

FORCE FILED

No. S-235288
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C., 1985 c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF NEXTPOINT
FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: the Petitioners

To: the Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on November 17, 2023, at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. A Claims Process Order which, among other things:
 - (a) sets out a procedure for the identification and adjudication of claims against NPLM Holdco LLC, MMS Servicing LLC, LoanMe, LLC, LoanMe Funding, LLC, LoanMe Stores LLC, LM Retention Holdings, LLC, LM BP Holdings, LLC, InsightsLogic LLC and LM 2020 CM I SPE, LLC (collectively, "**LoanMe**") (the "**Claims Process**"); and
 - (b) approves a Claims Bar Date, as such term is defined in the Claims Process Order, of December 15, 2023 at 5:00 pm (Vancouver Time).
2. An Order substantially in the form attached as Schedule "B" hereto, which provides for an extension of the stay of proceedings to December 22, 2023.

3. Such further and other relief as the Petitioners may advise and this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. All capitalized terms used, but not otherwise defined herein have the meanings given to them in the ARIO, the First Affidavit of Peter Kravitz, sworn July 25, 2023, or the Sixth Affidavit of Peter Kravitz, to be sworn. All amounts are referenced in USD, unless otherwise stated.
2. The Petitioners provide financial and tax services for small businesses and consumers across Canada and the United States through the following three primary business lines:
 - (a) a tax preparation and settlement business, operated through Liberty Tax;
 - (b) a tax debt resolution service, operated through Community Tax; and
 - (c) a lending and loan marketing business, which previously operated through LoanMe, but which has been in the process of winding down since approximately June 2022.
3. The Petitioners are over-leveraged and have recurring operating losses, working capital deficiencies, and insufficient cash flow to meet their obligations. As of July 14, 2023, the Petitioners had an outstanding debt load of approximately \$283.5 million.
4. Pursuant to an order made July 25, 2023 (the "**Initial Order**"), the Petitioners were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and FTI Consulting Canada Inc. was appointed monitor (the "**Monitor**").
5. Also pursuant to the Initial Order, the Court appointed the CRO, granted an initial stay of proceedings and approved various priority charges.
6. The Petitioners sought recognition of the Initial Order in Delaware on July 26, 2023, in concurrent proceedings under chapter 15 of title 11 of the United States Bankruptcy Code (the "**Chapter 15 Proceedings**"). At a hearing on July 27, 2023, the Honorable Thomas M. Horan of the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") recognized the Initial Order.

7. On August 3, 2023, the Court made the ARIO which:
 - (a) extended the Stay Period to October 20, 2023;
 - (b) approved an increase to certain priority charges, including:
 - (i) increasing the Administration Charge from \$1,000,000 to \$2,000,000;
 - (ii) increasing the CRO Charge from \$500,000 to \$1,000,000;
 - (iii) increasing the D&O Charge from \$500,000 to \$2,000,000;
 - (c) clarified the priority of the Franchisee Lender Charge; and
 - (d) increased the DIP Facility to a maximum of \$25 million USD and the Interim Lender's Charge up to the maximum amount of \$25 million USD.
8. On August 3, 2023, the Court also made an order approving the Sales and Investment Solicitation Process (the "**SISP**"), including the Stalking Horse agreement, and approving the Restructuring Support Agreement (the "**RSA**").
9. On August 16, 2023, the US Bankruptcy Court entered an order recognizing and approving, among other relief, the SISP and the ARIO.
10. The Petitioners and Province marketed the Petitioners' assets and operations in accordance with the SISP.
11. The Petitioners did not receive any bids prior to the Phase 1 Deadline that had a reasonable prospect of culminating in a Qualified Bid (as defined in the SISP).
12. On September 11, 2023, the Petitioners terminated the SISP and notified the Service List and the parties that had submitted bids of this termination.
13. On September 19, 2023, the Court granted an Order which, among other things:
 - (a) added LM BP Holdings, LLC as a Petitioner in this Proceeding;
 - (b) approved the formula for calculating the transaction fee payable to the CRO in the event of an applicable transaction;

