

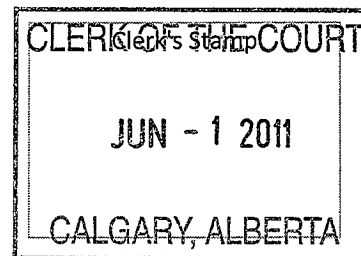
COURT FILE NUMBER: 1101-04438

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

PLAINTIFF: SERVUS CREDIT UNION LTD.

DEFENDANT: CALIBER SYSTEMS INC.



AND IN THE MATTER OF THE RECEIVERSHIP OF CALIBER SYSTEMS INC.

DOCUMENT: **APPLICATION by PricewaterhouseCoopers Inc. in its capacity as Receiver and Manager of the assets, undertakings and property of CALIBER SYSTEMS INC. for a Sale Approval and Vesting Order and other relief**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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File No. 280984

**NOTICE TO RESPONDENT(S):**

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

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

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

Date:	Thursday, June 9, 2011
Time:	11:00 a.m.
Where:	Calgary Courts Centre
Before Whom:	The Honourable Madam Justice B.E.C. Romaine, of the Commercial List

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 abridging, if necessary, the time for service of this application and deeming service good and sufficient.
2. An Order authorizing and approving the agreement of purchase and sale (the "**Caliber Equipment APA**"), between PricewaterhouseCoopers Inc. in its as receiver and manager (the "**Receiver**") of the assets, undertakings and properties (the "**Property**") of the Defendant Caliber Systems Inc. (the "**Defendant**") and the purchaser, Century Services Inc. (the "**Purchaser**" or "**Century**"), in the substantial form as attached to the Receiver's First Report.
3. An Order authorizing and directing the Receiver to take such steps and execute such documents necessary to effect the transactions arising under the Caliber Equipment APA.
4. An Order vesting the Defendant's property, rights and interests in the equipment included in the Caliber Equipment APA to the Purchaser free from all claims and encumbrances other than claims arising under the Receivership Order, as amended.
5. An Order that will give effect to the above, in substantially the same form as the Sale Approval and Vesting Order which is attached hereto as Schedule "A".
6. An Order authorizing the Receiver to include certain Additional Assets in the Caliber Auction, as those terms are defined and described in the Receiver's First Report, and authorizing the Receiver to take all steps reasonably required to carry out the terms of the Caliber Auction.
7. Granting leave to the Receiver and the Purchaser to apply to this Court for advice and directions as may be necessary to carry out the terms of any Orders granted at the within Application.
8. Granting such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Grounds for making this application:**

9. On March 31, 2011, PricewaterhouseCoopers Inc. was appointed the Receiver over the Property of the Defendant by Order of the Honourable Mr. Justice W.P. Sullivan (the "**Receivership Order**"). The Receivership Order was filed on April 1, 2011. The Receivership Order was amended on May 19, 2011 (the "**Amended Receivership Order**").
10. Pursuant to the terms of the Receivership Order and Amended Receivership Order, the Receiver is entitled to sell, convey and transfer the Property, or any part or parts thereof, out of the ordinary course of business with the approval of this Court in a case where the aggregate purchase price exceeds the applicable amount set out in the Receivership Order, and to apply for any vesting order or orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.
11. The Receiver has conducted a fulsome sales process in respect of the equipment included in the Caliber Equipment APA, as described in the First Report, in accordance with Receiver's obligations and mandate in these proceedings.
12. The Receiver has entered into the Caliber Equipment APA with Century, which is subject to the approval of this Honourable Court.
13. The Caliber Equipment APA is in the best interest of the administration of the receivership estate, and is just, appropriate and are in the best interest of the administration of the receivership estate and the stakeholders affected thereby.
14. The sale of equipment as contemplated at the Caliber Auction, and the inclusion of Additional Assets at the Caliber Auction as proposed by the Receiver, are just, appropriate and are in the best interest of the administration of the receivership estate and the stakeholders affected thereby.
15. The terms as set out in the form of Sale Approval and Vesting Order attached hereto as Schedule "A" are necessary to effect the sale of equipment included in the Caliber Equipment APA as contemplated by the Receiver and the Purchaser, and said form of Sale Approval and Vesting Order has been negotiated and consented to by the Receiver and the Purchaser.

16. The Receiver, the Plaintiff Servus Credit Union Ltd. and the GE Group of Companies support this Application.
17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

18. All pleadings and proceedings filed in the within action.
19. The First Report of the Receiver, filed.
20. The Receivership Order and the Amended Receivership Order.
21. The inherent jurisdiction of this Honourable Court to control its own process.
22. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

23. Part 6, Division 7, Rule 6.47(e) and (f).

**Applicable Acts and regulations:**

24. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the *Judicature Act*, R.S.A. 2000, c. J-2, as amended.

**Any irregularity complained of or objection relied on:**

25. None.

**How the application is proposed to be heard or considered:**

26. Oral submissions by counsel at an application in Justice Chambers as agreed and scheduled by counsel.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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"

Clerk's stamp:

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DEFENDANT: CALIBER SYSTEMS INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF CALIBER SYSTEMS INC.

