



No. S-209798
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 CREDITLOANS CANADA FINANCING INC. and
CREDITLOANS CANADA CAPITAL INC.

PETITIONERS

REQUISITION – GENERAL

Filed by: The Petitioners

Required: To reschedule the hearing of the Notice of Application filed by the Petitioners on October 9, 2020 (copy attached) from October 9, 2020 to **November 24, 2020 at 9:00 a.m.** at the courthouse at 800 Smithe Street, Vancouver, British Columbia, by consent.

Time reserved for hearing: 1 hour

To be heard before Madam Justice Fitzpatrick

Nature of application: The Petitioners are seeking a critical supplier order.

Date: November 18, 2020

Signature of Lawyer for the Petitioners
H. Lance Williams / Jared Enns
(Cassels Brock & Blackwell LLP)



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NOTICE OF APPLICATION

Names of applicants: The Petitioners, Creditloans Canada Financing Inc. ("**Progressa**" or "**Financing Inc.**") and Creditloans Canada Capital Inc. ("**Capital Inc.**" and together with Financing Inc., the "**Petitioners**" or the "**Applicants**")

To: Lendesk Technologies ULC and to the Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on October 9, 2020 at 11:30 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order declaring Lendesk Technologies ULC ("**Lendesk**") to be a critical supplier to Progressa pursuant to section 11.4 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), substantially in the form attached hereto as **Schedule "B"**.
2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Overview

1. All capitalized terms used and not otherwise defined herein have the same meaning as given to them in the Petition dated September 29, 2020.
2. Progressa is a financial technology company primarily engaged in originating and servicing consumer loans to individuals unable to secure loans from traditional lenders. Progressa funds the loans it originates by entering into Loan Purchase Agreements with certain Loan Funders. Progressa services the loans in accordance with the Loan Purchase Agreements between Progressa and the applicable Loan Funder.

3. Since at least 2015, Progressa has utilized certain Customer Relationship Management (or "**CRM**") software provided by Lendesk in its operations. The Lendesk CRM software used by Financing Inc. houses all of Progressa's loan applications, facilitates online access to Trans Union credit reports (which are critical to Progressa's underwriting criteria), manages email communications with borrowers, receives and stores loan application documentation (i.e., bank statements, copies of photo identification, pay stubs, etc.) and manages loan agreements. The Lendesk platform is also integrated with Progressa's loan funding software. As such, the Lendesk CRM software is critical to Progressa's ongoing operations as these services are essential to the origination of new loans and the servicing of existing loans.
4. In or around November 2019, Progressa made the decision to transfer to an alternative CRM system provided by Salesforce.com, Inc. ("**Salesforce**"). Salesforce offers a more mature CRM platform, with a richer set of features that Progressa's management felt would provide better scalability and function than what was available from Lendesk's platform.
5. In December 2019, Progressa gave six months' notice to Lendesk of Progressa's intention to terminate the CRM Contract, to be effective June 2020. At the time notice was given, it was expected that the migration to the Salesforce platform would take approximately four months.
6. Due to the cash flow limitations it was facing, Progressa hired a less experienced consulting firm to assist it with the transition to Salesforce's CRM system. Unfortunately, the time estimates provided by the consulting firm for that transition proved to be unrealistic and the date for the migration has repeatedly been pushed back. In April 2020, Progressa requested that termination of its access to the Lendesk software be delayed until July 2020. Lendesk agreed to this extension. On or about August 3, 2020, a further delay until September 2020 was sought, and again Lendesk agreed to this extension.
7. On September 30, 2020, Lendesk agreed to a final extension until December 1, 2020.
8. Progressa's migration to the Salesforce CRM platform is approximately 80% complete and management understands that that migration can be completed by the end of 2020. It would not be possible for Progressa to transition from the Lendesk platform to another CRM provider any sooner.
9. On September 30, 2020, Madam Justice Fitzpatrick granted an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). BDO Canada Limited was appointed as monitor (the "**Monitor**") pursuant to the Initial Order.
10. The Initial Order, amongst other things, imposed a stay of proceedings in favour of the Petitioners (the "**Stay of Proceedings**") until the return date of October 9, 2020, and ordered that all Persons having oral or written agreements with the Petitioners for the supply of services, including all computer software, communication and other data services, are restrained until further order of this Court from discontinuing, alternating, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners.
11. On October 2, 2020:

- (a) Madam Justice Fitzpatrick granted the ARIO; and
 - (b) Lendesk threatened to cut off access to its CRM platform unless its outstanding invoices were paid.
12. On October 7, 2020, the Petitioners filed a Notice of Application to be heard at the Comeback Hearing scheduled for 10 a.m. on Friday, October, 9, 2020.
 13. On October 8, 2020, Lendesk advised that unless the sum of \$45,000 was paid to it by wire transfer or equivalent by 5 p.m. Vancouver time on Friday, October 9, 2020, it would immediately suspend all of Progressa's user access for the CRM system until such time as Lendesk was able to confirm that payment had reached its bank account. Lendesk also sought to impose payment arrangements to recover pre-filing amounts which remain outstanding, notwithstanding the Stay of Proceedings.
 14. The Petitioners seek a declaration that Lendesk is a critical supplier [and authorization to make the immediate payment of the sum of \$30,000 to Lendesk on account of post-filing provision of access to the Lendesk CRM software for the months of October, November and December 2020], in order to continue to operate Progressa's business, particularly its consumer lending operations.
 15. Absent the ability to originate new loans and service existing loans, Progressa will be unable to generate income, threatening its continued operation.
 16. The Petitioners have access to adequate funds to pay the anticipated amounts owing to Lendesk in respect of services to be provided during the months of October, November and December.

