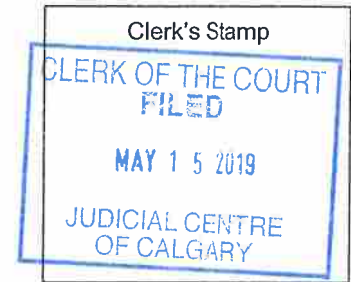


Form 27  
[Rule 6.3]

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 **AFFIDAVIT**



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  
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Fax: (403) 266-6016  
Email: Fogarty@burstall.com

### **AFFIDAVIT OF ROBERT KULHAWY**

**Sworn on May 14, 2019**

I, Robert Kulhawy, businessman of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am an individual residing in the Province of Alberta and am the founder, Chief Executive Officer, and President of Commerx Corporation (the "**Company**") and as such, I have personal knowledge of all facts and matters deposed to herein, except where stated to be based on information and belief, in which case I believe same to be true.

2. The Company is incorporated pursuant to the laws of the Province of Alberta and headquartered in Calgary, Alberta. The Company is a leading global provider of telecommunication services.

3. On February 25, 2019 and February 26, 2019, the Honourable Madam Justice Dario granted an Order allowing me to file a Notice of Intention to Make a Proposal (the “**NOI**”) on behalf of the Company.

4. On March 7, 2019, the NOI was filed.

5. Hardie & Kelly Inc. (the “**Proposal Trustee**”) was appointed as the Licenced Insolvency Trustee for the proposal.

6. On April 2, 2019, the Honourable Madam Justice Dario granted an Order extending the time upon which the Company must file a proposal to May 20, 2019 (the “**Initial Extension**”), along with an extension of the Stay of Proceedings (the “**Stay**”) afforded the Company pursuant to Section 69 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

7. Since the filing of the NOI, I have continued to work diligently and in good faith to enable the Company to address the issues that arose prior to its filings. Such efforts include, but are not limited to:

- (a) discussions with the accountants for the Company to prepare an updated 13-week cash-flow forecast, together with longer term cash-flow projections;
- (b) discussions with legal counsel on matters arising with the debtor-in-possession credit facility and the Canada Revenue Agency;
- (c) managing the Company’s business in the ordinary course;
- (d) cooperating with the Proposal Trustee; and
- (e) ongoing communication with creditors and performance of credit conditions during the stay of proceedings.

8. Further to paragraph 7(e) above, on April 16, 2019, the secured creditor Super G Capital, LLP (“**Super G**”) discharged Registration Number 18071923463 from the Alberta Personal Property Registry. Previously, and unbeknownst to me, Lotus Innovations Fund II L.P. (“**Lotus**”) had pledged the Company’s assets as collateral for a loan that Super G provided to Lotus, which encumbered all present and after-acquired personal property of the Company (the “**Lotus Loan**”). As of April 16, 2019, the Company’s assets are no longer collateral for the Lotus

Loan and the Company is no longer a 'debtor' with respect to the Lotus Loan. Attached hereto and marked as **Exhibit "A"** is a copy of the discharge of Super G's PPSA registration in Alberta registered against the Company.

9. In my previous affidavit sworn March 28, 2019, which was filed in support of the initial extension application, I supplied a cash-flow statement for the period of March 25, 2019 to June 23, 2019. I am working with the Proposal Trustee to finalize a further updated cash-flow statement for the thirteen-week period commencing on May 13, 2019. The updated cash-flow statement shall be provided under separate cover or will be handed up to the Justice on the day of the Application.

10. Under the protection of the Stay, the Company has stabilized its business operations and is once again generating revenue and has to date sustained itself from that revenue and periodic revolving advances from a subsidiary company (the "**Advances**"). The Advances were only a temporary measure due to delays in receiving payments for certain invoices issued to customers of the Company. These Advances are treated as an intercompany loan and will be paid back immediately when the delayed payments are received from the invoices at issue.

11. As the Super G Registration has been resolved, the Company is now in a better position to negotiate and finalize further debtor-in-possession ("**DIP**") financing to pay the professionals for their time expended on this matter and further fund the business, where necessary. The Company requires an extension to finalize the terms of a further DIP loan, at which time we will be back before the court for approval of the terms of the DIP loan.

