CANADA

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

Nº. : 500-06-001164-215

S U P E R I O R C O U R T

(Class Actions)

STEVE HOLCMAN

- and -

TARIQUE PLUMMER

Applicants

v.

LIGHTSPEED COMMERCE INC.

- and -

DAX DASILVA, JEAN PAUL CHAUVET, MARIE-JOSÉE LAMONTHE, PATRICK PICHETTE, ROB WILLIAMS, PAUL McFEETERS, MERLINE SAINTIL, DANIEL MICAK, ASHA BAKSHANI, BRANDON NUSSEY

- and -

PRICEWATERHOUSECOOPERS LLP

Defendants

MOTION TO ADDUCE RELEVANT EVIDENCE

(*DE BENE ESSE* UNDER SECTION 225.4 OF THE QUEBEC *SECURITIES ACT* AND PURSUANT TO ARTICLE 574(3) OF THE *CODE OF CIVIL PROCEDURE*)

I. CONTEXT

1. On October 1, 2021, the Plaintiff Steve Holcman filed an application for leave to bring an action pursuant to s. 225.4 of the Quebec *Securities Act*, CQLR, c. V-1.1 (the "**QSA**") and an application for authorization of a class action pursuant to ss. 574 and ff of the *Code of Civil Procedure*, CQLR c C-25.01 ("**CCP**") against the Defendants.

2. The Plaintiffs filed an application for leave to amend their application on February 14, 2022, which was granted on April 11, 2022.

3. On June 17, 2022, the Plaintiffs sought leave to re-amend their application and communicated a Re-Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the QSA (the "**Re-Amended Application**"). The Court granted leave to amend on September 8, 2022.

4. The Re-Amended Application has two prongs, namely:

   (a) An application for leave to advance a claim for secondary market misrepresentations under sections 225.4 of the QSA (the Plaintiffs seek to advance this claim on a class-wide basis);

   (b) An application for authorization of a class action pursuant to article 575 of the CCP for primary market misrepresentations under sections 217 and following of the QSA and for civil liability under article 1457 of the *Civil Code of Quebec* ("**CCQ**").

5. In their Re-Amended Application, the Plaintiffs allege that the Defendants made the following misrepresentations:

   (a) The Defendants overstated Lightspeed's gross transaction volume ("**GTV**") prior to it becoming public (par. 8 of the Re-Amended Application);

   (b) The Defendants misrepresented that Lightspeed's Total Addressable Market ("**TAM**") would grow to $542 billion, when it was revised down to $16 billion (par. 8 of the Re-Amended Application);

   (c) The Defendants failed to recognize goodwill impairment losses with respect to two acquired companies, that is, ShopKeep and Upserve (par. 19.13-19.14 of the Re-Amended Application);

   (d) The Defendants misrepresented Lightspeed's organic growth, which was allegedly declining absent a series of acquisitions that had the effect of hiding such decline (par. 19.7, 19.9-19.11 of the Re-Amended Application);

   (e) The Defendants misrepresented that their acquisition strategy was to acquire "high growth" companies, when they in fact acquired "legacy platforms" (par. 19.8 of the Re-Amended Application);

   (f) The Defendants misrepresented that the key performance indicator ("**KPI**") called "Average Revenue Per User" ("**ARPU**") was increasing, even during the COVID pandemic. The Defendants artificially inflated ARPU by "quietly" altering its definition and by changing the revenue recognition from net to gross in connection with the acquisitions of ShopKeep and Upserve (par. 19.16-19.23 of the Re-Amended Application);

   (g) The Defendants' allowance for bad debts is high relative to the industry (par. 19.24-19.25 of the Re-Amended Application);

   (h) The Defendants misrepresented that Lightspeed's internal controls, including DC&P and ICFR, were effective (par. 19.31-20 of the Re-Amended Application).

6. According to the Plaintiffs, these misrepresentations were publicly corrected in the following corrective disclosures:

   (a) The presentation titled "Putting the Brakes on Lightspeed" published on September 29, 2021, by the short seller Spruce Point Capital Management LLC ("**Spruce Point Report**") (P-4);

   (b) Lightspeed's Q2 2022 press release, MD&A, and interim financial statements published on November 4, 2021 (P-2, P-14, and P-16).

7. In support of their allegations, the Plaintiffs essentially rely on Lightspeed's public disclosures and three additional exhibits:

   (a) The expert report of Frank C. Torchio on materiality dated June 17, 2022 (the "**Torchio Report**") (P-65);

   (b) The expert report of Ramy Elitzur on alleged violations of applicable accounting standards dated August 1, 2022 (the "**Elitzur Report**") (P-17), and;

   (c) The confidential witness memoranda, which contains notes from private investigators who allegedly interviewed former Lightspeed employees whose names (amongst other things) are redacted for obscure reasons (P-71).

