

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

VELOCITY ASSET AND CREDIT CORPORATION AND
926749 ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED;
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, AS AMENDED

MOTION RECORD OF THE RESPONDENTS

Motion Returnable April 23, 2024

April 19, 2024

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appointed Receiver

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AFFIDAVIT OF HUGH WADDELL

I, **HUGH WADDELL**, of the Town of Peterborough, Ontario **MAKE OATH AND SAY:**

1. I am a director and officer of the Respondent Velocity Asset and Credit Corporation (“Velocity”) and 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the “Dealership” or the “Dealer”), which has operated a used car dealership for the past 28 years in Peterborough, Ontario, and as such have personal knowledge of the following.

2. I swear this affidavit opposing the receiver's motion for an order granting It power to assign the respondents into bankruptcy.
3. In the receiver's first report to the court dated December 7, 2023, the receiver made several allegations about my operating the business. As set out in my affidavit sworn on April 11, 2024 filed in support of the respondents' motion to vary paragraphs 9 and 10 of the December 8, 2023 order and in support of an order requiring the receiver to return the respondents' books and records, I repeat my comments to refute the receiver's allegations at that time and now. I instructed the staff to offer all the assistance that they could. Specifically, the receiver alleged that there were material financial irregularities. As stated in my affidavit sworn on April 11, 2024:

Insufficient evidence of a maladministration

13. The Receiver alleges in its First Report that there were a number of material financial irregularities in respect of the Respondents. The Receiver and its staff never requested my assistance on an on-going basis, but rather reviewed our books and records to show that the Respondents were being mismanaged. The following evidence of Receiver is countered below:

(a) Duplicate VINs and Lease Issues: The Receiver found 30 instances where the same Vehicle Identification Numbers ("VINs") were recorded for multiple leases (the "Duplicate VINs") indicating that there are 30 instances where the same vehicle was re-leased without a corresponding lease buyout, violating the terms of an agreement between the Dealer and Enlightened.

As explained in a letter given to the court in the Receiver's First Report, dated December 8, 2023, these 30 discrepancies were the result of an error in monthly reporting between the Applicant and Velocity due to the Applicant's lack of tracking of the monthly leases. There was no impact on the public or consumer, only on the Dealership, which paid for each of these leases to its own detriment.

(b) Financial Discrepancies: The Receiver states that the capital cost of

the vehicles subject to the Duplicate VINs is \$1,595,578. However, the total value of Enlightened funding related to these vehicles exceeds \$3.0 million. Accordingly, due to the Debtors' double-counting, Enlightened is under-secured by approximately \$1.4 million.

The Receiver misstated the \$1.5 million and over reported \$3 million figure. There was no double counting as the Receiver claims. The actual capitalization costs are only relevant to the origin of the lease contract and not to the date that is reported on the payout schedules. What is relevant are the current buyouts which are the balance of the leases . As of November 17th, 2023, the actual lease amortizations/buyouts that are presented by the Receiver are an actual buy out of \$1,293,830, not the capitalized cost of \$1,595,578. Following the Applicant's loan in June, 2022, 15 units, valued at \$574,958.04 were not paid out due to a break down in the accounting process from the Applicant to Velocity.

The errors in accounting were a result of a breakdown of processes between the Applicant and Velocity and the process by which buy-outs were required on a monthly basis by the Dealer. Vehicles were paid out monthly based on a list provided by the Applicant to Velocity that in turn provided the list to the Dealer.

(c) Unexplained Re-Leasing Practices: Despite multiple requests for explanations, the Receiver alleges it has not received a satisfactory explanation for these Duplicate VINs and re-leasing practices.

The Receiver did not make multiple requests for explanations. I wrote a detailed letter to Derek Hartland on November 30, 2023, attached as Exhibit "C", explaining the duplications and the re-leasing practices. Had the Receiver inquired earlier, it would have greatly reduced the time spent on files that had already expired, been released or not been delivered, also saving costs. This was also why 52 people alleged they did not have a lease anymore or at all.

(d) Lease Documentation Irregularities: The Receiver has been contacted by 52 lessees disputing the information in the Dealer's books and records. Issues include vehicles that the Dealer has recorded as leased despite being returned or repossessed, and leases that the lessees claim they never entered into.

As the Receiver sent a notice to every name and address in the Velocity database, it sent notices to many lessees whose leases were expired, returned, traded in or in draft, or never had been given a lease at all and maybe just a quote. All these people did not have a lease.

(e) Transfer of Dealer Property: The Receiver alleges that the Dealership transferred a number of vehicles that are subject to the receivership proceeding to Auto Connect Sales Inc. for sale, despite constituting Property.

