



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 presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on September 19, 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"**:
 - (a) approving a transaction fee payable to the CRO to be calculated pursuant to the Success Fee Calculation (as defined below);
 - (b) removing the LM Income Trusts as Petitioners in these proceedings; and
 - (c) adding LM BP Holdings, LLC as a Petitioner in these proceedings.
2. Such further and other relief as 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 Amended and Restated Initial Order made August 3, 2023, or the 1st Affidavit of Peter Kravitz, sworn July 25, 2023 (the "**First Kravitz Affidavit**"). 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 have an outstanding debt load of approximately \$285 million.
4. Pursuant to an order (the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") made on July 25, 2023, 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. As part of the Initial Order, this Honourable Court approved a CRO Charge. However, the CRO Success Fee (as defined below) was subject to further approval by this Honourable Court.
6. On August 4, 2023, the Court amended and restated the Initial Order (the "**ARIO**") and:
 - (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.
7. Also on August 4, 2023, the Court granted an order approving the Sales and Investment Solicitation Process (the "**SISP**"), including the Stalking Horse agreement, and approving the Restructuring Support Agreement (the "**RSA**").
8. 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 Initial Order was recognized by the Honorable Thomas M. Horan of the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**").
9. On August 16, 2023, the US Bankruptcy Court entered an order recognizing and approving, among other relief, the SISP and the ARIO.

Sales Process Update

10. Pursuant to the SISP, the Petitioners entered into a sales process. Interested parties were required to:
- (a) enter into a non-disclosure agreement in in form and substance satisfactory to the Petitioners; and
 - (b) by September 4, 2023, submit a non-binding letter of intent to bid that:
 - (i) identified the potential purchaser; and
 - (ii) included a general description of the assets and/or business(es) of the Petitioners that would be the subject of the bid and that reflected a reasonable prospect of culminating in a Qualified Bid.
11. In accordance with the terms of the SISP, the Petitioners have, with the assistance of the CRO, *inter alia*:

- (a) proceeded to market and sell the Petitioners' property, in accordance with the SISP;
 - (b) researched and identified potentially interested parties including certain strategic buyers and financial buyers;
 - (c) prepared a process summary non-confidential information letter (the "**Teaser Letter**"), confidential information memorandum (the "**CIM**"), and confidentiality agreement (the "**Confidentiality Agreement**") with input from the Monitor and its legal counsel;
 - (d) contacted various parties by direct email to determine their interest in the SISP, including 112 financial sponsors and 46 strategic buyers, and provided them with a copy of the Teaser Letter, CIM, and Confidentiality Agreement;
 - (e) prepared and populated an electronic data site containing information on the Petitioners' assets and operations (the "**Data Room**") for prospective purchasers
 - (f) responded to over 25 diligence requests from potential investors and their advisors;
 - (g) obtained signed Confidentiality Agreements from 13 interested parties and provided those parties with access to the Data Room; and,
 - (h) held discussions with more than 10 prospective buyers.
12. The Petitioners and the Monitor received two non-binding indications of interest (the "**IOIs**"). However, in consultation with the CRO, the Monitor, and the BP Lenders, the Petitioners determined that neither of the IOIs had a reasonable prospect of culminating in a "Qualified Bid" (as defined in the Sale Process). This is because, to be a "Qualified Bid" under the SISP, the bid needed to, among other things, pay in full or assume the BP NP-Liberty Claims (unless the BP Lenders agreed to waive this requirement). After discussions with the Monitor and DIP Lenders, the CRO concluded that neither IOI had a reasonable prospect of meeting this requirement for the Qualified Bid Deadline.
13. Accordingly, the Petitioners terminated the SISP and, on September 11, 2023, notified the IOI parties and the service list of this termination.