8. The Defendants require the Court's permission (*de bene esse* under section 225.4 of the QSA and this Court's case management powers, and pursuant to section 574(3) of the CCP) to present the following pieces of evidence:

   (a) A sworn statement from the Defendant Brandon Nussey, the former Chief Financial Officer of Lightspeed (the "**Nussey Statement**");

   (b) A sworn statement from Joseph Bartlett, Vice President of Financial Reporting at Lightspeed (the "**Bartlett Statement**");

   (c) An expert report from Professor Daniel J. Taylor (the "**Taylor Report**");

   (d) An expert report from Ernst & Young (the "**EY Report**"); and

   (e) Excerpts from the transcript of the examination of the Plaintiff, Steven Holcman, conducted by Lightspeed's counsel on April 12, 2024 (the "**Holcman Examination**").

II. THE DEFENDANTS' MOTION SHOULD BE GRANTED

9. The Defendants submit that their motion *de bene esse* under the QSA and their motion for leave to adduce relevant evidence pursuant to article 574(3) of the CCP should be granted.

10. The Defendants' motion *de bene esse* under the QSA must be addressed before the motion for leave to adduce relevant evidence under article 574(3) of the CCP.

A. The Defendants' Motion De Bene Esse Under the QSA

11. Under the QSA, the Plaintiffs bear the burden of demonstrating that their proposed action was brought in good faith and that there is a reasonable possibility that it will be resolved in their favour. The Defendants will briefly address each criterion in turn.

(a) Good Faith

12. To meet the "good faith" criterion, the Plaintiffs must have brought their action in the honest belief that they have an arguable claim, for reasons that are consistent with the purpose behind the statutory remedy, not for an oblique or collateral purpose, and with the genuine intention and capacity to prosecute the claim if leave is granted.

13. The Defendants wish to tender excerpts of the Holcman Transcript to demonstrate that Mr. Holcman, who initiated his action on October 1, 2021, after having spoken to Mtre Zukran, did not initiate his action with the honest belief that he had an arguable claim. Indeed, on the filing date, Mr. Holcman had no knowledge nor understanding of the proposed action, the allegations of misrepresentation he put forward, or the Spruce Point Report.

14. The excerpts of the transcripts are subpages 4 to 11, and 28 to 39 of the Holcman Transcript, which are attached herein as **Appendix A**.

(b) Reasonable Possibility of Success

15. To meet this criterion, the Plaintiffs must offer both a plausible analysis of the applicable legislative provisions and some credible evidence in support of their claim.

16. The remainder of the Defendants' evidence will prove useful to this Court in determining whether the Plaintiffs' evidence is credible at the leave stage, as discussed below.

(i) THE NUSSEY STATEMENT

17. The Nussey Statement outlines Lightspeed's overall acquisition strategy, with a particular focus on the acquisitions of ShopKeep, Upserve and Vend, and provides some context on the statements made by Jean Paul Chauvet (the former President and Chief Executive Officer at Lightspeed) and Mr. Nussey himself (the former Chief Financial Officer at Lightspeed) with respect to Lightspeed's ARPU during the pandemic.

18. In particular, Mr. Nussey squarely addresses two of the Plaintiffs allegations.

19. First, as stated above, the Plaintiffs allege that the Defendants misrepresented their acquisition strategy by stating that Lightspeed sought to acquire "high growth" companies, when it in fact acquired "legacy platforms" (par. 19.8 of the Re-Amended Application).

20. In his sworn statement, Mr. Nussey clarifies the meaning of "legacy platforms", which refers to solutions installed locally on a merchant's own computer or server, as opposed to cloud-based solutions.

21. Mr. Nussey further explains that Lightspeed consistently stated its objective to selectively pursue value enhancing acquisitions to complement its organic growth strategy. In particular, Lightspeed sought to increase its market penetration, to enter new verticals in different industry sectors and to accelerate its product roadmap through the integration of new technologies.

22. Mr. Nussey also explains how the acquisitions of ShopKeep, Upserve and Vend were in line with Lightspeed's disclosed strategy.

23. Second, the Plaintiffs allege that "[a]fter having misled the market into believing that Lightspeed's ARPU had increased even during COVID, Defendants later admitted that customers had, in fact, removed Modules during the pandemic. But this removal was not reflected in ARPU" (at para. 19.21 of the Re-Amended Application).

24. In support of their allegation, the Plaintiffs rely on on a statement that made by Mr. Nussey during an earnings call held on May 21, 2020 (P-43, at p. 9), as well as a statement made by Jean Paul Chauvet during another earnings call held on August 5, 2021 (P-64, at p. 13). Mr. Nussey attended both calls in his capacity as CFO.

25. In his statement, Mr. Nussey contextualizes each of these statements, which are read in isolation by the Plaintiffs, and explains that they did not indicate a decline in ARPU during the pandemic.

(ii) THE BARTLETT STATEMENT

26. The Bartlett Statement completes the record on the misrepresentations alleged by the Plaintiffs and on Lightspeed's public disclosures during the Class Period.

27. Mr. Bartlett addresses five topics that are germane to the Plaintiffs' allegations:

(a) First, Mr. Bartlett describes the nature of Lightspeed's business and the company's main sources of revenue. This information completes the factual record on a key element of the case.

