

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

DAVID ROBERTSON

Applicant

- and -

PAIDIEM PAYMENT SOLUTIONS INC.

Respondent

**APPLICATION UNDER** section 207 of the *Business Corporations Act*,  
R.S.O. 1990, c.B16

**FACTUM OF THE LIQUIDATOR**

**PART I - OVERVIEW**

1. This is a motion by MNP Ltd. in its capacity as the court-appointed liquidator (the “**Liquidator**”) of the property and assets of Paidiem Payment Solutions Inc. (“**Paidiem**”) for an order, *inter alia*:

- (1) approving the Liquidator’s Second Report (the “**Second Report**” or the “**Final Report**”) and the activities and actions of the Liquidator, as described herein;
- (2) approving the final fees and disbursements of the Liquidator, including the fees and disbursements of CG LLP and including the estimate of fees to complete the administration of the liquidation;
- (3) approving the Liquidator’s proposed distribution methodology and authorizing the distribution of funds and property according to same;
- (4) dissolving Paidiem, pursuant to Subsection 218(1) of the OBCA, subject to the Liquidator filing a certificate with the Court confirming that the

Remaining Duties (as hereinafter defined) have been completed (the “**Discharge Certificate**”);

- (5) directing the Purchaser (as hereinafter defined) to maintain custody of the documents and records of the Company in its possession for a minimum period of seven (7) years from the date of the Company’s dissolution; and
- (6) discharging the Liquidator subject to the Liquidator filing the Discharge Certificate.

### **BRIEF STATEMENT OF FACTS**

2. Paidiem is an Ontario company incorporated on June 28, 2019. It is a financial technology (fintech) company that provided payroll process for companies through a proprietary cloud-based workforce management and administration platform.<sup>1</sup>

3. By special resolution dated October 14, 2022, Paidiem’s shareholders (both common and preferred) approved the wind-up of Paidiem and the appointment of MNP Ltd. as its court-appointed liquidator.<sup>2</sup>

4. Pursuant to the order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) dated November 23, 2022 (the “**Liquidation Order**”), it was ordered that Paidiem be wound-up pursuant to Part XVI and subsection 210(1) of the Ontario *Business Corporations Act*. The Liquidation Order also appointed MNP Ltd. (the “**Liquidator**”) as liquidator.

5. The Liquidation Order authorized and directed the Liquidator to sell Paidiem’s assets and to determine a process for the determining the claims of creditors of Paidiem.<sup>3</sup>

6. The Liquidator has sold the assets of Paidiem and brings this motion, *inter alia*, to approve the distribution of Paidiem’s property including the proceeds of the sale

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<sup>1</sup> Second Report, paragraph 1, page 4 (Motion Record, Page 18)

<sup>2</sup> Second Report, paragraph 3, page 4 (Motion Record, Page 18)

<sup>3</sup> Second Report, paragraph 2, page 1 (Motion Record, Page 15)

of its assets and expected realizations, to dissolve the company and to discharge the Liquidator.

## **THE LIQUIDATOR'S ACTIVITIES**

7. On March 10, 2023, the Liquidator issued its first report (the “**First Report**”) which outlined its activities until then including the sale of Paidiem’s assets to 14546865 Canada Inc. (the “**Purchaser**”). The sale to the Purchaser was approved pursuant to an Approval and Vesting Order dated March 15, 2023 and the activities of the Liquidator to February 28, 2023 were approved by an Ancillary Order also issued on March 15, 2023.

8. Since the First Report, the Liquidator’s activities included:<sup>4</sup>

- (1) monitoring Paidiem’s ongoing business operations and activities, including approval of the debiting of customer accounts and payment of disbursements/expenses;
- (2) those steps necessary to complete the sale to the Purchaser including entering into a Promissory Note and arranging for the transfer of all trust funds to the Purchaser;
- (3) payment of the costs awarded to the applicant and Michael T.R. List/Green Sky Capital, pursuant to the Liquidation Order;
- (4) coordinating with management, the preparation of T4s and T4 summary for 2023 (up to the date of the closing of the sale);
- (5) discussions and correspondence with Paidiem’s accountant in connection with the preparation of the December 21, 2022 year-end financial statements and tax filings;

