



COURT FILE NUMBER 2401-02664
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS* C40689
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended 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 **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: April 15, 2024
Time: 3:00 p.m.
Where: Calgary Law Courts (by WebEx - See **Schedule "A"**)
Before: The Honourable Justice Sidnell

Go to the end of this document to see what you can do and when you must do it.

Clerk's Stamp

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

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

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: April 15, 2024
Time: 3:00 p.m.
Where: Calgary Law Courts (by WebEx - See **Schedule "A"**)
Before: The Honourable Justice Sidnell

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, the “**Applicants**”), seek an Order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) substantially in the form attached hereto as **Schedule “B”**:
 - (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; and

- (e) such further and other relief as the Applicants may request and this Honourable Court may grant.

Grounds for making this application:

The CCAA Proceedings

2. On February 22, 2024, the Applicants were granted protection under the CCAA pursuant to an Order granted by the Honourable Justice Gill of this Court (the “**Initial Order**”).
3. The Initial Order, among other things, granted a broad stay of proceedings in favour of the Applicants, their property, and business up to and including March 4, 2024, and authorized and empowered the Applicants to obtain and borrow under an interim lending credit facility provided by the Interim Lender in an amount up to USD\$750,000. The Initial Order was amended and restated pursuant to the ARIO, which granted a stay of proceedings up to and including April 15, 2024, and increased the amount of the interim lending credit facility provided by the Interim Lender to CAD\$5,013,000.
4. On March 1, 2024, the Honourable Justice Whitling of this Court also granted an order approving the Applicants’ proposed sale and investment solicitation process (“**SISP**”) to maximize value for their stakeholders (the “**SISP Order**”).
5. The SISP contemplates a sale of all of the Applicants’ remaining valuable assets, including the Applicants’ right, title and interest in owned, leased or operated aircraft, aircraft engines, and aircraft parts.
6. The SISP also contemplates a very short time frame (conclusion by April 22, 2024) due to the repossession rights afforded to lessors under 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) (collectively, the “**Cape Town Convention and Protocol**”).

The Extension of the Stay Period

7. Since the granting of the ARIO and the SISP Order, the Applicants have worked diligently and in good faith towards implementing the SISP for the benefit of their stakeholders. The work has taken place in conjunction with, and under the supervision of the Monitor and in consultation with the Applicants' stakeholders.
8. In particular, since the ARIO and SISP Order were granted in these proceedings on March 1, 2024, the Applicants have: (a) continued engaging with their suppliers, employees, noteholders, lenders, equipment lessors, and other stakeholders regarding these CCAA proceedings, (b) worked in conjunction with the Monitor to establish and populate the confidential virtual data room for the SISP, and (c) drafted and negotiated non-disclosure agreements with prospective bidders.
9. An extension of the Stay Period up to and including June 28, 2024 is necessary to permit the Applicants and the Monitor to continue their efforts to conclude the SISP and consummate the successful transaction, and to address various other issues in the Applicants' insolvency proceedings.
10. As a result of the forgoing, circumstances exist that make the requested extension of the Stay Period appropriate, and the Applicants have acted, and are acting, in good faith and with due diligence.
11. It is appropriate in the circumstances and in the best interests of the Applicants and all stakeholders that the requested extension of the Stay Period be granted.

The Interim Distribution and Authorization

12. 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**").
13. 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**”) amongst the Applicants and Indigo.

14. Prior to the date of the Initial Order, the Applicants granted security for its obligations under the Promissory Note Agreements, which security was properly registered and perfected by the Interim Lender.
15. The Applicants thereby request of this Court:
 - (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.

Material or evidence to be relied on:

16. The Affidavit of Michael Woodward, sworn February 22, 2024;
17. The Affidavit of Michael Woodward, sworn April 9, 2024;
18. The Third Report of the Monitor, to be filed; and
19. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

20. *The Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and regulations:

21. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
22. *Cape Town Convention and Protocol*.
23. *Judicature Act*, RSA 2000, c J-2.
24. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

25. None.

How the application is proposed to be heard or considered:

26. By WebEx, before the Honourable Justice Sidnell at the Calgary Law Courts, 601 5th St SW, Calgary, AB at 3:00 p.m. on April 15, 2024 or so soon thereafter as counsel may be heard.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

The above booking is Confirmed

File #(s) : 2401 02664

Style of Cause: LYNX AIR HOLDINGS CORPORATION v. COMPANIES CREDITORS
ARRANGEMENT ACT

Date/Duration:

Apr 15, 2024 03:00 PM

Total: 90 Minute(s)

Booking Type/List: Commercial

Purpose of Hearing: Commercial Hearing

Counsel: Randal Steven Van de Mosselaer;

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

Notes: Stay Extension

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**

- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Schedule "B"

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

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

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

DOCUMENT **ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: April 15, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Sidnell

UPON the application of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx (collectively, the "**Applicants**"); **AND UPON** reading the Affidavit of Micheal Woodward sworn April 9, 2024; **AND UPON** reading the Third Report of FTI Consulting Canada Inc. (the "**Monitor**"); **AND UPON** hearing from counsel for the Applicants, counsel for Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**"), counsel for the Monitor, and any other interested party; **AND UPON** being satisfied that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make this Order appropriate;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of this application is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other person other than those persons served is entitled to service of this application.

EXTENSION OF THE STAY PERIOD

2. 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 (“**ARIO**”) is hereby extended up to and including June 28, 2024.

DISTRIBUTION

3. The Applicants, with the approval of the Monitor, are hereby authorized, directed and empowered to make a distribution to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the interim financing term sheet dated February 21, 2024, between the Applicants and the Interim Lender (the “**Interim Financing Distribution**”).
4. The Applicants, with the approval of the Monitor, are authorized to make further distributions to Indigo, up to an amount equal to the secured obligations owing to Indigo, and such distributions shall be credited against the secured obligations and amounts owing by the Applicants 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, amongst the Applicants and Indigo (the “**Lender’s Distribution**”), subject to the Applicants retaining a reserve in an amount deemed appropriate by the Monitor.
5. The Applicants are hereby authorized, directed and empowered to take any further steps deemed necessary or desirable, with the approval of the Monitor, to complete the Interim Lending Distribution and the Lender’s Distribution described in paragraph 3 and 4, above.

MISCELLANEOUS

6. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta