



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(s) of Applicants: M&M Business Group, L.P., Mufeed Haddad, and Mike Budka

To: The Petitioners

And to: The Service List

TAKE NOTICE that an application will be made by the Applicants to the presiding judge or master at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Friday, the 1st day of December, 2023 at 9:45 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Orders setting aside the Notices of Disclaimer dated October 27, 2023 delivered to M&M Business Group, L.P., Mufeed Haddad, and Mike Budka.
2. A Declaration that the agreements listed below between the Petitioners and the Applicants have not been disclaimed or resiliated.
 - (a) Area Developer Agreement dated as of August 15, 2018 by and among JTH Tax, Inc. and M&M Business Group L.P. (Entity 2532).
 - (b) Area Developer Agreement dated as of February 28, 2014 by and among JTH Tax, Inc. and Mufeed Haddad (Entity 7700).
 - (c) Area Developer Agreement dated as of July 13, 2018 by and among JTH Tax, Inc. and Mike Budka and Mufeed Haddad (Entity 4711).

- (d) Area Developer Agreement dated as of August 15, 2018 by and among JTH Tax, Inc. and Mufeed Haddad (Entity 4693).
3. A declaration that the AD Agreements (as defined below) and the respective Existing Franchise Agreements (as defined below) are integrated transactions and that, to the extent the Debtors retain the Existing Franchise Agreements, the Debtors must continue to perform their obligations under the respective AD Agreements.
 4. A declaration that the Area Developers (as defined below) are entitled to continue to use the Intellectual Property notwithstanding the disclaimer or resiliation of the AD Agreements.

Part 2: FACTUAL BASIS

5. Applicants, M&M Business Group L.P., Mufeed Haddad, and Michael Budka (collectively, the “**Area Developers**”) are parties to the following area developer agreements identified in the attached Notices by Company to Disclaim or Resiliate an Agreement dated October 27, 2023 (see **EXHIBIT A** to the Affidavit of Mufeed Haddad sworn to November 14, 2023 (“**MH Aff.**”) accompanying this Application):
 - a. Area Developer Agreement dated as of August 15, 2018 by and among JTH Tax, Inc. d/b/a Liberty Tax Service (“**Liberty Tax**”) and M&M Business Group L.P. (Entity 2532);
 - b. Area Developer Agreement dated as of February 28, 2014 by and among Liberty Tax and Mufeed Haddad (Entity 7700);
 - c. Area Developer Agreement dated as of July 13, 2018 by and among Liberty Tax and Mufeed Haddad and Michael Budka (Entity 4711); and
 - d. Area Developer Agreement dated as of August 15, 2019 by and among Liberty Tax and Mufeed Haddad (Entity 4693) (collectively, the “**AD Agreements**”). Copies of the AD Agreements are attached to the MH Aff. as **EXHIBIT B**.
6. Pursuant to the AD Agreements, Liberty Tax licensed a system for the operation of tax return preparation offices within specified territories to the Area Developers. Each of the Area Developers paid a “fully earned” fee to Liberty Tax in exchange for the exclusive license to develop, service, and maintain Liberty Tax franchises within the specified territory.
7. In total, the Area Developers paid Liberty tax in excess of USD\$5.8 million of fees for the exclusive license rights under the AD Agreements (the “**License Fees**”). In addition to paying the License Fees to Liberty Tax, the Area Developers made substantial additional investments of time and money to (i) to market and develop new franchises within their specified territories and (ii) support and maintain the franchises they developed within their specified territories (collectively, the “**Development Services**”).

