



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

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 PAYMENT SYSTEMS LTD.

PETITIONER

NOTICE OF APPLICATION

Name of applicant: The Petitioner, Felix Payment Systems Ltd. ("**Felix**")

To: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on January 31, 2025, at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 day.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge. Justice Masuhara is seized of these proceedings and this matter has been booked through trial scheduling.

PART 1: ORDERS SOUGHT

1. Felix seeks an order substantially in the form attached hereto as **Schedule "B"** (the "**DIP Increase Order**"), which includes the following relief:

- (a) an increase in the DIP Facility and a corresponding increase in the DIP Lender's Charge (each as defined below) to a maximum of \$2,650,000.

2. Felix may also seek such other others as counsel for Felix may advise and this Court may deem appropriate in the circumstances.

PART 2: FACTUAL BASIS

A. Background

3. On October 15, 2024, Felix filed a notice of intention to make a proposal (the "NOI") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, which commenced the NOI proceeding (the "NOI Proceeding"). Alvarez & Marsal Canada Inc. ("A&M") was appointed to act as the proposal trustee (in such capacity, the "Proposal Trustee"). On November 12, 2024, this Court (sitting in it bankruptcy and insolvency) granted Felix an extension of time to file a proposal to December 30, 2024.

Affidavit #2 of Andrew Cole, sworn December 3, 2024
(the "Second Cole Affidavit") at para 4

4. On November 25, 2024, this Court granted an initial order with respect to Felix under the CCAA, which, among other things (the "Initial Order"):

- (a) established a stay of proceedings against Felix for an initial period of ten (10) days (the "Initial Stay Period") The Initial Stay Period was extended up to and including December 6, 2024;
- (b) granted Felix a continuation of the NOI Proceeding as a proceeding under the CCAA (the "CCAA Proceeding");
- (c) appointed A&M as an officer of the Court to monitor the assets, business, and financial affairs of Felix (in such capacity, the "Monitor");
- (d) approved Felix's ability to borrow under up to a principal amount of \$400,000 under a debtor-in-possession ("DIP") credit ability (the "DIP Facility"), to finance Felix's critically required operating expenses and other general corporate purposes, post-filing expenses, and costs in accordance with the applicable cash flow forecast;
- (e) granting the Administration Charge, the Directors' Charge, and the DIP Lender's Charge (each as defined in the First Cole Affidavit) in the following priorities:
 - (i) First – the Administration Charge in favour of the Monitor, counsel to the Monitor, and the counsel to Felix up to a maximum of \$150,000;

- (ii) Second – the DIP Lender's Charge in favour of the DIP Lender; and
- (iii) Third – the Directors' Charge in favour of the directors and officers of Felix up to a maximum of \$150,000.

Second Cole Affidavit at para 6

5. On December 6, 2024, this court granted an amended and restated initial order (the "ARIO"), which, among other things:

- (a) approved the extension of the Initial Stay Period up to and including February 28, 2025;
- (b) approved Felix's ability to borrow up to a principal amount of \$2,350,000 under the DIP Facility;
- (c) increased the quantum of the Administrative Charge up to a maximum amount of \$250,000;
- (d) approving Felix's proposed key employee retention plan (the "KERP") and granting a related charge (the "KERP Charge") up to the maximum amount of \$95,000 subordinate to the Administration Charge, the DIP Lender's Charge, and Directors' Charge; and
- (e) authorized Felix's execution of the Stalking Horse Subscription Agreement, dated December 3, 2024; and
- (f) approved a sales and investment solicitation process (the "SISP"), in which the Stalking Horse Subscription Agreement would service as the Stalking Horse Bid.

Affidavit #4 of Andrew Cole, sworn January 26, 2024
(the "Fourth Cole Affidavit") at para 6

B. Revised Cash Flow Forecast

6. With the assistance of the Monitor, Felix has undertaken an updated cash flow analysis to determine the quantum of funding required to finance their operations over the 7-week period through to the week ending March 2, 2025 (the "Revised Cash Flow Forecast").

Fourth Cole Affidavit at para 7 and Exhibit "A"

7. The Revised Cash Flow Forecast indicates that Felix requires an increase in the DIP Facility and a corresponding increase in the DIP Lender's Charge from \$2,350,000 to \$2,650,000, representing an increase of \$300,000 from the previously approved DIP Facility (the "DIP Increase").

Fourth Cole Affidavit at para 8

C. The Proposed DIP Increase

8. As set out in the Revised Cash Flow Forecast, Felix requires the DIP Increase of \$300,000 to ensure that it has the liquidity required to meet its obligations and continue its business operations during the Stay Period. However, with the DIP Increase, Felix will have sufficient liquidity to meet its obligations during the Stay Period.