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<sup>4</sup> Second Report, paragraph 6, pages 4-6 (Motion Record pages 18 to 20)

- (6) reviewing and authorizing Paidiem's T2 Corporate income tax filing for the taxation year end December 31, 2022 (net loss position, no taxes owing);
- (7) under the authority of the Liquidation Order providing a revolving credit facility in the amount of \$450,000 to the Purchaser, including taking back of security in support of same;
- (8) administering the Claims Procedure, including the review and settlement of claims;
- (9) evaluating and reconciling the accounts receivables due from Roberston & Company Ltd. which is ultimately being written off as part of the settlement of the Robertson claim;
- (10) coordinating with management and engaging MNP LLP to prepare the Scientific Research and Experimental Development ("SRED") tax credit filings;
- (11) updating the Case Website; and
- (12) the preparation of the Second Report.

## **THE CLAIMS PROCEDURE**

9. As set out in the First Report, the known claimants in Paidiem's liquidation and their relative priority are as follows:

- (1) secured creditor – BDC;
- (2) unsecured creditors – L-Spark Corporation, Robertson and Shift 8 Inc.;
- (3) preferred shareholders;
- (4) common shareholders.

10. Also as reported in the First Report, both Canada Revenue Agency (“CRA”) and MNP LLP were also identified as a potential claimants. Accordingly, both were given notice of the Claims Procedure.<sup>5</sup>

11. Under the Claims Procedure, any person that receives a Notice of Claim and who does not deliver a Proof of Claim to the Liquidator by the Claims Bar Date is deemed to have the claim set out in the Notice of Claim. Proofs of Claim were received from BDC, Robertson, Shift 8 Inc. and MNP LLP.<sup>6</sup>

### **RESULTS OF CLAIMS PROCEDURE**

12. The results of the Claims Procedure were as follows:<sup>7</sup>

- (1) BDC’s secured claim was approved and paid in full by way of an interim distribution (such payment approved by the Ancillary Order);
- (2) the claim of MNP LLP was rejected on the basis that the claimant missed the Claims Bar Date;
- (3) the claims of Robertson and Shift 8 Inc. have been resolved by the Liquidator pursuant to the authority granted to it pursuant to paragraph 26 of the Liquidation Order; and
- (4) the Liquidator has produced a summary of the proven claims in Appendix E to the Second Report.<sup>8</sup>

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<sup>5</sup> Second Report, paragraph 8, page 6 (Motion Record, Page 20)

<sup>6</sup> Second Report, paragraph 9, page 6 (Motion Record, Page 20)

<sup>7</sup> Second Report, paragraph 10, page 6 (Motion Record, Page 20)

<sup>8</sup> Second Report, Appendix E (Motion Record, Page 91)

## **PROPERTY AVAILABLE AND TO BE AVAILABLE FOR DISTRIBUTION**

13. The following property is currently available for distribution:<sup>9</sup>
- (1) the monies held in bank accounts totaling approximately \$662,170.00, plus interest, but subject to the Liquidator's Reserve (as such term is later defined) (collectively, the "**Net Cash**");
  - (2) the Promissory Note in the principal amount of \$2,561,076.36, plus interest that resulted from the sale to the Purchaser; and
  - (3) the Revolving Loan in the principal amount of \$450,000, plus interest.
14. In addition to the above, the following property is anticipated to be recovered/realized:
- (1) a HST refund associated with 2023 period (currently an annual filer), including the write off of accounts receivable and the recovery of HST previously remitted – estimated to total to approximately \$50,000;
  - (2) refunds associated with the SRED tax credits to be claimed – estimated to amount to approximately \$80,000; and
  - (3) Interest earned on the Net Cash.

(collectively, the "**Additional Recoveries**")

15. In connection with realizing on the Additional Recoveries, the Liquidator intends to file an election with CRA to change the reporting period from annual to monthly in order to accelerate the collection of the HST refunds. Additionally, the Liquidator is working with Management and MNP LLP to coordinate and expedite the filing of the SRED tax credit claim.

