



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 (the "Application Respondent")

THIS IS A RESPONSE TO the Notice of Application of Felix Payment Systems Ltd.
filed January 28, 2025.

The Application Respondent estimates that the application will take 30 minutes.

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

1. DapIt is a secured creditor of Felix Payment Systems Ltd. (“**Felix**”), with a material interest in the outcome of the sales process and the determination of the approval of the Stalking Horse Bid.

2. DapIt has serious concerns regarding the quantification of the indebtedness of the First Lien Lenders (as defined in Affidavit #2 of Douglas Mordy, filed January 28, 2025 (“**Mordy #2**”)), and seeks an adjournment of the relief sought in Felix’s Notice of Application filed January 28, 2025.

Unauthorized Signatures

3. It appears that some signatures used by Felix, as borrower, for certain promissory notes with certain First Lien Lenders were not provided by the signatory, and these allegations need to be further investigated.

Affidavit #1 of Warren Hogg (“**Hogg #1**”).

4. As is more particularly described in Hogg #1, DapIt has concerns about certain “Secured Demand Promissory Notes”, which make up part of the First Lien Lenders’ debt, and ultimately the value of the Stalking Horse Bid. For instance, a “Secured Demand Promissory Note” dated March 14, 2024, for the amount of \$60,000, with Jake Boxer as lender, and Felix as borrower, is unsigned by Felix.

Hogg #1, para. 3, Ex. A.

5. Other “Secured Demand Promissory Notes” appear to bear a signature of Warren Hogg, but he has deposed that he does not recognize his signature on these promissory notes, and that he does not recall signing them.

Hogg #1, paras. 4-5, Exs. B and C.

6. An adjournment of Felix’s application is necessary to investigate and determine the provenance of Mr. Hogg’s signatures on these (and perhaps other) records, as the validity of these promissory notes may impact the amount owing to the First Lien Lenders (as defined in the Petition filed November 21, 2024).

Discrepancies in Amounts Owing to Felix

7. It also appears that some of the First Lien Lenders have failed to account for certain repayments of secured debt from Felix. Mordy #2 appears to fail to account for a payment of \$266,849.32 made to Jake Boxer from Felix in June 2024. It is vital that such a discrepancy be adequately investigated and properly accounted for against the amount of the secured debt claim of the First Lien Holders. This is important for the fairness and integrity of the sales process and to determine the value of Felix for other bidders.

Affidavit #1 of Andrew Clough (“**Clough #1**”).

Part 5: LEGAL BASIS

8. It is important that insolvency proceedings, including those under the CCAA, be conducted fairly and that all stakeholders be treated with fairness:

[2] Fairness is a cornerstone principle of insolvency proceedings. Most often, fairness is considered in relation to the treatment of those stakeholders who are directly affected by the proceedings at the time it begins.

(emphasis added).

Good Natured Products Inc. (Re), 2024 BCC 2126, para. 2.

9. In *Royal Bank v Soundair Corp.*, 1991 CanLII 2727 (ONCA), the Court set out the factors for the court to consider when determining to approve a sale:

- (a) Whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) The efficacy and integrity of the process by which offers were obtained;
- (c) Whether there has been unfairness in the working out of the process; and,
- (d) The interest of all parties.

10. In *CCM Master Qualified Fund v blutip Power Technologies* (which involved a court-appointed receiver) Justice Brown set out the factors that a court ought to consider in assessing the reasonableness and adequacy of a proposed sales process:

- (a) The fairness, transparency, and integrity of the proposed process;
- (b) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver;
- (c) Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

CCM Master Qualified Fund v blutip Power Technologies,
2012 ONSC 1750 at para 6.

11. A material part of the Stalking Horse Bid and the “Purchase Price” to be paid is the declared value of “all amounts outstanding and obligations payable by [Felix] under or in connection with the First Lien Loan Documents and secured by the First Lien Charge, . . . “

Cole #2, Ex. A, para. 3.1(b).

12. The First Lien Lenders seek a summary determination of this amount having filed the supporting affidavit evidence on January 28, 2025. An initial review of these materials by DapIt indicates there are potential problems with provenance of some of the security documents and the amounts claims. These issues require further investigation so this Court and the parties to this proceeding can have confidence in the fairness of the sales process.

13. As a result, an adjournment of the First Lien Holders application is required to allow that investigation to take place and to ensure the integrity of the process is preserved.

Part 6: MATERIAL TO BE RELIED ON

14. Affidavit #1 of Warren Hogg, made January 30, 2025;

15. Affidavit #1 of Andrew Clough, made January 31, 2025.

☒ 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:

c/o Lawson Lundell LLP
1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2,
e-mail address: proberts@lawsonlundell.com;

Dated at the City of Vancouver, in the Province of British Columbia, this 31st day of January, 2025.



Lawson Lundell LLP
Solicitors for the Application Respondent
DapIt Na, LLC

This Application Response is filed by Peter Roberts, KC, 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: proberts@lawsonlundell.com; telephone number: 604-685-3456.