

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE MR) MONDAY, THE 2ND
)
JUSTICE CAVANAGH) DAY OF NOVEMBER, 2020

B E T W E E N:

SMARTPAY INC.

Applicant

- and -

CUREXE INC.

Respondent

**IN THE MATTER OF PART XVIII OF THE *CANADA BUSINESS CORPORATIONS
ACT, RSC 1985, C C-44***

LIQUIDATION ORDER

THIS APPLICATION made by SmartPay Inc. (“**SmartPay**”) for an Order pursuant Part XVIII of the *Canada Business Corporations Act*, RSC 1985 c. C-44 (the “**CBCA**”) liquidating Curexe Inc. (“**Curexe**”) appointing MNP Ltd. (“**MNP**”) as liquidator was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Johnathan Holland sworn 27 October 2020 and the Exhibits thereto and on hearing the submissions of counsel for SmartPay and that Curexe has consented to the Application, and on reading the Consent of MNP to act as the Liquidator of Curexe:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

LIQUIDATION

2. **THIS COURT ORDERS** that Curexe be liquidated pursuant to Part XVIII of the CBCA and MNP be and is hereby appointed as liquidator (the "**Liquidator**").

LIQUIDATOR'S POWERS

3. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the assets, property and undertaking of Curexe, including any funds or monies held for or to the credit of Curexe or in any account opened by or held in the name of Curexe at any financial institution, intermediary or service provider (the "**Property**") and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Liquidator's powers and duties, including without limitation those conferred by this Order;

- (d) to receive and collect all monies and accounts now owed or hereafter owing to Curexe and to exercise all remedies of Curexe in collecting such monies, including, without limitation, to enforce any security held by Curexe;
- (e) to settle, extend or compromise any indebtedness owing to the Curexe;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Curexe;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Curexe, the Property or the Liquidator, and to settle or compromise any such proceedings;
- (h) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (j) to exercise any shareholder, partnership, joint venture or other rights which the Curexe may have; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Curexe, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

4. **THIS COURT ORDERS** that (a) Curexe, (b) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (c) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Liquidator of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Curexe, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information

onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

NO PROCEEDINGS AGAINST CUREXE OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of Curexe or the Property shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court and any and all Proceedings currently under way against or in respect of Curexe or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against Curexe, the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, provided that nothing in this paragraph shall (a) empower the Liquidator to carry on any business that Curexe is not lawfully entitled to carry on, (b) exempt the Liquidator or Curexe from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE LIQUIDATOR

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by Curexe, without written consent of the Liquidator or leave of this Court.

DELIVERY OF FUNDS

11. **THIS COURT ORDERS** that Luminus Financial Services & Savings Credit Union Limited shall pay over to the Liquidator all funds or monies being held for or to the credit of Curexe or in any account opened by or held in the name of Curexe.

LIQUIDATOR TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Liquidator (the "**Post Liquidatorship Accounts**") and the monies standing to the credit of such Post Liquidatorship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Liquidator to be paid in accordance with the terms of this Order or any further Order of this Court.

CLAIMS

13. **THIS COURT ORDERS** that any of the clients or creditors of Curexe that wishes to assert a claim against Curexe or the Property shall deliver a proof of claim substantially in the form and manner contemplated by section 124 of the *Bankruptcy and Insolvency Act*, RSC c B-3 (the "**BIA**") to the Liquidator by no later than 10 December 2020 (the "**Bar Date**") failing which the claim of that client or creditor against Curexe or to the Property shall be barred and the Liquidator may proceed to distribute the Property without regards to the claim(s), if any, of any such client or creditor.

14. **THIS COURT ORDERS** that the Liquidator shall: (a) deliver to each known client and creditor of Curexe a notice substantially in the form of the notice contemplated by section 149(1) of the BIA by or before 10 November 2020; and (b) publish in *The Globe and Mail* (National

Edition) by no later than 10 November 2020 a notice advising the clients and creditors of Curexe of the requirement to deliver a proof of claim to the Liquidator by no later than the Bar Date.

15. **THIS COURT ORDERS** that Johnathan Holland shall forthwith deliver to the Liquidator a list of Curexe's clients and the amount payable to each client as set forth in the books and records of Curexe as of the date of this Order.

16. **THIS COURT ORDERS** that any client or creditor of Curexe that wishes to dispute the Liquidator's determination of its claim may bring a Motion to the Court on notice to the Liquidator within thirty (30) days of being notified of the Liquidator's determination, failing which the Liquidator's determination shall be final and conclusive.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

17. **THIS COURT ORDERS** that the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

LIQUIDATOR'S ACCOUNTS

18. **THIS COURT ORDERS** that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

GENERAL

19. **THIS COURT ORDERS** that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and

to assist the Liquidator and its agents in carrying out the terms of this Order, and all courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that the SmartPay shall be paid the costs of this Application fixed at \$25,000 plus HST by the Liquidator from the Property in priority to the claims of any Person, subject to the final allocation of the costs associated with liquidation.



BETWEEN:

SMARTPAY INC.
Applicant

- and -

CUREXE INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

LIQUIDATION ORDER

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SOLICITORS FOR THE APPLICANT