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<sup>9</sup> Second Report, paragraphs 14 and 15, Pages 7 and 8 (Motion Record, Pages 21 and 22)

## **PROFESSIONAL FEES AND DISBURSEMENTS**

16. Pursuant to paragraph 18 of the Liquidation Order, the Liquidator and its counsel Camelino Galessiere LLP (hereinafter “**CG LLP**”) are to be paid their reasonable fees and disbursements, unless otherwise ordered by the Court on the passing of accounts. In addition, the Liquidation Order provides for the Liquidator and CG LLP having a first charge on the property, assets and undertakings of the Company (the “**Property**”) for their reasonable fees and disbursements, in priority to all security interest, trusts, liens, charges and encumbrances.

17. The fees and disbursements of the Liquidator for the period commencing on March 1, 2023 and ending on July 31, 2023 is \$52,206.68 (inclusive of HST) as set out in the Second Report. It also anticipates a cost to complete of \$22,000.00 plus HST.<sup>10</sup>

18. The fees and disbursements of the Liquidator’s legal counsel for period commencing on March 1, 2023 and ending on July 31, 2023 is \$47,823.10 (inclusive of HST) as set out in the Second Report. CG LLP also estimates a cost to complete of \$10,000.00 plus HST.<sup>11</sup>

19. The fees and disbursements of the Liquidator and its legal counsel (as set out in Appendices F and G of the Liquidator’s Second Report) are fair and reasonable and justified in the circumstances and reflect the work done by and on behalf of the Liquidator in connection with the liquidation.

## **PROPOSED DISTRIBUTION METHODOLOGY**

20. The order of priority for distributions by category of Claimant and the total proven claims by category is as follows:<sup>12</sup>

- (1) trust claims – none, but subject to receipt of comfort letter or clearance certificate from CRA prior to any distributions;

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<sup>10</sup> Second Report, paragraph 18, Page 8 (Motion Record, Page 22)

<sup>11</sup> Second Report, paragraph 19, Page 9 (Motion Record, Page 23)

<sup>12</sup> Second Report, paragraph 22, Page 9 (Motion Record, Page 23).

- (2) secured creditor - \$164,910.27, already paid to BDC (January 18, 2023);
- (3) unsecured creditors - \$417,027.81
- (4) preferred shareholders - \$4,480,764.07
- (5) common shareholders – entitlement is based on residual funds/Property available after the payment of the preceding claims.

21. Based on the above, the total amount of the Proven Claimant's claims that currently remain unpaid and excluding the claims of the common shareholders, total approximately \$4.9 million. The total Property currently available and expected to be available for distribution to such Proven Claimants, before the Liquidator's Reserve, totals approximately \$3.8 million. Accordingly, there is an expected shortfall of more than \$1 million, before the claims of the common shareholders are considered. As such, the Liquidator does not anticipate that there will be any distributions to the common shareholders.

22. As indicated above, the Liquidator has received from each of the preferred shareholders an irrevocable letter of direction directing the Liquidator to distribute all proceeds from the liquidation and wind-up of Paidiem to Purchaser's counsel, Denton Canada LLP.

23. Based on the forgoing and subject to the Liquidator's Reserve and confirmation of no trust claims of CRA, the Liquidator proposes to make distributions as follows:

- (1) pay in full the proven claims of the unsecured creditors from the Net Cash;
- (2) pay the balance of the Net Cash and any net monies realized from the Additional Recoveries, including any other monies later received to the Purchaser/Dentons on behalf of the preferred shareholders and for their proven claims on a *pro rata basis*; and



- (3) offset the Promissory Note and the Revolving Loan against the distribution to the Purchaser/Dentons on behalf of the preferred shareholders and for their proven claims on a *pro rata basis*.

24. The above proposed distribution methodology is fair and equitable, practical and is in accordance with the OBCA and order of priority of claim in law. Accordingly, the Liquidator respectfully requests that this Court approve the Liquidator's proposed distribution methodology set out above and authorize the distribution of funds according to same.

