

CANADA / JUDGMENT

PaySlate Inc. (Re)

2023 BCSC 977

COURT

Supreme Court of British Columbia

DECIDED

10 May 2023

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2023 BCSC 977 PaySlate Inc. (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: PaySlate Inc. (Re), 2023 BCSC 977 Date: 20230510 Docket: B220504 Estate No.: 11-2891281 Registry: Vancouver In Bankruptcy and Insolvency In the Matter of the Notice of Intention to Make a Proposal of PaySlate Inc. Before: The Honourable Mr. Justice Walker Oral Reasons for Judgment In Chambers Counsel for PaySlate Inc.: M. Lemmens J. Pepper L. Beatch, Articled Student T. Haggstrom, Articled Student Counsel for Paysafe Merchant Services Inc.: P. Bychawski C. Hildebrand Counsel for the Proposal Trustee, Grant Thornton Limited: R. Gurofsky J. Cameron Counsel for Ayrshire Real Estate Management Inc. and 1410512 B.C. Ltd.: S. Collins E. Wilson Place and Dates of Hearing: Vancouver, B.C. April 24, 27 and May 10, 2023 Place and Date of Judgment: Vancouver, B.C. May 10, 2023 THE COURT:

Introduction

- [1] Let me start by saying I have no hesitation in approving the new proposed reverse vesting order ("RVO") as modified in oral submissions today and supported by Grant Thornton Limited, the proposal trustee ("Proposal Trustee"). The terms will be reflected in an affidavit to be prepared and filed by counsel, Ms. Pepper, on behalf of PaySlate Inc. ("PaySlate").
- [2] Even though the approval application is now unopposed, it is important, as Professor Sarra reminds us, to provide reasons, even brief ones, explaining why the proposed transaction passes judicial scrutiny: Janis Sarra, "Reverse Vesting Orders - Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 431 at 1-2.
- [3] The parties have now addressed all of the concerns I expressed in my reasons for judgment indexed as 2023 BCSC 608 ("Prior Reasons") about the RVO previously proposed and have satisfied the tests established in Harte Gold Corp. (Re), 2022 ONSC 653, and Arrangement relatif à Blackrock Metals, 2022 QCCS 2828, leave to appeal ref'd 2022 QCCA 1073. PaySlate has met the tests set out in Harte Gold and Blackrock
- [4] PaySlate's value is unquestionably tied to its business as a going concern and its tax attributes and Scientific Research and Experimental Development ("SR&ED") credits.

- [5] There is now an appropriate evidence-based rationale provided by the debtor with fulsome and most helpful information and analysis of value provided by the Proposal Trustee in its sixth and seventh reports. It establishes that the proposed consideration is appropriate or, as required by the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], "reasonable and fair" in relation to the value of the business being acquired through the proposed RVO.
- [6] The administration and professional charges, cure costs, KERP charge, employee termination payments of \$2,000 each, per the Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1, and the debtor-in-possession ("DIP") financing will all be satisfied.
- [7] The proposed RVO offer follows upon a well-structured, highly robust, and comprehensive marketing program (Sale and Investment Solicitation Process or "SISP") and follow-up efforts after the SISP failed (all conducted by the Proposal Trustee); the latter attracted offers demonstrating that the value in the company does not extend beyond its DIP financing.
- [8] The parties have established that the proposed RVO offers better value to stakeholders than the asset vesting order ("AVO") offered as an alternative transaction in the event I did not approve the RVO, by approximately \$357,000.
- [9] The RVO also offers better value than the two other offers (received from Party A and Party B as discussed in the Proposal Trustee's sixth and seventh reports), both of which attract risk and completion delays.
- [10] Stakeholders are not worse off if the proposed RVO is approved. In fact, not only does the RVO offer better value, as I have just said, some stakeholders are better off than under any other proposed transaction offered.
- [11] Necessity has also been established. Not only does the share acquisition contemplated by the RVO preserve PaySlate's tax attributes and SR&ED credits, from additional evidence adduced by PaySlate and discussed by the Proposal Trustee, it is clear that the RVO is also necessary to preserve PaySlate's cyber security and cyber insurance policies.
- [12] A vesting order, including the AVO proposed in the alternative, would require the new purchaser to secure that coverage which affords integral protection to PaySlate's business. The evidence establishes that such coverage may not be readily obtainable, if at all, and even if it is, operational delays for PaySlate would result while coverage is being sought and placed. Customers may leave to other service providers.
- [13] The proposed releases are now significantly restricted (more so than typically seen in other AVO transactions) and are, in any event, rationally connected to the proposed transaction and are in favour of those persons and entities who have been integrally involved in supporting the RVO and the alternate AVO transaction. Further, parties to retained contracts are not being asked to release pre-filing claims.
- [14] Service has been properly effected on all requisite stakeholders, including parties to retained contracts, and all key stakeholders have been consulted.