(b) Second, Mr. Bartlett provides context on two of Lightspeed's KPIs, namely its average revenue per user (or ARPU) and gross transaction volume (or GTV):

(i) **ARPU**: Mr. Bartlett first describes the various definitions of ARPU that were disclosed in Lightspeed's MD&As throughout the Class Period and explains the reasoning behind the changes. This part of the Bartlett Statement directly refutes the Plaintiffs' opinion that Lightspeed "quietly altered" the ARPU definitions to artificially inflate this metric.

(ii) **GTV**: Mr. Bartlett also explains the meaning of GTV and how it differs from Lightspeed's pre-IPO metrics. This part of the Bartlett Statement provides useful context on the Plaintiffs' allegation that Lightspeed "overstated" its GTV.

(c) Third, Mr. Bartlett provides context on the Plaintiffs' allegation that Lightspeed has "covered up massive inflation of its Total Addressable Market (TAM)" (at para. 8.1 of the Re-Amended Application):

(i) Mr. Bartlett explains that Lightspeed's TAM, a non-IFRS metric, was based on data from the report of the consulting firm Access Markets International Partners, Inc. (the "**AMI Report**"), which estimated the global market size for Lightspeed's product.

(ii) Mr. Bartlett further explains that TAM was not revised down from $542 billion to $16 billion. Rather, the TAM of $16 billion represented a subset of the $542 billion that was extracted from the AMI Report, as disclosed by Lightspeed.

(d) Fourth, Mr. Bartlett discusses the impact of the acquisitions of ShopKeep, Upserve and Vend on Lightspeed's financials. In particular, Mr. Bartlett addresses three points:

(i) Mr. Bartlett first debunks the Plaintiffs' allegation that these acquisitions had the effect of hiding an alleged decline in organic growth. He explains that the Plaintiffs' calculation of a so-called organic growth is flawed, as it focuses on the wrong metrics.

(ii) Mr. Bartlett then provides context on the allegation in the Elitzur Report regarding an alleged discrepancy in the reported contribution to revenues of ShopKeep and Upserve in Lightspeed's Q3 2020 MD&A. Mr. Bartlett explains that the reported contribution to revenue for both acquisitions was correctly disclosed in the Results of Operations section of Lightspeed's, whereas Lightspeed made a clerical error on the time period covered by their revenue contribution in the MD&A section on "Limitation on Scope of Design [of Internal Controls]" (P-52).

(iii) Mr. Bartlett also addresses the Plaintiffs' argument that "ARPU was unduly inflated due to the change in revenue recognition from net to gross in connection with the acquisitions of ShopKeep and Upserve" (at para. 19.22 of the Re-Amended Application). Mr. Bartlett explains that the change in revenue recognition from net to gross resulted from the amendment of Upserve's contract with a third-party credit card payment processor, which justified revenue recognition on a gross basis.

(e) Finally, Mr. Bartlett outlines the notion of goodwill and impairment testing and describes how Lightspeed conducted its goodwill impairment test as of December 31, 2020, and 2021, in response to the Plaintiffs' allegation that Lightspeed failed to recognize goodwill impairment losses with respect to ShopKeep and Upserve.

(iii) THE TAYLOR REPORT

28. The Taylor Report opines on the statistical models used in the Elitzur Report to demonstrate an alleged probability of earnings management at Lightspeed during the Class Period. These statistical models are the Beneish Manipulation Index and Benford's Law.

29. Dr. Taylor holds a Ph.D in Business from Stanford University and is currently a professor at The Wharton School of the University of Pennsylvania, where he teaches and researches statistical analysis of insider trading, corporate disclosure, and accounting fraud.

30. In his report, Dr. Taylor provides historical context on both statistical models, clarifies their underlying formula, and highlights their inherent flaws when applied to financial statements as Mr. Elitzur purports to do, thus challenging the very foundations of the Elitzur Report.

31. The additional context provided by Dr. Taylor on the Beneish Manipulation Index and Benford's Law will assist the Court in determining whether the Plaintiffs' evidence is credible within the meaning of section 225.4 of the QSA.

(iv) THE EY REPORT

32. The EY Report provides an opinion on whether Lightspeed violated accounting standards during the Class Period. In particular, the EY Report opines on the following topics, which are germane to the Plaintiffs' allegations:

(a) The EY Report analyzes Lightspeed's public disclosures to determine whether Lightspeed "covered up massive inflation of its TAM" (at para. 8.1 of the Re-Amended Application). The EY Report concludes that Lightspeed did not.

(b) With respect to ARPU, the EY Report discusses the Plaintiffs' following allegations:

(i) That Lightspeed "quietly altered the definition of ARPU […] burying these subtle changes within Lightspeed's filings" (at para. 19.16 of the Re-Amended Application). The EY Report concludes that the changing definitions conformed to accounting and financial standards.

(ii) That Lightspeed "swap[ped] the denominator from the larger customer count number to a smaller customer location number, thereby artificially increasing the ARPU metric, and obfuscating it to the Company's benefit" (at para. 19.17 of the Re-Amended Application). The EY Report concludes that using customer locations as opposed to unique customers as a denominator has the effect of decreasing ARPU rather than increase it, since a single customer may have multiple locations.

