



FORCE FILED

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.

**NOTICE OF APPLICATION**

**Name of Applicant:** DapIt NA, LLC ("DapIt")

To: The Service List attached as **Schedule "A"**

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Wednesday, the 5<sup>th</sup> day of February, 2025 at 9:00 a.m. for the order set out in Part 1 below.

The Applicant estimate that the application will take 20 minutes.

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

**Part 1: ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"**:
  - (a) Abridging the time for service and hearing of the within application such that service of the application is deemed to be timely and sufficient and the application is properly returnable on the date of this Order; and

- (b) Extending the Bid Deadline to February 14, 2025.

## **Part 2: FACTUAL BASIS**

### **Background**

1. The Applicant DapIt NA, LLC ("**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 since 2021, and is currently one of its major secured creditors.

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 extension of the Bid Deadline to February 14, 2025.

### **CCAA Proceedings**

3. On November 25, 2024, the Honourable Justice Masuhara granted an Initial Order which, among other things:

- (a) provided an initial stay period of proceedings against Felix for ten days (the "**Stay Period**"); and
- (b) appointed Alvarez & Marsal Canada Inc. ("**A&M**") as Monitor over the assets, business, and financial affairs of Felix (the "**Monitor**").

4. On December 6, 2024, the Honourable Justice Masuhara granted an amended and restated initial order (the "**ARIO**") which, among other things:

- (a) extended the Stay Period to February 28, 2025; and
- (b) authorized Felix to borrow up to a principal amount of \$2,350,000 CAD under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**").

### **The Sales Process**

5. 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) a 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.

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

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

7. The Monitor was to commence the Sales Process with the solicitation of interest from parties as the first key date in the sale of Felix on December 13, 2024.

8. Despite this Court’s approval of the Sales Process, DapIt has identified several issues regarding Felix’s evidence in support of the Sales Process. In addition, DapIt has only very recently been given adequate disclosure to assess Felix’s value.

#### **Deficiencies in the VDR**

9. The solicitation of interest from parties commenced on December 13, 2024. However, DapIt was only provided with access to the VDR on January 21, 2025, after requesting access eight full days prior. On January 13, 2025, DapIt requested from the Monitor access to the VDR. However, it took eight full days before DapIt was finally granted access.

Clough #1, para. 8, Ex. D.

10. When DapIt did receive access to the VDR, it immediately recognized that the VDR was missing a significant amount of material information regarding Felix that a bidder

would expect to see, which are more particularly described in Clough #1. In particular, the VDR did not include, among other things:

- (a) financial statements for the 2023 and 2024 fiscal years there existed material inconsistencies. Only the fiscal year of 2022 was reviewed by an outside third party professional;
- (b) accounts receivable details;
- (c) tax returns for the past three years;
- (d) articles of incorporation, bylaws, or shareholder meeting minutes;
- (e) no original filing documentation regarding any intellectual property;
- (f) vendor lists;
- (g) employment agreements, confidentiality or non-competition agreements, or compensation and benefits information;
- (h) software licenses and agreements; and
- (i) data privacy and security policies

(collectively, the “**VDR Deficiencies**”).

Clough #1, para. 9.

11. The Monitor and Felix failed to provide necessary documents in the VDR despite Mr. Cole’s evidence in early December 2024 that:

Felix will work to prepare a data room by gathering as much information as possible about the company, and it will actively participate in the SISP;

Affidavit #2 of A. Cole filed December 4, 2024 (“**Cole #2**”), para. 18(c).

12. It was not until the request of Christopher Wick, DapIt’s counsel in the United States, that the Monitor added additional documents to the VDR, 32 hours before the Bid

Deadline of 5:00 p.m. (PST) on January 31, 2025. Importantly, most of the documents added to the VDR on January 29, 2025 appear to be records that had long been in the possession of Felix.

13. The delay in populating the VDR with material records relating to Felix directly undercuts the fairness and integrity of this sales process.