Part 3: LEGAL BASIS

1. The Petitioners rely on:
 - (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended;
 - (b) *Supreme Court Civil Rules*;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. Section 11.4(1) and (2) of the CCAA provides:
 - (1) *On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.*
 - (2) *If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court tot eh*

company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

3. In circumstances where no charge is sought pursuant to section 11.4(3) of the CCAA, no additional notice is required. The absence of a request for a charge is not contrary to the language or purpose of section 11.4. In any case, the court may in fact be left to rely on its inherent jurisdiction: *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4286 at para 43.
4. The Petitioners seek an order authorizing Progressa to pay [the sum of \$10,000 per month] to Landesk for ongoing supply of its CRM software during the months of October, November and December.
5. In determining what is fair and appropriate in the circumstances, the court must consider whether the order sought advances the policy objectives underlying the CCAA.

“The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.”

Soccer Express Trading Corp. (Re), 2020 BCSC 749 at para 66,
citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70

Part 4: MATERIAL TO BE RELIED ON

1. Third Affidavit of Nathan Slee, made October 9, 2020.
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicants estimate that the application will take 30 minutes.


The Honourable Madam 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).

Date: October 9, 2020



Signature of 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

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

SCHEDULE A

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PETITIONERS

SERVICE LIST

Updated: October 9, 2020

<p>McMillan LLP Royal Centre, Suite 1500, 1055 West Georgia St. Vancouver, BC V6E 4N7</p> <p>Attention: Vicki Tickle Daniel Shouldice Julie Hutchinson</p> <p>Tel: 236-826-3022 Email: vicki.tickle@mcmillan.ca daniel.shouldice@mcmilla.ca Julie.Hutchinson@mcmillan.ca</p> <p><i>Counsel for Creditloans Canada Financing Inc. and Creditloans Canada Capital Inc.</i></p>	<p>BDO Canada LLP 1600 - 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Jervis Rodrigues Ilya Margulis</p> <p>Tel: 604-688-541 Fax: 604-688-5132 Email: jrodrigues@bdo.ca imargulis@bdo.ca</p> <p><i>The Monitor</i></p>
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<p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson</p> <p>Tel: 604-631-4786 Email: kjackson@fasken.com</p> <p><i>Counsel for the Monitor</i></p>	<p>Stikeman Elliot LLP 1700 – 666 Burrard Street Vancouver, BC V6C 2X8</p> <p>Attention: Victor Gerchikov Karen Fellowes</p> <p>Email: vgerchikov@stikeman.com kfellowes@stikeman.com</p> <p><i>Counsel for ACF Financial Limited Partnership</i></p>
<p>Blake, Cassels & Graydon LLP 2600 – 595 Burrard Street Vancouver, BC V7X 1L3</p> <p>Attention: Peter Rubin/Morgan Crilly</p> <p>Email: peter.rubin@blakes.com morgan.crilly@blakes.com</p> <p><i>Counsel for the Interim Lender, JWC Opportunities Fund Inc.</i></p>	<p>Edwards, Kenny & Bray LLP 1900 – 1040 West Georgia Street Vancouver, BC V6E 4H3</p> <p>Attention: Fraser Hartley</p> <p>Email: fhartley@ekb.com</p> <p><i>Counsel for CHP Master I Limited Partnership and CHP ALT Credit Limited Partnership</i></p>
<p>Borden Ladner Gervais LLP 1200 – 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention : Lisa Hiebert</p> <p>Email : lhiebert@blg.com</p> <p><i>Counsel for Health Smart Financial Services Inc.</i></p>	<p>Merchant Opportunities Funds Limited Partnership 20 – 1500 West Georgia Street Vancouver, BC V6G 2Z6</p> <p>Attention: David Gens</p> <p>Email: david.gens@merchantgrowth.com</p>
<p>Bondholders</p> <p>Via email</p>	<p>FirePower Capital 200 – 47 Front Street East Toronto ON M5E 1B3</p> <p>Attention: Stella Millis</p> <p>Email: smillis@firepowercapital.com</p>

SCHEDULE B

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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
) 9 OCTOBER 2020
MADAM JUSTICE FITZPATRICK)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 9th day of October, 2020; AND ON HEARING H. Lance Williams, counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the materials filed, including the Third Affidavit of Nathan Slee affirmed October 9, 2020; 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 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application be and is hereby abridged such that the application is properly returnable today and service upon any interested party other than those parties on the Service List maintained by the Monitor in these proceedings is hereby dispensed with.

2. Lendesk Technologies ULC ("**Lendesk**") is declared a critical supplier of the Petitioners pursuant to section 11.4 of the CCAA and, upon payment by the Petitioners of a deposit of \$30,000 (the "**Deposit**"), Lendesk shall continue to provide services to the Petitioners in the same manner and consistent with their current arrangements and agreements, as may be amended between them (the "**Arrangements**"). The Deposit shall be applied to the invoices of Lendesk for services rendered to the Petitioners after the commencement of these proceedings on terms consistent with the Arrangements. For greater certainty, Lendesk shall not be required to grant credit to the Petitioners, and may require that the Deposit be increased if the fees for the services requested by the Petitioners will exceed the amount of the Deposit.

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

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 H. Lance Williams
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"
COUNSEL LIST

Party	Counsel
The Monitor, BDO Canada Limited	Kibben Jackson