

SUPERIOR COURT

Commercial Division

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-11-042345-120

DATE : October 2, 2012

PRESIDING : THE HONOURABLE MARK SCHRAGER, J.S.C.

**IN THE MATTER OF THE PROPOSED PLAN OF COMPROMISE AND
ARRANGEMENT OF :**

**AVEOS FLEET PERFORMANCE INC. /
AVEOS FLEET PERFORMANCE AÉRONAUTIQUE INC.**

and

AERO TECHNICAL US, INC.
Insolvent Debtors / Petitioner

and

FTI CONSULTING CANADA INC.
Monitor

and

VISION AIRLINES, INC.
Respondent

**REASONS FOR JUDGMENT DELIVERED ORALLY
ON SEPTEMBER 28, 2012**

[1] Prior to seeking protection under the Companies' Creditors Arrangement Act¹ (the "C.C.A.A."), the Debtor, Aveos Fleet Performance Inc. had issued invoices to Vision Airlines, Inc. ("Vision") claiming payment for work done pursuant to the contract between the parties dated April 2, 2009.

[2] In 2011, prior to the present C.C.A.A. filing, Aveos instituted proceedings in the State of New York claiming payment from Vision for various amounts, including the invoices for work done on the engine. The engine remains in Aveos' possession.

[3] Clause 22 of the contract provides for an attornment to the jurisdiction of the Courts of New York State, as well as a choice of New York law as the law applicable to the contract.

[4] Based on the documents from the United States ("U.S.") Court record filed before me, Vision contests the action in the U.S. inter alia on the basis that work on the engine was not performed, or not performed properly, or not authorized.

[5] Vision has also submitted in a brief to the U.S. Court that it has requested but has been refused access by Aveos to inspect the engine and spare parts in Aveos' possession.

[6] Vision's proceedings before the undersigned seek a lifting of the statutory stay of proceedings under the C.C.A.A. in order ultimately to repossess its property (the engine and the spare parts), and by way of interim safeguard order to have access thereto through a third party to inspect the property.

[7] Vision has resisted Aveos' request for particulars seeking that Vision file the U.S. Court documents and materials before the undersigned.

[8] Aveos pleads that because of the pending U.S. proceedings, there is litispence such that this Court should either dismiss or at least suspend Vision's proceedings.

[9] Aveos' Motion is accompanied by pleadings and exhibits from the U.S. Court file.

[10] This Court agrees with the position adopted by Aveos.

[11] The proceedings in the U.S. Court and before the undersigned are between the same parties; they have the same cause (i.e. the contract and business dealings between the parties specifically regarding engine JT9D-7R4 - serial number 709632.

¹ R.S.C., 1985, c. C-36

[12] Vision claims that the object of the two proceedings is different. One claims payment and the other claims repossession and as an interim measure, inspection of the engine and the parts.

[13] However, counsel for Vision concedes that the reason to inspect is to take a position on payment. Irrespective of Vision's strategy, the order to inspect (or not) should come from the Court before which the litigation over payment is pending. The object of that which is sought in Canada is included in and incidental to the object of the proceedings in the U.S. The matter of inspection (or rather Aveos' refusal to consent to an inspection), is even raised in Vision's brief filed before the U.S. Court which has been produced before the undersigned.

[14] All of this constitutes sufficient connexity required by the case law for the undersigned to conclude that there exists litispence between the two cases.²

[15] Counsel for Vision underlines that the choice of jurisdiction clause in the contract between the parties is not exclusive to the Courts of New York State. The undersigned agrees with this. However, that is immaterial since there are pending proceedings before the Courts of New York which do have jurisdiction, albeit non exclusive. No one suggests that the decision of the Courts of New York would not be recognized, so that under Article 3137 of the Quebec Civil Code, the undersigned has discretion to stay Vision's proceedings before me.

[16] Counsel for Vision also pleaded for a "practical solution" to the conundrum of being met in the U.S. by a plea invoking the stay of proceedings under the C.C.A.A. should Vision ask the New York Court for an order to inspect its property.

[17] The stay under the C.C.A.A. does not per se have extra-territorial effect. Formal recognition proceedings are required. In any event, should the New York Court refuse to issue an order for inspection merely because of the Canadian stay, the aid and assistance of this Court can then be sought and be decided on its merits at the appropriate time. It is not merely for reasons of comity that this Court should stay Vision's proceedings, but for the reasons of avoiding any possibility of contradiction in judgments or orders as between the two Courts.

[18] The dispute between Aveos and Vision has been validly put before the Courts of New York. Those Courts should resolve it, including any ancillary or preliminary motions such as the inspection of the engine in respect of which Aveos seeks payment in the U.S.

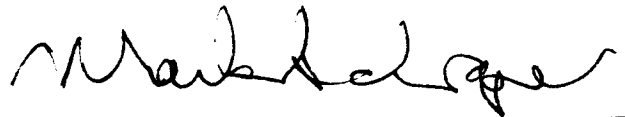
² La Garantie, Compagnie d'Assurance vs. Gordon Capital Corp., 1995 R.D.I. 537 (C.A.); York-Hannover Development Ltd. vs Commonwealth Insurance Co., JE 92-297 (C.A.)

FOR THE FOREGOING REASONS, THE COURT :

[19] **GRANTS**, in part only, Aveos' Motion to dismiss or subsidiarily to stay Vision's Motion for an Order Lifting the Stay of Proceedings to Inspect and Repossess Certain Assets dated September 25, 2012, and

[20] **DECLARES** that Vision's Motion for an Order Lifting the Stay of Proceedings to Inspect and Repossess Certain Assets (number 116 on the plunitif) dated August 13, 2012 is suspended pending resolution of the proceedings in the U.S. District Court, for the District of New York number 11CIV.8: 11-CV0950 or until further order of this Court.

[21] **COSTS TO FOLLOW SUIT.**



MARK SCHRAGER, J.S.C.

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Monitor

Date of Hearing: September 28, 2012