

Court File Number **2301 - 08305**

Court **COURT OF KING'S BENCH OF ALBERTA**

Judicial Centre **CALGARY**

Applicants **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.**

Respondent **DIGIFLEX INFORMATION SYSTEMS INC.
2611 VENABLES STREET
VANCOUVER, BC V5K 2R4**

 Attention: **Mohamad Z. Mardukhi**
 Telephone: **604-720-0485**
 Email: **mardukhi@digiflex.ca**

Written Reply Submission of the Respondent

Remedy sought by the Respondent

Digiflex Information Systems Inc. ("Digiflex") seeks from the Honourable Court:

- a) To declare all License Agreement in place between Wallace & Carey Inc. ("Wallace & Carey") and Digiflex terminated, as early as November 17, 2023, when a Sales Agreement between 7-Eleven Canada ("7-Eleven") and Wallace & Carey was finalized.
- b) To block 7-Eleven from using Digiflex software without a license and to pay Digiflex any profits it earned from this infringement of Digiflex's intellectual property rights since November 17, 2023. Or alternatively, to force 7-Eleven to pay our license fee invoice dated November 13, 2024 in the amount of \$3,230,000 plus interest, and to pay our maintenance fee invoice for the period from November 1, 2024 to October 31, 2025 in the amount of \$807,500 plus interest.
- c) Any further relief for damages caused to Digiflex that this Honourable Court may deem appropriate.

Background

1. Wallace & Carey and Digiflex signed a software licencing agreement for the use of Digiflex's ProCLASS Distribution Management System ("ProCLASS") on March 9, 2000. The very first paragraph in this, and in all other Digiflex licensing agreements, states (**Appendix "C" of the Applicant's FOURTEENTH REPORT OF THE MONITOR**):

THIS AGREEMENT WITNESSES the mutual terms and conditions upon and subject to which Digiflex is prepared to grant to Customer a **non-transferable**, non-exclusive, perpetual License of certain computer application software owned by Digiflex.

2. Wallace & Carey and Digiflex signed a second software licencing agreement for the use of Digiflex's CLASS Financial Systems ("CLASS Financials") on August 12, 2003.
3. Loudon Bros. Ltd., a division of Wallace & Carey, and Digiflex signed a third software licencing agreement for the use of Digiflex's ProCLASS and CLASS Financials on February 18, 2013. This is further proof that the license granted to

Wallace & Carey did not even apply to a company fully owned by Wallace & Carey.

4. The 23+ year relationship between Wallace & Carey and Digiflex has been of great mutual benefit to both parties. Wallace & Carey managed to grow from annual sales of \$200 million to over \$2 billion and greatly expanded their business just prior to the COVID-19 pandemic. Digiflex grew its business and its software products during the same period.
5. Digiflex's software systems have been exceptionally trouble free and have run uninterrupted in 7 by 24 mode for multiple years at a time. Digiflex has always provided software enhancements in record time and at minimal expense when compared to other software providers with similar software offerings.

Developments since CCAA

6. On July 4, 2024, Digiflex was asked to set up a completely new company on Digiflex's software and to have it go live on January 1st, 2025. This new company was then identified as 7-Eleven Distribution Canada Corporation ("SEDCC"). In subsequent response emails, Digiflex identified the need for a new software license for the new company and provided a table of applicable license fees for different ranges of annual sales (shown below). This project seemed to get stalled at that point.

	Annual Sales \$100M	Annual Sales \$300M	Annual Sales \$600M	Annual Sales \$700M
System	License Fee	License Fee	License Fee	License Fee
ProCLASS	\$300,000	\$1,000,000	\$2,000,000	\$2,400,000
CLASS A/P	\$60,000	\$200,000	\$400,000	\$480,000
CLASS A/R	\$60,000	\$200,000	\$400,000	\$480,000
CLASS G/L	\$60,000	\$200,000	\$400,000	\$480,000
CLASS B/R	\$4,000	\$14,000	\$30,000	\$35,000
Total License Fee:	\$484,000	\$1,614,000	\$3,230,000	\$3,875,000

Annual Maintenance Fee:	\$169,400	\$403,500	\$807,500	\$968,750
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7. On October 7, 2024, Digiflex received an email from four 7-Eleven USA staff requesting a quote on renewal of the Maintenance Agreement in place with Wallace & Carey. Digiflex informed 7-Eleven USA that a new software license is required before we can establish a new Maintenance Agreement, but that Digiflex's Helpdesk services agreement was not tied to a license agreement, and we asked who we should bill that invoice to. Joshua Buchanan of 7-Eleven USA responded with "Seven Eleven Distribution Canada Corporation will have the same address in Calgary that W&C has had in the past."
8. Digiflex informed 7-Eleven USA that according to point 15 on Affidavit Number 5 of Patrick Carey, filed on July 29, 2024 and available at KSV Advisory web site:

15. Following the SISP, 7-Eleven Canada, Inc. (the "**Purchaser**") and the Applicants entered into a purchase and sale agreement (the "**Sale Agreement**"). The Sale Agreement was for the sale of the Applicants' personal property and equipment assets located in Alberta and British Columbia and the intellectual property, **technology, software and systems relating to the entire Logistics Companies' logistics/distribution business across Canada**. The Applicants are continuing to operate in various provinces across Canada, including BC, Alberta, Saskatchewan, Manitoba and Ontario.

Digiflex software is not owned by Wallace & Carey and cannot be sold by them. Wallace & Carey only has a non-transferable license-to-use for Digiflex software. The continued use of Digiflex's software by SEDCC without a legal license constitutes copyright infringement under the Copyright Act.

9. On October 24, 2024, Digiflex forwarded an invoice for Helpdesk Services for one year to 7-Eleven USA.
10. On November 12, 2024, Digiflex forwarded a software License Agreement and invoices for the license fee plus a 1-year software Maintenance fee to 7-Eleven USA. 7-Eleven USA has continued to ignore these documents.
11. On December 3, 2024, Digiflex sent an email to 7-Eleven USA, stating:

Based on the lack of response, or even acknowledgment, of our new license agreement and 3 overdue invoices, we can only assume that your Epicor implementation project has finally been completed, and you no longer need our systems or services.

If this is the case, please inform Wallace & Carey of this change and initiate the destruction of our software and documentation at Wallace & Carey, as stipulated in point 5 of our license agreements. As per the last paragraph of point 5, please send us a letter confirming that this destruction has been completed.

This email has also been ignored by 7-Eleven USA.

12. In less than 3 hours after sending the email in point 11 above, we received a letter from Jeffrey Oliver threatening court action to “compel your cooperation”. Our argument that according to their own affidavit, referenced in point 8 above, 7-Eleven bought our software and systems from Wallace & Carey on or before November 17, 2023, was never addressed. The fact that our software was not owned by Wallace & Carey and could not be bought from them by anyone was not addressed either.
13. We assert that based on these facts, summarized below:
 - a) Request to set up Digiflex software systems for SEDCC and have them ready for production use on January 1, 2025.
 - b) Request for renewal of Maintenance agreements sent to Digiflex by 7-Eleven USA, with no one from Wallace & Carey copied onto the request.
 - c) Request to expand Wallace & Carey databases so SEDCC operations can be conducted in our software, but this time using Wallace & Carey databases and implementations, in an attempt to hide SEDCC operations behind a Wallace & Carey façade.
 - d) SEDCC has been making changes to our systems to hide the fact that they are conducting business as **SEDCC** and not as Wallace & Carey; and they are doing this without obtaining a legal license for our software. As an example, the helpdesk team at SEDCC attached a purchase order form to an email request that shows they have replaced the Wallace & Carey logo with the SEDCC logo:

7-ELEVEN DISTRIBUTION CANADA CORP.		5445 - 8th Street N.E. CALGARY, ALBERTA T2K 5R9 Tel: (403) 275-7360 Fax: (403) 275-3921 (403) 274-0461		PURCHASE ORDER										
VENDOR	7-ELEVEN CALGARY FOOD CENTRE 2626 COUNTRY HILLS BLVD NE BAY#50 CALGARY, AB CANADA T2N 1A7	SHIP TO	Calgary Warehouse 5445 - 8TH STREET N.E. CALGARY, ALBERTA CANADA T2K 5R9	ISSUE DATE	DUE DATE	VENDOR NO.	P.O. NO.							
	21-AUG-2025		25-AUG-2025	75747	64727									
NOTE: ORD M->W T->R W->F R->M F->T (4032580895)				Net 30 Days 0.0% 0 Days		PAGE 1								
BROKER: ALISHA BUYER: RICKY CHAN-FOODSERVICE		SALESMAN: BUYER NO.: 14		CARRIER: BRANCH 1 CALGARY PICK UP (101) MINIMUM BUY: 1\$										
UPC	ITEM	DESCRIPTION	PACK	SIZE	QUANTITY	WEIGHT	CUBE	TI	HI	PRICE	P.A.	DEBIT	VND PRG	NET VALUE

