



NO. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
C. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002 c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FELIX
PAYMENTS SYSTEMS LTD.

APPLICATION RESPONSE

Application Response of: Dapit NA, LLC ("Dapit" or the "Application Respondent")

THIS IS A RESPONSE TO the Notice of Application of Felix Payment Systems Ltd.
filed February 27, 2025.

The Application Respondent estimates that the application will take two hours.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: NIL.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in paragraph 1 of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

Background

1. The Applicant, Dapit, is a United States based financial technology company that specializes in the advancement of business and payment technologies. Dapit has been heavily involved in the business and operations of Felix Payment Systems Ltd. (“**Felix**”) since 2021, and is currently one of its major secured creditors.

2. Dapit, BBSG Hall Investments, LLC, Ripcord Capital LLC, Steve Hall, and SR Hall Management LLC (the “**Dapit Group**”) have tried, in good faith, to participate in the sales process to purchase Felix as a qualified bidder. However, the Dapit Group has encountered numerous delays and setbacks in that process.

3. Although Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Monitor**”), in its capacity as Monitor, determined that the Dapit Group is not a Qualified Bidder, the Dapit Group has addressed the Monitor’s concerns with its bid, and is willing and able to make that bid for the benefit of all stakeholders, and seeks approval from this Court of their bid for the purchase of the assets of Felix.

4. As set out in more detail in the Affidavit #2 of Andrew Clough (“**Clough #2**”), the Dapit Group has been significantly involved in Felix for a number of years, and has made investments of close to \$17 million CDN over that period.

CCAA Proceedings

5. On November 25, 2024, the Honourable Justice Masuhara granted an Initial Order which, among other things, appointed A&M as Monitor over the assets, business, and financial affairs of Felix.

6. On December 9, 2024, the Honourable Justice Masuhara granted the Sales Process Order, which approved the following:

- (a) a sale and investment solicitation process for the Petitioner and Monitor to implement (the “**Sales Process**”); and

- (b) stalking horse subscription agreement dated December 3, 2024 (the “**Stalking Horse Bid**”) between Felix, as vendor, and Jake Boxer, Doug Mordy, the CA Mordy Legacy Trust and PEL Chartered Professional Accountants Inc. as purchaser (the “**Stalking Horse Bidders**”).

Sales Process

7. Pursuant to the Sales Process Order, the Monitor was to oversee and conduct the Sales Process. In particular, the Monitor was to:

- (a) solicit interest and opportunities for the sale of Felix’s business, including substantially all of its property, assets, and undertakings;
- (b) create and make available a confidential virtual data room (the “**VDR**”) in relation to potential bidders;
- (c) employ bidding procedures and auction procedures; and
- (d) determine whether a potential bidder is a Qualified Bidder.

8. The Dapit Group has made every possible effort to comply with the Sales Process, and be considered as a Qualified Bidder, but has encountered numerous roadblocks in that process.

VDR Deficiencies

9. As is more particularly described in Andrew Clough Affidavit #1 (“**Clough #1**”) and Clough #2, the Dapit Group was not granted access to the VDR until eight days after its initial request for access. Further, when the Dapit Group was finally saw the VDR, it did not contain the type of documents and content that would be required in order to conduct due diligence and submit a Qualified Bid (the “**VDR Deficiencies**”).

Clough #1, paras 18-26
Clough #2, paras. 9-10.

10. It was not until January 30, 2025, that the Dapit Group was granted access to the VDR. However, the Dapit Group had only 32 hours to submit a bid before the Bid Deadline by that time.

Clough #1

Dapit Group's Bid

11. While Dapit still submitted a bid by a letter of intent (“LOI”) on January 31, 2025, A&M found that the LOI did not meet the requirements. However, A&M then extended the Bid Deadline to February 5, 2025.

Clough #2.

12. On February 4, 2025, the Dapit Group requested a meeting with A&M to discuss further material deficiencies in the VDR. However, despite meeting with A&M and the recognition of these remaining material deficiencies, the Dapit Group's request remains outstanding.

Clough #2.

13. In any event, on February 5, 2025, and in its continuous efforts to participate in this sales process, the Dapit Group submitted a revised LOI along with a redline of the Stalking Horse Bid.

Clough #2.

Rejection of the Dapit Group's Bid

14. As is more particularly described in Clough #1 and #2, A&M deemed the Dapit Group to not be a Qualified Bidder after February 5, 2025 due to its concerns about its ability to close a transaction. As at that time, the Dapit Group had expended considerable efforts and resources to participate in the bid process, was willing to post a significant deposit, had provided considerable financial documents and evidence of security of assets showing the Dapit Group's ability to close a transaction, and the Dapit Group's good faith and dedicated cooperation to comply with each of A&M's requests. The Dapit Group respectfully disagrees with the Monitor's conclusion with respect to its bid not being a Qualified Bid.

The Dapit Group's Current Bid

15. Although A&M previously determined the Dapit Group to not be a Qualified Bidder, the Dapit Group maintains its considerable interest in Felix and has arranged for the necessary financing to demonstrate its ability to close the proposed transaction, which was the Monitor's stated concern with its bid. The Dapit Group urges this Court to accept its current and higher bid over the Stalking Horse Bid, for the benefit of the Company's stakeholders.

16. The Dapit Group's bid is comprised of secured debt, in the amount of \$865,000 USD (approximately \$1,275,000 CDN), plus interest, and additional cash in the amount of \$7,712,549 CDN, for a total value of \$8,987,549 CDN (exclusive of interest on the credit bid amount). The fact that the Dapit Group has loaned significant amounts to Felix to fund its operations is not or should not be in dispute.