Fourth Cole Affidavit at para 9

9. Felix has negotiated an amendment to the DIP Facility to contemplate the DIP Increase.

Fourth Cole Affidavit at para 10 and Exhibit "B"

10. The DIP Increase is necessary to provide Felix sufficient liquidity to, among other things, administer the SISP, continue Felix's operations during these CCAA proceedings, and maintain the value of Felix's assets during this time. Additional unexpected costs and a delayed payment have caused sufficient variation from the last cash flow forecast that the DIP Increase is necessary.

Fourth Cole Affidavit at para 11

Delayed Receivable from Customer

11. Throughout 2024, Felix worked on technology upgrades for the LA Clippers basketball team (the "Customer"). Most recently, Felix conducted work in Q4 of 2024.

Fourth Cole Affidavit at para 12

12. On January 21, 2025, Felix experienced a system-wide outage, which disrupted their delivery of services. Felix is attending to the outage, but as a result, receivables, including from the Customer, may be delayed and additional costs are anticipated to be incurred to address the long term solution.

Fourth Cole Affidavit at para 13

13. Given concerns raised by the Customer about the commencement of the Chapter 15 Proceedings and the system outage, the Customer has not yet provided payment for all services rendered. As of the date of this Application, approximately \$200,000 remains outstanding.

Fourth Cole Affidavit at para 14

14. Felix anticipates the Customer will ultimately pay the outstanding amounts, but the delay in payment has caused short-term cash flow constraints. The DIP Increase is necessary to bridge the gap until the outstanding invoice is paid.

Fourth Cole Affidavit at para 15

Additional Restructuring Costs

15. Felix anticipates increased expenses over the budgeted amounts as a result of the company's general restructuring efforts and specifically, the Chapter 15 Proceedings (as defined below).

Fourth Cole Affidavit at para 16

16. Felix hired a new Chief Technology Officer (the "CTO") in December 2024. The CTO has reviewed the work of Felix's technology team and is restructuring the team's work, including commencing new projects and refocusing on certain products. Felix believes these changes will create significant long-term value for the company, which justify the additional costs that are incurred in the short-term.

Fourth Cole Affidavit at para 17

17. To gain the protection of a stay of proceedings in the United States, Felix filed a chapter 15 petition in the United States Bankruptcy Court for the Eastern District of North Carolina for foreign recognition of these CCAA proceedings (the "**Chapter 15 Proceedings**") on January 7, 2025. While the commencement of the Chapter 15 Proceedings was anticipated, there have been additional counsel requirements in relation to the Chapter 15 Proceedings, which have resulted in increased costs.

Fourth Cole Affidavit at para 18

18. The DIP Increase is necessary to address these anticipated additional restructuring costs.

Fourth Cole Affidavit at para 19

PART 3: LEGAL BASIS

19. Section 11.2(1) of the CCAA gives this Court the authority to grant a charge, in an amount the court considers appropriate, to secured interim financing provided during the course of CCAA proceedings.

20. Felix submits that the requested increase in the DIP Facility (and corresponding increase to the DIP Lender's Charge) is reasonable and appropriate in the circumstances, given (among other things):

- (a) the status of Felix's restructuring efforts;
- (b) the lack of funding currently available to Felix;
- (c) the need to implement the SISP in order to seek to maximize value for Felix's assets, to the benefit of its stakeholders; and
- (d) the need to continue the Chapter 15 Proceedings;

21. Having regard to Felix's current financial needs and the progress of these CCAA proceedings, granting the DIP Increase is both prudent and appropriate in the circumstances and meets the non-exhaustive list of statutory factors set out in s. 11.2(4) of the CCAA.

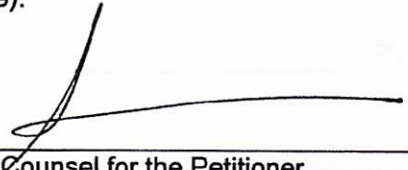
PART 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Andrew Cole, made November 21, 2024;
- 2. Pre-Filing Report of the Proposed Monitor, dated November 22, 2024;
- 3. Initial Order of Justice Masuhara, made November 25, 2024;
- 4. Affidavit #2 of Andrew Cole, sworn December 3, 2024;
- 5. First Report of the Monitor, dated December 5, 2024;
- 6. Affidavit #4 of Andrew Cole, sworn January 29, 2025;
- 7. Second Report of the Monitor (to be filed); and
- 8. Such further and other materials as counsel may advise and this Court may permit.

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 of 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).

DATE: January 29, 2025



Counsel for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

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

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"

NO. S248103
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AND

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FELIX PAYMENT SYSTEMS LTD.