(iii) That Lightspeed "misled the market into believing that Lightspeed's ARPU had increased even during COVID" (at para. 19.21 of the Re-Amended Application). The EY Report reviews Lightspeed's financial disclosures and determines that ARPU did not decrease during the pandemic. As such, the Plaintiffs' expert, Mr. Elitzur, had no basis to conclude that Lightspeed misled the market into believing that ARPU had increased during COVID.

(c) The EY Report also opines on selected items in the Elitzur Report, namely:

(i) That "Lightspeed's allowance for bad debts ("**AFDA**") is anomalously high compared to that of its peer group, both with respect to gross trade receivables and sales", which may show revenue recognition problems contrary to IFRS 15 (at paras. 116-117 of the Elitzur Report). The EY Report essentially explains that having a higher AFDA does not suggest improper accounting and that Mr. Elitzur's calculation in support of a violation of IFRS 15 is flawed.

(ii) That there is a "discrepancy" in Lightspeed's Q3 2020 MD&A on the revenue contribution of ShopKeep and Upserve, which allegedly violates accounting standards and MD&A rules (at para. 133 of the Elitzur Report). The EY Report concludes that Mr. Elitzur's findings are ill-founded.

(iii) That "the change in the accounting from net to gross for the revenues generated by ShopKeep and Upserve is a material violation of both IAS 8 and IFRS 15" (at para. 155 of the Elitzur Report). The EY Report concludes that Lightspeed did not change its accounting policy, such that Lightspeed did not violate accounting standards.

(iv) That Lightspeed should have written down and recognized as goodwill impairment the post-acquisition revenue of ShopKeep and Upserve and that Lightspeed violated IAS 36 “Impairment of Assets” by using unreasonable assumption in testing goodwill impairment (at paras. 159, 180 and 182 of the Elitzur Report). The EY Report concludes that Mr. Elitzur’s observations are incorrect since they obfuscate the fact that Lightspeed monitors goodwill at the total company level, as disclosed in Lightspeed’s financial statements. Moreover, the EY Report asserts that Mr. Elitzur provides no market analysis in support of his assertion that the assumptions used in testing goodwill impairment are unreasonable.

33. As appears from the above, the Defendants’ evidence is relevant and proportionate to the leave procedure under the QSA and, as such, there is no reason to prevent the Defendants from adducing same as part of their defense. For these reasons, the Defendants’ evidence should be admitted into the Court record.

B. The Defendants’ Motion Pursuant to Article 575 of the CCP

34. Since the Defendants are entitled to adduce evidence as part of their defense to the QSA application, the evidence will also form part of the evidentiary record for the class action. This Court will be in a position to consider the Defendants’ evidence under both the QSA and the CCP, making the appropriate nuances for each prong of the Plaintiffs’ action.

35. In any event, given the nature of the Plaintiffs’ allegations, which paint an incomplete picture of the facts, the Defendants’ evidence will be useful, relevant, and necessary to assist the Court in determining whether the facts alleged appear to justify the conclusions sought pursuant to article 575(2) of the CCP. The evidence will enable the Court to separate the hypotheses, opinions, and vague allegations from the facts.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present *Application* De Bene Esse *by Defendants to Adduce Evidence under Section 225.4 of the Québec Securities Act and Application for Leave to Adduce Relevant Evidence under Article 574 of the Code of Civil Procedure*;

AUTHORIZE the Defendants Lightspeed Commerce Inc. (previously Lightspeed POS Inc.), Dax Dasilva, Jean Paul Chauvet, Marie-Josée Lamothe, Patrick Pichette, Rob Williams, Paul McFeeters, Merline Saintil, Daniel Micak, Asha Bakshani and Brandon Nussey (collectively referred to as the “Defendants”) to produce the sworn statements of Brandon Nussey and Joseph Bartlett and the Exhibits LSPD referenced therein;

AUTHORIZE the Defendants to produce two expert reports prepared by Professor Daniel J. Taylor and the accounting firm Ernst & Young, respectively;

AUTHORIZE the Defendants to produce the excerpts of the transcripts of the examination of the Plaintiff, Steve Holcman, namely subpages 4 to 11 and 28 to 39 of the transcripts, which are reproduced herein as **Appendix A**;

THE WHOLE without costs, save in the event of contestation.

MONTREAL, May 31, 2024

Stikeman Elliott

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NOTICE OF PRESENTATION

TO: **Me Elizabeth Meloche**
Me Shawn K. Faguy
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Attorneys for Plaintiffs

Me Joey Zukran
276 rue Saint-Jacques, suite 801
Montreal (Québec) H2Y 1N3
Attorney for Plaintiffs

TAKE NOTICE that the Motion to Adduce Relevant Evidence will be presented before the Honourable judge Lukasz Granosik, on July 3rd, 2024, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Province of Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, May 31, 2024

