

Court of Appeal File No. CA49489

Supreme Court File No. S-235288

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Justice Fitzpatrick, of the Supreme Court of British Columbia, pronounced October 31, 2023

BETWEEN:

M&M BUSINESS GROUP, L.P., MUFEED HADDAD and MIKE BUDKA

APPELLANTS
(RESPONDENTS)

AND:

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

RESPONDENTS
(PETITIONERS/APPLICANTS)

AND:

FTI CONSULTING CANADA INC., FIRST CENTURY BANK, N.A., BASEPOINT, DRAKE ENTERPRISES LTD., FRONTIER CAPITAL GROUP LTD., CHILMARK ADMINISTRATIVE LLC, TMI TRUST COMPANY, CMB TAX SERVICE, LLC, and HIS MAJESTY THE KING IN RIGHT OF CANADA

RESPONDENTS
(RESPONDENTS)

MEMORANDUM OF ARGUMENT OF NEXTPPOINT FINANCIAL, INC., AND THOSE PARTIES LISTED ON SCHEDULE "A" ON THE RESPONDENTS' URGENT APPLICATION FOR CASE MANAGEMENT

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MEMORANDUM OF ARGUMENT

1. On October 31, 2023, Justice Fitzpatrick made an order (the “**Order**”) granting a reverse vesting order in the proceedings in the court below, which, among other things, approved the transaction detailed below.
2. M&M Business Group, L.P., Mufeed Haddad and Mike Budka (collectively, the “**Appellants**” or the “**Area Developers**”) sought leave to appeal the Order on November 21, 2023 (the “**Appeal**”).
3. The applicants, the NextPoint Group and 26 other petitioners listed on Schedule “A” (collectively, the “**Applicants**” or the “**NextPoint Group**”) apply for an urgent referral to case management pursuant to Rule 47(1) and 48(1) of the *Court of Appeal Rules*, B.C. Reg. 120/2022 to set a timeline for the appeal process.

Background

4. The background to these proceedings is set out in the Fifth Report to Court of the Receiver, dated November 16, 2023 (the “**Fifth Report**”).
5. On July 25, 2023, the Applicants were granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) in the Supreme Court of British Columbia Action No. S-235288, Vancouver Registry (the “**CCAA Proceedings**”).
6. On July 27, 2023, the Applicants obtained orders in the United States Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”) under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) recognizing the CCAA Proceedings as a foreign main proceeding and granting certain additional provisional relief related to the recognition of the Initial Order.
7. On August 3, 2023, the Supreme Court of British Columbia granted:
 - (a) an amended and restated Initial Order which, among other things, extended the Stay of Proceedings and increased the amounts of certain priority charges granted in the Initial Order; and
 - (b) an order (the “**SISP Order**”) approving, among other things, a restructuring support agreement among the NextPoint Group and certain of its lenders, and a sales and investment solicitation process, including a stalking horse purchase agreement among certain of the NextPoint Group and certain of their secured lenders (the “**Purchasers**”).
8. The sales and solicitation process approved by the SISP Order contemplated a closing of a transaction to purchase certain of the assets of the NextPoint Group, either by the

Purchasers or by a third party if another offer was received, by the end of September, 2023.

9. No offer that had a reasonable prospect of culminating in a qualified bid was received by the deadline set in the SISP Order, and the sales and investment solicitation process was terminated by the NextPoint Group on September 11, 2023. The stalking horse bid was determined to be the successful bid. Following additional due diligence by the Purchasers, the NextPoint Group and the Purchasers determined that certain licences and agreements were non-transferrable to the Purchasers, and that a reverse vesting order was required to effect the contemplated purchase (the “**Transaction**”).
10. On October 31, 2023, the Supreme Court of British Columbia granted the Order which, among other things, approved the purchase of certain of the Applicants by the Purchasers. The Order approved the form of Transaction which required the use of a reverse vesting order. The reverse vesting order was required because of non-transferrable licenses, contracts, and the payroll system that are required in order to operate the business. The Transaction allows the business to continue after the purchase, benefiting all stakeholders, including the NextPoint Group’s current employees and existing franchisees.
11. The restructuring support agreement requires that the Order be recognized by the U.S. Bankruptcy Court in the concurrent Chapter 15 Proceedings. In the Chapter 15 Proceedings, on October 16, 2023, the NextPoint Group filed a motion for recognition of the vesting order, to be heard on November 6, 2023, by the U.S. Court.
12. On October 31, 2023, the Area Developers filed an objection to the recognition of the Order in the Chapter 15 Proceedings. However, the objection could not be addressed in the time available for the hearing on November 6, 2023. The recognition motion has been continued to December 11, 2023. As a result of the delay, the Transaction could not be completed as scheduled.
13. On November 17, 2023, the Supreme Court of British Columbia granted an order, among other things, extending the stay of proceedings in the CCAA Proceeding to December 22, 2023, to allow for the recognition hearing in the Chapter 15 Proceedings on December 11, 2023. The NextPoint Group’s current cash flow projections indicate that any further extension will require additional financing.
14. On November 21, 2023, the Area Developers filed their application for leave to appeal the Order.