PETITIONER

SERVICE LIST

As at January 28, 2025

Cassels Brock & Blackwell LLP Suite 2200, 885 West Georgia Street Vancouver, BC V6E 3E8 Attention: Vicki Tickle Mihai Tomos Hayley Roberts Email: vtickle@cassels.com mtomos@cassels.com hroberts@cassels.com <i>Counsel to the Court Appointed Monitor, Alvarez & Marsal Canada Inc.</i>	Alvarez & Marsal Canada Inc. 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2 Attention: Anthony Tillman Taylor Poirier Ryan Wu Email: atillman@alvarezandmarsal.com tpoirier@alvarezandmarsal.com ryan.wu@alvarezandmarsal.com <i>Court Appointed Monitor</i>
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<p>Osler, Hoskin & Harcourt LLP Bentall Four, 1055 Dunsmuir St Suite 3000, Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery Emma Newbery Lucas Hodgson Sam Tse Emily Paplawski Stephen Kroeger</p> <p>Email: mbuttery@osler.com enewbery@osler.com lhodgson@osler.com stse@osler.com epaplawski@osler.com skroeger@osler.com</p> <p><i>Counsel to Proposed DIP Lender</i></p>	<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver BC V6E 0C5</p> <p>Attention: Lance Willams Ashley Bowron Victoria Tortora Sue Danielisz</p> <p>Email: lwilliams@mccarthy.ca abowron@mccarthy.ca vtortora@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel to the Petitioner, Felix Payment Systems Ltd.</i></p>
<p>Kornfeld LLP 1100 One Bentall Centre, 505 Burrard St, Box 11 Vancouver, BC, Canada V7X 1M5</p> <p>Attention: Douglas B. Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p><i>Counsel to the Business Development Bank of Canada</i></p>	<p>Axiom B.I. MC Group of Companies 1680 – 200 Burrard Street Vancouver, BC V6C 3L6</p> <p>Attention: Vincenzo DePalma</p> <p>Email: vdepalma@axiomcapitalinc.com</p>

Department of Justice Canada B.C. Regional Office 900-840 Howe Street Vancouver, BC V6Z 2S9 Attention: Jessica Ko Miriam Assadi Email: Jessica.ko@justice.gc.ca Miriam.Assadi@justice.gc.ca	Bennett Jones LLP 2500 Park Place, 666 Burrard Street Vancouver, B.C., V6C 2X8 Attention: David Gruber Email: GruberD@bennettjones.com <i>Counsel to the Respondent, Dapit NA, LLC</i>
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E-SERVICE LIST

As at January 28, 2025

vtickle@cassels.com; mtomos@cassels.com; hroberts@cassels.com; atillman@alvarezandmarsal.com; tpoirier@alvarezandmarsal.com; ryan.wu@alvarezandmarsal.com; muttery@osler.com; enewbery@osler.com; lhodgson@osler.com; stse@osler.com; epaplawski@osler.com; skroeger@osler.com; lwilliams@mccarthy.ca; abowron@mccarthy.ca; vtortora@mccarthy.ca; sdanielisz@mccarthy.ca; dhyndman@kornfeldllp.com; vdepalma@axiomcapitalinc.com; Jessica.ko@justice.gc.ca; Miriam.Assadi@justice.gc.ca; GruberD@bennettjones.com

SCHEDULE "B"

NO. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**ORDER MADE AFTER APPLICATION
(DIP INCREASE)**

BEFORE THE HONOURABLE)	FRIDAY, THE 31 ST DAY
)	
JUSTICE MASUHARA)	OF JANUARY, 2025

ON THE APPLICATION of the Petitioner, Felix Payment Systems Ltd., coming on for hearing at Vancouver, British Columbia on the 31st day of January, 2025; AND ON HEARING H. Lance Williams and Ashley Bowron, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the Fourth Affidavit of Andrew Cole, sworn January 29, 2025, the Second Report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor of the Petitioner, dated January •, 2025; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; 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 AND DECLARES THAT:

SERVICE

1. The time for service of the Notice of Application, dated January 27, 2025 (the "**Notice of Application**") and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

INTERIM FINANCING

2. Paragraph 35 of the Amended and Restated Initial Order of this Court dated December 6, 2024 (the "ARIO") is hereby amended such that the total amount of the borrowings under the Commitment Letter (as defined in the ARIO) is increased to a maximum of \$2,650,000.
3. The DIP Lender's Charge (as defined in the ARIO) is correspondingly increased to a maximum of \$2,650,000.

GENERAL

4. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.
5. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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:

Signature of Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

BY THE COURT

REGISTRAR

