

COURT FILE NUMBER 2301-08305
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1985, c
C-36, as amended



AND IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF WALLACE & CAREY
INC., LOUDON BROS LIMITED, and CAREY
MANAGEMENT INC.

APPLICANT KSV RESTRUCTURING INC., in its capacity as Court-appointed Monitor of
Wallace & Carey Inc., Loudon Bros Limited and Carey Management Inc.
RESPONDENT DIGIFLEX INFORMATION SYSTEMS INC. and MOHAMAD ZÄHED
MARDUKHI

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT
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File No.: 54670-3

NOTICE TO THE RESPONDENTS: see Service List attached hereto as Schedule "A"

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 show below:

Date: December 17, 2024
Time: 11:00 AM
Where: Edmonton (via WebEx)
Before Whom: The Honourable Justice Neilson

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. KSV Restructuring Inc. (“**KSV**”), in its capacity as Court-appointed Monitor (in such capacity, the “**Monitor**”) of Wallace & Carey Inc. (“**Wallace & Carey**”), Loudon Bros Limited (“**Loudon Bros**”), and Carey Management Inc. (“**CMI**”, and together with Wallace & Carey Inc. and Loudon Bros, the “**Companies**”), seeks:
 - (a) an order (the “**Order**”) substantially in the form attached hereto as Schedule “B”:
 - (i) if necessary, abridging the time for service of this Application and the supporting fourteenth report of the Monitor, dated December 13, 2024 (the “**Fourteenth Report**”) and declaring service to be good and sufficient;
 - (ii) declaring that DigiFlex Information Systems Inc.’s (“**DigiFlex**”) purported termination, price increases and all other amendments to the DigiFlex Agreements and any other agreement for services between DigiFlex and the Companies are in breach of paragraphs 18 and 19 of the Amended and Restated Initial Order pronounced June 30, 2023 (the “**ARIO**”) and of no force and effect;
 - (iii) requiring DigiFlex and Mohamad Zahed Mardukhi (“**Mardukhi**”), as sole director and voting shareholder of DigiFlex, to continue to provide the Companies with services and software on the terms and in the manner prescribed by the DigiFlex Agreements, and at an annual rate that shall not exceed \$290,093.70, representing 103.5% of the 2024 rates, unless otherwise agreed to by DigiFlex, the Companies and the Monitor in writing;
 - (iv) restraining DigiFlex, Mardukhi and any other parties on direction from DigiFlex or Mardukhi, from terminating or otherwise interfering with the services provided under the terms of the DigiFlex Agreements and the services provided thereunder; and
 - (v) ordering DigiFlex and Mardukhi to jointly and severally pay costs of this application on a solicitor and own client, full indemnity basis in the amount of \$35,000; and
 - (b) such further and other relief as this Honourable Court deems appropriate.

Grounds for making this Application:

Background

2. On June 22, 2023, this Honourable Court granted an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), among other things, declaring that the Companies were companies to which the CCAA applies, granting a stay of proceedings up to and including July 1, 2023, and appointing KSV as Monitor of the Companies.
3. The Initial Order was amended and restated pursuant to the ARIO on June 30, 2023.
4. Under an order granted by the Court on August 23, 2023, the Companies undertook a sale and investment solicitation process (the “**SISP**”) that resulted in a transaction (the “**Transaction**”) between the Companies and 7-Eleven Canada, Inc. (“**7-Eleven**”) that was approved by the Court

on November 17, 2023 pursuant to an approval and vesting order (the “**Transaction Approval and Vesting Order**”) and other orders (together with the Transaction Approval and Vesting Order, the “**Transaction Orders**”).

5. Pursuant to the Transaction Orders, the Court, among other things:
 - (a) approved the sale of certain property, assets and undertakings of the Companies to 7-Eleven;
 - (b) approved a transition services agreement (the “**TSA**”) among CMI, Wallace & Carey, the Monitor and 7-Eleven, as more fully discussed in the sixth report of the Monitor dated November 8, 2023; and
 - (c) appointed KSV as receiver of all of the property, assets and undertakings of certain subsidiaries of CMI.
6. During these CCAA proceedings, Wallace & Carey has been responsible for carrying on the day-to-day business operations. The TSA, among other things, sets out the terms under which Wallace & Carey will continue to operate for the benefit of 7-Eleven under CCAA protection. The duration of the TSA is 15 months and nine months for the Western Business and the Eastern Business (both as defined in the TSA), respectively, from November 21, 2023 (i.e., the Effective Date of the TSA), subject in each case to two 90-day extensions that are available to 7-Eleven.
7. TSA period, 7-Eleven is responsible for funding substantially all of Wallace & Carey’s operations, including employee costs, real and personal property leases and other contracts, the fees and costs of the Monitor and its counsel, and certain fees of the Companies’ counsel.
8. Upon application by the Companies, the Court granted an order on November 25, 2024, among other things, extending the stay of proceedings in these CCAA proceedings to and including April 30, 2025 (the “**Stay Period**”).
9. Capitalized terms not otherwise defined in this Application shall have the meaning given to such terms in the Fourteenth Report.

