

Bankruptcy Court File No. BK-23-03015853-0033
Estate File No. 33-3015853

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF RELOGIX
INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE COMPANY
(RE: INTERIM FINANCING)**

December 5, 2023

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. On November 29, 2023, Relogix Inc. (“**Relogix**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). Dodick Landau Inc. was appointed as Proposal Trustee under the NOI (in such capacity, the “**Proposal Trustee**”).

2. This factum is filed in support of the Company’s motion seeking an Order that, among other things:
 - (a) abridges the notice periods and service requirements pursuant to s. 6 of the *Bankruptcy and Insolvency General Rules*, CRC, c. 368 (“**Bankruptcy Rules**”);

 - (b) approves an Interim Credit Facility Term Sheet (the “**DIP Agreement**”) executed by the Company on December 4, 2023 with Andrew Millar (the “**DIP Lender**”) pursuant to which the DIP Lender has agreed to advance to the Company a total amount of up to \$100,000 (the “**DIP Facility**”); and

 - (c) grants a “**DIP Lender’s Charge**” (in the maximum amount of \$50,000) against the assets, property, and undertakings of the Company (the “**Property**”), as security for the Company’s obligations under the DIP Agreement, which charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person;

3. The Proposal Trustee is supportive of the requested relief and the Company is presently unaware of any opposition.

PART II – FACTS

4. The relevant facts are more fully described in the affidavit of Andrew Millar sworn December 4, 2023.¹

5. The Company is in the business of using state-of-the-art technology to provide companies with office workplace optimization analytics and insights (the “**Business**”). The Business helps its customers prepare and execute scalable, flexible and cost-effective real estate strategies for their enterprises.²

6. In approximately mid-2022, Relogix began experiencing significant cash flow pressures due to the lingering effects that COVID-19 had in the corporate real estate market and the slower than anticipated return to corporate offices by its customers.³

7. The Company has taken extensive marketing steps in an attempt to find a buyer or investor to address its cash flow pressures.⁴

8. In and around mid-June 2023, the Company retained an investment bank, Proptech Bankers (“**Proptech**”), to perform a comprehensive marketing process with the purpose of widely canvassing the market for a possible sale or investment transaction that would address the Company’s cash flow pressures (the “**Sale Process**”). Proptech is a specialized investment bank with extensive experience executing marketing processes for technology companies and early-stage technology start-ups.⁵

9. The Sale Process was conducted over approximately five months and concluded in mid-November 2023. As part of the sale process, Proptech solicited a wide array of interest in the Business from both strategic and financial investors. The Sale Process ultimately culminated in

¹ Affidavit of Andrew Millar sworn December 5, 2023, Motion Record of Relogix Inc., Tab 2 (“**Millar Affidavit**”).

² Millar Affidavit, *ibid* at para 4.

³ Millar Affidavit, *ibid* at para 7.

⁴ Millar Affidavit, *ibid* at para 10.

⁵ Millar Affidavit, *ibid* at para 10.

two offers for the Business: one involving a purchase of assets, and the other involving the purchase of the Business (and all related assets) on a going-concern basis.⁶

10. Upon review of the two offers, the Board of Directors of the Company has determined that the offer that involves a going-concern sale of the Business (the “**Potential Transaction**”) is the offer that is in the best interests of the Company and its stakeholders. Accordingly, the Board of Directors is working diligently with its counsel, and with the oversight of the Proposal Trustee, to finalize the documentation necessary for the Potential Sale including the Asset Purchase Agreement (“**APA**”), subject to Court approval, which will be sought upon execution of the APA with the potential purchaser.⁷

11. As a result of the completion of the Sale Process and the Company’s continued cash flow pressures, on November 29, 2023, the Company commenced these NOI proceedings to, among other things,

- (a) obtain the breathing room necessary to preserve value for creditors and stakeholders generally, preserve the value of the company’s contracts, and maintain employment for the majority of its 18 employees;
- (b) effect a transaction with a potential asset purchaser, subject to Court approval of the transaction; and
- (c) develop a proposal for its creditors.⁸

⁶ Millar Affidavit, *ibid* at para 11.

⁷ Millar Affidavit, *ibid* at para 12.

⁸ Millar Affidavit, *ibid* at paras 8-9 and 13.