As a part of normal business, some Dealership vehicles were wholesaled to other dealers. One of the dealers, Auto Connect, bought a few vehicles from the Dealership. When they were sold, the liens were paid out after funds were received from the purchasing dealer. When the Applicant ran out of money, the ability to pay for the units was compromised, and the Dealership had to raise funds to be able to remove the liens for Auto Connect to be able to receive their property.

(f) Misappropriation of Dealer Property: The Receiver alleges that a preliminary analysis of the Dealership's receipts and disbursements indicated a misappropriation of funds. This includes the use of lease collection proceeds and vehicle sales revenue, which were supposed to be remitted to Velocity or Enlightened, to repay amounts owing to a separate creditor, NextGear, as well as to acquire additional vehicles for leasing or sale.

This is false. There was no misappropriation of any funds. After the Applicant ran out of funds and failed under the Forbearance Agreement to continue emergency funding, the Dealership raised capital from family and lenders. \$1,400,000.00 of HST refunds were also forthcoming from Canada Revenue. The amounts raised exceeded the payout of funds to Next Gear and other commitments. This was a misrepresentation by the Receiver.

(g) OMVIC concerns: The Receiver convened a conference call with OMVIC on December 1, 2022 to advise of the Receiver's intention to seek expanded scope and investigative powers. During this call, OMVIC advised the Receiver that OMVIC's investigations revealed the Dealer had not remitted customer payments to Canada General Warranty in respect of

insurance and warranty products.

This is incorrect. I had made arrangements with Canada General Warranty that all vehicles were properly insured. No customer was affected.

14. The Receiver alleges it has made significant efforts to review the books and records of the Debtors, but that its efforts have hampered an opportunity to assemble a definitive listing of leases which comprise the Dealer Property. This is solely due to the failure of the Receiver, not due to any action or inaction of the Respondents.

15. The Dealership, upon the dealer's direction, gave the Receiver access to the dealership's sole bank account at RBC, allowing the Receiver to collect all payments owing. I then instructed my staff to give the Receiver access to all files and programs, deposit books and all the facilities required to conduct its investigations. Again there was a stunning lack of understanding of how a dealership functions due to unprepared Deloitte staff with no dealership training and no knowledge of where to start. This at a cost of \$750,000.00.

16. At no time did the Receiver ask me for help regarding the list of leases, nor did our Dealership deny the Receiver any information to assist in the compilation of leases. All the physical files were in filing cabinets at the Dealership. The Receiver fabricated this "difficulty," as I gave the Receiver the office operations manager, Maryanne Jacobs' full co-operation between October 26th and December the 8th 2023. Maryanne was the only staff member at the Dealership who knows how the software system and accounting operates between Velocity, the Dealership and the Applicant. This despite the fact that she was working on the HST audit.

17. The Receiver alleges that it spent "significant time and resources attempting to reconstruct the lease portfolio." With all our co-operation, this indicates the Receiver's inefficiency, incompetency, lack of training and over-billing. Again they were advised not to keep removing documents from the lessees files. This would create hours and hours of time wasted trying to reconcile files that the receiver who despite being warned by Maryanne Jacobs continued to separate documents from their respective files.

18. The Receiver alleges that it is unable to estimate the actual receivable balance of the leases and that based on pre-authorized payment contracts

that the Receiver reviewed, it appears there are fewer than 400 lessees remitting payments to the Dealership each month. However, the Receiver did not assess all the receivables, and disregarded reports that the Applicant and Velocity provided, as well as the receipt books that we gave to the Receiver on the first day it arrived at the Dealership. The Receiver made no mention that in addition preauthorized payments we received many payments by e transfers, cheques and cash. The Receiver also failed to report that at minimum, 150 of the leases reported on the Applicant's portfolio were from a different dealer, National Auto Finance. The theoretical and unsubstantiated Receiver's guess of a difference in reported and official leases versus the amount the Deloitte staff were able to find, was unfounded inuendo that improperly influenced the court on December 8, 2023 to keep the Dealership, then unrepresented, in receivership. This omission, despite full cooperation of the Dealership's operations staff, access to its computers, email, and bank account, indicates the Receiver's inadequacies.

19. The Receiver alleges that the Dealership and Velocity have been "evasive and have not provided any response that would explain the significant discrepancies and irregularities already uncovered by the Receiver." This is not true. No Deloitte staff asked me to explain their perceived irregularities. Had they asked my staff and I we would have spent time investigating any possible irregularities. Instead of being forthright a staff member would inform me that I was not to interrupt their closed-door meeting and they would huddle together on a conference call. Again never once asking me a single question about what they were investigating and have withheld all the Respondents' books and records from me despite requests.

