



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-24-00716267-00CL DATE: July 5, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: In the matter of Skylink Express Inc

BEFORE: JUSTIC STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--------------------------------|--|
| Jessica Stam | Lawyer for Skylink Express Inc | Jennifer.stam@nortonrosefulbright.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---|--|
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| Bobby Kofman | Monitor, KSV Restructuring Inc | Bkofman@ksv advisory.com |

ENDORSEMENT OF JUSTICE STEELE:

[1] The applicant, Skylink Express Inc. (“Skylink”) seeks court approval of the sale of an aircraft contemplated by an agreement of purchase and sale dated June 24, 2024 between the applicant and LAD Inc. and a vesting order. The applicant asks the court to authorize and direct the applicable government authorities to register the transfer of the aircraft to the buyer. In addition, the applicant seeks authorization to distribute the net proceeds of sale from the transaction to TD and seeks a sealing order.

[2] No party opposes the relief sought.

[3] The Monitor supports the relief sought.

[4] The Sale Process was previously approved by Court Order. A sales agent, with the support of the Monitor, has gone to market with Skylink’s fleet of 14 aircraft. This is the first plane to be sold.

Approval of Sale and AVO

[5] Under section 36 of the CCAA, the Court has the jurisdiction to approve a sale proceeding in the context of CCAA proceedings. The factors for the Court to consider are set out at section 36(3) of the CCAA:

- a. Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. Whether the monitor approved the process leading to the proposed sale or disposition;
- c. Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. The extent to which the creditors were consulted;
- e. The effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[6] These factors are not intended to be a checklist or exhaustive: *Target Canada Co. (Re)*, 2015 ONSC 1487 at para. 16. The courts also continue to consider the well-known principles set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA) at para. 16, as relevant to whether a sale ought to be approved.

[7] I am satisfied that the proposed sale of the aircraft should be approved for the reasons set out at para. 19 of Skylink’s factum. Among other things, the marketing agent undertook a process that was commercially reasonable and consistent with the terms of the Sale Process, the agent is of the view that the purchase price is acceptable and appropriate, the only condition on closing the transaction is court approval, and there is no opposition.

[8] The proposed order contains language intended to address the fact that ownership of aircrafts and aircraft security must take place in the international registry of mobile assets, and there are registration requirements with Transport Canada, among other things. I heard submissions from counsel on whether it was appropriate to include the proposed paragraphs in the order directing the applicable government authorities to

transfer ownership of the plane and discharge the registrations related to the sale of the plane. The applicant noted that vesting orders are routinely used to transfer title in real property, among other things. In addition, the applicant noted that in the Lynx Air CCAA proceeding, the Court made orders similar to those requested directing and authorizing governmental authorities to transfer title to the purchased assets and discharge registrations (see para 4 and 5 of the Order, dated May 21, 2024, *In the Matter of the Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air*).

[9] I am satisfied that the proposed additional language in the Order related to the registration and transfer of the aircraft is acceptable and appropriate.

Distribution to TD

[10] The applicant also seeks court approval to distribute the net proceeds of sale of the aircraft to TD, the applicant's senior secured creditor.

[11] Courts routinely grant orders authorizing distributions to secured creditors. The Quebec Court in *AbitibiBowater Inc. (Arrangement relatif à)*, 2009 QCCS 6461 at para. 75, considered these factors in the context of an interim distribution:

- a. Whether the payee's security is valid and enforceable;
- b. Whether the distribution would leave the estate with sufficient liquidity; and
- c. Whether the amounts owed to the beneficiary of the distribution far exceed the amount of the distribution.

[12] TD's security in respect of the aircraft is not primed by any of the charges under the Initial Order. The Monitor has received an opinion from its legal counsel with respect to the validity and enforceability of TD's security in respect of the aircraft.

Sealing Order

[13] Skylink requests that the confidential appendix to the Fourth Report, the redacted agreement of purchase and sale, be sealed pending further court order or completion of the Sale Process. The only information that has been redacted is the purchase price and the amount of the deposit.

[14] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.

[15] It is common to temporarily seal bids and other commercially sensitive material when assets are to be sold under a court process.

[16] The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. If this information were released, it may impact the applicant's ability to maximize value on the sale of the other

13 planes. No stakeholder will be materially prejudiced by the time limited sealing order, which applies to only a limited amount of information.

[17] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

[18] The applicant is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed.

[19] Order attached.



Justice Steele

Date: July 5, 2024