Stikeman Elliott

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ATTORNEYS FOR DEFENDANTS LIGHTSPEED COMMERCE INC. (PREVIOUSLY LIGHTSPEED POS INC.), DAX DASILVA, JEAN PAUL CHAUVET, MARIE-JOSÉE LAMOTHE, PATRICK PICHETTE, ROB WILLIAMS, PAUL MCFEETERS, MERLINE SAINTIL, DANIEL MICAK, ASHA BAKSHANI AND BRANDON NUSSEY

SUPERIOR COURT **(Class Action)**
No : 500-06-001164-215
PROVINCE OF QUÉBEC **DISTRICT OF MONTRÉAL**
STEVE HOLCMAN **-and-** **TARIQUE PLUMMER** Applicants - v. - **LIGHTSPEED COMMERCE INC. ET AL.** Defendants
BS0350 **Our File : 144699-1025**
MOTION TO ADDUCE RELEVANT EVIDENCE (*DE BENE ESSE* UNDER SECTION 225.4 OF THE QUEBEC *SECURITIES ACT* AND PURSUANT TO ARTICLE 574(3) OF THE *CODE OF CIVIL PROCEDURE*)
ORIGINAL
Me Stéphanie Lapierre **514 397-3029 │slapierre@stikeman.com** **Me Frédéric Paré** **514 397-3690 │fpare@stikeman.com** **Me Amara Khy** **514 397-3099 | akhy@stikeman.com** **STIKEMAN ELLIOTT** **Stikeman Elliott S.E.N.C.R.L., s.r.l. AVOCATS** **1155, boul. René-Lévesque Ouest, 41e Étage** **Montréal, Canada H3B 3V2**

APPENDIX A

CANADA	**C O U R S U P É R I E U R E** **(Action collective)**
PROVINCE DE QUÉBEC	
DISTRICT DE MONTRÉAL	
Nº. : 500-06-001164-215	**STEVE HOLCMAN** - and - **TARIQUE PLUMMER** Demandeurs c. **LIGHTSPEED COMMERCE INC.** - et - **DAX DASILVA, JEAN PAUL CHAUVET, MARIE-JOSÉE LAMONTHE, PATRICK PICHETTE, ROB WILLIAMS, PAUL McFEETERS, MERLINE SAINTIL, DANIEL MICAK, ASHA BAKSHANI, BRANDON NUSSEY** - et - **PRICEWATERHOUSECOOPERS LLP** Défendeurs

AVIS DE COMMUNICATION D'EXTRAITS D'UNE DÉPOSITION
(Articles 227 C.p.c.)

À : **Me Joey Zukran**
276 rue Saint-Jacques, suite 801
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Avocat des demandeurs

Me Elizabeth Meloche
Me Shawn K. Faguy
329 rue de la Commune Ouest
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Avocats des demandeurs

PRENEZ AVIS que lors de l'audience, les défendeurs (à l'exception de PWC) par l'entremise de leurs avocats soussignés, entendent introduire en preuve les extraits de la déposition de Steven Holcman recueillie lors de son interrogatoire présidé par Mes Frédéric Paré et Éric Préfontaine le 12 avril 2024.

Une copie des extraits de la transcription des notes sténographiques de cet interrogatoire est jointe au présent avis.

- Page 4 à la page 11;
- Page 28 à la page 39.

VEUILLEZ AGIR EN CONSÉQUENCE.

MONTRÉAL, le 31 mai 2024

Stikeman Elliott

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C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N° : 500-06-001164-215

S U P E R I O R   C O U R T

STEVEN HOLCMAN
and
TARIQUE PLUMMER
Plantiffs

- vs. -

LIGHTSPEED COMMERCE INC.,
LIGHTSPEED POS INC.,
DAX SASILVA,
JEAN-PAUL CHAUVET,
MARIE-JOSÉE LAMONTHE,
PATRICK PICHETTE,
ROB WILLIAMS,
PAUL McFEETERS,
MERLINE SAINTIL,
DANIEL MICAK,
ASHA BAKSHANI,
and
PRICEWATERHOUSECOOPERS LLP.
Defendants

VIDEOCONFERENCE EXAMINATION OF STEVEN HOLCMAN BY
Me FRÉDÉRIC PARÉ & Me ÉRIC PRÉFONTAINE

ATTENDANCE:

Me ÉLIZABETH MELOCHE,
Me SHAWN FAGUY,
Me JOEY ZUCKRAN,
Me LÉA BRUYÈRE,
for Plaintiffs

Me FRÉDÉRIC PARÉ,
Me AMARA KHY,
Me ÉRIC PRÉFONTAINE,
Me JOSY-ANNE THERRIEN,
for Defendants

240412B April 12, 2024

THOMAS ADAMS, S.O./OCR - 364016-7

TABLE OF CONTENTS

TABLE OF OBJECTIONS

4

In the year two thousand twenty-two (2024), this twelfth (12th) day of the month of April,

PERSONALLY CAME AND DID APPEAR:

STEVEN HOLCMAN, domiciled and residing 5900, Armstrong, apt. 302, in the City of Côte-Saint-Luc, Province of Québec, H4W 2Z5.