- (c) removed LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 (collectively, the "**LoanMe Income Trusts**") as Petitioners in this proceeding; and
 - (d) granted a limited stay of proceedings in relation to the LoanMe Income Trusts (the "**LoanMe Stay**") until the hearing of the next application.
14. On October 13, 2023, this Honourable Court granted an order amending and restating the ARIO (the "**Second ARIO**") which, among other things:
- (a) extended the Stay Period to November 20, 2023;
 - (b) extended the LoanMe Stay until the expiry of the Stay Period; and
 - (c) expanded the powers to be exercised by the CRO upon resignation of the Petitioners' boards of directors.
15. The Petitioners and the BP Lenders entered into a revised transaction agreement (the "**Transaction Agreement**"), which increased the consideration to be provided thereunder relative to the stalking horse purchase agreement (the "**SHPA**") and revised the structure to a "reverse vesting order" transaction.
16. On October 31, 2023, the Court granted an Order (the "**RVO**") which, among other things:
- (a) approved the Transaction Agreement pursuant to which BP Commercial Funding Trust, Series SPL-X acquired Liberty Tax and Community Tax through a reverse vesting order transaction;
 - (b) vested the non-acquired property of Liberty Tax and Community Tax in 1000694777 Ontario Limited and 100069477 USA LLC;
 - (c) provided releases for various parties, including, but not limited to, Liberty Tax, Community Tax, the Monitor, the CRO, the DIP Lender, the Purchaser and their respective legal counsel; and
 - (d) removed LoanMe Trust SBL 2019-1 from the definition of "**LoanMe Income Trusts**" in the Second ARIO, such that neither the LoanMe Stay nor any other Order of this Court is effective as against LoanMe Trust SBL 2019-1.

17. The Petitioners sought recognition of the RVO in concurrent proceedings under Chapter 15 Proceedings on November 6, 2023. There was an objection to the recognition that was filed by certain area developers, which was unable to be addressed in the available court time. At the hearing, the Honourable Judge Horan of the US Bankruptcy Court adjourned the hearing to December 11, 2023.
18. As a result of the delay in obtaining the recognition order from the US Bankruptcy Court in the Chapter 15 Proceedings, the transactions contemplated by the Transaction Agreement and approved by this Court in the RVO will not be implemented within the current Stay Period.
19. Since October 31, 2023, the Petitioners, with the assistance of the Monitor, among other things:
 - (a) have continued discussions with the BP Lenders and the CRO regarding the terms of a proposed plan of compromise and arrangement for specific Petitioners, namely LoanMe; and
 - (b) in consultation with key stakeholders, are working to finalize the terms of a plan of arrangement to be proposed to LoanMe's creditors.

The Claims Process

20. The steps for the implementation of the Claims Process are as follows:
 - (a) within four Business Days of the Claims Process Order, the Monitor shall:
 - i. cause the Newspaper Notice of Claims Process to be published in the Wall Street Journal for one Business Day; and
 - ii. post on the Monitor's Website copies of the Claims Process Order, the Claims Process Instruction Letter, a blank Proof of Claim form, a blank Notice of Dispute form, and the Newspaper Notice of Claims Process;
 - (b) by November 24, 2023, the Monitor shall send a Negative Notice Claims Package to all identified creditors of LoanMe (the "**Identified Creditors**"), using the negative claims process described below;

- (c) all Identified Creditors who wish to dispute their claims and all other creditors must submit a Proof Claim, by the Claims Bar Date which is 5:00 p.m. (Vancouver time) on December 15, 2023;
 - (d) LoanMe and the Monitor shall review the Proof of Claims and the Monitor, after consultation with LoanMe, shall send creditors a Notice of Revision or Disallowance advising the creditor that its claim has been revised or disallowed and the reasons therefor; and
 - (e) A creditor who has received a Notice of Revision or Disallowance and wishes to dispute it must, within 10 business days deliver a Notice of Dispute to the Monitor and LoanMe. The Monitor and LoanMe will work with the creditor to try and resolve any issues, and if that is unsuccessful, any creditor wishing to dispute their Notice of Revision or Disallowance must file an application with the Court within 15 days to determine the validity or quantum of the claim.
21. The Claims Process contemplates a negative claims process. The affected creditors of LoanMe have been identified by LoanMe, and the negative option will eliminate the need for the filing proofs of claim and supporting evidence for all known creditors.
22. In circumstances where a creditor is known to LoanMe but LoanMe is unable to make a reasonable assessment of the claim, the creditor will receive the claims package and will be required to prove their claim in accordance with the terms of the Claims Process Order.
23. Any creditor that does not receive a Claims Package and wishes to assert a claim relating to LoanMe may request a Claims Package from the Monitor and is required to file a Proof of Claim with the Monitor by the Claims Bar Date.

