

#medialawcamp 2016 Compliance

SimplePay GmbH

For the first few years, Ivan Innocent, managing director and CEO, and Wendy Wiser, managing director and CTO of Simplepay GmbH had every reason to believe their payment solutions company might become the next 'unicorn'. SimplePay offers businesses an easy-to-integrate technology to accept credit and debit card payments and most other payment methods in up to 120 currencies worldwide. Besides Ivan and Wendy, the company has several renowned investors as shareholders.

However, in 2015, things started going down the drain. SimplePay suffered several major security leaks and client confidence shrank dramatically. SimplePay had lost almost a third of its clients. The financial year 2015 closed with the net assets of SimplePay not even covering half of the 25,000 € share capital anymore.

Ivan and Wendy consulted Ivan's cousin in mid-June 2016, who happens to be an accountant. He told them that SimplePay does not have sufficient cash to pay its due invoices (utility bills and previous suppliers), which at that time amounted to 30,000 €. Furthermore, within the next two weeks their employees' wages of 15,000 € would become due and the week after the rent with another 5,000 €. Wendy suggested Ivan to file for insolvency, but Ivan reminded her of their responsibility for the employees and thought it best to make 'good use' of the three week period to file for insolvency. Ivan further noted that their biggest customer BuyStuffNow GmbH was due to pay them 50,000 € at the end of the month although he was not sure BuyStuffNow would have sufficient cash to pay the entire amount.

Wendy agreed to this approach, as the CEO was the boss and Wendy's responsibilities as CTO only related to IT questions.

In fact, on 30 June 2016, BuyStuffNow was only able to pay 30,000 € (25,210 € net amount plus VAT).

When the money arrived, the founders assembled their employees to inform them that the company was going through tough times but that the employees always came first and were to receive their wages on time that day, even if it meant to pay some of their suppliers a few days later. Later that day, SimplePay used 12,000 € of the money from BuyStuffNow to pay the net wages (but not social security) and used the remaining 18,000 € to pay the overdue utility bills.

In the evening, Ivan went to the birthday party of Peter, the head of sales of SimplePay. He gave Peter one of the company's spare MacBooks Pro as a gift as Peter had been a loyal employee from the outset. And at last year's birthday, Ivan had been too busy with work to buy him a gift. Peter thanked him for his generosity.

In September 2016, having finally filed for insolvency, Wendy received a call by MSupplies GmbH who had heard about the filing from another supplier and angrily demanded payment of an unpaid invoice. Wendy agreed to pay the invoice because MSupplies had been one of the first suppliers who had believed in them and she thought it better for the insolvency estate if at least one of the creditors had been satisfied and no longer had claims against the company. MSupplies gladly received the payment.

In October 2016, insolvency proceedings over the company's assets were formally opened.

How would you have acted in Ivan's and Wendy's place?