



FORM 109
(RULE 22-2(2) AND (7))

This is the 6th affidavit
of Robert Kaul in this proceeding
and was made on November 1, 2024

District of British Columbia
Division No.: 02-Victoria
Court No.: B240300
Estate No.: 11-3089419
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF CLOUD DIAGNOSTICS CANADA ULC**

AFFIDAVIT

I, Robert Kaul, care of 2900 – 733 Seymour Street, Vancouver, in the Province of British Columbia SWEAR THAT:

1. I am a director on the board of directors of Cloud Diagnostics ULC ("Cloud DX"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.
2. On June 5, 2024 (the "Filing Date"), Cloud DX filed a Notice of Intention to Make a Proposal (the "NOI") pursuant to subsection 50.4(1) of the *Bankruptcy and the Insolvency Act* R.S.C.1985, c. B-3 (the "BIA") and Crowe MacKay and Company Ltd. consented to act as Trustee under the Proposal (the "Proposal Trustee").
3. The background facts relating to the applicant is set forth in the affidavit #1 of Robert Kaul, sworn June 7, 2024 and the Proposal Trustee's First Report to Court, dated June 10, 2024.

Operations since June 7

4. Cloud DX continues to operate in the normal course. Its post filing obligations remain current. It enjoys a good relationship with its customers and clients, many of whom know about the NOI process. Cloud DX has sold approximately 120 health kits since the filing date, and has, in October, successfully integrated its software with the software of a major provincial health services authority. It has lost no customers, it has renewed contracts and has entered into an agreement with a major Ontario university. There has been no material adverse change to Cloud DX's business operations since June 7.
5. Cloud DX's platform is used to care for patients over set periods of time. In some cases, patients use it for 30 days after surgery. In other cases, they could be on Cloud DX's system for many months or even years for chronic disease management.
6. At present, Cloud DX is caring for approximately 1,700 patients. Cloud DX has, in the last two years, cared for over 11,000 patients.
7. Since the Filing Date, Cloud DX, as well as maintaining operations, has engaged in, among other things, the following activities:
 - a) attended meetings with the Proposal Trustee to discuss the affairs of Cloud DX, as well as the options available;
 - b) prepared and filed cashflow statements;
 - c) prepared and filed a court application for extensions of time, as well as for additional interim financing; and
 - d) engaged with individual lenders to seek to obtain interim financing to ensure sufficient liquidity during these proceedings.

Proceedings to date: June 11 order

1. Several orders have been made herein in chambers.
2. On June 11, 2024, Madam Justice Sharma made an order, among other things, extending time for filing a proposal until August 19, 2024, granting an administration charge in the amount of \$200,000.00 (the "Administration Charge"), and granting an interim financing charge in the amount of \$120,000.00. Justice Sharma also approved the SISP, to be conducted by the Proposal Trustee and Cloud DX.
3. On June 14, 2024, Justice Kent made an order granting an interim financing charge of \$400,000.00 over the property of Cloud DX.
4. On June 28, 2024, Justice Jones made an order granting a second interim financing charge of \$700,000.00 over the property of Cloud DX.
5. On August 15, 2024, Justice Morellato made an order extending time to file a proposal until October 3, 2024.
6. On September 13, 2024, Justice Hoffman made an order granting a third interim financing charge of \$150,000.00 over the property of Cloud DX and extending time to file a proposal until November 5, 2024.

Activities of Cloud DX

7. Since the Filing Date, Cloud DX has engaged in, among other things, the following activities:
 - a) attended meetings with the Proposal Trustee to discuss the affairs of Cloud DX, as well as the options available;
 - b) prepared and filed cashflow statements;
 - c) prepared and filed a court application for extensions of time, as well as for additional interim financing;

- d) engaged with individual lenders to seek to obtain interim financing to ensure sufficient liquidity during these proceedings; and,
- e) other various matters.