WHO, upon having taken a Solemn Affirmation, did depose and say as follows:

EXAMINED BY Me FRÉDÉRIC PARÉ,
for Defendants:

Q.1 Good afternoon, Mr. Holcman.
A. Good afternoon.
Q.2 So, as previously indicated, my name is Frédéric Paré, I'm the attorney for Lightspeed as well as the individuals named in the class action. I will be asking you a few questions this afternoon. If my questions are not clear enough for you, just say so and I will rephrase them.
A. Correct. Okay.
Q.3 Since we are conducting a virtual

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examination, I will ask you to tell us where physically you are at the moment.
A. Right now, I'm in my apartment.
Q.4 Okay.
A. My condo.
Q.5 Are you alone?
A. Yes.
Q.6 Okay. Do you have any notes with you for the purpose of the examination of today?
A. No.
Q.7 Okay. Let's briefly address your academic and professional background, so maybe starting by your academic background. What is it?
A. My academic background?
Q.8 Yes.
A. School of Fort Knox [sic]. Hard knocks. Just, you know, 40 years of experience.
Q.9 Okay.
A. 45, 50 years of experience working.
Q.10 Okay. Could you expend a little bit as to in what field or in what specific industry you've been working?
A. Sales.
Q.11 Sales? Could you walk us through your

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different employers over time?
A. My employers, recently right now is an IT firm, I'm in sales of IT.
Q.12 Which firm?
A. Quadbridge.
Q.13 Okay, and you've been with that firm since when?
A. Nine years.
Q.14 Okay, and prior to that?
A. Prior to that, I was working for retail stores, in sales doing retail. Mattresses, selling mattresses.
Q.15 Okay. For how many years approximately?
A. About four years.
Q.16 Okay, and before that?
A. Before that, I was in IT before that. I was in - Well, I was four years at one company. Let's say eight years total in mattresses, and before that I was in IT, selling IT.
Q.17 Okay, so always a seller --
A. In sales.
Q.18 -- in a variety of industries?
A. Yes.
Q.19 Okay. Did you act as a plaintiff class

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representative before today in the present file?
A. Yes.
Q.20 In which cases?
A. Tim Hortons.
Q.21 Mm-hmm. Aside from that?
A. That's it.
Q.22 Okay, and the Tim Hortons' matter, if my memory serves me right, it was a privacy-related class action, correct?
A. Correct, yes.
Q.23 So, the initial application, or the claim that was filed in the present case, is dated October 1st, 2021. Have you read it before it was filed by your lawyer?
A. Yes.
Q.24 Did you agree with its content?
A. Yes.
Q.25 Okay. The claim was subsequently amended on February 14th, 2022. Again, did you read it before this amended claim was filed in Court?
A. Yes. I mean, I - Yes, did read it, yes.
Q.26 Is there any nuance to be made?
A. I'm sorry?

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Q.27 It seemed that you wanted to say something. I was just wondering if you wished to make any nuance, or... ?
A. No.
Q.28 No? Okay. You agree with the content of the amended claim as well?
A. Yes.
Q.29 And likewise, for the re-amended application dated June 17th, 2022, did you read it prior to it being filed?
A. Yes.
Q.30 Did you agree with its content?
A. Yes.
Q.31 Is there anything, before we go on, that you wish to either rectify or add that's not stated in the re-amended application?
A. No.
Q.32 Do you know the other class representative, Mr. Tarique Plummer?
A. Do I know him? I know his name, but do I know him personally? No.
Q.33 No? Did you ever meet him?
A. No.
Q.34 Did you talk to him prior to your examination today?

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A. No.
Q.35 Talking about your trading experience, when did you start, Mr. Holcman, to invest in stock of publicly traded companies?
A. I mean what do you mean, 'when did I start'? I'm not - I mean, I'm a certain age and, you know, did I start buying 40 years ago? Yes. I don't understand your question.
Q.36 That's pretty much the question that I was asking for. When did you start to invest or to purchase or to sell stocks of publicly traded companies?
A. 40 years ago.
Q.37 40 years ago, and how old are you today?
A. 64.
Q.38 Okay. How often do you trade securities, typically?
A. "How often" meaning what? Years, days?
Q.39 On what frequency do you trade securities, typically?
A. Yearly? I mean ,I'm not answering your question because I don't do it - I'm not - I don't do it every day. I'm not - I don't trade every day. It's for my retirement. I

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look for my retirement, and I look to invest, to put - to buy securities for my retirement, so, you know, I may buy, I don't know, once a month, you know what I mean? Or twice a month for my retirement, but I don't buy daily if that's your question.
Q.40 It was indeed my question.
A. Yes.
Q.41 So, I heard and took notes of once or twice a month, typically. Is that fair enough as an answer?
A. At certain points yes, other points, maybe twice a year.
Q.42 Okay, so, it's fluid?
A. Yes, it's fluid.
Q.43 Okay, but you wouldn't qualify yourself as an active trader, if I may?
A. No, not at all.
Q.44 Okay. How would describe your knowledge on stocks of publicly traded companies or investments in general?
A. My knowledge of publicly traded companies?
Q.45 Your level of knowledge, yes.
A. I understand, basically, financial

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statements, okay? I do my due diligence, I look. Also, where - market hype, what's - you know, and then I make a decision on what I see, what I hear, and I make a decision on that, and I invest. I buy, but I buy for my retirement. I don't buy to make money daily on it. I put in and I find companies - I'd like to find companies that I have confidence in for growth.
Q.46 Okay, and when you say you buy for your retirement, in terms of your expectations as to the duration of your investments, are you saying that you're looking for long-term investments, mid-term investments, short-term investments? What are you looking at, typically, in terms of --
A. Mid to long-term.
Q.47 Mid to long-term. And you were talking about the way you proceeded before making a trade, either purchasing or selling. How do you typically acquire the sufficient knowledge you need in order to make a decision to trade a security?