DOCUMENT: ORDER (Sale Approval and Vesting Order)

Address for Service and Contact  
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Document:

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File No. 280984

DATE UPON WHICH ORDER WAS PRONOUNCED: \_\_\_\_ day, June \_\_, 2011

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice B.E.C. Romaine

**ORDER**

**UPON THE APPLICATION** of counsel for PricewaterhouseCoopers Inc. in its capacity as receiver and manager (the "**Receiver**") of the assets, undertakings and property of the Defendant Caliber Systems Inc. (the "**Defendant**"); **AND UPON** having read the First Report of the Receiver, filed June 1, 2011 (the "**First Report**") and the proposed agreement of purchase and sale (the "**Caliber Equipment APA**"); **AND UPON** reviewing the Order of the Honourable Mr. Justice W.P. Sullivan dated March 31, 2011, as amended and filed herein; **AND UPON** hearing counsel for the Receiver, the Plaintiff Servus Credit Union Ltd., the GE Group of Companies, the Purchaser (as that term is defined herein) and/or their counsel, and from any other parties who may be present; **AND UPON** it appearing that the sale of the Purchased Assets (as that term is defined herein) is just, fair and appropriate in all the circumstances and in the best interests of the administration of the receivership estate;

**THE COURT IS CONVINCED AND HEREBY ORDERS AND DECLARES THAT:****Service:**

1. The time for service of the application materials in support thereof is hereby abridged to the date of actual service and that service is hereby approved, this application is properly returnable today and further service of the application and supporting materials is hereby dispensed with.

**Defined Terms:**

2. All capitalized terms not defined herein shall have the meanings defined in the First Report of the Receiver.

**Approval of Transaction:**

3. The Caliber Equipment APA between the Receiver and the purchaser, Century Services Inc. (the "**Purchaser**"), that is described in and attached to the Receiver's First Report,

for the sale of the Purchased Assets (as defined and described in the Caliber Equipment APA and in Schedule "A" thereto), is commercially reasonable and are hereby approved and ratified.

4. The Receiver is hereby authorized to conclude the transaction contemplated by the Caliber Equipment APA (the "**Transaction**") and to perform or cause to be performed the covenants of the Caliber Equipment APA substantially in accordance with the terms of the Caliber Equipment APA, and to take all such steps and execute all such documents as may reasonably be necessary to complete the Transaction contemplated therein.

**Vesting of Purchased Assets:**

5. Upon Closing of the Transaction, all of the Defendant's right, title, interest and estate, in and to the Purchased Assets shall, without further instrument of transfer or assignment, vest in the Purchaser as contemplated by the Caliber Equipment APA, absolutely and forever, free and clear of and from any and all claims by, through, or under the Defendant, free and clear of and from any and all right, title, interest and estate, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, easements, covenants, caveats, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of the Defendant whether or not they have attached or have been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as the "**Claims**"), and whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and



administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "**Claimants**"), including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceedings.

6. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any Claimants in respect of any Claims any of the Claimants may have against the Defendant.
7. Other than a certified copy of this Order and a letter from Macleod Dixon LLP, counsel to the Receiver, authorizing the use of this Order, no further authorization or approval or any other action by any authority or regulatory body exercising jurisdiction over the Purchased Assets shall be required for the Closing and post-Closing implementation of the Transaction contemplated in the Caliber Equipment APA.
8. The net proceeds of the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets and the Purchased Assets and all Claims shall cease to be attached to or encumber or otherwise form a lien or a claim against the Purchased Assets and shall attach to the net sale proceeds with the same validity, priority in the same amounts, and subject to the same defences, that existed when the Claims attached to the Purchased Assets.

#### **Miscellaneous**

9. Any transfers, assignments, or other conveyances in respect of the Purchased Assets shall be deemed to be validly executed if signed in the following manner:

PricewaterhouseCoopers Inc., in its capacity as Receiver and Manager of Caliber Systems Inc., and not in its personal capacity

Per: \_\_\_\_\_

10. The Transaction contemplated in the Caliber Equipment APA is approved notwithstanding the provisions of section 60(11) of the *Personal Property and Security Act*, R.S.A. 2000, c. P-7, and shall not be void or voidable at the instance of the Claimants and shall not constitute nor shall be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance, oppressive, or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or any other applicable federal or provincial legislation, and the Transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
11. Nothing in this Order shall prejudice any person's *in personam* claim against the Defendant.
12. The Purchaser shall have possession of the Purchased Assets immediately upon closing of the Transaction, at which time the Defendant and any other person having possession of the Purchased Assets shall deliver up possession of same to the Purchaser, and in default of possession being delivered up as aforesaid a Writ of Possession shall issue without further Order.
13. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, or any other foreign courts or any administrative body or other tribunal to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

14. The Receiver be at liberty and is hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance to give full force and effect to, and in carrying out the terms of, this Order.
15. The Receiver and the Purchaser are at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.

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Justice of the Court of Queen's Bench of Alberta