The ARIO

10. Under paragraph 19 of the ARIO, suppliers are compelled to provide services to the Companies during the CCAA proceedings in accordance with the terms of existing agreements. Paragraph 19 reads (emphasis added):

19. During the Stay Period, **all persons having:**

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the [Companies], including without limitation all supply arrangements pursuant to purchase orders and historical supply practices, **computer software**, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the [Companies],

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the [Companies] or exercising any other remedy provided under such agreements or arrangements. The [Companies] shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the **usual prices or charges for all such goods or services** received after the date of this Order are paid by the [Companies] in accordance with the payment practices of the [Companies], or such other practices as may be agreed upon by the supplier or service provider and each of the [Companies] and the Monitor, or as may be ordered by this Court.

11. Similarly, paragraph 18 of the ARIO reads (emphasis added):

18. During the Stay Period, **no person shall** accelerate, suspend, discontinue, **fail to honour**, alter, interfere with, repudiate, **terminate** or cease to perform **any right, renewal right, contract, agreement, licence or permit in favour of or held by the [Companies]**, except with the written consent of the [Companies] and the Monitor, or leave of this Court.

The DigiFlex Agreements

12. DigiFlex and Wallace & Carey have a long-standing business relationship spanning approximately 24 years whereby DigiFlex licenses software and provides helpdesk support to Wallace & Carey.

13. The Monitor is aware of the following agreements between DigiFlex and Wallace & Carey:

- (a) Software License Agreement dated August 19, 2013 (the “**Software Agreement**”), which references a Maintenance Agreement attached thereto as Schedule “A” (the “**Maintenance Agreement**”); and
- (b) Helpdesk Support Agreement, a copy of which the Monitor has not received and/or reviewed (the “**Support Agreement**”);

(collectively, the Software Agreement, Support Agreement and any other agreement for services between DigiFlex and the Companies shall be referred to as the “**DigiFlex Agreements**”).

14. To the best of the Monitor’s knowledge, Mardukhi is the controlling mind of DigiFlex and directs its operations.

15. The Software licensed to Wallace & Carey under the DigiFlex Agreements is integral to its operations, as the Software is utilized for all aspects of Wallace & Carey’s operations including distribution management, financial reporting, and business intelligence.

16. The key terms of the Software Agreement are, among others, the following:

- (a) Wallace & Carey agreed to pay \$300,000 for an unlimited-use license-to-use agreement, which amount was paid by way of an initial payment of \$150,000 on April 23, 2012, with the remaining \$150,000 paid on the execution of the Software Agreement on August 19, 2013;

- (b) all rates specified in the Software Agreement (including the fees payable under the Maintenance Agreement) are fixed for the first 12-month period (starting in August 2013), after which DigiFlex may increase the price payable by Wallace & Carey upon providing at least 30 days advance written notice to Wallace & Carey. The percentage increase shall not exceed the Consumer Price Index for that period as published by Statistics Canada for the City of Calgary, or in the alternative, the province of Alberta or Canada;
 - (c) Wallace & Carey is also responsible for certain service fees on an hourly basis. Historically, hourly service fees are invoiced to and paid by Wallace & Carey as soon as the service request is completed by DigiFlex; and
 - (d) there is no set term or expiration date for the Software Agreement.
17. The key terms of the Maintenance Agreement are, among others, the following:
- (a) Wallace & Carey agreed to pay an annual maintenance services fee for three software packages in an amount of \$28,350 (\$9,450 per software package) for one year, to be paid in advance (the “**Maintenance Charge**”). Additional fees apply to install the software packages in multiple branches on additional server systems;
 - (b) the term of the Maintenance Agreement began on the date of software installation and automatically renews for successive one-year terms to be agreed upon by the parties at the time of renewal, unless the agreement is terminated. The Maintenance Agreement is terminated by either party serving written notice to the other at least 30 days prior to the expiration of the initial term or renewal, in which case the Maintenance Agreement terminates at the end of that term or renewal; and
 - (c) the Maintenance Charge is fixed for a 12-month period, after which DigiFlex may increase the price payable by Wallace & Carey upon providing at least 30 days advance written notice prior to the end of the then current term to Wallace & Carey. The percentage increase shall not exceed the Consumer Price Index for that period as published by Statistics Canada for the City of Calgary, or in the alternative, the province of Alberta or Canada. Historically, DigiFlex invoiced renewal fees for the Maintenance Agreement in February of each calendar year.

