

District of: British Columbia
Division No.: 03 – Vancouver
Court No.:
Estate No.: 11-3149370

B-240536



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
LAMBDA SOLUTIONS INC.

NOTICE OF MOTION

NAME OF APPLICANT: Lambda Solutions Inc. ("**Lambda**", alternatively, the
"**Applicant**")

TO: The Service List

TAKE NOTICE that an Application will be made by the Applicant to the presiding Judge or Associate Judge sitting as a Registrar in Bankruptcy at the courthouse at 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on November 29, 2024 at 9:45am for the Orders set out in Part 1 below.

The Applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of an associate judge.

PART 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) abridging the time for service of this Notice of Application;
 - (b) approving a first priority administration charge in favour of the Crowe MacKay & Company Ltd. (the "**Proposal Trustee**"), any counsel retained or to be retained by the Proposal Trustee, and counsel to Lambda in the aggregate maximum amount of \$150,000 (the "**Administration Charge**");
 - (c) approving the interim financing of Batsheva Levy (in such capacity, the "**DIP Lender**"), substantially in accordance with the terms of the term sheet (the "**DIP Financing Term Sheet**") attached to the Proposal Trustee's First Report to the Court; and granting a DIP priority charge over the assets of Lambda in favor of the DIP Lender for all amounts owing under the DIP Financing Term Sheet limited to \$120,000 (the "**DIP Charge**"), ranking ahead of all other charges other than the Administration Charge and amounts owing to the Canada Revenue Agency on account of unpaid source deductions;
 - (d) extending the time for filing Lambda's proposal under Part III, Division I of the *Bankruptcy and Insolvency Act* ("**BIA**") from December 1, 2024 to 11:59 p.m. on January 15, 2025;

2. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

Background

3. Lambda is a company that was incorporated pursuant to the laws of British Columbia on October 23, 2002, with a registered and records office located at 800 – 885 West Georgia Street, Vancouver, British Columbia.
4. Lambda filed a Notice of Intention to Make a Proposal dated November 1, 2024 (the “**Filing Date**”), under which the Proposal Trustee was appointed.
5. Pursuant to section 50.4(8) of the BIA, the initial stay period in the proposal proceedings is from November 1, 2024, to December 1, 2024 (the “**Initial Stay Period**”).
6. Lambda is a software-as-a-service company that provides cloud-based learning management software to organizations. The Lambda platform allows users to learn, track progress, and achieve goals within a flexible and customizable environment.
7. Lambda serves enterprises, governments, and associations needing integrated training, certification, and professional development tools.
8. Lambda employs 9 full-time employees through its Canadian head office, and maintains a small development team of 2 independent contractors in Serbia. It serves 88 customers across the U.S. and Canada.

Assets

9. Lambda’s primary assets are its intellectual property, goodwill with customers, its value as a business as a going concern, and a Scientific Research and Experimental Development investment tax credit (“**SR&ED**”) in the amount of \$250,000.
10. Due to the nature of the assets and the business, the liquidation value of Lambda is minimal. However, there is significant potential value for Lambda to continue operating as a going concern post-restructuring.

Financial Difficulties and Liabilities

11. Lambda’s financial difficulties and solvency issues have been caused by several factors, summarized below:
 - (a) Challenges relating to being a start-up company while navigating the delayed affects of the COVID-19 pandemic;
 - (b) Economic downturn;
 - (c) Loss of 3 major clients since 2022; and
 - (d) Limited access to funding.

12. Lambda's second-ranking secured creditor is Business Development Bank of Canada ("**BDC**"). Lambda entered into a forbearance agreement with BDC dated March 8, 2024 (the "**BDC Forbearance Agreement**").
13. On September 26, 2024, BDC filed a Notice of Civil Claim against Lambda as the principal, as well as Doron Efraim Levy, Batsheva Levy, and Joshua Keshet as guarantors, under both the BDC Forbearance Agreement and the underlying credit facility.
14. The outstanding balance owed to BDC is approximately \$425,835.63.
15. On or around December 23, 2020, Lambda entered into a loan agreement with its senior secured creditor, EVERGREEN GAP DEBT LP as agent for FIREPOWER GAP DEBT II LP (collectively, "**FirePower**"), for \$2.5M.
16. The outstanding balance to Firepower is approximately \$1,376,926.56.
17. Both FirePower and BDC retain security interests in all present and after-acquired property of Lambda.
18. Lambda has no outstanding obligations to CRA, save for unremitted employee source deductions for the period of October 16 to October 31, 2024. Its GST/HST obligations are up to date.

