

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 December 18, 2023, at 10:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. An Order substantially in the form attached hereto as **Schedule "B"** which provides for an extension of the stay of proceedings to February 16, 2024.
2. 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 (as hereinafter defined), the First Affidavit of Peter Kravitz, sworn July 25, 2023 and the 8th Affidavit of Peter Kravitz, sworn December 14, 2023. 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 at July 14, 2023, the Petitioners had an outstanding debt load of approximately USD\$283.5 million.
4. Pursuant to an order made July 25, 2023 (the "**Initial Order**"), the Petitioners, NextPoint and certain subsidiaries, 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 Peter Kravitz, to act as the Chief Restructuring Office (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 Amended and Restated Initial Order (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. 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.
15. 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.
16. On October 31, 2023, the Court granted an Order (the "**RVO**") which, among other things:
  - (a) approved the Transaction Agreement for the acquisition of Liberty Tax and Community Tax through a reverse vesting order transaction; and
  - (b) vested the non-acquired property and liabilities of Liberty Tax and Community Tax in 1000694777 Ontario Limited and 100069477 USA LLC; 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.
17. The Petitioners sought recognition of the RVO in the concurrent Chapter 15 Proceedings on November 6, 2023. There was an objection to the recognition that was filed by certain parties to area developer agreements (the "**Area Developers**"), which could not be addressed in the available court time. At the hearing, the Honourable Judge Horan of the U.S. Bankruptcy Court continued the hearing to December 11, 2023.
18. In the intervening time, the Petitioners received one further objection from another area developer. Both objections have since been resolved and withdrawn.
19. On November 14, 2023, the Area Developers filed a Notice of Application in the within CCAA Proceedings seeking to set aside disclaimer notices related to their agreements. That application has since been adjourned generally by consent.

20. On November 17, 2023, the Court granted an extension of the Stay Period to December 22, 2023, and an Order (the “**Claims Process Order**”) which, among other things:
  - (a) set out a procedure for the identification and adjudication of claims against NextPoint, the LoanMe Entities, and the Remaining Entities (collectively, the “**Remaining Petitioners**”); and
  - (b) approved a claims bar date of December 15, 2023.
21. On November 21, 2023, the Area Developers filed an application for Leave to Appeal the RVO with our Court of Appeal. On November 29, 2023, the Area Developers abandoned their appeal by filing a Notice of Settlement or Abandonment with that court.
22. Since the last court application on November 17, 2023, the Petitioners, with the assistance of the Monitor, have, among other things:
  - (a) resolved the objections from the Area Developers in the Chapter 15 Proceedings, an appeal of the RVO in the British Columbia Court of Appeal and the objection to the disclaimer of the agreements of the Area Developers; and
  - (b) in consultation with key stakeholders, considered and advanced the windup of the Remaining Petitioners, including assessing potential options for the wind-up of the Remaining Petitioners.
23. On December 11, 2023, the US Bankruptcy Court entered an order recognizing and approving, among other relief, the RVO.
24. It is anticipated that the transactions contemplated by the Transaction Agreement will close the week ending December 22, 2023.

#### **Update on Claims Process**

25. The Claim Process Order made November 17, 2023 provides for a negative claim process. The Claims Bar Date is December 15, 2023, at which time, or shortly thereafter, the creditors of the Remaining Petitioners will be known.

### **Extension of Stay**

26. The Petitioners seek an extension of the Stay of Proceedings from December 22, 2023, until and including February 16, 2024.
27. The Petitioners require an extension of the Stay of Proceedings in order to implement the Transaction. The Petitioners anticipate proceeding with an application in January 2024 to (i) effect a distribution of the remaining asset following the closing of the Transaction Agreement to the Interim Lender (the "**Proposed Distribution**"); (ii) seek authorization to proceed with the wind-down of the Petitioners which remain following the closing of the Transaction Agreement; and (iii) terminate these proceedings.
28. The Petitioners have been acting in good faith and with due diligence to maximize the return of value to their stakeholders through these proceedings and no creditor will be materially prejudiced by the extension of the Stay of Proceedings.
29. 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.

### **Extension of the Stay**

2. 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.

3. 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.

4. 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

5. Extending the stay is appropriate and necessary to enable the Petitioners to allow for the implementation of the Transaction Agreement approved by this Honourable Court pursuant to the RVO, effect the Proposed Distribution and complete the wind-down the Remaining Entities.
6. 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 February 16, 2024
7. The Monitor supports the extension of the stay to February 16, 2024.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Peter Kravitz, made July 25, 2023;
2. Affidavit #8 of Peter Kravitz, made December 14, 2023; and
3. Sixth 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 1 hour.

- 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).

December 14, 2023  
Dated \_\_\_\_\_



\_\_\_\_\_  
 Signature of  lawyer for filing party  
 For 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

**SCHEDULE "B"**

Draft Order

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AND

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FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

**ORDER MADE AFTER APPLICATION**

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

December 18, 2023

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on December 18, 2023, and on hearing Jeffrey D. Bradshaw, 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 December 14, 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 February 16, 2024.
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:

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

BY THE COURT

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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**

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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**

<b>Name of Counsel</b>	<b>Party Representing</b>

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**ORDER MADE AFTER APPLICATION**

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SAA/day

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