DigiFlex’s purported termination, price increases and all other amendments to the DigiFlex Agreements are in breach of the ARIO

- 18. A detailed timeline of communications with DigiFlex leading to this Application is set out in the Fourteenth Report.
- 19. DigiFlex is seeking to materially increase the prices payable under the DigiFlex Agreements, terminate or otherwise amend the terms of the DigiFlex Agreements. This conduct is very clearly contrary to the terms of the ARIO.
- 20. Representatives from the offices of 7-Eleven, Wallace & Carey, the Monitor and Monitor’s counsel have made several attempts to discuss this matter with Mardukhi with the goal of reaching a resolution out of court, all of which have been unsuccessful.

21. As a result of the unsuccessful attempts to reach a resolution out of court, the Monitor proceeded to book emergency time on the Commercial List for the hearing of this Application (the "**Hearing**").
22. On December 11, 2024, after Mardukhi was forwarded WebEx details for the Hearing, Mardukhi sent an email on behalf of DigiFlex to representatives of 7-Eleven which reads, in part: "Since you have decided to proceed with court action (see email below), this is our formal notice that we will stop our support, maintenance and helpdesk services on January 1st, 2025. This will be the case regardless of the court outcome."
23. Mardukhi has been explicit that DigiFlex will be terminating the DigiFlex Agreements effective January 1, 2025, and that he will not comply with any Court order issued which would require continuation of the DigiFlex Agreements.
24. DigiFlex's actions are clearly and manifestly contrary to the ARIO.
25. In accordance with the Transaction Orders, Wallace & Carey continues to carry on active business operations. DigiFlex remains contractually bound to provide services to Wallace & Carey pursuant to the DigiFlex Agreements and the ARIO, regardless of 7-Eleven's obligations to Wallace & Carey under the TSA.

The Need for Urgent Relief

26. As set out in the Fourteenth Report, the services provided under the DigiFlex Agreements are integral to Wallace & Carey's operations.
27. The Monitor is seeking urgent relief from the Court as DigiFlex's conduct, if not addressed immediately, would have a profound and detrimental impact on Wallace & Carey's entire supply chain. In the event Wallace & Carey's access to the software or services provided under the DigiFlex Agreements is disrupted, service to hundreds of 7-Eleven Stores from Ontario to British Columbia, which make up the bulk of Wallace & Carey's business, would be significantly and immediately impacted and it would be impossible for Wallace & Carey to continue to operate.
28. The Monitor respectfully requests that this Honourable Court grant the Order.

Material or evidence to be relied on:

29. Amended and Restated Initial Order pronounced by the Honourable Justice Burns on June 30, 2023.
30. Transaction Approval and Vesting Order pronounced by the Honourable Justice Burns on November 17, 2023.
31. Twelfth Report of the Monitor dated August 13, 2024, filed.
32. Sixth Affidavit of Pat Carey, sworn on November 19, 2024, filed.
33. The Fourteenth Report of the Monitor dated December 13, 2024, to be filed.
34. Bench Brief of the Monitor dated December 13, 2024, to be filed.

35. Affidavit of Service to be sworn and filed.
36. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

37. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3 and 6.47.
38. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

39. *Companies' Creditor Arrangement Act*, RSC 1985, c. C-36.
40. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
41. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

42. None.

How the application is proposed to be heard or considered:

43. Remotely, via Webex.

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 time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

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<p>TIP FLEET SERVICES CANADA LTD. 1880 Britannia RD E Mississauga, ON L4W 1J3 Canada</p> <p>Email: absecparties@avssystems.ca</p>	Email	PPR Registrant
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<p>A&M Enterprise Ltd. dba 'Freshslice Pizza'</p> <p>Attention: Vincent Li and Tom Horler</p> <p>Email: Vincent@freshslice.com tom.horler@freshslice.com</p>	<p>Email</p>	<p>PPR Registrant</p>
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<p>KERRY, INC. c/o Dickinson Wright LLP 199 Bay Street Suite 2200 Toronto, ON M5L 1G4</p> <p>Attention: John D. Leslie Dan Poliwoda</p> <p>Email: jleslie@dickinsonwright.com dpoliwoda@dickinsonwright.com</p>	<p>Email</p>	<p>Interested Party</p>

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COURT FILE NUMBER 2301 - 08305
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC 1985,
c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE
OF ARRANGEMENT OF WALLACE & CAREY
INC., LOUDON BROS. LIMITED, and CAREY
MANAGEMENT INC.