Extension of Filing Deadline

19. Since the Filing Date, Lambda has worked with the Proposal Trustee to begin developing a viable proposal. However, despite having made good progress towards developing a proposal since the Filing Date, Lambda will not be in a position to file one during the Initial Stay Period.
20. Lambda expects a viable proposal can be filed by January 15, 2025.
21. Lambda believes that its creditors will achieve a greater net recovery by allowing it to continue to develop a viable proposal.
22. In addition to developing a viable proposal, since the Filing Date, Lambda has, among other things:
 - (a) worked in good faith and with due diligence in stabilizing its business affairs and operations;
 - (b) pursued the collection of accounts receivable;
 - (c) prepared the cash flow statement filed pursuant to section 50.4(2)(a) of the BIA; and
 - (d) assisted and worked with the Proposal Trustee in relation to these matters and Lambda's post-filing obligations generally.
23. Lambda has acted, and continues to act, in good faith and with due diligence and intends to work diligently to pursue its proposal with a view to achieving a greater net recovery for its stakeholders in a timely manner.

Interim Financing (DIP)

24. While Lambda is currently seeking additional funding from its client-base by offering discounted rates for annual subscriptions to its services for the upcoming calendar year (the "**Interim Funding Efforts**"), Lambda may require interim financing to continue operating through these proceedings, with a view to maintaining going concern value and formulating and presenting a proposal to its creditors.
25. If the Interim Funding Efforts are unsuccessful, Lambda's cash flow statement, filed pursuant to section 50.4(2)(a) of the BIA, demonstrates that Lambda will require additional funding for its operations and expenses.
26. A line of credit of \$120,000 is intended to be made available to Lambda, to use as and if needed, for payroll and other operations costs as short term financing (the "**DIP Loan**").
27. The key terms of the DIP Loan are contained in the DIP Financing Term Sheet, attached to the Proposal Trustee's First Report to the Court.
28. The key provisions include:
 - (a) A \$120,000 line of credit;
 - (b) 10% interest on any amounts borrowed by Lambda;
 - (c) A first charge over all creditors, second only to the Administration Charge (as defined herein).
29. Given the intangible and specialized nature of Lambda's business and assets, its greatest value is as a going concern. Lambda requires the DIP Loan to meet its obligations and maintain value.

Administration Charge

30. Lambda seeks a charge on its assets in the maximum amount of \$150,000 (the "**Administration Charge**") to secure the fees of the Proposal Trustee, of any counsel retained or to be retained by the Proposal Trustee, and of Lambda's legal counsel, Cody Reedman Law Corporation dba Reedman Law ("**Company's Counsel**") so that Lambda can have the benefit of their services during the insolvency proceedings herein.
31. It is critical to the success of these proceedings and the proposal to have the Administration Charge in place and to ensure that the Proposal Trustee and the Company's Counsel are protected with respect to their fees and disbursements. The professionals that are the proposed beneficiaries of the Administration Charge have contributed, and continue to contribute, to these proceedings and the restructuring of Lambda. Further, the joint efforts of the Proposal Trustee and the Company's Counsel are necessary to facilitate a better overall result.
32. Should the Proposal Trustee retain counsel in connection with these proceedings, Lambda seeks that such counsel also be included as a beneficiary of the Administration Charge, ensuring that all necessary professional services are safeguarded to support the restructuring process.

33. The Administration Charge is reasonable in the current circumstances and necessary to ensure the success of these proposal proceedings.

PART 3: LEGAL BASIS

Extension of Filing Deadline

34. Lambda relies on section 50.4(9) of the B/A, which states:

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

35. An application for an extension of time to follow a proposal under section 50.4(9) is to be considered on an objective standard.

Cantrail Coach Lines Ltd. (Re), 2005 BCSC 35 [Cantrail], at para. 11
T & C Steel Ltd. (Re), 2022 SKKB 236, at para. 5-8

36. In demonstrating that the debtor is acting in good faith and with due diligence, it is sufficient for the debtor to show that it is not acting in bad faith and is taking steps towards making a proposal. A debtor that shows “some diligence” will be found to have met the requirement under section 50.4(9)(a).

Andover Mining Corp. (Re), 2013 BCSC 1833 [Andover], at para. 65

37. Regarding section 50.4(9)(b), a “viable proposal” is one that is “reasonable on its face to a reasonable creditor.” This standard ignores “the possible idiosyncrasies of any specific creditor.” Further, it need not be certain that the debtor will table a proposal within the extension period; “likely” in section 50.4(9)(b) means “such as might well happen.”