- [15] The rights of parties to retained contracts are not being abrogated other than they are not permitted to terminate on account of PaySlate's insolvency.
- [16] The RVO and the related subscription agreement which contains that singular prohibition of termination rights, i.e., in respect of insolvency, are not opposed, and the RVO is now supported by the only party who previously opposed it, Paysafe Merchant Services Inc. ("Paysafe"). This is not a case where the RVO is a disguised attempt to rid PaySlate of a recalcitrant creditor.
- [17] Paysafe and PaySlate have reached an agreement, where Paysafe, who is a critical supplier, will continue to provide services for 30 days beyond closing of the transaction, at which time the contract between the parties will terminate. In return, Paysafe's indemnity claim of just over \$2.21 million will be accepted and, in turn, comprised by the receipt of equity for approximately 4.8% of PaySlate's common shares, representing an approximate value of \$350,000.
- [18] However, the agreement between Paysafe and PaySlate does not involve a reordering of priorities and does not reduce the amounts that would otherwise be available to other creditors. I agree with the Proposal Trustee that the settlement with Paysafe represents a positive outcome for PaySlate and its stakeholders, as it allows PaySlate to pursue a transaction before the looming expiry of this "NOI" proceeding and avoids further court proceedings and their attendant drain on the company's cash and a distraction to the company's intention to pursue a successful restructuring.
- [19] I am satisfied that the parties have met the criteria set out in s. 65.13(4) and (5) of the BIA, as:
- a) sustained good faith, comprehensive and robust efforts have been made to solicit offers from non-related parties;
 - b) the RVO offers a far better outcome than bankruptcy; and
 - c) no other viable alternative providing the same value to stakeholders exists.
- [20] There is no funding available to conduct a further SISP, and even if there were, I am satisfied that all efforts have been undertaken by the Proposal Trustee after the failed SISP to obtain further and better offers from those expressing an interest in pursuing an acquisition.

Conclusion

- [21] Before concluding, I wish to thank counsel and the parties for engaging in what I understand to have been further substantive negotiations following the release of the Prior Reasons to achieve this positive outcome for PaySlate and its stakeholders.
- [22] I also wish to thank counsel for their most helpful, focused oral and written submissions and the Proposal Trustee, in particular, for providing me with the information, evidence, and analysis necessary when a reverse vesting order is sought.

- [23] Anyone wishing to read a useful example of the type of information, evidence, and analysis required to pass judicial scrutiny to obtain a reverse vesting order should read the Proposal Trustee's sixth and seventh reports and the further evidence adduced through Mr. Bentham's affidavit and the affidavits of service after the Prior Reasons were issued.
- [24] In summary, I have approved the RVO as amended in submissions today that will be reflected in an exhibit attached to an affidavit to be sworn by Ms. Pepper. I also approve the order sought that is declaring service to be valid and effected and also approve the increase in the DIP amount.
- [25] Is there anything arising? [DISCUSSION RE: EXTENSION OF STAY]
- [26] THE COURT: I am prepared to extend it to the end of the week if the parties agree to that. I will extend the extension of the stay to midnight, May 19, 2023. "Walker J."

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Prepared on 28 October 2026 · Esheria