The SISP

8. On June 11, 2024, Madam Justice Sharma approved the SISP to be conducted by the Proposal Trustee and Cloud DX.

9. The key dates for the SISP were as follows:

The Proposal Trustee to create list of Known Potential Bidders and distribute Teaser Letter and Confidentiality Agreements to Known Potential Bidders	No later than June 25, 2024
The Proposal Trustee to prepare and have available for Potential Bidders the Data Room	No later than June 28, 2024
Bid Deadline	July 26, 2024

10. Subsequently, Cloud DX assisted the Proposal Trustee with the planning and execution of the SISP including the following:

- a) prepared a list of prospective parties which includes companies in a same or similar industry;
- b) coordinated distribution of teaser letter outlining the opportunity to prospective purchasers;
- c) created a data room with various documents to assist interested parties in assessing the opportunity;
- d) numerous discussions and correspondence with prospective parties with respect of the opportunity, SISP process, and other matters;

- e) prepared and coordinated the execution of non-disclosure agreements to parties wishing to access the data room; and
- f) preparation of the sealed bid package and distributing to interested parties who had signed the non-disclosure agreement.

SISP results

- 11. The Proposal Trustee received two (2) bids. The first bid it received was a cash offer in the amount of \$50,000.00 for the purchase of the Assets.
- 12. The second bid received was from 1493907 B.C. Ltd. ("907Co") on the date of the Bid Deadline. The bid included the following major terms, among others:
 - a) 907Co would acquire 100% of the shares of Cloud DX through a transaction enabled, among other things, by a reverse vesting order ("RVO") issued by the Court and an arrangement approved by the Court;
 - b) 907Co is funded by the majority of the secured debenture holders of Cloud DX, by way of a secured facility assignment agreement and a private placement subscription agreement. The participating secured debenture holders represent in excess of 90% of the secured indebtedness of Cloud DX;
 - c) the price offered is \$10,490,868.79 plus the amounts owing to CRA for its deemed trust amount, the DIP charges and the Administration Charge;
 - d) the bid is not subject to any conditions other than Court approval; and,
 - e) a wire representing the Deposit in the amount of \$149,980.00 representing approximately 15% of the bid was received by the Proposal Trustee on or around the Bid Deadline.

13. I believe that the bid from 907Co in the approximate amount of \$10,490,868.79 plus the superior bid for the following reasons:
- a) it offers the highest certainty for the highest gross recovery and preserves value;
 - b) it will repay the CRA's trust claim in the amount of \$921,775.47;
 - c) it includes a credit bid by the majority of the secured creditors of Cloud DX in the amount of \$10,368,616.50, representing 90% of the total indebtedness of Cloud DX to its secured debenture holders;
 - d) it will repay the amounts owing under the DIP charges and the Administration Charge;
 - e) it will preserve the value of the customer contracts;
 - f) it benefits Cloud DX's medical customers and clients and its patients, as it allows for Cloud DX to continue as a going concern; and
 - g) it benefits employees who may continue their employment.

Description of transaction

14. The Subscription Agreement contemplates a transaction in which:
- a) The purchaser is 907Co;
 - b) 907Co subscribes for the common shares in the capital of Cloud DX;
 - c) all existing share in the capital of Cloud DX are cancelled for no consideration;
 - d) the indebtedness of Cloud DX to its debenture holders is acquired by 907Co;
 - e) the debenture holders are issued common shares;

- f) the subscription price is paid by way of credit bid consisting of the debtor in possession ("DIP") indebtedness and 90% of the debenture indebtedness, the cash consideration in an amount to permit completion of the NOI process and payment of CRA, and the assumption of assumed liabilities;
 - g) encumbrances, claims and liabilities shall be transferred to a corporation incorporated for the purpose of acquiring them, all pursuant to an approval and reverse vesting order, an arrangement and the arrangement approval order.
15. I understand that a copy of the Subscription Agreement will be attached as an appendix to the Second Report of the Proposal Trustee filed herein.

The Buyers

16. In my view, the buyers are the ideal buyers of Cloud DX. The buyers are a consortium of investors, many of whom have experience in the medical field, and all of whom have experience in the industry by the fact that they have been investors in the business for some time. The prospective president of Cloud DX, once the transaction takes place, is Dr. Constantine Zachos, who is a practicing doctor and the prospective officer is Dr. Gaurav Puri, who is head of emergency medicine at Southlake Regional Health Centre, a hospital located in Newmarket, Ontario.