Andover at para. 66.

38. A creditor is materially prejudiced if it will be “substantially or considerably prejudiced if the extension being applied for is granted.” This standard exceeds the prejudice to creditors that necessarily and ordinarily arises from proposal proceedings.

Cantrail at para. 21 – 22.

39. There is no evidence that any creditor would be materially prejudiced if the extension being applied for were granted.
40. An extension of the deadline to file a consumer proposal is both just and necessary in the circumstances.

Interim Financing (DIP)

41. Section 50.6 of the *BIA* provides the Court with the authority to grant an interim financing charge in priority to any secured creditor of the application on notice to the secured creditors who will likely be affected by the charge.
42. Section 50.6(5) stipulates that the court is to consider, *inter alia*, the following seven factors in deciding whether to grant such a charge:

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

43. Lambda requires interim financing to continue its operations and work towards filing a proposal to its creditors.
44. Lambda's Eight-Week Cash Flow Forecast (the "**Cash Flow Forecast**") shows that Lambda requires an injection of funds by November 24, 2024, in order to ensure its continued operations.
45. The DIP Lender is prepared to advance \$120,000 to Lambda in accordance with the terms of the DIP Financing Term Sheet, provided that the DIP Charge is granted to protect their interests.
46. The Proposal Trustee supports this Application.
47. The DIP Charge is reasonable and appropriate in the circumstances and critical to the success of Lambda's insolvency proceedings. Prejudice to the creditors is minimal.

Administration Charge

48. Section 64.2 of the *BIA* authorizes the Court to grant a priority charge in respect of the Proposal Trustee and counsel for Lambda (collectively, the “**Administrative Professionals**”).
49. There are a number of legal, financial, and operation issues for which Lambda requires the services of the Administrative Professionals in these proceedings. The Administrative Professionals are integral to the successful development of a viable proposal, and in order to ensure their participation, the Administration Charge is required to protect and secure their fees and disbursements.
50. The Administrative Charge is reasonable and appropriate in the circumstances and critical to the success of Lambda’s insolvency proceedings.

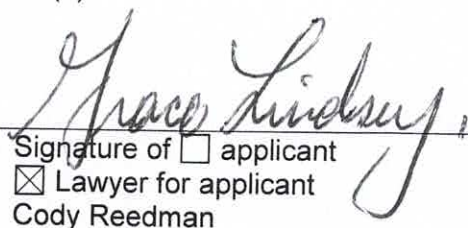
PART 4: MATERIAL TO BE RELIED ON

51. Affidavit #1 of Batsheva Levy to be filed.
52. First Report of the Trustee.
53. Such and further materials as counsel may advise.

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:
- (iii) a copy of the filed Application Response;
 - (iv) 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;
 - (v) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: NOVEMBER 22, 2024

 FOR
Signature of ☐ applicant
☒ Lawyer for applicant
Cody Reedman

Cody Reedman

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
- ☒ other: motion to extend deadline to file a proposal in NOI proceedings and other relief

SCHEDULE "A"

District of: British Columbia
Division No.: 03 – Vancouver
Court No.:
Estate No.: 11-3149370

IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LAMBDA SOLUTIONS INC.

BEFORE) FRIDAY, THE 29TH DAY
)
) OF NOVEMBER, 2024

ORDER

UPON THE APPLICATION of Lambda Solutions Inc. ("**Lambda**"), coming on for a hearing at Vancouver, British Columbia, on the 29th day of November, 2024; AND ON HEARING Cody Reedman, counsel for Lambda, and those other counsel listed in Schedule "A" hereto; AND UPON READING the material filed AND PURSUANT TO the Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3 as amended (the "**BIA**") and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS THAT:

Service

1. The time for service of the Notice of Motion and materials referred to herein be and is hereby abridged and the Notice of Application is properly returnable today.

Extension of Period for Filing Proposal

2. The time for filing a proposal with the Official Receiver under Part III of Division I of the BIA be and is hereby extended to 11:59 p.m. on January 15, 2025.

Administration Charge

3. For the fees incurred in connection with these proceedings, including those incurred prior to commencement of these proceedings, Crowe MacKay & Company Ltd. (the "**Proposal Trustee**"), any counsel retained or to be retained by the Proposal Trustee, and Cody Reedman Law Corporation shall be entitled to the benefit of, and are hereby granted, a charge (the "**Administration Charge**") on all current and future assets, undertakings and properties of Lambda, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (collectively, the "**Charged Property**"), which Administration Charge shall not exceed an aggregate amount of \$150,000.00 as security for their professional fees and disbursements incurred at their standard rates and charges, both

before and after making this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 10 below.

DIP Charge

4. Lambda is authorized and empowered to borrow under an interim financing facility term sheet dated for reference November 22, 2024 (the "**DIP Financing Term Sheet**") between Lambda, as borrower, and Bat-Sheva Levy, as lender (in such capacity, the "**DIP Lender**"). Lambda is authorized and empowered to perform its obligations under the DIP Financing Term Sheet (subject to obtaining such Court and other approvals as may be required in connection with any step or transaction contemplated therein) and to obtain and borrow under the DIP Financing Term Sheet, provided that borrowing under such credit facility shall not exceed the principal amount of \$120,000.00.
5. Lambda is authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents and other definitive documents (such documents, together with the DIP Financing Term Sheet, collectively, the "**Definitive Documents**"), as are contemplated by the DIP Financing Term Sheet or as may reasonably be required by the DIP Lender pursuant to the terms thereof, and Lambda is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provisions of this Order.
6. The DIP Lender shall be entitled to the benefit of and is granted a charge (the "**DIP Charge**") on the Charged Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall attach to the Charged Property and shall secure all obligations under the Definitive Documents.
7. Notwithstanding any other provisions of this Order, the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record, or perfect the DIP Charge or any of the Definitive Documents.
8. All claims of the DIP Lender pursuant to the Definitive Documents are not claims that may be comprised pursuant to any proposal under the BIA filed by Lambda without the consent of the DIP Lender and the DIP Lender shall be treated as unaffected in any proposal filed by Lambda under the BIA with respect to any obligations outstanding to the DIP Lender under or in respect of the Definitive Documents.

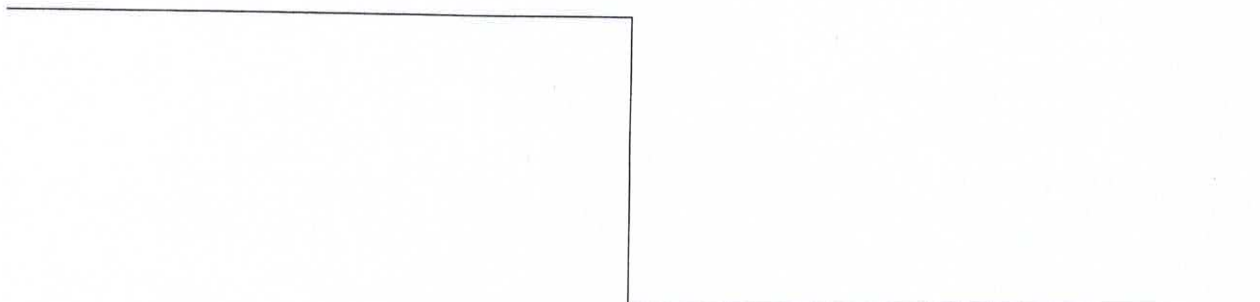
Validity and Priority of Charges Created by this Order

9. The Administration Charge and the DIP Charge (together, the "**Charges**") each constitute a mortgage, security interest, assignment by way of security and charge on the Charged Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**"), in favour of any person, notwithstanding the order of perfection or attachment, except that the DIP Charge shall rank subordinate to the interest of the Canada Revenue Agency ("**CRA**") on account of unpaid source deductions owing by Lambda to CRA.
10. The priorities among the Charges shall be:

- (a) First – the Administration Charge, up to the maximum amount of \$150,000.00; and
 - (b) Second (subject to CRA) – the DIP Charge.
11. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and the Charges shall be effected as against the Charged Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect the Charges.
12. The Charges and Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the Charges (the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such application(s); (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (each, an "**Agreement**") which binds Lambda, and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or deemed to constitute a breach by Lambda of any Agreement to which it is a party;
 - (b) none of the Chargees shall have any liability to any person entity whatsoever as a result of any breach of any Agreement caused by or resulting from Lambda entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
 - (c) the payments made by Lambda pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

Suppliers

13. Subject to the prior written approval of the Proposal Trustee, Lambda is authorized, but not directed, to pay amounts owed to employees and suppliers which were incurred prior to November 1, 2024, where the Proposal Trustee is satisfied payment of such amounts are necessary to ensure the supply of goods or services which are critical to Lambda's continued operations.



Endorsement

14. Endorsement of this Order by counsel appearing on this application, other than counsel for Lambda, 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 Cody Reedman,
Lawyer for the Applicant

BY THE COURT

REGISTRAR IN BANKRUPTCY