8. In consideration of the License Fees and the Development Services, Liberty Tax agreed to pay portions of certain franchise fees and royalties collected under the franchise agreements developed within the specified territory (the “**Royalty Payments**”) to the Area Developers.
9. To date, as a result of the Area Developers’ efforts, the Area Developers and Liberty Tax successfully developed seventy-five (75) franchises within their specified territories in California, West Virginia, Kentucky, Ohio, Indiana, and North Carolina (collectively, the “**Existing Franchise Agreements**”).
10. In accordance with the AD Agreements, Liberty Tax paid approximately USD\$650,000 of Royalty Payments to the Area Developers for fees and royalties collected under the Existing Franchise Agreements on an annual basis prior the filing of the present CCAA proceeding. Upon information and belief, the Existing Franchise Agreements will continue to generate approximately USD\$650,000 of annual Royalty Payments payable to the Area Developers in 2024 and beyond.
11. Upon information and belief, Liberty Tax is obligated to pay the Area Developers in excess of USD\$23,000 for fees and royalties collected under the Existing Franchise Agreements after filing the present CCAA proceeding.
12. Liberty Tax is in breach of its post-filing obligations to the Area Developers as a result of its failure to pay the pre-filing Royalty Payments owed to the Area Developers under the AD Agreements.
13. Pursuant to the Area Developer Agreements, Liberty Tax is obligated to continue to make the Royalty Payments to the Area Developers for the fees and royalties collected under the Existing Franchise Agreements *and any future franchise agreements* that come into existence in the specified territories covered by the AD Agreements.
14. In exchange for the License Fees and Development Services, Liberty Tax granted the Area Developers a perpetual right to renew the AD Agreements. The current terms of the AD Agreements run through 2024 with respect to one of the AD Agreements and 2028 with respect to three of the AD Agreements. Each of the AD Agreements provides that “[u]pon the completion of the Term of this Agreement, provided Area Developer is in compliance with the terms and conditions in this Agreement and all other Agreements with Liberty and Liberty’s affiliates, *Liberty will provide Area Developer with the right to enter into a new agreement with Liberty for the provision of services similar to those in this Agreement.*” Emphasis added.
15. Pursuant to the AD Agreements, Liberty Tax granted the Area Developers the right to use certain intellectual property and trade secrets belonging to Liberty Tax, including methods of operation, computer systems, software, and trademarks (collectively, the “**Intellectual Property**”).

16. Upon information and belief, Liberty Tax, the Area Developers, and the respective franchisees intended the Area Developers to be parties to the Existing Franchise Agreements. Upon information and belief, Liberty Tax and the Area Developers intended the Area Developers to be parties to any future franchise agreements arising in the territories covered by the AD Agreements.
17. In accordance with the parties' intentions, the Area Developers are deemed to be parties to the Existing Franchise Agreements.
18. On October 24, 2023, the Debtors filed an application seeking approval of a reverse vesting transaction. As set forth in the application, the Debtors sought approval of a reverse vesting transaction agreement pursuant to which (i) the proposed purchasers would purchase the equity interests of certain debtors and (ii) certain excluded contracts, excluded assets, and excluded liabilities would be transferred to a residual company. The application did not identify any excluded contracts or excluded liabilities and did not describe how the obligations under the AD Agreements or the Existing Franchise Agreements would be treated.
19. On October 27, 2023, the Debtors served the Notices of Disclaimer by first class mail.
20. On October 31, 2023, the same day of the hearing and after the objection deadline for the RVO application passed, the Debtors filed a supplemental declaration disclosing *for the first time* that the AD Agreements were excluded contracts that would be transferred to a residual company.
21. It is unclear how the Debtors propose to treat the AD Agreements in connection with the Notices to Disclaim. On the one hand, the Debtors sought to disclaim the AD Agreements prior to approval of the reverse vesting transaction, which suggests that the Debtors will remain obligated to perform the AD Agreements if the request to disclaim the AD Agreements is denied. On the other hand, the Debtors obtained approval of the reverse vesting transaction and identified the AD Agreements as excluded contracts, which suggests that the residual company, not the Debtors, will be obligated to perform the AD Agreements if the request to disclaim the AD Agreements is denied. However, the residual company does not have the assets or resources to perform the AD Agreements if the request to disclaim the AD Agreements is denied.
22. The Debtors' decision to disclaim the AD Agreements will impose substantial financial hardship on the Area Developers. The Area Developers paid in excess of USD\$5.8 million to Liberty Tax in order to obtain the rights granted to them under the AD Agreements. The Area Developers have retained two individuals whose sole functions are to develop additional franchises within their respective exclusive territories and support the franchisees under the Existing Franchise Agreements. The AD Agreements and the Royalty Payments are the primary assets of the Area Developers. The potential loss of the USD\$650,000 of annual Royalty Payments, the sole source of revenue for the Area Developers, will have a devastating effect on the ability of the Area Developers to continue business operations and will likely result in the termination of all employees, the