APPLICANT KSV RESTRUCTURING INC., in its capacity as Court-appointed Monitor of
Wallace & Carey Inc., Loudon Bros Limited and Carey Management Inc.

RESPONDENT DIGIFLEX INFORMATION SYSTEMS INC. and MOHAMAD ZÄHED
MARDUKHI

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Attention: Jeffrey Oliver

File no. 54670-3

DATE ON WHICH ORDER WAS PRONOUNCED: December 17, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Neilson

UPON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity, the "**Monitor**") of Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros Limited, and Carey Management Inc. (collectively, the "**Companies**") for an Order (among other things): (i) declaring that DigiFlex Information Systems Inc.'s ("**DigiFlex**") purported termination, price increases and all other amendments to the DigiFlex Agreements (as defined in the Fourteenth Report of the Monitor, dated December 13, 2024 (the "**Fourteenth Report**")) and any other agreement for services between DigiFlex and the Companies are in breach of paragraphs 18 and 19 of the Amended and Restated Initial Order of this Court pronounced June 30, 2023 (the "**ARIO**") and of no force and effect; (ii) requiring DigiFlex and

Mohamad Zahed Mardukhi (“**Mardukhi**”), as sole director and voting shareholder of DigiFlex, continue to provide the Companies with services and software on the terms and in the manner prescribed by the DigiFlex Agreements, and at an annual rate that shall not exceed \$290,093.70, representing 103.5% of the 2024 rates, unless otherwise agreed to by DigiFlex, the Companies and the Monitor in writing; and (iii) restraining DigiFlex and Mardukhi, or any other parties on direction from DigiFlex or Mardukhi, from terminating or otherwise interfering with the services provided under the terms of the DigiFlex Agreements and the services provided thereunder;

AND UPON having reviewed the ARIO; the Fourteenth Report; and the Affidavit of Service of Angeline Gagnon, sworn December [●], 2024; **AND UPON** hearing counsel for the Monitor, counsel for the Companies, 7-Eleven Canada Inc. (“**7-Eleven**”) and any other interested parties appearing at the within application; **AND UPON** being satisfied that it is appropriate to do so;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Fourteenth Report.

SERVICE

2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and time for service of this application is abridged to that actually given.

DIGIFLEX AGREEMENTS NOT TERMINATED

3. DigiFlex’s purported termination, price increases and all other amendments to the DigiFlex Agreements and any other agreement for services between DigiFlex and the Companies are in breach of paragraphs 18 and 19 of the ARIO and of no force and effect.
4. Unless agreed to in writing by DigiFlex, the Companies and the Monitor, DigiFlex shall continue to provide services to the Companies in the manner prescribed in the DigiFlex Agreements, and at a rate that shall not exceed the aggregate total of \$290,093.70 (being 103.5% of the 2024 rates). Any party may apply for leave to amend the terms of supply upon application to this Court on at least 10 days prior notice.
5. Without limitation to paragraphs 18 and 19 of the ARIO, which remain in full force and effect, during the Stay Period:
 - (a) DigiFlex, Mardukhi and any other parties upon their direction are restrained from discontinuing, altering, interfering with, suspending or terminating the supply of such

goods or services as may be required by the Companies or exercising any other remedy provided under the DigiFlex Agreements or at law. The Companies shall be entitled to the continued use of the software and services provided by DigiFlex pursuant to the terms of the DigiFlex Agreements.

- (b) DigiFlex, Mardukhi and any party upon their direction shall not accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Companies, except with the written consent of the Companies and the Monitor, or leave of this Court.

COSTS

- 6. The Monitor shall be awarded costs of its application on a solicitor and own client full indemnity basis from DigiFlex and Mardukhi jointly and severally in the amount of \$35,000.

SERVICE OF ORDER

- 7. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - i. the persons listed on the service list created in these proceedings;
 - ii. any other person served with notice of the application for this Order; and
 - iii. any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Monitor's website established in connection with these proceedings, for no less than six months from the date of this Order;and service on any other person is hereby dispensed with.
- 8. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier.

Justice of the Court of King's Bench of Alberta