

COURT OF APPEAL OF ALBERTA

**COURT OF APPEAL FILE
NUMBER:** 1903-0029AC

TRIAL COURT FILE NUMBER: 1703 12765

REGISTRY OFFICE: EDMONTON

PLAINTIFF: SERVUS CREDIT UNION LTD.

STATUS ON APPEAL: RESPONDENT

APPLICANT: ALVAREZ & MARSAL CANADA INC., in its capacity as the receiver and manager of CRELOGIX ACCEPTANCE CORPORATION, CRELOGIX PORTFOLIO SERVICES CORP., and CRELOGIX CREDIT GROUP INC.

STATUS ON APPEAL: APPELLANT

DEFENDANTS: CRELOGIX ACCEPTANCE CORPORATION, CRELOGIX PORTFOLIO SERVICES CORP., CRELOGIX CREDIT GROUP INC., KARL SIGERIST, NICHOLAS CARTER, MIKE MCKAY and MICHAEL MILLS

STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

RESPONDENTS: 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, a partnership between JOHN GEOFFREY ANDREWS, JANE ANDREWS, JASON WILLIAM ANDREWS, JOSHUA ROBINSON ANDREWS and JAMES RICHARD ANDREWS; RECREATIONAL PARTS AND ACCESSORIES LIMITED; RENOVATION & CONSTRUCTION GAUTHIER ET PELOGUIN; 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 ALBERTA 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 SOUTHSORE AUTOMOTIVE LTD.; DYNASTY SPAS INC., carrying on business as WORLD OF SPAS CALGARY; 1781457 ALBERTA LTD., carrying on business as WORLD OF SPAS EDMONTON; HOLLAND CONTRACTING LIMITED; ADVENTURE POWER PRODUCTS LTD.; BREATHE E-Z HOMES LTD.

STATUS ON APPEAL:	RESPONDENTS
COURT OF APPEAL FILE NUMBER:	1903-0031AC
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APPLICANT:	SERVUS CREDIT UNION LTD.

STATUS ON APPEAL:	APPELLANT
RESPONDENT:	ALVAREZ & MARSAL CANADA INC., in its capacity as the receiver and manager of CRELOGIX ACCEPTANCE CORPORATION, CRELOGIX PORTFOLIO SERVICES CORP., and

CRELOGIX CREDIT GROUP INC.

STATUS ON APPEAL:

RESPONDENTS

DEFENDANTS:

KARL SIGERIST, NICHOLAS CARTER, MIKE MCKAY and MICHAEL MILLS

STATUS ON APPEAL:

NOT PARTIES TO THE APPEAL

RESPONDENTS:

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, a partnership between JOHN GEOFFREY ANDREWS, JANE ANDREWS, JASON WILLIAM ANDREWS, JOSHUA ROBINSON ANDREWS and JAMES RICHARD ANDREWS; RECREATIONAL PARTS AND ACCESSORIES LIMITED; RENOVATION & CONSTRUCTION GAUTHIER ET PELOGUIN; 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 ALBERTA 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

SOUTHSORE AUTOMOTIVE LTD.;
DYNASTY SPAS INC., carrying on business as
WORLD OF SPAS CALGARY; 1781457
ALBERTA LTD., carrying on business as WORLD
OF SPAS EDMONTON; HOLLAND
CONTRACTING LIMITED; ADVENTURE
POWER PRODUCTS LTD.; BREATHE E-Z
HOMES LTD.

STATUS ON APPEAL:

RESPONDENTS

DOCUMENT:

~~ORDER~~ JUDGMENT

ADDRESS FOR SERVICE AND
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PARTIES FILING THIS
DOCUMENT:

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DATE ON WHICH ORDER WAS
PRONOUNCED:

May 29, 2020

LOCATION OF HEARING:

Edmonton, Alberta

**NAMES OF JUDGES WHO GRANTED
THIS ORDER:**

The Honourable Mr. Justice Peter Costigan
The Honourable Madam Justice Sheila Grekol
The Honourable Mr. Justice Kevin Feehan

UPON THE HEARING OF THESE CONCURRENT APPEALS ON April 29, 2020, from the Order of the Honourable Mr. Justice R.A. Graesser granted on January 21, 2019; AND UPON REVIEWING all Factums received, being those from Alvarez & Marsal Canada Inc. in its capacity as Receiver and Manager of Crelogix Acceptance Corporation, Crelogix Portfolio Services Corp. and Crelogix Credit Group Inc. (“**Alvarez**”), Servus Credit Union Ltd. (“**Servus**”), and the Respondents represented by Ms. Coralie Mohr of Witten LLP; AND UPON HEARING argument from all parties present at the Appeal, being counsel for Alvarez, counsel for Servus, and Ms. Coralie Mohr as counsel for various of the Respondents:

IT IS ORDERED THAT:

1. The within appeals are allowed.
2. The case is to be returned to a justice of the Commercial Practice Group of the Court of Queen’s Bench for a new hearing to address the issues, including:
 - a. The interpretation of Merchant Agreement 1;
 - b. Whether a term must be implied into Merchant Agreement 1 and any implications that result;
 - c. Whether the *Personal Property Security Act*, RSA 2000, c P-7 applies to Merchant Agreement 1; and
 - d. If necessary, whether equitable principles apply.

Registrar, Court of Appeal

[CONTINUED ON FOLLOWING PAGE]

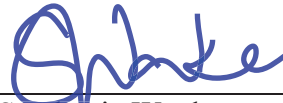
APPROVED AS BEING THE ORDER GRANTED:

PARLEE MCLAWS LLP



Jeremy H. Hockin, Q.C.
*Counsel for Alvarez & Marsal Canada Inc. in its
capacity as Receiver and Manager of Crelogix
Acceptance Corporation, Crelogix Portfolio
Services Corp. and Crelogix Credit Group Inc.*

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Counsel for Servus Credit Union Ltd.

WITTEN LLP

Coralie J. Mohr, *Counsel for the Respondents:*
*1537891 Ontario Inc. carrying on business as
Positive Promotions, 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
Alberta 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, Holland Contracting Limited, Adventure
Power Products Ltd., and Breathe E-Z Homes Ltd.*

APPROVED AS BEING THE ORDER GRANTED:


PARLEE MCLAWS LLP

MILLER THOMSON LLP

Jeremy H. Hockin, Q.C.
*Counsel for Alvarez & Marsal Canada Inc. in its
capacity as Receiver and Manager of Crelogix
Acceptance Corporation, Crelogix Portfolio
Services Corp. and Crelogix Credit Group Inc.*

Stephanie Wanke
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Coralie J. Mohr, *Counsel for the Respondents:*
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