### **REMAINING DUTIES**

25. The Liquidator's administration of these proceedings is substantially complete other than, and subject to, this Court granting the relief sought herein:<sup>13</sup>

- (1) obtaining a comfort letter or clearance letter from CRA prior to making any distributions;
- (2) making the distributions to the Proven Claimants as contemplated above;
- (3) taking such steps to realize on the Additional Recoveries;
- (4) payment of the final accounts of the Liquidator and CG LLP;
- (5) close all bank accounts;
- (6) sending, pursuant to Subsection 218(2) of the OBCA, a certified copy of the order directing the Director to issue a certificate of dissolution, and receiving the Certificate of Dissolution from the Director; and
- (7) preparing and filing of the final corporate income tax returns for the period from January 1, 2023 to the date of the Company's dissolution.

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<sup>13</sup> Second Report, paragraph 28, page 11 (Motion Record, Page 25)

## **LIQUIDATOR'S RESERVE**

26. From the cash in its possession, the Liquidator's proposes maintaining a reserve of up to \$111,000.00 (the "**Liquidator's Reserve**"), to cover the following:<sup>14</sup>

- (1) the unpaid portion of the professional fees for the Liquidator's and CG LLP's accounts, as reflected earlier in this Report;
- (2) other professional fee costs associated with preparation and filing of the final T2 corporate income tax return and the SRED tax credit claim; and
- (3) potential miscellaneous fees or costs in connection with the wind-up of the Company.

27. Should any amount of the Liquidator's Reserve not be required or has been paid, the Liquidator's Reserve will be reduced accordingly and be made available for distribution to the Proven Claimants.

## **PART III – LAW AND ARGUMENT**

### **1. APPROVAL OF THE SECOND REPORT AND LIQUIDATOR'S ACTIVITIES**

28. This court has the jurisdiction to approve the Final Report along with the activities of the Liquidator described therein pursuant to its inherent powers. According this Honourable Court in *Bank of America Canada v. Willian Investments Ltd.*<sup>15</sup>:

3. ....*this court has inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver....*

4. *I pause to note that it would be unusual and illogical that the receiver would come to court for prior approval but not post approval. If that were the case, one might expect the courts to be inundated with prior approval requests for virtually every activity.*

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<sup>14</sup> Second Report, paragraph 29, page 121 (Motion Record, Page 26)

<sup>15</sup> Bank of America Canada v. Willann Investments Ltd. (1993) 20 CBR (3d) 223 (ONSC)

29. While the court's observations in the *Bank of America* case cited above were made in the context of a receivership proceeding, it is submitted that they are equally applicable to liquidation proceeds such as the one at bar.

30. In this case, the Liquidator's activities as set out in the Second Report were conducted in a manner consistent with the powers granted to it pursuant to the OBCA and the Liquidation Order and each of the activities were in furtherer of the objective of an orderly liquidation of Paidiem's assets in a manner that fairly maximized recovery for all stakeholders.

31. The Liquidator therefore respectfully requests that the Second Report and its activities described therein be approved.

## **2. THE PROPOSED DISTRIBUTION SHOULD BE APPROVED**

32. Pursuant to Subsection 221(1)(a) of the OBCA, the Liquidator shall:

*apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation.*

33. It is submitted that the proposed distribution methodology complies with section 221(1)(a) of the OBCA as it satisfies the claim of all unsecured creditors in priority to shareholders and provides for a rateable distribution to preferred shareholders.

## **3. APPROVAL OF THE FEES OF THE LIQUIDATOR AND ITS COUNSEL**

34. Paragraph 18 of the Liquidation Order provides that the Liquidator and its counsel shall be paid their reasonable fees and disbursements, in each case at the standard rates charges unless otherwise ordered by the court. Moreover, paragraph 19 of the Liquidation Order grants a first raking charge – the Liquidator's Charge – on Paidiem's property as security for such fees and disbursements.

35. In determining whether to approve those fees and disbursements, the court should consider whether the remuneration and disbursements incurred are fair and reasonable taking into account the following factors<sup>16</sup>:

- 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.