14. The Monitor's legal counsel is reviewing the security that forms the credit bid, including:
- (a) the Interim Lenders' Charge;
 - (b) the first ranking secured interest over the Liberty Tax assets held by the BP Lenders under the NP/LT Credit Agreement; and
 - (c) the first ranking secured interest over the Community Tax assets held by Drake Enterprises under the Drake Debt;

to confirm that, subject to the standard and customary qualifications, assumptions and limitations, the security of the BP Lenders and Drake over the assets, property and undertakings is valid and enforceable.

15. Given that the SISP did not result in any Qualified Bids, the Petitioners anticipate seeking further orders to close on the Stalking Horse Transaction and are seeking court dates with Court Scheduling to have those matters heard, the sale approved and the vesting order granted.

DIP Financing Update

16. The cash flow forecast provided by the Petitioners, and prepared with the assistance of Province, show a positive variance in the Petitioners' cash flow. The Petitioners are therefore not seeking an increase to the borrowings under the DIP Facility, nor seeking to increase the Interim Lender's Charge.

CRO Success Fee

17. As noted at the initial hearing, the compensation package for the CRO included a transaction fee payable at the discretion of the NextPoint board of directors (the "**Board**"). Pursuant to the ARIO, this transaction fee is subject to approval by this Honourable Court.
18. In the course of the SISP, the Compensation Committee of the Board and the CRO negotiated and discussed the quantum of the CRO Success Fee. After evaluating market compensation packages for success fees in similar engagements, on August 16, 2023, the Compensation Committee and the CRO arrived at the following calculation for the transaction fee payable to the CRO:

- (a) the greater of \$500,000 or 0.3% of the Credit Bid; or
 - (b) 0.4% of the total consideration pursuant to the Successful Bid (other than the Stalking Horse Transaction),
- subject to a maximum payment of \$1,000,000 (the "**Success Fee Calculation**").

19. The Board approved the Success Fee Calculation in a resolution passed August 21, 2023.

The Chicago Lease

20. Community Tax LLC had a lease with Marc Realty (the "**Chicago Landlord**") for office space in Chicago (the "**Chicago Lease**"). In order to enhance the prospects of a viable sale, the Petitioners, in consultation with the CRO and the Monitor, determined that it was necessary to issue a Disclaimer Notice to the Chicago Landlord for the Chicago Lease. The Disclaimer Notice was served on August 31, 2023 and will be effective on September 30, 2023. Community Tax LLC had fully vacated the premises as of August 31, 2023.

LM BP Holdings, LLC

21. LM BP Holdings, LLC is one of the LoanMe companies who is not a petitioner in these proceedings, but appears on the NextPoint organizational chart attached to the First Kravitz Affidavit as Exhibit "A".

22. The Petitioners were unable to file LM BP Holdings, LLC into the CCAA proceeding as LM BP Holdings, LLC was subject to a forbearance agreement with BasePoint that prevented the filing. BasePoint has now consented to LM BP Holdings, LLC's inclusion in these proceedings for the purposes of winding down LM BP Holdings, LLC with the other LoanMe Entities.

23. The Petitioners seek to add LM BP Holdings, LLC as a Petitioner to these proceedings and amend the style of cause to reflect such change.

LoanMe Income Trusts

24. Two entities in these proceedings, LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 (collectively, the "**LM Income Trusts**") are statutory trusts created under the provisions of the Delaware Statutory Trust Act.

25. The LM Income Trusts are unincorporated entities that hold various performing LoanMe loans and pay out regular distributions to investors who have bought trust units.
26. The Petitioners are requesting that the LM Income Trusts be removed as petitioners from these proceedings.
27. To the Petitioners' knowledge, no party has objected to, or been adversely affected by, the inclusion of the LM Income Trusts in these proceedings.
28. As a significant unitholder of the LM Income Trusts (100% of 2019, approx. 30% of 2018), the Petitioners and their creditors benefit from any value that can be derived from them. The BP Lenders have requested that certain limited relief be granted that would protect the assets and portfolios of the LM Income Trusts and prevent third parties from taking enforcement steps, proceedings, or actions based solely on the filing of the Petitioners for protection of the CCAA.
29. Given that the trusts are being removed from the CCAA, the Petitioners, at the request of the BP Lenders, seek a limited stay over the trust assets and portfolios with respect to defaults triggered by the CCAA filing or the Petitioners' insolvency.
30. The Petitioners are reaching out to the owner trustees prior to the hearing of this application, and will advise if any trustee raises issues or concerns with the application of the limited relief.