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Q.117 Do you know that short sellers such as Spruce Point have a vested interests in the value of the stock of the company they comment on to go down?
A. Are you asking me if I'm aware of that?
Q.118 Do you know - I'm suggesting to you this is a fact. Were you aware of that?
A. No.
Q.119 So, I'm going to show Exhibit P-4 to you, page 2.

Me ÉLIZABETH MELOCHE:
Exhibit P-4 is the Spruce Report, Mr. Holcman.

Me FRÉDÉRIC PARÉ:
Yes.

Me ÉLIZABETH MELOCHE:
The Witness doesn't necessarily know the exhibit numbers.

Me FRÉDÉRIC PARÉ:
No, fair enough, Maître Meloche.
Q.120 So, maybe, let's go back to page 1. That's

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the cover page.
A. Yes.
Q.121 Does it refresh your memory, Mr. Holcman?
A. Yes, yes. I remember seeing that, yes.
Q.122 Okay, so page 2, which is the very first page after the cover page, at the very very beginning, there's a disclaimer for the reader where we say:
"You should assume that as of the publication date of any presentation, Spruce Point [...]" - which is the company that produced this document - "[...] has a short position in all stocks including that of Lightspeed, and therefore Spruce Point stands to realize significant gains in the event that the price declines. So again, you were not aware of that?
A. No.
Q.123 What was your level of confidence, Mr. Holcman, in the content of this report at the time you saw it?

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A. My level - I'm sorry, my level of... ?
Q.124 Of confidence as to the accuracy of the information contained in this report at the time you saw it?
A. Confidence? I had confidence in the report.
Q.125 And now that you've seen the disclaimer, does it change anything to you?
A. Not really, no.
Q.126 Exhibit P-5. Mr. Holcman, we're going to show it to you in a second. It's a CBC article filed in support of the claim dated September 30th, 2021. Did you see this document at the time?
A. No.
Q.127 Okay. Exhibit P-10 now, it's a press release issued by Lightspeed on September 29th, 2021, the day of the Spruce Point report. Did you look at this press release?

Me ÉLIZABETH MELOCHE:
If you want, Mr. Holcman, you can take the time to read it to refresh your memory.

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Me FRÉDÉRIC PARÉ:
Of course.
A. Repeat your question, please?
Q.128 Yes. Did you see this press release of Lightspeed?
A. No. I didn't see it.
Q.129 No, so you would have seen it, presumably, prior to it being filed as an exhibit in support of the application, or even later?
A. Sorry? I'm --
Q.130 I'm just trying to see when you would have seen it for the first time, this press release.
A. I don't remember.
Q.131 No?
A. I don't remember.
Q.132 So, are you saying, Mr. Holcman, that your decision to sell your shares of Lightspeed on October 7th, 2021, was solely based on the Spruce Point short report?
A. Yes.
Q.133 So, in paragraph 7 of your affidavit dated June 16th, 2022 - I'll show it on the screen - you say --

Me ÉLIZABETH MELOCHE:
So, we currently can't see paragraph 7, even.

Me FRÉDÉRIC PARÉ:
Q.134 If you go at line 3: "I want the Defendants to be held responsible for their conduct." So, what conduct here are you referring to, Mr. Holcman?
A. Making sure that the financials are correct, that the numbers are correct. I believe it's their responsibility to have - to give proper numbers, to have proper numbers.
Q.135 Okay, so there's nothing more specific then that, having - disclosing proper numbers?
A. And proper - Yes, proper conduct too, yes.
Q.136 When you say "proper conduct", is there any other conduct that would be problematic in your view, aside from disclosing certain numbers?
A. Well, I guess not, no.
Q.137 What were the key performance indicators, or the KPIs that you were interested in

Lightspeed in connection with your investment in it?
A. Earnings, sales, hiring, mostly. Mostly that.
Q.138 Do you know what KPIs or key performance indicators were publicly disclosed by Lightspeed at any point in time?
A. I'm sorry? You asked - Say that again.
Q.139 Yes. Do you know what key performance indicators were publicly disclosed by Lightspeed at any point in time?
A. By Lightspeed?
Q.140 Mm-hmm.
A. I don't know. I'm not sure.
Q.141 The Spruce Point report refers to the notion of ARPU, A-R-P-U. Does it ring a bell to you?
A. No.
Q.142 No? And this acronym stands for "average revenue per user". Still, does it ring a bell to you?
A. No.
Q.143 So, it's not something that you would be interested in, or having looked at?
A. Correct.