Affidavit #1 of Andrew Cole, filed November 22, 2024, at para 41, Exs. FF-MM;
Affidavit #1 of Stephen Hall, filed February 14, 2025, at paras 4-6, Exs A-O.

17. The Dapit Group's bid contains the same material terms as the Stalking Horse Bid, with the exception of the value being provided for the shares of Felix.

18. As evidence of the Dapit Group's financial wherewithal and ability to close the transaction contemplated by its bid, the Dapit Group has deposited funds sufficient to complete the transaction with its counsels' trust account. This amount is a meaningful increase in value over the Stalking Horse Bid and its acceptance would benefit all stakeholders in these CCAA proceedings, including the Stalking Horse Bidders, whose security will be paid out in full by the bid.

Clough #2.
Affidavit #1 of Ashley Cheng, filed February 27, 2025

Part 5: LEGAL BASIS

Purpose of the CCAA

19. A purpose of the CCAA is not to disadvantage creditors, but to provide a constructive solution for all stakeholders when a company becomes insolvent. Another purpose of the CCAA is to maximize creditor recovery.

Sun Indalex Finance, LLC v United Steelworkers, 2013 SCC 6 at para 205;
Harte Hold Corp. (Re), 2022 ONSC 653 at para 81.

20. It is trite law that the Court under the CCAA has broad and flexible discretion to make orders that are appropriate in the circumstances.

Southern Star Developments Ltd. v. Quest University Canada, 2020 BCCA 364, para. 30

21. In this case, the Dapit Group encountered significant disadvantage and delay, despite its compliance and good faith efforts to participate in the sales process. The Dapit Group's bid now offers an improved constructive solution for all stakeholders that maximizes creditor recovery to a greater extent than the Stalking Horse Bid.

Sales Processes

22. SISPs, like the one that took place in these proceedings, are granted in CCAA proceedings when a "true" reorganization is not feasible, and when a sale or sales of a debtor's assets is warranted in order to maximize value for all stakeholders.

Inca One Gold Corp. (Re), 2024 BCSC 1478 at para 33.

23. The authority of the court to approve a sale is well known and found in s. 36(3) of the CCAA. That section provides a non-exhaustive list of factors to be considered by the court:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

24. The Honourable Justice Fitzpatrick recognized that a more general test has been restated, discerned from the above factors, “namely to consider the transaction as a whole and decide ‘whether or not a sale is appropriate, fair, or reasonable’”.

Veris Gold Corp. (Re), 2015 BCSC 1204 [*Veris*] at para 23.

25. The often-cited *Royal Bank v Soundair Corp.* (1991) CanLII 2727 (ONCA) also provides principles which the courts have used in considering whether to approve a sale:

- (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained;
and
- (d) whether there has been any unfairness in the sales process.

Veris at para 24.

26. The Dapit Group comes before this Honourable Court with a bid that provides significantly more value than the Stalking Horse Bid to Felix’s stakeholders. In particular, it is superior to the Stalking Horse Bid in price, and therefore superior in its ability to fulfill the purpose of the CCAA and to meet the goal of the sales process: to maximize value for all stakeholders. The Dapit Group also has specific plans to carry the business forward to the benefit of all stakeholders.

27. The Dapit Group submits that in the unique circumstances of this case, the fact that its bid was not considered a Qualified Bid by the Monitor in the SISP does not render the process unfair to the extent that this Court should ignore a clearly higher and better offer for the shares being sold. In particular:

- (a) The SISP was relatively short in this matter and took place primarily over the winter holiday break;
- (b) Perhaps as a result of the short SISP process, only two parties made bids against the Stalking Horse Bid, with the other bid being much less than the Dapit Group's bid. Accordingly, there is minimal if any unfairness to other bidders in the process;
- (c) As discussed above, there were difficulties and issues presented in terms of the VDR and otherwise that impacted the Dapit Group's ability to bid in the process in the time available;
- (d) The Dapit Group is not an outsider to Felix and has invested close to \$17 million CDN into Felix over recent years, and has been heavily involved in the operation and financing of the Company. The Dapit Group has expended significant time and energy to make its bid in the SISP in good faith;
- (e) The Dapit Group has remedied the Monitor's concern with its bid, which was evidence of the financial ability of the Dapit Group to complete the transaction. Although the Dapit Group disagrees with the Monitor's prior determination on this point, it nonetheless has taken the required steps to address that concern.

28. Events in CCAA proceedings unfold as they progress and the situation constantly changes. Although late, the Dapit Group's bid reflects that very state of flux inherent in CCAA proceedings, and its rejection revokes an obvious and increased benefit for all stakeholders that they will not be able to receive from the Stalking Horse Bid.

Edgewater Casino Inc., 2009 BCCA 40 at para 21.

Part 6: MATERIAL TO BE RELIED ON


- 1. Affidavit #2 of Andrew Clough, sworn February 27, 2025;
- 2. Affidavit #1 of Ashley Cheung, sworn February 27, 2025;

3. The pleadings and proceedings filed herein;
4. Such further and other materials as counsel may advise and this Honourable Court may accept.

☒ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

☐ The Application Respondent has not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

Dated at the City of Vancouver, in the Province of British Columbia, this 27th day of February, 2025.



Lawson Lundell LLP
Solicitors for the Application Respondent

This Application Response is filed by Scott Boucher, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: sboucher@lawsonlundell.com; telephone number: 604-685-3456.