

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

**WINNIPEG AIRPORTS AUTHORITY INC.,**

plaintiff,

- and -

**SKYSERVICE AIRLINES INC./LIGNES AÉRIENNES SKYSERVICE INC.,**

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AFFIDAVIT OF MARY ELLEN McDONALD  
SWORN THE 31<sup>st</sup> DAY OF MARCH, 2010

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**AFFIDAVIT OF MARY ELLEN McDONALD**

I, Mary Ellen McDonald, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY THAT:

1. I am the Director Finance of the Winnipeg Airports Authority Inc. (the "Authority") and as such have personal knowledge of the facts hereinafter deposed to by me. I have personally reviewed the Authority's books and records which are kept in the ordinary course of the Authority's business respecting its account with, and the claims against, the defendant. I am authorized by the Authority to make this affidavit. To the extent that I do not have personal knowledge of the statements contained in this affidavit, I have obtained such information from the records of the Authority or from the Authority's employees and I verily believe such information to be true.
2. The Authority is a designated airport authority pursuant to the provisions of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c.5, as amended (the "Act") and operates the Winnipeg James Armstrong Richardson International Airport (the "Airport"). Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of

an order of the Governor General in Council bearing a registration date of September 18, 1996, issued under the Act and designating the Authority as a designated airport authority.

3. The Authority holds and operates the Airport lands and facilities pursuant to the terms of a ground lease with Her Majesty the Queen and Right of Canada dated December 13, 1996. Among other things, the ground lease obligates the Authority to continuously operate and maintain the Airport at its own cost and expense in a manner befitting a First Class Facility and a Major International Airport to meet the capacity demands of the City of Winnipeg and surrounding region. Attached as Exhibit "B" to this my Affidavit is a true copy of the relevant excerpts from the ground lease.
4. Attached hereto and marked as Exhibit "C" is a copy of a corporate search of the defendant. This search was conducted of the Manitoba Companies Office registry by the Authority's solicitors, Duboff Edwards Haight & Schachter on March 31, 2010.
5. Pursuant to its designation as an Airport Authority, the Authority establishes landing fees, general terminal fees, aircraft parking fees and other charges (the "User Fees") related to the use of the airport terminal, facilities and services (the "Airport Facilities"). The Authority provides to all carriers, including the defendant, a copy of its current Schedule of Rates and Fees (the "Schedule"). The Schedule prescribes the terms under which the defendant is required to pay User Fees for the use of the Airport Facilities. Attached hereto and marked as Exhibit "D" is a true copy of the Authority's Schedule of Rates and Fees as at February 1, 2010.
6. The defendant has received a copy of the Schedule and has been paying fees pursuant thereto.


7. The terms and conditions of the Schedule require the defendant to pay all invoices issued pursuant thereto within thirty (30) days from the date of the invoice. The only exception to this requirement is fees for vehicle parking, which are payable in advance.
8. The Authority relies upon the User Fees for a large portion of its operating revenues. The User Fees are charged to airlines and passengers in direct relation to their use of airport facilities and resources. The amount of User Fees incurred is primarily a function of an airlines volume of operations. Under the terms of the ground lease, the Authority cannot divert aircraft traffic, except as required by weather conditions or emergency and is, thereby, an involuntary creditor.
9. The defendant has continuously operated commercial aircraft that has used the Airport Facilities. As a result of the defendant landing its aircraft at the Airport and its use of the Airport Facilities, the defendant has become indebted to the plaintiff.
10. The Authority, Air Transport Association of Canada, signatory air carriers, including the defendant, and other airport authorities have entered into an agreement (the "AIF Agreement") under which the airlines collect an airport improvement fee ("AIF") from passengers on behalf of airport authorities. Attached hereto and marked as Exhibit "E" is a copy of the AIF Agreement.
11. Pursuant to the AIF Agreement, the defendant acts as a collector of the AIF for the Authority. The money is dedicated to capital improvements at the Airport. The defendant and other signatory airlines are consulted with respect to use of the AIF monies. Capital improvements are commenced based on anticipated receipt of those monies. The failure by an airline to remit AIF on a timely basis has a significant impact on the funding for the Authority.

12. The AIF Agreement requires the defendant to collect the AIF from its passengers at the time the ticket is purchased. AIF is a separate identifiable amount on the passenger ticket invoice. The AIF comes into possession of Skyservice and is then remitted to the Authority on the following basis:
  - a) the obligation to remit AIF to an airport arises upon the enplanement of a passenger at the airport;
  - b) the monies are remitted in arrears after the end of the month in which they are collected;
  - c) on the first of each month an estimated amount is remitted on account of the AIF collected in the prior month; and
  - d) thirty days after the end of a month, the defendant is required to report the actual amount of passengers who paid the AIF to them for the use of the airport in the prior month. At the same time, the amount of the AIF to be remitted in respect of the prior month is reconciled to the estimated payment made at the beginning of the month. A final adjusting payment is due at that time to close out the prior month.
13. On March 31, 2010, I prepared a listing of all invoices and estimates of amounts owed by the defendant pursuant to the Schedule for which more than thirty days has expired from the date of invoice. Attached hereto and marked as Exhibit "F" is a copy of that listing.
14. Attached hereto and marked as Exhibit "G" is a search conducted of the Canadian Civil Aircraft Register maintained by Transport Canada of Aircraft owned by the defendant as at March 31, 2010, which are currently located at the Airport.

- 15. I have observed press reports which indicate that the defendant may be insolvent and may imminently seek protection from its creditors. I am concerned that the defendant or a creditor may institute insolvency proceedings, leaving the User Fees unpaid, with no recourse to the seizure and detention remedy provided by Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*. Attached as Exhibit "H" are copies of press clippings which detail the defendant's precarious financial situation.
  
- 16. I have just been advised of and received a copy of an Order pronounced by the Ontario Superior Court of Justice in the matter of Thomas Cook Canada Inc. and Skyservice Airlines Inc. Attached as Exhibit "I" is a copy of the said Order pronounced March 31, 2010.
  
- 17. I make this Affidavit in good faith in support of an application for an order authorizing the Authority to effect a seizure of an aircraft registered to the defendant and to detain that aircraft in accordance with the provision of the *Airport Transfer (Miscellaneous Matters) Act*.

SWORN before me this )  
 31<sup>st</sup> day of March, 2010, )  
 in the City of Winnipeg, in )  
 the Province of Manitoba. )

  
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 MARY ELLEN McDONALD

  
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 A Notary Public in and for the  
 Province of Manitoba.