Q.144 The notion of customer accounts, customer location, is it something that you were interested in, or that you looked at?
A. No.
Q.145 The notion of TAM, T-A-M - stands for "total addressable market" - is that something that you were interested in, or looked at?
A. No.
Q.146 The growth of the company, be it organic, non-organic, is it something that you were interested in, or looked at?
A. Growth of company, yes. I'm not sure what you mean by "organic or no-organic".
Q.147 You're not making a difference? It's a question.

Me ÉLIZABETH MELOCHE:
The witness is asking you to define what you mean by "organic or non-organic".

Me FRÉDÉRIC PARÉ:
I'm asking him.
Q.148 For you, do you make a difference between what is defined as organic growth versus

non-organic growth?
A. I'm not understanding the question, so --
Q.149 Is there --
A. I don't know what you mean by "organic growth" or "non-organic growth".
Q.150 Okay. An acquisition, for instance, which is non-organic per se, is that something that is of interest to you, or not? The growth of the company, be it organically within the company or through acquisition, is that something that has any interest to you --
A. Oh, yes.
Q.151 -- that you looked at?
A. Yes.
Q.152 Yes. So, what were you looking at specifically? What was of interest to you in terms of the origin of the growth being organic or non-organic?
A. Both.
Q.153 Okay, so for you, growth is growth regardless of its origin?
A. No, I look at it at original - growth and organic growth. I mean, any company can grow just by being - having an acquisition

of another company. It shows growth, right? But I mean, you have to - I look at both.
Q.154 You look at both. Any one more important than the other to you?
A. More important one than the other? No.
Q.155 Is there any issue [ph.], as far as you're concerned, with the way Lightspeed described its various acquisitions over time?
A. What do you mean, "SU"?
Q.156 "Issue".
A. Oh, "issue".
Q.157 Yes.
A. I wasn't really - You know, if there was any issues with their acquisitions, I didn't look at it into details, so --
Q.158 Were you aware that the transaction occurred with a company called Vend?
A. Sorry, "Vend"?
Q.159 "Vend", V-E-N-D?
A. No.
Q.160 No. Upserve?
A. No.
Q.161 Shopkeep?

A. --
Q.162 You need to speak out louder.
A. I don't remember. I don't remember if I remember seeing those acquisitions.
Q.163 Goodwill impairment, is that a notion that rings a bell to you?
A. No.
Q.164 You don't know what this is?
A. Don't know.
Q.165 This notion has no interest or bearing to you?
A. Which one, I'm sorry?
Q.166 This notion of goodwill impairment, or goodwill, is that something that has any interest to you?
A. No.
Q.167 You have no clue, Mr. Holcman, I suggest to you, of what is Lightspeed's accounting policy for revenue recognition?
A. No.
Q.168 Do you know if there's been any change in the way Lightspeed accounted for revenue recognition?
A. No.
Q.169 Do you know if there's been any change

with respect to ARPU?
A. Do I know if there's been any change to respect to... ?
Q.170 This acronym of ARPU.
A. No.
Q.171 Okay. We're going to break for five minutes and go off the record. So, Mr. Holcman, I'm just going to confirm with my colleague to see if I have any further questions and in the interim I invite you not to talk about the content of your testimony with your lawyers. Okay? I'm going to get back to you in a few minutes. Thank you everyone.

UPON RECESSING
UPON RETURNING

Me FRÉDÉRIC PARÉ:
Q.172 So, two remaining questions, Mr. Holcman. The first one, do you still hold shares of Lightspeed today?
A. No.
Q.173 So, you never bought back any shares after you've sold them in October 2021?

A. Correct.
Q.174 Okay. And lastly, how is it that you became the class representative in this matter?
A. How I became... ? Well, I was working with Joey on another case, and when this happened, I just spoke to Maître Zukran about this, and that's how it came out. I brought it up to him.
Q.175 Okay, so thank you for your time, Mr. Holcman. I have no further questions for you today, and I understand that my colleague Maître Préfontaine will have a few questions for you. Thank you.
A. Thank you.

EXAMINED BY Me ÉRIC PRÉFONTAINE, for Defendant:
Q.176 Good afternoon, Mr. Holcman, I'm Éric Préfontaine, I represent PriceWaterhouseCoopers. Just one note for the stenographer, Mr. Adams, same book as for the previous witness.

De :	Amara Khy
À :	jzukran@lpclex.com; Elizabeth Meloche; Shawn Faguy; Préfontaine, Éric; Gravel, Amanda; Therrien, Josy-Ann
Cc :	Stéphanie Lapierre; Frédéric Paré
Objet :	NOTIFICATION | 500-06-001164-215 | STEVE HOLCMAN ET AL. v. LIGHTSPEED COMMERCE INC. ET AL. | Motion to adduce relevant evidence and Appendix A
Date :	Friday, May 31, 2024 3:22:00 PM
Pièces jointes :	2024-05-31 - Defendants" motion for leave to adduce relevant evidence with appendix.pdf

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