14. Therefore, DapIt requests a two week extension to the Bid Deadline in order to allow it (and other potential bidders) sufficient time to meaningfully review and assess the records and other information regarding Felix that any prudent bidder in the Sales Process is entitled to review.

### **Part 3: LEGAL BASIS**

15. The SISP Procedures provide:

13. The Bid Deadline may be extended by:(a) the Monitor, in consultation with the Petitioner, and, subject to Section 40, with the consent of the DIP Lender and the Stalking Horse Bidder; or (b) further order of the Court.

Sales Process Order, Sched. B, para. 13.

16. Section 18.6 of the CCAA provides that any interested person in any proceeding under the CCAA has a duty of good faith. If that person does not act in good faith, the Court may make any order it considers appropriate:

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

17. In *Royal Bank v Soundair Corp.*, 1991 CanLII 2727 (ONCA), the Court set out the factors for the court to consider when determining whether 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.

18. 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.

19. Although Felix is not asking the Court to accept a proposed sales process, without extension of the Bid Deadline the Court will not be able to adequately assess the above factors.

20. The Monitor provided records and documents regarding Felix to DapIt on an unreasonable timeline from the Bid Deadline. These records and documents appear to largely be information that Felix has had in its possession since at least the inception of the Sales Process. The Monitor neglected to put material information in the VDR that has put any potential bidder at a significant disadvantage in assessing Felix's value and bidding in this sales process. Further, the Monitor did not provide these documents until 32 hours before the Bid Deadline.

21. DapIt has attempted to come to these proceedings as an honest bidder, but its ability to submit a Qualifying Bid is being undermined and potentially thwarted by the actions of the Monitor and Felix. This prejudices not only DapIt but likely all other Felix stakeholders, including creditors.

22. Artificial and unnecessary impediments to the sales process, such as those noted above, are likely to dissuade interest from bidders in participating in the SISP and diminish the

prospect of “optimiz[ing] the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.”

23. The sales process, on its current timeline, lacks fairness, transparency, and integrity. The Court could not be confident that the sales process optimized the chances of securing the best possible price for the assets up for sale. The Bid Deadline should therefore be extended to February 14, 2025, to allow DapIt to adequately assess, and submit a reasonable bid in the Sales Process.

**Part 4: MATERIAL TO BE RELIED ON**

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

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

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

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



\_\_\_\_\_  
Lawson Lundell LLP  
Solicitors for the Applicant, DapIt NA, LLC

This Notice of Application 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](mailto:proberts@lawsonlundell.com); telephone number: 604-685-3456.

*To be completed by the court only:*

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_  
of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
Signature of ☐ Judge ☐ Associate Judge

**APPENDIX**

The following information is provided for data collection purposes only and is of no legal effect.

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

**Schedule "A"****List of Counsel**

| <b>Counsel Name</b> | <b>Party Represented</b> |
|---------------------|--------------------------|
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**Schedule "B"**

NO. S-248103  
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AND

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

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE  
JUSTICE MASUHARA

FRIDAY, THE 31<sup>st</sup> DAY OF JANUARY,  
2025.

ON THE APPLICATION of the DapIt NA, LLC, coming on for hearing at Vancouver, British Columbia, on ●, and on hearing Peter Roberts, KC, counsel for the Applicant, and those other counsel listed on **Schedule "A"** hereto; and on reading the material filed herein; including Affidavit #1 of Warren Hogg, made January 30, 2025, and Affidavit #1 of Andrew Clough, made January 31, 2025; and pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Civil Rules, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

1. The time for service of the Notice of Application and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that the Application is deemed to be timely and sufficient and the Application is properly returnable on the Date of this Order.
2. The Bid Deadline is extended to February 14, 2025.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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COUNSEL FOR THE APPLICANT  
Lawson Lundell LLP

BY THE COURT

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REGISTRAR

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