Extension of Stay

24. The Petitioners seek a 32 day extension of the Stay Period from November 20, 2023, until and including December 22, 2023.
25. The Petitioners require an extension of the Stay Period in order to implement the Transaction Agreement and implement the Claims Process for the creditors of LoanMe.

26. The Petitioners have been acting in good faith and with due diligence to maximize the return of value to its stakeholders through these proceedings and no creditor will be materially prejudiced by the extension of the Stay Period.
27. The Amended Cash Flow Forecast shows that no additional funding is required to cover the expenses of the Petitioners up to the end of the proposed Stay Period.

Part 3: LEGAL BASIS

1. The Petitioners rely generally on the CCAA, the *Supreme Court Civil Rules*, and the inherent and equitable jurisdiction of this Honourable Court.

Claims Process Order

2. The Court has the authority to grant an order providing for the administration and adjudication of claims pursuant to s. 11 of the CCAA. Section 11 of the CCAA vests the Court a broad and flexible authority to make such orders as are necessary to achieve the remedial objectives of the CCAA.
3. It is of fundamental importance to a debtor company engaged in restructuring under the CCAA, which may include a liquidation of its assets, to determine the quantum of liability to which it is subject. By establishing a claims-bar date, the company can determine the extent of claims and potential distribution to creditors, while creditors are better positioned to make an informed choice as to the alternatives presented to them.

Timminco Limited (re), 2014 ONSC 3393 at paras 41-43.

4. It is in the best interests of all stakeholders for the claims against LoanMe to be determined fairly and efficiently.
5. The claims process proposed is a “negative one”, meaning that where LoanMe has sufficient information to make a reasonable assessment of creditors’ claims, with the assistance of the Monitor, the creditors will receive claims packages indicating the amount of claims shown on LoanMe’s books and records as owing, which amount will be deemed to have been proven unless disputed.
6. The negative claims process will improve efficiency, affordability, and certainty. It will make it easier for all known creditor claims to be recognized and counted, while allowing for any

potential creditors who have not been identified by LoanMe to submit a claim in accordance with the Claims Process.

Extension of the Stay

7. Subsection 11.02(2) of the CCAA provides that the Petitioners may apply for an extension of the stay for a period that a court considers necessary on any terms that a court may impose. Subsection 11.02(3) of the CCAA provides that the Court shall not make the order extending the stay unless:

(a) the applicant satisfies the Court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the Court that the applicant has acted, and is acting, in good faith and with due diligence.

8. In determining whether the appropriate circumstances exist to extend the stay, the Court should inquire whether the order sought advances the remedial purpose of the CCAA.

North American Tungsten Corp. (Re), 2015 BCSC 1376 at para. 25.

9. The Court may grant a stay of proceedings to enable a company to conduct an orderly restructuring, even if that restructuring may not ultimately be as a going concern but a liquidation or wind down of the company's assets or business.

Target Canada Co. (Re), 2015 ONSC 303 at paras. 31-33

10. Extending the stay is appropriate and necessary to enable the Petitioners to commence the claims process for the creditors of LoanMe and to allow for the implementation of the Transaction Agreement approved by this Honourable Court pursuant to the RVO.

11. The Petitioners, with the assistance of the CRO and the Monitor, have been working in good faith and with due diligence to advance these proceedings in pursuit of a restructuring that will maximize value for their stakeholders. The Petitioners submit that, in these circumstances, it is necessary and appropriate that the stay be extended to December 22, 2023.

12. The Monitor supports the extension of the stay to December 22, 2023.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter Kravitz, made July 25, 2023;
2. Affidavit #6 of Peter Kravitz, to be sworn;
3. Fifth Report of the Monitor, to be filed; and
4. Any such further materials as counsel advises and this Honourable Court permits.

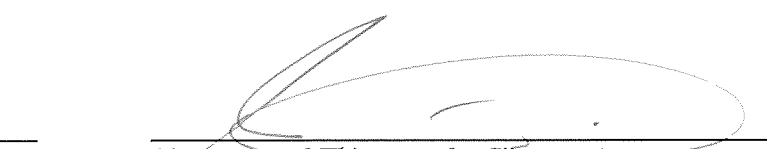
The applicants estimate that the application will take 2 hours.