closure of their businesses, and substantial personal losses for the individuals, including the loss of Mr. Haddad's and Mr. Budka's entire retirement savings, the inability to support handicap/disabled family members, and the likely foreclosures on their homes in connection with approximately USD\$950,000 of loan obligations they incurred to pay the License Fees to Liberty Tax.

23. In contrast, the ongoing business operations of the franchisees under the Existing Franchise Agreements generate sufficient revenue to fund a profit for the Debtors (or any purchaser) while simultaneously paying the amounts owed to the Area Developers under the AD Agreements.
24. As set forth in the AD Agreements, the Debtors and the Area Developers are effectively co-owners of the fees and royalties payable under the Existing Franchise Agreements. The Debtors should not be able to transfer or retain that portion of the fees and royalties they conveyed to the Area Developers under the Franchise Agreements. It would be fundamentally unfair to allow the Debtors (or any purchaser) to reap the rewards of the Existing Franchise Agreements, that were developed with the funds and efforts of the Area Developers, without paying the Area Developers the amounts owed under the AD Agreements.

Part 3 LEGAL BASIS

Section 32 of the Company Creditors Arrangement Act, RSC 1985, c. 36

25. A Court may order that an agreement not be disclaimed on application by the counterparty to the contract.
26. The factors a Court may consider include:
 - (a) Whether the Monitor approved the disclaimer;
 - (b) Whether the disclaimer would enhance the prospect of a viable compromise or arrangement; and
 - (c) Whether the disclaimer would likely cause significant financial hardship to a party to the agreement.
27. The Applicants only recently received copies of the notices of disclaimer. The AD Agreements in question are fundamental to the revenue and income of the Applicants. The Applicants' business and personal finances would be destroyed if the disclaimers are allowed to stand.
28. The Debtors have sought to retain the benefits of the Existing Franchise Agreements. The Existing Franchise Agreements and the respective AD Agreements should be considered integrated transactions. The Debtors should not be able to retain the Existing Franchise Agreements without also retaining the AD Agreements.

29. Pursuant to the laws of the United States and Canada, in the event the Debtors are allowed to disclaim or resiliate the AD Agreements, the Area Developers should be entitled to continue to use the Intellectual Property as provided by the AD Agreements. Section 32(6) of the CCAA; Section 365(n) of the Bankruptcy Code.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit(s) of the Applicants, to be provided
2. the pleadings, Orders and Reports herein
3. the Affidavit of Mufeed Haddad and the Exhibits annexed thereto
4. the Third Report of the Monitor dated October 11, 2023
5. the Fourth Report of the Monitor dated October 27, 2023
6. the Notice of Application for an Order amending and restating the Amended and Restated Initial Order made August 3, 2023, dated October 10, 2023
7. the Affidavit of Peter Kravitz dated October 10, 2023
8. the Affidavit of Peter Kravitz dated October 30, 2023

The Applicants estimate that the application will take 90 minutes.


- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

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 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).

Dated at the City of Vancouver, in the Province of British Columbia, this 14 day of November, 2023.



 Lawson Lundell LLP
 Agents for solicitors for the Applicants

This Notice of Application is filed by William L. Roberts, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: wroberts@lawsonlundell.com; telephone number: 604-685-3456.

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
- other 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 Service 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

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"**

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: William L. Roberts