The Application for Case Management

15. The current scheduled date for the hearing of the Appeal in the CCAA Proceedings is December 14, 2023. The Applicants submit that there will be prejudice to the myriad

stakeholders if the Appeal does not proceed in a manner that preserves the U.S. recognition hearing on December 11, 2023, including:

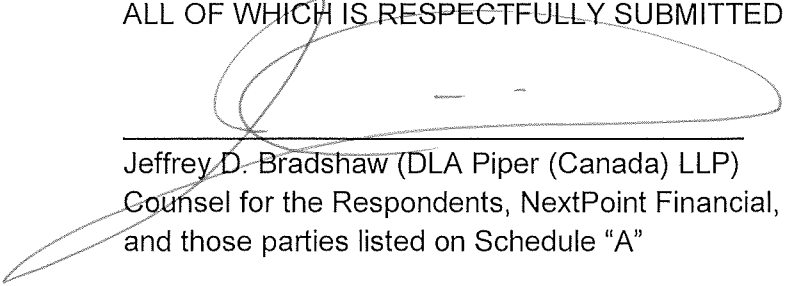
- (a) the NextPoint Group is running out of their current debtor in possession financing and only have sufficient funding to a short time after the current stay period, which is set to expire on December 22, 2023;
 - (b) the delay is preventing closing, as recognition is a condition to closing, and this is potentially imperiling the Transaction;
 - (c) the recognition hearing in the Chapter 15 Proceedings has already been delayed by over a month due to an objection filed in the Chapter 15 Proceedings by the Area Developers and the U.S. Bankruptcy Court's limited availability;
 - (d) the tax preparation business is seasonal and starts in earnest in January, and the Purchasers need to be in control of the business as soon as possible to make preparations for the coming cycle or risk significant operational challenges; and
 - (e) the recognition hearing in the Chapter 15 Proceedings is subject to a scheduling order that will require further orders of the U.S. Bankruptcy Court to adjust. The U.S. Bankruptcy Court and this Court have extremely limited time available before the holiday break.
16. Counsel for the NextPoint Group has attempted to coordinate an expedited timeline for the hearing of the Appeal. However, counsel for the Appellants and the NextPoint Group have been unable to agree on dates for any expedited hearing of the leave application and, if leave is granted, the Appeal.

ORDER SOUGHT

17. The NextPoint Group seeks an order:
- (a) for case management of the Appeal; and
 - (b) setting the following timelines for the Appeal:
 - (i) the Respondents will file and serve their response to the Appellants' application for leave to appeal by Monday, November 27, 2023;
 - (ii) the Appellants will file and serve their materials for the Appeal by Thursday, November 30, 2023;
 - (iii) the Respondents will file and serve their response materials for the Appeal by Monday, December 4, 2023; and

- (iv) the leave application will be heard on Wednesday, December 6, 2023, and, if leave is granted, the hearing of the Appeal will be thereafter on December 6, 2023.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Jeffrey D. Bradshaw (DLA Piper (Canada) LLP)
Counsel for the Respondents, NextPoint Financial, Inc.
and those parties listed on Schedule "A"

Schedule "A"

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

Liberty Tax Entities

3. LT Holdco, LLC
4. LT Intermediate Holdco, LLC
5. SiempreTax+ LLC
6. JTH Tax LLC
7. Liberty Tax Holding Corporation
8. Liberty Tax Service, Inc.
9. JTH Financial, LLC
10. JTH Properties 1632, LLC
11. Liberty Credit Repair, LLC
12. Wefile LLC
13. JTH Tax Office Properties, LLC
14. LTS Software LLC
15. JTH Court Plaza, LLC
16. 360 Accounting Solutions, LLC
17. LTS Properties, LLC

Community Tax Entities

18. CTAX Acquisition LLC
19. Community Tax Puerto Rico LLC
20. Community Tax LLC

LoanMe Entities

21. NPLM Holdco LLC
22. MMS Servicing LLC
23. LoanMe, LLC
24. LoanMe Funding, LLC
25. LM Retention Holdings, LLC
26. LoanMe Stores LLC
27. LM BP Holdings, LLC

28. InsightsLogic LLC
29. LM 2020 CM I SPE, LLC