This matter is not within the jurisdiction of a master. Madam Justice Fitzpatrick is seized of this matter. The date and time for this Application has been confirmed with Supreme Court Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

November 10, 2023
Dated _____



Signature of lawyer for filing party
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
Lawyer for the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____ Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

1. NextPoint Financial, Inc.
2. NPI Holdco LLC

Liberty Tax Entities

1. LT Holdco, LLC
2. LT Intermediate Holdco, LLC
3. SiempreTax+ LLC
4. JTH Tax LLC
5. Liberty Tax Holding Corporation
6. Liberty Tax Service, Inc.
7. JTH Financial, LLC
8. JTH Properties 1632, LLC
9. Liberty Credit Repair, LLC
10. Wefile LLC
11. JTH Tax Office Properties, LLC
12. LTS Software LLC
13. JTH Court Plaza, LLC
14. 360 Accounting Solutions, LLC
15. LTS Properties, LLC

Community Tax Entities

1. CTAX Acquisition LLC
2. Community Tax Puerto Rico LLC
3. Community Tax LLC

Loan Me Entities

1. NPLM Holdco LLC
2. MMS Servicing LLC

3. LoanMe, LLC
4. LoanMe Funding, LLC
5. LM Retention Holdings, LLC
6. LoanMe Stores LLC
7. LM BP Holdings, LLC
8. InsightsLogic LLC
9. LM 2020 CM I SPE, LLC

AB

Schedule "B" – List of Counsel

Name of Counsel	Party Representing
Lisa Hiebert	The Monitor
Mary Buttery, KC Marc Wasserman Dave Rosenblat	BasePoint
Lance Williams	First Century Bank, N.A.
Martin Sennott	Drake Enterprises Ltd.
David Gruber	TMI Trust Company
Kieran Siddall	Chilmark

Schedule "C"

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AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF NEXTPOINT
FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

ORDER MADE AFTER APPLICATION

))
))
BEFORE)	THE HONOURABLE MADAM)
)	JUSTICE FITZPATRICK)
))
))

November 17, 2023

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on November 17, and on hearing Jeffrey D. Bradshaw, Samantha Arbor and Lydia Huang, articulated student, counsel for the Petitioners and those other counsels listed in the attached Schedule "B";

THIS COURT ORDERS that:

1. The time for service of the Petitioner's Notice of Application dated November 10, 2023 is abridged such that this Application is properly returnable today.
2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Second Amended and Restated Initial Order of this Court, granted by the Honourable Justice Fitzpatrick on October 13, 2023 (the "**Second ARIO**").
3. The Stay Period set out in paragraph 23 of the Second ARIO is hereby extended up to and including December 22, 2023.
4. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

5. Endorsement of this order by counsels other than counsel for the Petitioner is hereby dispensed with.
6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners' proceedings under Chapter 15 of the Bankruptcy Code in Case No. 23-10983-TMH, or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Petitioners
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)

BY THE COURT

REGISTRAR

Schedule "A"

1. NextPoint Financial, Inc.

2. NPI Holdco LLC

Liberty Tax Entities

1. LT Holdco, LLC

2. LT Intermediate Holdco, LLC

3. SiempreTax+ LLC

4. JTH Tax LLC

5. Liberty Tax Holding Corporation

6. Liberty Tax Service, Inc.

7. JTH Financial, LLC

8. JTH Properties 1632, LLC

9. Liberty Credit Repair, LLC

10. Wefile LLC

11. JTH Tax Office Properties, LLC

12. LTS Software LLC

13. JTH Court Plaza, LLC

14. 360 Accounting Solutions, LLC

15. LTS Properties, LLC

Community Tax Entities

1. CTAX Acquisition LLC

2. Community Tax Puerto Rico LLC

3. Community Tax LLC

Loan Me Entities

1. NPLM Holdco LLC

2. MMS Servicing LLC

3. LoanMe, LLC

4. LoanMe Funding, LLC

5. LM Retention Holdings, LLC
6. LoanMe Stores LLC
7. LM BP Holdings, LLC
8. InsightsLogic LLC
9. LM 2020 CM I SPE, LLC

Schedule "B" – List of Counsel

Name of Counsel	Party Representing
Lisa Hiebert	The Monitor
Mary Buttery, KC Marc Wasserman Dave Rosenblat	BasePoint
Lance Williams	First Century Bank, N.A.
Martin Sennott	Drake Enterprises Ltd.
David Gruber	TMI Trust Company
Kieran Siddall	Chilmark

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ORDER MADE AFTER APPLICATION

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File No.: 109926-00007

SAA/day

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