

Endorsement

This is an application by SmartPay Inc., the sole shareholder of Curexe Inc., pursuant to part 18 of the *Canada Business Corporations Act* for an order liquidating Curexe and appointing MNP Limited (“MNP”) as the liquidator of Curexe. Curexe has consented to the application and MNP has consented to be the liquidator of Curexe.

in support of this application, SmartPay relies upon the affidavit of Jonathan Holland. Mr. Holland has provided evidence that SmartPay satisfies the statutory requirements in the CBCA, specifically, (i) Curexe is a CBCA company; (ii) it is not an insolvent person within the meaning of the Bankruptcy and Insolvency Act; and (iii) Smart has filed an affidavit stating the reasons why Curexe should be liquidated.

Curexe was incorporated as a single purpose entity to provide electronic online payment processing services to merchants operating in a variety of sectors and industries. Curexe has 21 clients for which it provides payment processing services. The agreements between Curexe and its clients provide that the funds paid to Curexe are held in trust by Curexe for a period of time, and then converted into what is referred to as a promissory note. Curexe holds a substantial amount of money for its clients, but there have been no promissory notes issued by Curexe to any of its clients.

To operate its business, Curexe requires bank accounts into which amounts payable to its clients by their customers can be deposited and from which Curexe can disburse amounts to its clients and to SmartPay (pursuant to a Memorandum of Understanding between Curexe and SmartPay). The funds payable to Curexe’s clients as a result of online transactions between Curexe’s clients and their customers are paid to Curexe. Curexe then remits those funds to its clients net of fees payable by Curexe by the clients. The fees paid to Curexe by its clients, net of any bank fees or charges, are then paid to SmartPay pursuant to the Memorandum of Understanding.

Curexe entered into an agreement with Luminus Financial Services & Savings Credit Union Limited (“Luminus”) pursuant to which Luminus opened deposit accounts for Curexe. In February 2020, all of the funds in connection with the services provided by Curexe from and after February 2020 were deposited into “client accounts” with Luminus. On or about June 12, 2020, Luminus froze the Luminus accounts. Mr. Holland is not aware of the specific reasons why these accounts were frozen and Luminus has not provided this information to Curexe. Luminus has refused to release the funds in the Luminus accounts, although it has advised that it would release the funds to a bankruptcy trustee should Curexe become bankrupt.

Luminus has provided information to Curexe that there is approximately \$995,000 currently in the Luminus accounts. A transfer of approximately \$1.64 million in client funds that Mr. Holland had believed had been received in the Luminus accounts was not completed when the Luminus accounts were frozen.

Curexe’s only asset, aside from the contracts with its clients, is the money in the Luminus accounts. As a result of the freezing of the Luminus accounts, Curexe is no longer able to carry on business in the ordinary course and provide services to its clients.

According to Mr. Holland’s affidavit, in the circumstances, SmartPay believes that it is in the best interests of Curexe’s clients, and SmartPay, that Curexe be liquidated under the supervision of the Court so that the funds being held by Luminus can be distributed in an orderly fashion. MNP has consented to act as the liquidator of Curexe.

I am satisfied that it is just and equitable that the liquidation order sought be granted. Curexe is no longer able to carry on business. The ability to protect the asset value of Curexe is dependent on the release of funds being held in the Luminus accounts and the distribution of those funds to Curexe's clients and SmartPay. Given the freezing of the Luminus accounts, it is appropriate that the liquidation take place under court supervision.

The liquidation order requested provides the liquidator with a priority charge over all Curexe's property, including the funds in the Luminus accounts. I am satisfied that this is a proper provision in the circumstances. The services to be provided by the liquidator are essential for the funds to be released to Curexe's clients and will benefit them. In the absence of a liquidation, each of Curexe's clients would have to take proceedings against Luminus to secure the release of the funds payable to them by Curexe.

The Court has jurisdiction to determine the validity of any claims against Curexe: CBCA, s. 217 (e). The requested liquidation order provides for the filing by creditors and clients of a proof of claim substantially in the form of the notice contemplated by s. 149(1) of the BIA. I am satisfied that this claims procedure is appropriate in the circumstances.

Order to issue in form of attached order signed by me today.

Cavanagh, J.