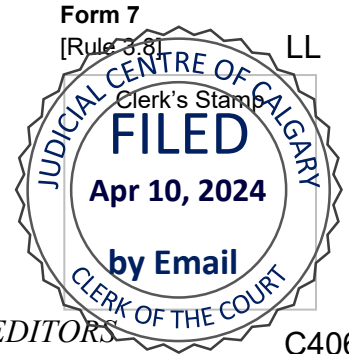


COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

C40689

Apr 15, 2024  
COM

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT OF MICHAEL WOODWARD**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File Number: 1246361

### **AFFIDAVIT OF MICHAEL WOODWARD**

**SWORN APRIL 9, 2024**

I, Michael Woodward, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Chief Executive Officer and Director of my personal company that has been contracted to provide the services of Interim Chief Financial Officer (“**Interim Contractor CFO**”) to Lynx Air (as that term is defined below). I have been the Interim Contractor CFO of Lynx Air since March of 2023, and since that time I have been responsible for all financial-related

Clerk's Stamp

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IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

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ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION  
and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT OF MICHAEL WOODWARD**

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File Number: 1246361

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aspects of Lynx Air's business. Prior to this role, I served as Chief Financial Officer of Campus Energy Partners, an energy infrastructure and supply company, and as a Vice President of BMO Capital Markets. I hold a Bachelor of Commerce in Accounting from the University of British Columbia and have obtained Chartered Accountant and Chartered Financial Analyst designations.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Applicants' (as that term is defined below) management teams and advisors and reviewed relevant documents and information concerning the Applicants' operations and business and financial affairs.

3. I swear this Affidavit in support of an application (the "**Application**") by the Applicants for an order:

- (a) abridging the time for service of notice of this Application (if necessary), deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
- (b) extending the Stay Period, as defined in paragraph 15 of the Amended and Restated Initial Order granted in these proceedings by the Honourable Justice Whitling on March 1, 2024 (the "**ARIO**"), up to and including June 28, 2024, or such other date as this Court may deem appropriate;

- (c) authorizing and directing the Applicants, with the approval of FTI Consulting Canada Inc. (the “**Monitor**”), to make a distribution to Indigo Northern Ventures LP (the “**Interim Lender**” or “**Indigo**”) in an amount equal to the amounts owing to the Interim Lender under the interim financing credit facility approved by the ARIO;
- (d) authorizing the Applicants, with the approval of the Monitor, to make further distributions to Indigo up to an amount equal to the secured obligations owing to Indigo, with such distributions to be credited against the secured obligations and amounts owing by the Applicants to Indigo under the Note Purchase Agreements (as that term is defined below), subject to the Applicants retaining a reserve in an amount deemed appropriate by the Monitor for priority payables and to fund the remaining proceedings.

**A. The Applicants’ CCAA Proceedings**

4. On February 22, 2024, Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, and together with Lynx Holdco, “**Lynx Air**” or the “**Applicants**”) filed an originating application under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Further information regarding the Applicants, the reasons leading to these CCAA proceedings, and the Applicants’ intended liquidation and orderly wind down is provided in my Affidavit sworn February 22, 2024 (the “**February 22 Affidavit**”).

5. On February 22, 2024, the Honourable Justice Gill granted the Applicants an Initial Order under the CCAA (the “**Initial Order**”), pursuant to which the Applicants were declared companies

to which the CCAA applies, FTI Consulting Canada Inc. was appointed Monitor of the Applicants, and an initial stay of proceedings until March 4, 2024, was granted (the “**Initial Stay**”).

6. On March 1, 2024, the Applicants obtained an ARIO that, amongst other things, extended the Initial Stay to April 15, 2024 (the “**Stay Period**”). The Honourable Justice Whiling also granted an order approving the Applicants’ sale and investment solicitation process (the “**SISP**” and “**SISP Order**”).

7. On April 2, 2024, the Applicants obtained an order approving the agreement made between The Boeing Company (“**Boeing**”) and the Applicants dated as of March 21, 2024 (the “**Termination Agreement**”), setting out the terms of the agreed-upon settlement to terminate the Purchase Agreement Number ABQ-PA-04427 dated October 18, 2015, between Boeing and Lynx Opco (the “**Boeing Agreement**”).

## **B. SISP Update**

8. Information regarding the Applicants and the Monitor’s involvement with the SISP since the ARIO is provided in the Second Report of the Monitor dated March 27, 2024 (the “**Second Report**”).