20. To that end, when the Receiver's lawyer received my letter dated November 30, 2023 explaining the discrepancies, the response from the Receiver's lawyer was that it was "unacceptable." No reason was given as to why my explanations provided were unacceptable. Every one of the Dealership's staff and I was willing to assist the Receiver, because everyone at the Dealership wanted to ensure that the business remained operational.

21. The Receiver made all these false innuendos to give the impression that the Respondents were misleading the Receiver. This created the narrative that allowed the Receiver's legal team to be successful in having

the court believe the expanded receivership powers were necessary.

4. I have, and my counsel has, requested on several occasions for the return of the respondents' books and records. It has been almost six months since the initial receivership order of October 26, 2023, and still the respondents have not had the benefit of using their own documents to defend themselves against the receiver's false accusations.
5. In the receiver's 3rd report, the receiver claims in paragraph 43 that there were 7 trade-ins from a customer, but failed to collect the balance of the loan. Lessee 3260 delayed in paying out his 17 Ram which was an error on the part of Clonsilla. When I spoke to the customer, he requested to keep his car loan intact so that he might continue to receive a favourable credit rating as provided by his lender Bank of Nova Scotia. The Dealer had leased the customer's 3260 trade in the 17 Ram to a third party and then arranged to receive monthly payments. OMVIC Inspectors reviewed the agreement and found it to be unusual but not illegal.
6. In the receiver's 3rd report, the receiver questioned in paragraphs 53 and 54 family vehicles. I had a system of payments in place which I believed was correct. Payments were tracked by the Dealer from Clonsilla accounts where my children's investments were located. When questioned by the receiver, the vehicles were returned in the expectation of addressing the matter at a later date.
7. In the receiver's 3rd report, the receiver reiterates at paragraph 64 that it is continuing to investigate to recover "reviewable transactions, including transfers at undervalue and other preferences", related to reviewable transactions, including transfers at

undervalue and other preferences”, but fails to show any particulars.

8. After operating this business for 28 years, I believe that the receiver has not stabilized the lease payments after 6 months in possession and until the lease payments are stabilized, the receiver should be keeping the business operational and should not be liquidating the leases or vehicles but rather the receiver should be developing a marketing plan to sell or re-finance the fleet. Prior to the receivership, the Dealer would be receiving approximately \$450,000 monthly. After 6 months and to date, the receiver has collected about \$900,000.

SWORN remotely by Hugh Waddell)
stated as being located in the Town of)
Peterborough, before me at the City of)
Toronto in the province of Ontario on this)
19th day of April, 2024 in accordance with O.)
Reg 431/20, Administering Oath or)
Declaration Remotely.)

Frank Bennett

A Commissioner for Taking Oaths
Frank Bennett



HUGH WADDELL

This is Exhibit “C” referred to in the
Affidavit of Hugh Waddell
sworn before me on April 11, 2024
in the City of Toronto.

Frank Bennett

A Commissioner, etc.

November 30,2023

Rebecca Kennedy
Thornton Grout Finnigan

Dear Ms Kennedy

Thank you for your letter of November 17th,2023 .

In response to your 4th paragraph item A

Clonsilla's role in the process of leasing vehicles to retail customers was as the originator of the leases , that were to be managed under the portfolio of leases that existed . The process of buying out the vehicle contracts / leases was left to Velocity and Enlightened Capital . In fact the day that The Beacon trust people were paid out by Velocity /EC after funding commenced in June of 2022 Clonsilla Auto 926749 Ontario LTD . had no say in the closing amounts. Those were all reconciled by Enlightened Capital staff and staff at Velocity asset and credit corporation .Clonsilla's role was to create a contract with the customer , sign and witness all the pertinent documents and upload the entire file to the Velocity /EC system for funding . Once that file is uploaded the entire accounting was left to Enlightened Capital and Velocity Asset and their various accounting personnel and their systems .

Clonsilla would simply collect The payments from the customer and pay EC/Velocity the bill that was presented at the end of the month for payments and middle of the month for buyouts .

Clonsilla Auto often rewrote leases after reconditioning , repossessions and new contracts would be submitted Through the Velocity system . The general practice was for EC and Velocity to prepare a monthly report that provided Clonsilla with a list of buyouts that were required to be paid out by the 15th of the following month . Velocity /EC would review any new files that were sent in and search the vins and Clonsilla would then payout any previously funded units from a list that was provided from an Enlightened capital/Velocity mid month subservicing report that included **all buy outs** . So on the 15th of the month Clonsilla would simply send Velocity a payment for the affected contracts to be paid out and Velocity Paid out the contracts to EC as per the mid month subservicing report .These cheques were often several hundred thousand dollars depending on the number of units being paid out .