36. The Liquidator respectfully submits that taking into account the above factors that its fees and disbursements, along with those of its counsel, as detailed in the Second Report should be approved.

#### **4. DISSOLUTION OF PAIDIEM**

37. Section 218(1) of the OBCA provides as follows with respect to the dissolution of a company:

**218 (1)** The court at any time after the business and affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order.

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<sup>16</sup> *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

38. It is submitted that it would be appropriate for this Honourable Court to issue an order for the dissolution of Paidiem effective immediately upon the filing of a discharge certificate by the Liquidator for the following reasons:

- (1) once the distribution is made to the Proven Claimants, save and except for the common shareholders, there will be no claims against Paidiem or any of their present and former directors and officers that the Liquidator is aware of;
- (2) the Liquidator has carried out all of its duties and obligations as set out in the Liquidation Order; and
- (3) subject to completing the remaining administrative matters noted above, it is the view of the Liquidator that the affairs of Paidiem will have been fully wound-up and the administration of the winding-up of the Company will come to an end once it is dissolved.

## **5. DISCHARGE OF THE LIQUIDATOR**

39. It is submitted that it would be appropriate for the Liquidator to be discharged once it has completed the Remaining Duties.

40. Section 217 of the OBCA requires, among other things, that if the Court approves the final accounts of the liquidator, the Court shall make an order discharging the liquidator, subject to it sending a certified copy of the order directing the Director to issue a certificate of dissolution.

41. The Liquidator is respectfully requesting that this Court approve the discharge of MNP as Liquidator and thereupon releasing MNP from any and all liability upon the filing with the Court of the Discharge Certificate.

## **PART V – ORDER SOUGHT**

42. For the foregoing reasons the Liquidator respectfully requests an order:

- (1) approving the Liquidator's Second Report and the activities and actions of the Liquidator, as described herein;
- (2) approving the final fees and disbursements of the Liquidator, including the fees and disbursements of CG LLP and including the estimate of fees to complete the administration of the liquidation;
- (3) approving the Liquidator's proposed distribution methodology and authorizing the distribution of funds according to same;
- (4) dissolving Paidiem, pursuant to Subsection 218(1) of the OBCA, subject to the Liquidator filing a certificate with the Court confirming that the Remaining Duties (as hereinafter defined) have been completed (the "**Discharge Certificate**");
- (5) directing the Purchaser (as hereinafter defined) to maintain custody of the documents and records of the Company in its possession for a minimum period of seven (7) years from the date of the Company's dissolution; and
- (6) discharging the Liquidator subject to the Liquidator filing the Discharge Certificate

All of which is respectfully submitted this  
6<sup>th</sup> day of August, 2023 by

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**Camelino Galessiere LLP**  
Per: Gustavo F. Camelino  
Lawyers for MNP Ltd.

## SCHEDULE A

Authorities relied upon by the Liquidator:

1. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA)
2. *Bank of America Canada v. Willann Investments Ltd.* (1993 20 CBR (3d) 223 (ONSC)
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

## **SCHEDULE B**

Statutes and Regulations relied upon by the Liquidator

### **Business Corporations Act**

R.S.O. 1990, CHAPTER B.16

#### ***Provision for discharge and distribution by the court***

**217** (1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in the liquidator's hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator. R.S.O. 1990, c. B.16, s. 217 (1).

#### ***Disposal of documents and records***

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1990, c. B.16, s. 217 (2).

#### ***Order for dissolution***

**218** (1) The court at any time after the business and affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1990, c. B.16, s. 218 (1).

#### ***Copy of dissolution order to be filed***

(2) The person on whose application the order was made shall file with the Director, within 10 days after the order was made, a certified copy of the order, a notarial copy of the certified copy or any other type of copy of the order permitted by the Director. 2017, c. 20, Sched. 6, s. 29.



**DAVID ROBERTSON**

Applicant

and

**PAIDIEM PAYMENT SOLUTIONS INC.**

Respondent

Court File No: CV-22-00690376-00CL

**ONTARIO  
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(COMMERCIAL LIST)**

**FACTUM**

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