9. Since the Second Report, it has become clear that lessors to the Aircraft Leases (as defined in the February 22 Affidavit) will not consent to the assignment thereof, and the aircraft will need to be returned in accordance with the terms of the *Convention on International Interests in Mobile Equipment*, 16 November 2001, UNTS Vol 2307,1-41143 at 285 (entered into force 1 March 2006) and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters*

*Specific to Aircraft* Equipment, 16 November 2001, UNTS Vol 2367,1-41143 at 517 (entered into force 1 March 2006).

10. The Applicants are currently negotiating the terms of termination agreements with lessors to the Aircraft Leases to ensure an orderly transition of the aircraft to the lessors.

***Engines and Miscellaneous Equipment***

11. In the context of the SISP, the Applicants sought bids for certain ancillary equipment, namely wheels and brakes compatible with aircraft operated by the Applicants.

12. On April 5, 2024, the Applicants received 2 bids and are in the process of reviewing and considering same, in consideration with the Monitor and the Interim Lender.

13. In the context of the SISP, the Applicants also sought bids for engines and engine parts compatible with aircraft operated by the Applicants.

14. The Applicants expect to receive bids in the course of the week of April 8, 2024 and will promptly consider same.

15. The Applicants expect to seek Court approval for both the engine and the other equipment sales concurrently and as soon as practicable once a successful bidder has been selected and the necessary definitive documents have been executed. The Applicants require an extension of the Stay Period to complete this process.

**C. Boeing Agreement**

16. Further to the approval by the Court of the Termination Agreement on April 2, 2024, the Applicants received the funds contemplated therein from Boeing.

#### **D. Business and Operations Update**

17. As previously reported to the Court, the Applicants' operations have been suspended since the issuance of the Initial Order, and the Applicants have been working on maximizing recovery to their stakeholders through the SISP and otherwise. The Applicants' operational and business activities (outside the SISP) are summarized below.

##### ***Receipts and Audits***

18. The Applicants have been diligently working on collecting amounts from service providers and vendors which had letters of credit or deposits that exceeded the amounts owed to such parties. As a result of their efforts to date, the Applicants have collected significant amounts in respect of such letters of credit and deposits. The Applicants intend to continue these efforts over the coming weeks.

19. The Applicants have also been diligently working with various authorities on several tax / withholdings audits, including payroll, GST and fuel tax. The Applicants have received a significant refund of fuel tax from the Province of British Columbia. The Applicants intend to continue working with authorities over the coming weeks.

20. Details of amounts mentioned above will be set out in the report to be filed by the Monitor in support of the Application.

##### ***D&O Trust***

21. As set out in the February 22 Affidavit, on September 20, 2023, Lynx Holdco established a CAD\$2,000,000 irrevocable trust with TSX Trust Company as trustee and the Applicants' Directors and Officers as beneficiaries (the "**Lynx Air D&O Trust**").

22. The Lynx Air D&O Trust will expire on September 20, 2024 or earlier, pursuant to the terms of the agreement, and will not be renewed.

*Applicants' Employees*

23. The Applicants have been assisting the Monitor in its administration of the WEPPA process for the benefit of the employees.

24. The deadline to submit WEPPA claims was April 4, 2024. Those claims are being reviewed by the Applicants and the Monitor.

25. The Applicants are currently evaluating their staffing needs for the future in terms of their remaining workforce and will adjust the workforce as necessary to ensure that the remaining administrative matters can be completed as economically as possible.

*Premises*

26. As is set out in the February 22 Affidavit, the Applicants are party to a lease agreement with Deerfoot Junction Holdings Inc., pursuant to which it leases head office space in Calgary, Alberta.

27. Over the course of these CCAA proceedings, the Applicants reduced their head office footprint by 75% and have extended the head office lease until end of April 2024.

28. The Applicants are currently evaluating whether the head office lease will be extended further.

29. The Applicants are liquidating certain IT equipment outside of the SISP, in accordance with the terms of the ARIO. The Applicants expect to complete this sale in the short term.



30. The Applicants also intend to vacate its leased hangar premises on or before April 14, 2024.

### ***Customer Refunds***

31. As set out in the Second Report, the Applicants' intention was to complete customer refunds directly without the need for customers to contact their credit card providers to submit chargebacks.

32. Unfortunately, Sabre Corporation (which was the Applicants' provider of air bookings services) has refused to assist with customer refunds, leaving the Applicants no other choice but to work with Elevon Canada Company (the Applicants' credit card processor) to process chargebacks for affected customers.

33. The chargeback process is expensive, and this will therefore result in significant chargeback fees to the Applicants, to the detriment of their stakeholders.

