, 2017 [**Tab 3 to the Receiver's Bench Brief**]

Applicable rules:

21. Rules 1.4, 6.1 and 6.2 of the *Alberta Rules of Court* [**Tab 4 to the Receiver's Bench Brief**]

Applicable Acts and regulations:

22. Section 99 of the Alberta *Business Corporations Act*, RSA 2000, c. B-9 (as amended) [**Tab 5 to the Receiver's Bench Brief**]
23. Section 243 and 249 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (as amended) [**Tab 6 to the Receiver's Bench Brief**]
24. Such further and other Acts and regulations as Counsel may advise.

Any irregularity complained of or objection relied on:

25. None.

How the application is proposed to be heard or considered:

26. Before the Honourable Mr. Justice M.J. Lema by Webex in accordance with the particulars attached as Schedule 'B'.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE 'A'
List of Respondents (Unfunded Merchants)

Name of Respondent	Counsel of Record
BLACKFOOT MOTORCYCLE LTD.; AIRDRIE TRAILER SALES LTD.; BADIUK EQUIPMENT LTD.; BROADVIEW POWER SPORTS LTD.; BROKER'S MARINE & SPORT LTD.; ELK ISLAND SALES INC.; FRASER PACIFIC EQUIPMENT CORP.; GRM SALES LTD., carrying on business as BAR T5 TRAILERS SASK; HAPPY CAMPER R/V ALBERTA LTD.; JAKE'S SPEED SHOP INC., carrying on business as J&J SPORTS; NORTHSTAR RECREATION LTD. carrying on business as KEN'S MARINE; 1784302 ALBERTA LTD., carrying on business as M&P TRAILER SALES; MOUNTAIN TOYS POLARIS LTD.; PROLINE MOTORSPORTS & MARINE LTD.; 1455300 ALBERTA LTD., carrying on business as RAVEN TRUCK ACCESSORIES; RECREATIONAL POWER SPORTS INC.; RED LINE POWER CRAFT LTD.; RICK'S MARINE (1999) LTD.; 1431209 AB INC. carrying on business as RIDERZ; TRACTION MOTORCYCLES LTD., carrying on business as DAYTONA MOTORSPORTS; TRAILER COUNTRY LTD.; WHITECAP RECREATION, a partnership between NORTHSHORE AUTOMOTIVE LTD. and SOUTHSHORE AUTOMOTIVE LTD.; DYNASTY SPAS INC., carrying on business as WORLD OF SPAS CALGARY; 1781457 ALBERTA LTD., carrying on business as WORLD OF SPAS EDMONTON;	Fulton & Company LLP 300 – 350 Lansdowne Street Kamloops, BC V2C 1Y1 Attention: Hal Hicks Local Agent: Coralie Mohr, Witten LLP Email: hhicks@fultonco.com ; cmohr@wittenlaw.com
1537891 ONTARIO INC., carrying on business as POSITIVE PROMOTIONS; ELDER ENTERPRISES LTD.; J&B CYCLE AND MARINE CO. LTD.; NORTH BAY CYCLE & SPORTS (2015) INC.; CLARE'S CYCLE AND SPORTS LTD.; 900337 ONTARIO INC., carrying on business as GASTON'S SPORTS & MARINE; ANDREWS SPORTS, RECREATIONAL PARTS AND ACCESSORIES LIMITED;	Frank M. Falconi Barrister & Solicitor 369 Murray Street North Bay, ON P1B 4G3 Attention: Frank M. Falconi Email: frank@falconi.ca

SCHEDULE 'B'

WebEx Particulars

Virtual Courtroom 86 has been assigned for the following matter:

Date: November 25, 2020 at 10:00 AM

Style of Cause: 1703 12765 - SERVUS CREDIT UNION LTD. v. CRELOGIX ACCEPTANCE CORP

Presiding Justice: LEMA, J.

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.