



COURT FILE NUMBER 1501-05314
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **CALLIDUS CAPITAL CORPORATION**
DEFENDANTS **KEVIN BAUMANN and PEKISKO RANCH LTD.**

AND

COURT FILE NUMBER 1501-05769
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **CALLIDUS CAPITAL CORPORATION**
DEFENDANTS **KEVIN BAUMANN and PEKISKO RANCH LTD.**

AND

COURT FILE NUMBER 1701-14167
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **CALLIDUS CAPITAL CORPORATION**
DEFENDANTS **KEVIN BAUMANN**

AND

COURT FILE NUMBER 1801-06399
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **ALKEN BASIN DRILLING LTD.**
DEFENDANTS **CALLIDUS CAPITAL CORPORATION, SCOTT SINCLAIR,
ALTAIR WATER AND DRILLING SERVICES LTD. and
SINCLAIR RANGE INC.**

DOCUMENT

APPLICATION BY KEVIN BAUMANN

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File No: 68058.001

NOTICE TO RESPONDENT: CALLIDUS CAPITAL CORPORATION

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master.

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

Date	June 4, 2019
Time	10:00 a.m.
Where	Calgary Courts Centre
Before Whom	Master in Chambers <i>Justice Chambers</i>

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 consolidating Action No. 1501-05314 (the **Foreclosure Action**), Action No. 1501-05769 (the **Misappropriation Action**), Action No. 1701-14167 (the **Defamation Action**) and Action No. 1801-06399 (the **Alken Action**). For purposes of this application, the aforesaid actions shall be referred to as the **Actions**.
2. Alternatively, an Order directing that the Actions be tried at the same time, and that the evidence in each of the actions shall be taken as evidence in all of the actions.
3. Alternatively, assistance by the Court in directing a conference or procedural order with respect to the Actions.
4. Costs of this Application.
5. Such further and other relief as this Honorable Court deems just and necessary.

Grounds for making this application:

Background

6. Callidus Capital Corporation (**Callidus**) advanced certain funds to Alken Basin Drilling Ltd. (**Alken**) pursuant to a Credit Agreement. Kevin Baumann (**Baumann**), the majority shareholder of Alken, provided Callidus with a Guarantee with respect to the indebtedness of Alken under the Credit Agreement. Callidus subsequently forced Alken into receivership and the Actions were commenced.
7. Callidus commenced the Foreclosure Action seeking to enforce the Guarantee provided by Baumann with respect to the indebtedness of Alken under the Credit Agreement and foreclose on certain lands which were pledged in connection with the Guarantee.
8. Baumann filed an Amended Counterclaim against Callidus and related parties in the Foreclosure Action pleading, *inter alia*, breaches of the Credit Agreement, breaches of fiduciary duties, oppressive and bad faith actions, misappropriation of certain corporate opportunities of Alken, intentional interference with Alken's economic relations, and the perpetration of a civil fraud in relation to their dealings with Alken and Baumann in connection with the Credit Agreement, Guarantee and receivership of Alken.
9. Callidus commenced the Misappropriation Action alleging that Baumann misappropriated certain Alken funds alleged to be trust funds under the Credit Agreement. Baumann denies these allegations.
10. Callidus commenced the Defamation Action against Baumann alleging that Baumann made certain defamatory statements regarding Callidus in relation to its dealings with Alken and Baumann in connection with the Credit Agreement, Guarantee and receivership of Alken.
11. Baumann filed an Amended Statement of Defence in the Defamation Action pleading, *inter alia*, that the allegedly defamatory statements were made in good faith and without malice, and reflected his honest assessment of the facts, and were truthful and justified. These pleas are based on the facts and allegations pleaded by Baumann in his Amended Counterclaim in the Foreclosure Action.

12. Baumann caused Alken to commence the Alken Action against Callidus and the other Defendants by Counterclaim in the Foreclosure Action in regards to their dealings with Alken and Baumann in connection with the Credit Agreement, Guarantee and receivership of Alken. The Statement of Claim in the Alken Action makes allegations against Callidus which are very similar to the allegations made by Baumann in his Counterclaim in the Foreclosure Action.
13. Baumann has spent nearly \$2,000,000 on lawyers, accountants and forensic professionals with respect to the Actions to date, and will have to expend significant additional funds moving forward.
14. In a written decision relating to the Alken Action dated April 23, 2019, Justice Jeffrey noted that the application he was deciding arose "in the context of a complex web of related litigation", being the Actions.

Grounds for Consolidation

15. The Actions all have common questions of law and fact.
16. The Actions all arise out of the same transaction or occurrence or series of transactions or occurrences, namely the actions of Callidus and related parties in regards to their dealings with Alken and Baumann in connection with the Credit Agreement, Guarantee and receivership of Alken.
17. The Actions all involve the same or similar parties.
18. Consolidating the Actions will avoid a multiplicity of proceedings and eliminate the risk of inconsistent findings.
19. None of the Actions will be delayed by consolidation as they are all at similar stages.
20. Consolidating the Actions would not prejudice any of the parties. Rather, it would allow the parties to realize efficiencies in terms of legal and expert fees.
21. Consolidating the Actions would be consistent with the Foundational Rules.

Material or evidence to be relied on:

22. The pleadings and proceedings in the Actions.

23. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

24. Rules 1.2, 1.4, 3.72, 4.10, 4.11 and 10.29

Applicable Acts and regulations:

25. *Alberta Rules of Court*
26. *Judicature Act, RSA 2000, c J-2*

Any irregularity complained of or objection relied on:

27. N/A

How the application is proposed to be heard or considered:

28. Orally in Masters Chambers

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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 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 applicants a reasonable time before the application is to be heard or considered.