12. The Company intends to appear before this Court on December 18, 2023 to, among other things, seek approval of the APA and the Potential Transaction, and to extend the time for the Company to file a proposal in accordance with s. 50.4(9) of the BIA.⁹

13. However, in the interim, the Company is in urgent need of interim financing to allow it to continue operating in the normal course until December 18, 2023, including to pay its post-filing payroll and other obligations.¹⁰

PART III – ISSUES

14. There are two issues before this Court on this motion:

- (a) Should the Court abridge the time for service of this motion pursuant to Rule 6 of the *Bankruptcy Rules*?
- (b) Should the Court approve the DIP Agreement and grant the corresponding DIP Lender's Charge pursuant to section 50.6 of the BIA?

PART IV – LAW & ARGUMENT

A. The Time for Service Should be Abridged

15. Rule 6 of the *Bankruptcy Rules* states, in part:

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

⁹ Millar Affidavit, *ibid* at para 14.

¹⁰ Millar Affidavit, *ibid* at para 15.

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.¹¹

16. As evidenced by the Affidavit of Service of Jessica Wuthmann, the Company served its Motion Record on the evening of December 4, 2023 for the hearing scheduled for December 6, 2023. It was served electronically, as contemplated by Rule 6, on all but one party for who no email address was available. The party without an email address was personally served by a process server on December 5, 2023.¹²

17. The service of the Company's Motion Record was effected with less than five days notice.¹³ Accordingly, the Company seeks abridgement of the time to service the Company's Motion Record.

18. Rules 2 and 3 of the *Rules of Civil Procedure* grant the Court the jurisdiction to abridge the time for service in proposal proceedings where it is satisfied the interests of justice require abridgement.¹⁴

19. The Company respectfully submits that this is an appropriate case for the Court to exercise its discretion to abridge the time for service for the following reasons:

¹¹ *Bankruptcy Rules* at Rule 6.

¹² Affidavit of Service of Jessica Wuthmann sworn December 5, 2023. Affidavit of Service of Dave Kilrea sworn December 5, 2023.

¹³ Millar Affidavit, *ibid* at para 24.

¹⁴ *Rules of Civil Procedure*, RRO 1990, Reg 194. See for e.g. *In Re Entegritiy Wind Systems Inc*, 2009 PESC 25 at [para 3](#).

- (a) the December 6, 2023 court date was the only date available before the Ottawa Bankruptcy Court before the Company required funding to meet post-filing payroll obligations due the week ending December 15, 2023;¹⁵
- (b) the Company has limited the relief requested herein to only what is reasonably necessary to continue operations until the return date on December 18, 2023;¹⁶
- (c) the Company requires interim financing immediately in order to fund its near-term expenses including its upcoming payroll.¹⁷ Without that financing, the Company will:
 - (i) not be able to maintain its operations and fund payroll, preserve asset value or complete the Proposed Sale Transaction; and
 - (ii) be forced to wind down its operations and commence a liquidation of its assets, resulting in the loss of value and eighteen jobs to the material detriment of its creditors and stakeholders;¹⁸
- (d) the Ottawa Bankruptcy Court scheduled the December 6th hearing date on December 4, 2023 and the Company served its Motion Record that same day; and
- (e) no prejudice will result to any party by reason of the proposed abridgement.¹⁹

B. The DIP Agreement Should be Approved and the DIP Lender's Charge Should be Granted

20. Section 50.6 of the BIA gives the Court the jurisdiction to approve a DIP financing charge.

It provides, in part, as follows:

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court

¹⁵ Millar Affidavit, *ibid* at para 23.

¹⁶ Millar Affidavit, *ibid* at para 25.

¹⁷ The First Report of the Proposal Trustee dated December 5, 2023 at para 23.

¹⁸ The First Report of the Proposal Trustee dated December 5, 2023 at para 20.

¹⁹ Millar Affidavit, *ibid* at para 27.

considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Priority

(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.²⁰

21. Section 50.6(5) enumerates a list of factors to guide the court's decision whether to grant the DIP financing and corresponding priority charge:

Factors to be considered

(5) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.²¹

22. Courts have routinely concluded that DIP financing and a corresponding priority charge are appropriate where the evidence demonstrates that a debtor would cease operations if the relief was not granted, the proposal trustee supports the DIP facility, and the DIP lender would not participate without the protection of a security charge.²²

²⁰ BIA at s. 50.6(1) and (3). See *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at [para. 26](#).