Payment of CRA

17. Canada Revenue Agency has a trust claim against Cloud DX in the amount of \$921,775.47 for unremitted payroll deductions. This amount is a priority claim which will be paid out on closing.

Comparison with asset purchase in theory and by comparison to other bids

18. In my view, the only value of Cloud DX to a purchaser would be as a going concern. No one would buy the assets for a significant price. Cloud DX's value

is its software system and active client contracts. As there are restrictions on assignment in most of its key agreements, it is possible that some would be impossible to assign, and most of them would be difficult, time-consuming and expensive to assign. In my view, if a buyer was required to seek consents on assignment, the uncertainty would significantly deteriorate the value, even to the point where possibly there would be no buyer.

Role of Residualco

19. As part of the transaction, the parties are contemplating the incorporation of a company ("ResidualCo") to receive unsecured liabilities owing to creditors. I agree to act as the director of ResidualCo and I seek authorization by the Court to assign it into bankruptcy following the closing of the Transaction.

Releases

20. The proposed order will include releases in favour of Cloud DX, the Proposal Trustee, Residualco, and their respective directors, *de facto* directors, secured debenture holders, officers, employees, legal counsel and advisors. Each of these parties have contributed to the transaction and proposed order and the preservation of Cloud DX as a going concern in these proceedings.

Withdrawal of NOI

21. Following the conclusion of the Transaction Cloud DX proposes to withdraw, cancel or undo its filing of the NOI to permit the continued operation of the business in the ordinary course without filing a proposal. I believe that the withdrawal cancellation or annulment of the NOI will not prejudice any creditor, and that this step will benefit all parties with an interest in Cloud DX, specifically its patients, suppliers, clients, customers and employees that will be retained.

Interim Financing and DIP Charges

22. Cloud DX seeks interim financing in the amount of \$275,000.00 which it requires to continue operating through these proceedings and to complete a sale, with a

view to maintaining going concern value. Funding is required to pay Cloud DX's employees, suppliers and other obligations including restructuring costs, insurance, and professional fees in these proceedings. The proposed new DIP charge will rank behind all existing charges, including the CRA deemed trust claim.

23. In consultation with the Proposal Trustee, Cloud DX has prepared cash flow statements pursuant to s.50.4(2)(a) of the BIA (the "Cash Flow Statement").
24. The interim financing sought by Cloud DX is consistent with the Cash Flow Statement and is reasonably required to maintain Cloud DX as a going concern until the contemplated transactions can close.
25. All of the parties who are participating in the sale as buyers are aware of this application. All previous DIP lenders have consented to it. The proposed sale will see the Administration Charge, the DIP Charges and CRA paid out in full.
26. The Proposal Trustee is aware of and approves this application for further interim financing.

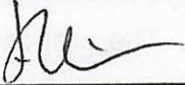
Extension of Time

27. Cloud DX seeks an extension of time under the NOI proceeding for a period a further 45 days, as provided by section 50.4(9) of the BIA.
28. It is reasonable to believe that Cloud DX will be able to apply to Court for approval of a sale contract in the period contemplated by the current extension application.
29. Cloud DX has:
 - a) remained current with its statutory reporting and remittance requirements with the Canada Revenue Agency ("CRA");
 - b) paid its post-NOI obligations in the ordinary course; and,

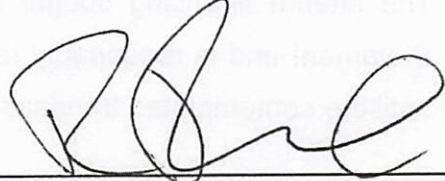
c) has maintained a positive cash balance.

The Proposal Trustee is not aware of any material adverse variances between the actual cash flows and the proposed extension period.

30. Cloud DX has acted, and is acting, in good faith and with due diligence, and will reasonably be able to conduct a sale transaction for the benefit of its creditors within the extension period. No creditor will be materially prejudiced if the extension being applied for is granted.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 15th day of November, 2024.


A Commissioner for taking Affidavits for British Columbia



ROBERT KAUL

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AFFIDAVIT

OWEN BIRD LAW CORPORATION

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