Because of schedule A units 1,2 and 3 double payments would be made at a significant cost monthly. Clonsilla was deeply prejudiced by this oversight and obviously hurt financially .

This is not a problem that arose at any other time during our 25 years in business only since June 2022 when Velocity started funding with Enlightened capital .

Another accounting problem has come to light Schedule AA enclosed

Clonsilla has determined that EC/Velocity has been billing Clonsilla Monthly payments For vehicles and customers whose leases had expired . There is a list of all the leases that have expired in Section 2 of the enclosed schedule. It starts half way down page 2 and finishes on page 4 . The contract's expiry is listed and it shows how many payments were taken after the contract had expired up to and including July of 2023 when the last payments were made in full to EC/Velocity . This was only a preliminary sampling . The whole lease fleet has not been checked for further errors of this nature .

In Section 1 of the report

Certain Lease Contracts were short funded by a previous lender and Enlightened agreed to fund for the full value of the entire lease contract . However they started taking a second payment for each lease immediately , instead of waiting until the contracts due dates at the end of the contract to commence payments . This would have been when the customer would actually still be making the payments . These second payments continued to show on ECs/Active portfolio and Continued until current .

Total cost of expired leases overcharged to July 2023	377,064.75
Total second payment accumulation overcharged to July 2023	<u>511,373.37</u>
Total overcharges by EC/Velocity up to and including July 2023	888,438.12

Item 3 b.

No vehicles sold to Auto Connect were sold to avoid paying EC for their security .
 Several of the vehicles were on Clonsillas lot for periods of six months or better and
 It seemed a better choice to sell the vehicle while they still had good value . Clonsilla will
 establish what amounts are owing and reconcile the account with the receiver and provide
 payment For the contract payouts . This was unintentional .

ITEM 3 C in the November 17th letter dealing with category 1,2 and 3**Schedule B (supplied by receiver)**

category 1		last six	actual cost
Lease 3356	16 Hyundai Santa Fe	ser# 142002	21276.51
Lease 3361	16 Nissan sentra	640284	13864.41
Lease 3331	14 Jeep Cherokee	187045	13094.94
Lease 3353	12 Dodge Journey	285705	<u>9435.39</u>

Receivers suggested cost \$ 88,846.31

ACTUAL COST \$ 57,671.25

Category 2		Last six Ser#	Actual Cost
Lease #			
n/a	15 Nissan Juke	56144	13,194.00
3357	15 Honda Pilot	503972	15,502.07
3340	14 jeep Cherokee	322271 Trade in	<u>13,200.00</u>

Receivers suggested cost \$72,034..97

ACTUAL COST \$41,896.00

Category 3	Vehicle type	Last six Ser#	Actual Cost
Lease #			
n/a	2020 GMC savannah	255354 on consignment from Auto Connect	
n/a	2013 Dodge Gr Caravan	751374	
n/a	2012 Ram 1500 pick up	337511 TRade in allowance	\$15,000.00
3332	2012 ram 1500 pick	337511 same ser# as prior vehicle	N/A
n/a	2011 Gr Caravan	788267	

Receivers suggested cost \$42,817.96

ACTUAL COST \$15,000.00

Total ACTUAL COSTS \$129,567.20

Item 3 C continued from prior page schedule

The receiver expresses concerns that proceeds of Enlightened Capital were used to purchase items in Categories 1,2 and 3 at a cost Of 203,699.24 .

In fact the real cost to buy these vehicles was \$ 129,567.20 with the effect that costs were overstated by \$74,132.04 .

Enclosed are schedule C “Hugh Waddell's” deposits and “Hugh Waddell’s” withdrawals . The deposits exceed the withdrawals by 279,666.94 .

Therefore it should be clear that the items in Categories 1,2 and 3 With the corrected cost figures supplied by the Staff at Clonsilla Auto Is 129,567.20 and were paid by Clonsilla Auto not Enlightened Capitals funds out of funds on hand supplied by Hugh Waddell’s Deposits .

Staff at Clonsilla will be researching category 4 but we are unsure Why these costings are necessary if the vehicles were purchased Before August 1,2023 .

Any further questions please call the writer at 705 742 6500

Yours truly

Hugh Waddell

Title	Affidavit of Hugh Waddell re receiver's motion to assign cos...
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Sent for signature to Frank Bennett (bennett@ican.net) and Hugh Waddell (sales@trenttrading.ca) from rbennett@cannabislaw.ca
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19 / 04 / 2024
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COMPLETED

19 / 04 / 2024
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The document has been completed.

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

AFFIDAVIT OF HUGH WADDELL

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