The original purchase order form that Digiflex created for Wallace & Carey many years ago looks like this:

WALLACE & CAREY INC.		5445 - 8th Street N.E. CALGARY, ALBERTA T2K 5R9 Tel: (403) 275-7360 Fax: (403) 275-3921 (403) 274-0461		PURCHASE ORDER										
VENDOR	ITVAL LIMITED - FULL PALLETS 440 RAILSIDE DRIVE BRAMPTON, ON CANADA L7A 1L1	SHIP TO	Wallace & Carey Inc. Edmonton 14434-157 Avenue Northwest Division No. 11 EDMONTON, ALBERTA CANADA T6V 0R8	ISSUE DATE	DUE DATE	VENDOR NO.	P.O. NO.							
	01-NOV-2021		15-NOV-2021	22394	902500									
NOTE: FULL PALLET PRODUCT ONLY (9058400954)				Net 0 Days 0.0% 0 Days		PAGE 1								
BROKER: BUYER: BRANDON CIZEK - ITVAL (4037309351)		SALESMAN: KAREN KING / JOSIE LICATA (9048409400) BUYER NO.: 5		CARRIER: DELIVERED BY VENDOR (99) MINIMUM BUY:										
UPC	ITEM	DESCRIPTION	PACK	SIZE	QUANTITY	WEIGHT	CUBE	TI	HI	PRICE	P.A.	DEBIT	VND PRG	NET VALUE

Digiflex has always created and maintained all system forms for Wallace & Carey but in this case SEDCC reverse-engineered our PO form and replaced the Wallace & Carey logo with that of SEDCC, in an obvious attempt to hide this change from Digiflex.

- e) Email addresses for former Wallace & Carey IT department have been changed to the SEDCC domain. Here is an autoreply to one of our emails to a previous Wallace & Carey IT employee:

"Thank you for your email. I am currently out of the office and will be returning on Sept 10th. Please contact openticket@sedcc.ca for any urgent matters."

The Need for Urgent Relief

As set out above, we believe 7-Eleven is abusing the CCAA process that is meant to protect companies in distress, hiding behind CCAA, and pretending to be conducting business as Wallace & Carey.

7-Eleven has continued this abuse of the CCAA process by extending the original Stay Period ending on July 1, 2023, to end date of September 20, 2023, then to April 30, 2025, then to August 20, 2025, and again to September 30, 2025 (the Applicants requested an end date of February 15, 2026 but the Honourable Justice M. A. Marion only allowed an extension to September 30, 2025). The Applicants are now attempting once again to extend the Stay Period to February 15, 2026. Through this ongoing abuse of the process, 7-Eleven wants to continue to use the Digiflex software without a license and to continue to infringe on Digiflex's intellectual property rights.

7-Eleven's attempt at extending TSA multiple times appears to be primarily directed at Digiflex. Documents available online at KSV Advisory do not seem to mention any other creditors or vendors but they are all full of references to **Digiflex**. As an example, the "**SEVENTEENTH REPORT OF THE MONITOR**", dated August 13, 2025, mentions **Digiflex** 107 times.

7-Eleven is well aware that **Digiflex** is a very small Canadian company that in no way can afford legal representation that can come anywhere close to the legal representation available to 7-Eleven. Through the CCAA process, 7-Eleven has threatened Digiflex with financial penalties, including the threat of imprisonment for myself. We believe the main reason for 7-Eleven to continuously request to extend the TSA is to avoid paying for a software license and to continue using Digiflex's software illegally.

We are in no way questioning the need for and the merits of the CCAA process that is meant to protect distressed Canadian companies, their employees and their partners. But allowing a multinational and multi-billion-dollar corporation to abuse the CCAA process for its own benefit only weakens the much-needed CCAA.

It is profitable for 7-Eleven to spend several hundred thousand dollars on lawyers and the Monitor in order to avoid paying a higher amount to Digiflex for a legal software license. But 7-Eleven should not be allowed to infringe on Digiflex's intellectual property rights and to abuse the CCAA process for their own financial benefit.

Digiflex is microscopic in a size comparison with 7-Eleven. We plead with this Honourable Court not to allow any abuse of the process by 7-Eleven who is trying to squash a very small Canadian company. Digiflex has provided extremely valuable software and services to many Canadian companies, in particular to Wallace & Carey, throughout its 32-year history. Digiflex has not had a single conflict with its many clients over those years until this one brought on by 7-Eleven.

All of which is respectfully submitted



12-Sep-2025

Mohamad Z. Mardukhi, president
Digiflex Information Systems Inc.