12. There is still the outstanding issue of the Class 'A' shares of the Company held by Lotus. I have attempted to negotiate the return of the shares from Lotus with no success. Lotus has ceased returning phone calls and no longer responds to written communications. In my previous affidavits filed in support of the various court applications, I set out the following:

- (a) on December 30, 2016, Lotus and I entered into a Purchase Agreement, whereby I agreed to sell and Lotus agreed to purchase fifty-one percent (51%) of the Class A Shares of the Company in the amount of \$2,000,000;
- (b) the purchase was to take place in two (2) phases:

- i. payment from Lotus to me in the amount of \$500,000 on or before January 31, 2017 (the “Phase 1 Payment”); and
  - ii. Payment from Lotus to me in the amount of \$1,500,000 on or before November 30, 2018 (the “Phase 2 Payment”);
- (c) the Phase 1 Payment was not received until July 4, 2018;
- (d) the Phase 2 Payment from Lotus was never provided. This default necessitated the original application and hearing before Justice Feehan on November 29 and 30, 2018; and
- (e) after the hearing and the subsequent release of the Reasons for Decision on December 4, 2018, I discovered the Lotus Loan – which ultimately necessitated the application for authorization to file the NOI.

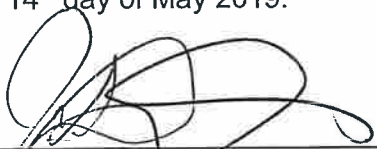
13. Before the Company can formulate the terms of a viable proposal, the issue of shares which Lotus has not paid for must be resolved, either through out-of-court discussions or a summary claims process. Once resolved I believe the Company will be able to make a viable proposal.

14. Accordingly, I believe the Company should be granted a further extension of the time to file a proposal and a corresponding extension of the Stay for the following reasons:

- (a) although progress has been made in resolving certain business issues required to be addressed, the proposal is not ready for submission to creditors;
- (b) I believe that creditors will not be materially prejudiced by the extension requested as a successful restructuring of the Company will provide a better return than liquidation in a bankruptcy; and
- (c) to date, I have not been made aware of any creditor of the Company intending to object to an extension of the stay of proceedings and the time for filing the proposal.

15. I make this Affidavit in support of a motion to extend the Stay and the time for filing a proposal through to July 4, 2019.

SWORN BEFORE ME at Calgary, Alberta, )  
this 14<sup>th</sup> day of May 2019. )

  
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Commissioner for Oaths in and for the  
Province of Alberta

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ROBERT KULHAWY

Jasmin Dhaliwal  
A Commissioner for Oaths - Notary Public  
in and for the Province of Alberta.  
Member of the Law Society of Alberta and  
My Appointment Expires at the Pleasure of  
The Attorney General for the Province of Alberta

Transmitting Party

DYE & DURHAM COMPANY INC.

Suite 10-620 Royal Avenue  
New Westminster, BC V3M 1J2

Party Code: 50078013  
Phone #: 250 953 1700  
Reference #: 9022079-7

**Discharge of Security Agreement**

Control #: M05528765

Registration Date: 2019-Apr-16

Registration #: 19041638782

Discharged Registration Information

Latest Registration Number: 18071923463

Registration Type: Security Agreement

First Current Debtor: COMMERX CORPORATION

First Current Secured Party: SUPER G CAPITAL, LLC

**Note:**

The Registration has been fully discharged by the Transmitting Party noted above.

"THIS IS EXHIBIT " A " referred to in the Affidavit of  
Robert Kulhawy  
Sworn before me this 14th  
day of May A.D. 20 19  
[Signature]  
A Commissioner in and for the Province of Alberta

**End of Verification Statement**

Jasmin Dhaliwal  
A Commissioner for Oaths - Notary Public  
in and for the Province of Alberta.  
Member of the Law Society of Alberta and  
My Appointment Expires at the Pleasure of  
The Attorney General for the Province of Alberta

