



## SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-22-00690376-00CL DATE: Wednesday March 15, 2023  
 Registrar: Christopher Riley

NO. ON LIST: 2

TITLE OF PROCEEDING: **Robertson, David v. Paidiem Payment Solutions Inc**

BEFORE: **MADAM JUSTICE STEELE, J.**

**PARTICIPANT INFORMATION**
For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Camelino, Gustavo	MNP (Moving Party)	gcamelino@clegal.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Julien Bougeois	145 Canada Inc	julien.bougeois@dentons.com
Emily McMurtry	145 Canada	emily.mcmurtry@dentons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

[1] The Liquidator brings a motion for an approval and vesting order approving the transactions contemplated by the Stalking Horse asset purchase agreement between the Liquidator and 14546865 Canada Inc. (“145CAN”) as purchaser, an order approving the Liquidator’s first report and its activities, and an order approving the fees and disbursements of the Liquidator and its counsel.

[2] By Order dated November 23, 2022, Justice Cavanagh ordered that Paidiem Payment Solutions (“Paidiem”) be wound up pursuant to Part XVI of the *Business Corporations Act* (Ontario) (the “OBCA”) and appointed MNP Ltd. as the Liquidator to liquidate the assets (the “Liquidation Order”).

[3] Counsel for the Liquidator advised that he spoke with Patrick Shea, counsel for the applicant, Mr. Robertson, and he is not opposing. Counsel for the Liquidator further advised that his client spoke with Mr. Ormston, counsel for Paidiem, which is also not opposing.

*Approval of 145CAN APA*

[4] Under section 223(c) of the OBCA, the Liquidator has the authority to “sell the property of the corporation by public auction or private sale and receive payment of the purchase price either in cash or otherwise.” Paragraph 3(j) of the Liquidation Order authorizes the Liquidator to “sell, convey, transfer, lease or assign the Property or any part or parts thereof outside the ordinary course,” provided that Court approval is required for any sale transaction where the consideration exceeds \$500,000. Paragraph 3(k) of the Liquidation Order also authorizes the Liquidator to apply for any vesting order.

[5] The Liquidator submits that the principles set out in *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), which apply in an insolvency context, are also applicable to a liquidation proceeding. The well-known *Soundair* principles are:

- a. Whether sufficient effort has been made to obtain the best price and the liquidator has not acted improvidently;
- b. The interests of all parties have been considered;
- c. The efficacy and integrity of the process by which offers have been obtained;
- d. Whether there has been unfairness in the working out of the process.

[6] The Liquidator submits that the sales process undertaken is in the best interests of all stakeholders and satisfies the *Soundair* principles. In particular,

- a. The sales process protocol and the asset purchase agreement with 145CAN were unanimously approved by the Paidiem shareholders;
- b. The sales process was open and public;
- c. The opportunity to purchase was marketed to 36 potentially interested parties and received interest from six of them;
- d. The only offer received was from 145CAN;

- e. The Liquidator is satisfied that the sales process resulted in maximum recovery<sup>G15</sup> for all stakeholders.

[7] I am satisfied that the sales process that was undertaken by the Liquidator satisfies the *Soundair* principles and that the proposed AVO should be approved. The Liquidator has run a sales process and canvassed the market. Ultimately there were no bids received other than the Stalking Horse bid put forward by 145CAN. The timing of the consideration has been changed, such that 145CAN is providing a promissory note for the balance of the consideration owing. The promissory note will be payable on the earlier of the distribution date (as the principals of 145CAN are a group of preferred shareholders of Paidiem who have a claim against the company) and six months from the closing of the transaction.

[8] The fairness, efficacy and integrity of the process has been established. The fact that no stakeholder has challenged or opposed the sale reinforces this.

#### *Approval of Report and Activities*

[9] The Liquidator's activities were carried out in accordance with the authority it was granted under the Liquidation Order and the OBCA. Among the activities carried out by the Liquidator was the payment of about \$165,000 to BDC, a secured creditor, to satisfy its entire claim.

[10] The Liquidator appears to have acted reasonably and in the best interests of the debtor's stakeholders.

#### *Approval of Fees and Disbursements of the Liquidator and its Counsel*

[11] In determining whether to approve the Liquidator's and its counsel's fees, the Court should consider whether they are fair and reasonable taking into account the following factors:

- The nature, extent and value of the assets;
- The complications and difficulties encountered;
- The degree of assistance provided by the debtor;
- The time spent;
- The liquidator's knowledge, experience and skill;
- The diligence and thoroughness displayed;
- The responsibilities assumed;
- The results of the liquidator's efforts; and
- The cost of comparable services when performed in a prudent and economical manner.

(See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851)

[12] The fees claimed for the Liquidator and its counsel are supported by affidavits. The professional fees for which approval is sought are commensurate with the tasks performed and I am satisfied that they are fair, reasonable and justified in the circumstances.

*Paidiem Books and Records*

[13] The Liquidator indicated that the chart with the capital structure of Paidiem (set out in Appendix G) was based solely on the books and records of the company. Paidiem's counsel has indicated that there may be issues with the capital structure set out in the chart.

[14] Orders to go in the forms signed by me today.



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Justice Steele

Date: March 15, 2023