Part 3: LEGAL BASIS

The CRO Success Fee

1. When considering whether proposed charges are appropriate, Canadian courts consider, among other things:
 - (a) the size and complexity of the businesses being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;

- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

Canwest Publishing Inc., 2010 ONSC 222, at para 54.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107, at para. 42.

2. The Petitioners submit that the Success Fee, and proposed fee payable to the CRO, is reasonable in the circumstances because:

- (a) the Petitioners' assets and operations, and the ensuing Sales Process, are significantly complex to justify the proposed compensation;
- (b) there is no unwarranted duplication of roles between the CRO, Province, and the Monitor. While these professionals have coordinated their efforts to effect the most beneficial restructuring and sales process of the Petitioners, each had a distinct focus within the process so as not to duplicate their efforts;
- (c) NextPoint's Board and Compensation Committee have reviewed similar compensation packages and determined that the Success Fee Calculation is consistent with compensation structures approved in other similarly complex insolvency proceedings; and
- (d) the secured creditors likely to be affected by the CRO Success Fee have approved the Success Fee Calculation, have been given notice and do not oppose the relief.

Adding LM BP Holdings

3. The Petitioners rely upon:

- (a) the CCAA;
- (b) the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, as amended (the "Civil Rules");
- (c) the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "BCBCA");
- (d) the *Business Corporations Act*, R.S.O. 1990, c. B. 16 (the "Ontario BCA");

- (e) the *Interpretation Act*, R.S.B.C. 1996 c. 238 (the "BC Interpretation Act");
 - (f) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA");
 - (g) the inherent jurisdiction of this Honourable Court; and
 - (h) such further and other legal basis as counsel may advise and this Honourable Court may allow.
4. Pursuant to section 11 of the CCAA, this Honourable Court may make any order that it considers appropriate in the circumstances with or without notice to any person as this Honourable Court may see fit.
5. The CCAA applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies is more than \$5M.

CCAA, ss. 2, 3.

6. The threshold for a debtor company to obtain a stay of proceedings under the CCAA is low. The company only has to satisfy the Court that a stay of proceedings would "usefully further" its efforts to reorganize.

Ted Leroy Trucking [Century Services] Ltd., Re, 2010 SCC 60 at para. 70.

7. The inclusion of LM BP Holdings enhances the CCAA - and permits the Petitioners to effect the orderly wind up of the LoanMe Entities *en bloc*.

Disclaiming of Contracts

8. Section 32 of the CCAA permits a debtor company to disclaim or resiliate any agreement to which the company is a party on notice given to the other parties to the agreement and the Monitor. The company may not give notice unless the Monitor approves the proposed disclaimer.

CCAA, s. 32(1).

9. The Chicago Lease has been disclaimed in these proceedings with the approval of the Monitor.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter Kravitz, made July 25, 2023;
2. Affidavit #3 of Wen-Shih Yang, made September 13, 2023;
3. First Report of the Monitor, filed August 2, 2023;
4. Second Report of the Monitor (to be filed); and
5. Any such further materials as counsel advises and this Honourable Court permits.

The applicants estimate that the application will take 2 hours.

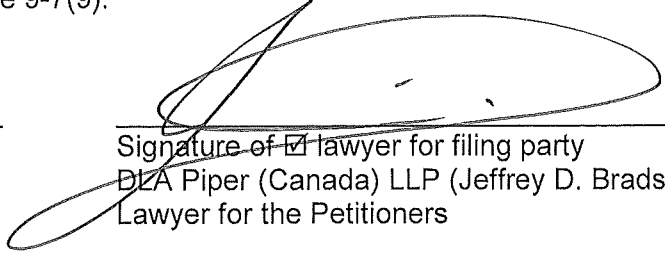
- This matter is not within the jurisdiction of a master. Justice Fitzpatrick is seized of this matter.