²¹ BIA at s. 50.6(5). See *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at [para. 27](#); *Chester Basin Seafood Group Inc. (Re)*, 2023 NSSC 388 at [para 33](#).

²² *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at [para. 28](#).

23. In *Chester Basin Seafood Group Inc. (Re)*, the Court approved interim financing and a corresponding priority charge in the amount of \$1.1 million provided by a lender that was not at arms-length.²³ The Court was satisfied that interim financing from a non-arms length party was appropriate given, in part, the loan was not being provided on onerous terms.²⁴ In reaching its conclusion, the Court took judicial notice that a Schedule I Bank could easily address any prejudice by replacing the interim financing loan with its own loan to redeem its place in the creditor hierarchy.²⁵

24. The Company submits that the DIP Agreement and DIP Lender's Charge are appropriate in this case for the following reasons:

- a) the cash flow projections demonstrate that, without interim financing, the Company will be unable to continue operating as a going concern until December 18, 2023, which will deteriorate the value of the Company's Business and seriously jeopardize the Company's ability to make a proposal;²⁶
- b) advances under the DIP Facility are conditional upon Court approval of the DIP Agreement and the granting of the DIP Lender's Charge;²⁷
- c) the DIP Agreement does not contain onerous terms and no provision therein would preclude the loan from being paid out without notice or penalty if a better deal comes along, including by an existing secured lender who deems it prudent to protect their position;²⁸

²³ *Chester Basin Seafood Group Inc. (Re)*, 2023 NSSC 388.

²⁴ *Chester Basin Seafood Group Inc. (Re)*, 2023 NSSC 388 at [para 32](#).

²⁵ *Chester Basin Seafood Group Inc. (Re)*, 2023 NSSC 388 at [para 33](#).

²⁶ Millar Affidavit, *ibid* at paras 13 and 16-17. The First Report of the Proposal Trustee dated December 5, 2023 at paras 20 - 25.

²⁷ Millar Affidavit, *ibid* at para 21.

²⁸ Millar Affidavit, *ibid* at para 20.

- d) the Proposal Trustee believes that the costs associated with the DIP Facility are more than commercially reasonable in the circumstances for a DIP Facility for a business in circumstances similar to Relogix;²⁹
- e) the Proposal Trustee is of the opinion that the DIP Facility in the best interests of the Company and its stakeholders, and that no creditor will be materially prejudiced by the granting of the DIP Charge, as it will provide the Company with the cash flow it requires to fund its going concern operations while it continues its negotiations and, absent such funding, operations would cease;³⁰
- f) there is no competing lender offering alternate financing;³¹
- g) the DIP Lender's Charge does not secure an obligation that exists before the filing of the NOI; and
- h) the Company's Business will continue to be managed in the ordinary course with the additional oversight of the Proposal Trustee.³²

PART V – RELIEF REQUESTED

25. Based on the foregoing, the Company respectfully requests that this Court grant the proposed form of order found at tab 3 of the Company's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th DAY OF DECEMBER, 2023



**JESSICA WUTHMANN
RECONSTRUCT LLP**

²⁹ The First Report of the Proposal Trustee dated December 5, 2023 at para 19.

³⁰ The First Report of the Proposal Trustee dated December 5, 2023 at para 18.

³¹ Millar Affidavit, *ibid* at para 17.

³² Millar Affidavit, *ibid* at para 18.

SCHEDULE "A"**List of Authorities**

1. <i>In Re Entegrity Wind Systems Inc.</i> , 2009 PESC 25
2. <i>Re Mustang GP Ltd.</i> , 2015 ONSC 6562
3. <i>Chester Basin Seafood Group Inc. (Re)</i> , 2023 NSSC 388

SCHEDULE "B"**Statutory Authorities****[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)****Order — interim financing**

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Individuals

(2) In the case of an individual,

(a) they may not make an application under subsection (1) unless they are carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

Priority

(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

Priority — previous orders

(4) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(5) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

Rules of Civil Procedure, RRO 1990, Reg 194

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Effect of Non-Compliance

2.01 (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part. R.R.O. 1990, Reg. 194, r. 2.01 (1).

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Bankruptcy and Insolvency General Rules, CRC c 368

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

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Applicant

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Proceedings commenced at Ottawa

FACTUM OF RELOGIX INC.

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