

COURT FILE NUMBER 1801-16809  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT ROBERT KULHAWY  
RESPONDENT COMMERX HOLDINGS LLC and LOTUS INNOVATIONS PRIVATE EQUITY FUND also known as LOTUS INNOVATIONS LLC and COMMERX CORPORATION  
DOCUMENT **APPLICATION BY ROBERT KULHAWY**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Burstall LLP  
Barristers & Solicitors  
1600, 333 – 7 Avenue SW  
Calgary, AB T2P 2Z1

Justin Fogarty, counsel for the Applicant, Robert Kulhawy  
Telephone: (403) 999-9817  
Fax: (403) 266-6016  
Email: Fogarty@burstall.com

**NOTICE TO THE RESPONDENT:** COMMERX HOLDINGS LLC and LOTUS INNOVATIONS PRIVATE EQUITY FUND also known as LOTUS INNOVATIONS LLC and COMMERX CORPORATION

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: May 16, 2019  
Time: 2:00 p.m.  
Where: 9th Floor, North Tower, Calgary Courts Centre  
601-5th Street SW, Calgary, AB T2P 5P7  
Before Whom: The Honourable Mr. Justice C.M. Jones

Go to the end of this document to see what else you can do and when you must do it.

**Basis for this claim:**

1. On February 25, 2019, the Honourable Madam Justice Dario granted an Order allowing the Applicant, Robert Kulhawy ("**Kulhawy**"), to file a Notice of Intention to Make a Proposal (the "**NOI**") on behalf of Commerx Corporation (the "**Debtor**").

2. On February 28, 2019, Justice Dario granted an Order inter alia, authorizing Commerx to obtain debtor-in-possession financing to finance the Company's working capital requirements and other general corporate purposes (the "**DIP Order**").
3. The NOI was filed on March 7, 2019.
4. Pursuant to section 50.4(8) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), a proposal was to be filed by April 6, 2019.
5. By Order of the Honourable Madam Justice Dario dated April 3, 2019, the time to file a proposal was extended to May 20, 2019 (the "**Extension Order**").
6. Under the protection of the proposal process and with use of the initial DIP financing as provided in the DIP Order, Commerx:
  - (a) successfully obtained a discharge of Super G Capital, LLC's PPSA registration in Alberta registered against the assets and undertakings of Commerx (the "**Super G Registration**");
  - (b) stabilized its business operations and is once again generating revenue and sustaining itself from that revenue;
  - (c) attempted to negotiate the return of Commerx shares currently held by Lotus Innovations, LLC ("**Lotus**");
  - (d) continued to discuss and negotiate further debtor-in-possession financing to finance the professionals and cash flow pending the filing of a proposal;
  - (e) commenced negotiations with a third-party investor regarding a commitment to inject sufficient equity into the business to allow it to emerge from the restructuring process.
7. The discharge of the Super G Registration is a significant and important development in the restructuring efforts of Commerx.
8. The Super G Registration previously caused serious problems for Commerx as it attempted to obtain financing to fund the business and day to day cash flow requirements. These problems and issues ultimately led the Company to the filing of the NOI.

9. With the Super G Registration discharged and resolved, there is a strong likelihood that the Company will be able to restructure itself and deliver a viable proposal in the coming months. However, before the Company can make its proposal, it will require further DIP financing to fund previous and ongoing professional fees to see it through the restructuring process, and resolution of the outstanding share issue or dispute with Lotus.
10. On the issue of further DIP financing, the Company requires a motion return date to make submissions on extending or increasing the borrowings under the DIP Facility on terms to be filed.
11. On the share issue, the Company requires a hearing date for the purpose of adjudicating, on a summary basis, the share issue, if any, as between Commerx and Lotus.
12. On the assumption that the borrowings under the DIP Order are increased, and the share issue is dealt with in accordance with a summary process (to be established in consultation with the Court and counsel for Lotus), Commerx can and will finalize a debt/equity plan with a third-party investor regarding a commitment to inject sufficient equity in to the business to allow it to emerge from the restructuring process.
13. The request for an extension of time to file a proposal has the support of the proposal Trustee and is likely unopposed.
14. The Court date for the extension hearing must be heard before May 20, 2019 when the current stay expires.
15. Commerx requires a comeback date in early June 2019 regarding a request to extend the borrowings under the DIP Order.
16. Under the circumstances, it is appropriate to establish a summary process for the purpose of adjudicating the issue of shares as between Commerx and Lotus.
17. The Proposal Trustee is of the view that the Debtor has acted, and is acting, in good faith and with due diligence in order to present a proposal to its creditors.
18. The Applicant is seeking an extension of time to June 30, 2019 to file a proposal pursuant to section 50.4(9) of the BIA.

**Remedy sought:**

19. The Applicant seeks an Order:
  - (a) declaring service of this Application and its supporting materials good and sufficient, and if necessary, abridging time for notice of the Application to the time actually given;
  - (b) approving an extension to and including July 4, 2019 of the time for filing of the proposal;
  - (c) setting a return or comeback date for the hearing of an application to increase the limits of the DIP financing set out in the DIP Order;
  - (d) setting a return or comeback date to deal with the share issue on notice to interest parties;
  - (e) Such further and other relief as this Honourable Court deems appropriate under the circumstances.

**Affidavit or other evidence to be used in support of this application:**

20. The Affidavit of Robert Kulhawy, sworn May 14, 2019, to be filed with this Application.
21. The Second Report of the Proposal Trustee, to be filed.
22. Such further and other materials as counsel may advise and this Honorable Court may permit.

**Applicable Acts and Regulations:**

23. Sections 50.4(1) and 64.2 of the BIA;
24. Rules 6.3, 9.14, 10.30, and 13.5 of the *Alberta Rules of Court*;
25. *Judicature Act*, RSA, c. J-2, as amended;
26. The inherent and equitable jurisdiction of this Court; and
27. Such further and other provisions and statutes as counsel may advise.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicants and against all persons claiming under the applicants. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicants are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicants.