

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

FIREPOWER DEBT GP INC. AS AGENT

Applicant

- and -

THEREDPIN,INC. and THE REDPIN.COM REALTY INC.

Respondents

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED

NOTICE OF MOTION

(returnable May 14, 2020)

(re authorizing the Receiver to file an assignment in bankruptcy)

THE APPLICANT will make a motion to a Judge presiding over the Commercial List on Thursday May 14, 2020 at 11:00 a.m., or as soon after that time as the motion can be heard by way of judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule "A"** hereto in order to attend the motion and advise if you intend to join the motion by emailing Sam Rappos at samr@chaitons.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(a) an order:

- (i) abridging the time for service of this notice of motion and the Applicant's motion record so that the motion is properly returnable on May 14, 2020;
 - (ii) authorizing and directing MNP Ltd. ("**MNP**"), in its capacity as Court-appointed receiver of the property, assets and undertakings of the Respondents (the "**Receiver**"), to file an assignment in bankruptcy on behalf of the Respondent, TheRedPin.Com Realty Inc. ("**TRP Realty**");
and
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. TheRedPin, Inc. ("**TRP**") was a developer of a technology-enabled online real estate platform. TRP Realty (together with TRP, the "**Debtors**") was a real estate brokerage operating in Ontario and regulated by the Real Estate Council of Ontario pursuant to the *Ontario Real Estate and Business Brokers Act, 2002* and associated regulations.
2. Pursuant to a loan agreement dated February 15, 2017, as amended, the Applicant, acting as agent for FirePower GAP Debt LP and FirePower GAP Debt II LP ("**FirePower**") loaned \$3.5 million to TRP.
3. TRP Realty guaranteed FirePower's loan to TRP and granted security over all of its property and assets in favour of FirePower.

4. The Debtors are also indebted to Trilogy Growth Fund LP (“**Trilogy**”) and granted security in favour of Trilogy.
5. Pursuant to an intercreditor agreement between Trilogy, FirePower and the Debtors, Trilogy’s security has priority over FirePower’s security with respect to a tranche of the loan advanced by Trilogy to the Debtors.
6. On June 13, 2018, FirePower commenced the within proceeding for the appointment of MNP as Receiver of the Debtors.
7. On June 14, 2018, MNP was appointed as Receiver by Order of the Court.

Secured Indebtedness

8. As at April 30, 2020, the Debtors owed FirePower \$4,602,098 (exclusive of legal costs) (the “**FirePower Secured Indebtedness**”) and owed Trilogy approximately \$2,422,935 (the “**Trilogy Secured Indebtedness**”).
9. The Receiver has obtained a legal opinion from its independent counsel that FirePower and Trilogy each have valid security against the property and assets of the Debtors.

HST

10. Canada Revenue Agency (“**CRA**”) claims that TRP Realty collected and failed to remit HST prior to MNP’s appointment as Receiver and that it has a deemed trust over TRP Realty’s property and assets to the extent of the collected and unremitted amount.

Proposed Distributions

11. The Receiver has realized on TRP Realty’s property and has brought a motion seeking Court authority to make an interim distribution to Trilogy in the amount of \$1,629,466,

approving further distributions to Trilogy, to the extent of the Trilogy Secured Indebtedness, and thereafter to FirePower to the extent of the FirePower Secured Indebtedness.

Assignment in Bankruptcy

12. TRP Realty's liabilities exceeds its assets and it is insolvent.
13. FirePower requests that the Court authorize and direct the Receiver to file an assignment in bankruptcy on behalf of TRP Realty. FirePower seeks such relief for the purpose of reversing the priority of the CRA's deemed trust claim for collected and unremitted HST.
14. It is well settled law in Ontario that a creditor may seek to bankrupt a company for the purpose of reversing creditor priorities.

General

15. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
16. Section 243 of the BIA.
17. The Receivership Order.
18. The inherent jurisdiction of the Court.
19. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Third Report of the Receiver dated May 6, 2020 and the appendices hereto; and

2. such further and other material as counsel may advise and this Honourable Court may permit.

May 11, 2020

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSO No. 21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Sam Rappos (LSO No. 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Applicant

TO: THE SERVICE LIST

SCHEDULE "A"

Join Zoom Meeting

<https://zoom.us/j/97638508444?pwd=TXJiRDd6bHRRUFZXRHN1YWttRy83Zz09>

Meeting ID: 976 3850 8444

Password: 5WTVay

One tap mobile

+15873281099,,97638508444#,1#,312886# Canada

+16473744685,,97638508444#,1#,312886# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 438 809 7799 Canada

Meeting ID: 976 3850 8444

Password: 312886

Find your local number: <https://zoom.us/u/aeC2dsVUZ9>

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Court File No.: CV-18-599644-00CL

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PROCEEDING COMMENCED AT
TORONTO

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CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Sam Rappos (LSO No. 51399S)

Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Applicant