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).

September 13, 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

16. CTAX Acquisition LLC
17. Community Tax Puerto Rico LLC
18. Community Tax LLC

LoanMe Entities

19. NPLM Holdco LLC

20. MMS Servicing LLC
21. LoanMe, LLC
22. LoanMe Funding, LLC
23. LM Retention Holdings, LLC
24. LoanMe Trust Prime 2018-1
25. LoanMe Trust SBL 2019-1
26. LoanMe Stores LLC
27. InsightsLogic LLC
28. LM 2020 CM I SPE, LLC

SCHEDULE "B"

No. S-235288
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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 JUSTICE)
)	FITZPATRICK)
))
))

September 19, 2023

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, B.C. on this date; AND ON HEARING Jeffrey D. Bradshaw, Samantha Arbor and Sean Gillis, articulated student, and those other counsel listed on Schedule "B" hereto; AND UPON READING the material filed, including the first affidavit of Peter Kravitz sworn July 25, 2023, the third affidavit of Wen-Shih Yang sworn September 13, 2023, the First Report of FTI Consulting Canada Inc. (the "**Monitor**"), in its capacity as monitor of the Petitioners, dated August 2, 2023, and the Second Report of the Monitor dated September ____, 2023; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules, BC Reg 168/2009, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged and this application is properly returnable today and hereby dispenses with further service thereof.
2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court dated August 3, 2023.
3. LM BP Holdings, LLC is added as a Petitioner in this proceeding and all prior Orders made herein shall apply *nunc pro tunc* to LM BP Holdings, LLC, as if it had been a Petitioner from commencement.
4. LM BP Holdings, LLC shall be added as a Petitioner to the Schedule "A" of the style of cause in these proceedings.
5. LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 shall be removed as Petitioners in this proceeding and all previous Orders made herein shall be of no force and effect.
6. LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 shall be removed as Petitioners from the Schedule "A" of the style of cause in these proceedings.
7. The Success Fee Calculation in the amount of:
 - (a) the greater of \$500,000 or 0.3% of the Credit Bid; or
 - (b) 0.4% of the total consideration pursuant to the Successful Bid (other than the Stalking Horse Transaction),subject to a maximum payment of \$1,000,000; is hereby approved.
8. During the Stay Period, no Proceeding shall be commenced or continued against or in respect of LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 (collectively, the "**LoanMe Income Trusts**"), or any of their current and future assets, business, undertaking and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**LoanMe Trust Property**"), and together

with the Trust portfolios, the "**Trust Portfolios and Property**") including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements, and no default or event of default shall have occurred or be deemed to have occurred under any such agreement or agreements, by reason of:

- (a) The insolvency of the Petitioners;
- (b) Any of the Petitioners having made a petition to this Court under the CCAA;
- (c) Any of the Petitioners being party to these proceedings;
- (d) Any of the Petitioners taking any step related to these proceedings; or
- (e) Any default or cross-default arising from the matters set out in subparagraphs (a), (b), (c) or (d) above
(collectively, the "**Petitioner Default Events**").

9. During the Stay Period, all rights and remedies of any Person against or in respect of the LoanMe Income Trusts, or affecting the Trust Portfolios and Property, as a result of a Petitioner Default Event, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.
10. This Order shall have full force and effect in all provinces and territories in Canada.
11. Endorsement of this Order by counsel appearing on this application other than the counsel for the Petitioners is hereby dispensed with.

12. 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.
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11. JTH Tax Office Properties, LLC
12. LTS Software LLC
13. JTH Court Plaza, LLC
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SCHEDULE "B"

List of Counsel Appearing

Name of Counsel	Party Representing

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SAA/day

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