34. The deadline for customers to submit chargeback requests is 18 months following the date of the Initial Order.

### **E. Relief Sought**

#### ***The Extension of the Stay Period***

35. Under the ARIO, this Court extended the Stay Period until April 15, 2024. The Applicants are seeking a further extension of the Stay Period through and until June 28, 2024.

36. Since the granting of the ARIO, the Applicants have, with the assistance of the Monitor, among other things:

- (a) conducted the SISP in accordance with the SISP Order;
- (b) worked to collect certain amounts, including from vendors and service providers holding deposits or letters of credit;
- (c) worked with various tax authorities on audits and document requests;
- (d) downsized operations; and
- (e) liaised with stakeholders;

37. The Applicants require an extension of the Stay Period in order to continue to implement the Applicants' restructuring plan to maximize value to its stakeholders through the continued administration of the SISP and ongoing downsizing of their operations.

38. The SISP remains a key component of the Applicants' restructuring plan and efforts, and an extension of the Stay Period is required in order to further those objectives.

39. The Applicants understand that the Monitor will be filing a report in connection with this Application, supporting the Applicants' request for an extension of the Stay Period. The Applicants further understand that such report will include a cash flow forecast for the duration of the requested extension of the Stay Period, and will show that the Applicants are forecasted to have sufficient liquidity to fund its operations during the extended Stay Period.

40. The Interim Lender also supports the extension.

41. As evidenced by the above activities of the Applicants, I believe that the Applicants have been acting with good faith and with due diligence through the CCAA proceedings, and it is appropriate to grant the extensions sought.

*The Interim Distribution and Authorization*

42. As described in the February 22 Affidavit, the Applicants are indebted to the Interim Lender under the terms of the interim financing term sheet dated February 21, 2024, between the Applicants and the Interim Lender (the “**Commitment Letter**”).

43. As described further described in the February 22 Affidavit, the Applicants are also indebted to Indigo under the terms of the note purchase agreement dated December 20, 2018 and the five bridge note purchase agreements dated February 24, 2023, October 26, 2023, January 12, 2024, February 2, 2024, and February 7, 2024, as amended (collectively, the “**Note Purchase Agreements**”).

44. The February 22 Affidavit sets out the details of the Note Purchase Agreements, including the amounts owed thereunder.

45. Prior to the date of the Initial Order, the Applicants granted security for its obligations under the Note Purchase Agreements, which security was properly registered and perfected by the Interim Lender.

46. The Applicants seek:

- (a) approval to make a distribution to the Interim Lender, with the approval of the Monitor, in an amount equal to the amounts owing to the Interim Lender under the interim financing credit facility approved by the ARIO, which shall be distributed to the Interim Lender in full and final satisfaction of the interim financing; and

- (b) authorization to make further distributions to Indigo, with the approval of the Monitor, up to an amount equal to the secured obligations owing to Indigo, with such distributions to be credited against the secured obligations and amounts owing by the Applicants to Indigo under the Note Purchase Agreements, subject to the Applicants retaining a reserve in an amount deemed appropriate by the Monitor for priority payables and to fund the remaining proceedings.

47. The Interim Lender made an initial advance of USD\$750,000 pursuant to the Commitment Letter, and no further interim financing was required by the Applicants.

48. Following receipt of the funds contemplated under the Boeing Agreement as well as certain other receivables, the Applicants' current cash position allows it to reimburse the amounts owing under the Commitment Letter as well as a portion of amounts owing under the Note Purchase Agreements.

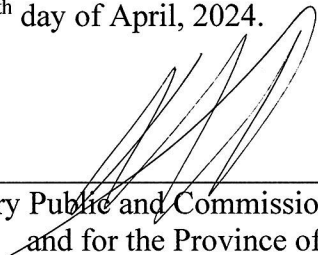
49. The Monitor has received an opinion from its independent legal counsel that, subject to the customary assumptions and qualifications, the Interim Lender's security is valid and enforceable in accordance with its terms.

50. In my view, the Applicants' stakeholders will not be materially prejudiced by the proposed distributions to the Interim Lender. On the contrary, the Applicants will limit interest payable to the Interim Lender, to the benefit of all stakeholders generally.

**F. Conclusion**


51. I make this Affidavit in support of the relief sought in the Application and for no other improper purpose.

SWORN BEFORE ME at Calgary, Alberta,  
this 9<sup>th</sup> day of April, 2024.



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Notary Public and Commissioner for Oaths in  
and for the Province of Alberta



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Michael Woodward

**ZFYAD ABOUDHEIR**  
**Student-at-Law**