

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-042345-120

DATE: August 22, 2012

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**PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.**

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**IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF :**

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

and

**AERO TECHNICAL US, INC.**

Debtors/Respondents

and

**MAYNARDS INDUSTRIES LTD**

Respondent

and

**FTI CONSULTING CANADA INC.**

Monitor

and

**AIR CANADA**

Petitioner

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**SAFEGUARD ORDER**

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**CONTEXT**

[1] The Court is seized with an "Amended Motion for a Declaratory Order In Respect of Certain Assets and Safeguard Order" filed by the Petitioner Air Canada on August 17, 2012 (the "**Amended Motion**").

[2] All capitalized terms, not otherwise defined herein, shall have the meaning ascribed to them in the Amended Motion.

[3] By the Amended Motion, Air Canada seeks an order to protect its "alleged" rights, by insuring that the Air Canada Fixed Assets are excluded from the Auctioned Assets.

[4] On August 14, 2012, namely prior to the filing of the Amended Motion, Jean-Yves Lalonde, j.s.c., dismissed Air Canada's first request for a safeguard order (the "**Lalonde Judgment**") and referred the matter to the undersigned for judgment on the merits (the "**Hearing**").

[5] The Auction of some of the Auctioned Assets took place in Vancouver on August 15 and 16, 2012 but, further to a letter received from Air Canada's attorneys, the Debtors and the Respondent Maynards Industries Ltd ("**Maynards**") have excluded the Air Canada Fixed Assets located in Vancouver from the said Auction.

[6] An Auction is also scheduled to take place in Montreal on August 22 and 23, 2012, for the sale of other Aveos' assets, including the Air Canada Fixed Assets located in Montreal.

[7] Since the Hearing is not finished yet, Air Canada has requested that the Lalonde Judgment be revised considering its Amended Motion and the proof presented to the Court up to now, and that a safeguard order be issued on the basis of (i) the alleged urgency, (ii) Air Canada's alleged appearance of right, and (iii) Air Canada's alleged serious and irreparable prejudice if the Auction, or any sale of the Air Canada Fixed Assets, proceeds.

#### **GENERAL COMMENTS**

[8] During the Hearing, the Court indicated to the parties that the present litigation is totally disproportionate considering (i) the made-to-measure nature of the Air Canada Fixed Assets, (ii) the value to be expected thereof at the Auction, specially that the buyer will have to dismantle the Air Canada Fixed Assets, which can hardly be assembled elsewhere, and (iii) the high costs for Air Canada to replace them, should it be successful with the Amended Motion.

[9] This is the perfect situation where practical business persons would have settled the issue. It is unfortunate that it was not the case in the present instance. But the Court still hopes that between now and the day the Hearing resumes, the parties will have shown more flexibility in their settlement negotiations.

[10] Having said that, and after review of the September 24, 2004 APA and October 1, 2006 Master Lease between Air Canada and Aveos (or its predecessors) and, after having had the benefit, which J. Lalonde, j.s.c., did not have, of the new allegations of the Amended Motion and of a full day of Hearing, including Mr. Salvatore Ciotti's testimony on the incorporation of the Air Canada Fixed Assets in the Hangars and on the APA, the Court is of the opinion that a safeguard order has to be issued for the reasons explained hereafter.

**URGENCY**

[11] The urgency of the matter is not denied and is evident, as the Auction of the Air Canada Fixed Assets located in Montreal is scheduled to take place today at 10:00 am and on August 23, 2012.

**APPEARANCE OF RIGHT**

[12] The Court is of the opinion that Air Canada has an apparent right on the basis that the Air Canada Fixed Assets are "immoveable property", made-to-measure for the specialized purpose of maintenance operations conducted in the Hangars and, therefore, specifically excluded from the APA<sup>1</sup>.

**SERIOUS AND IRREPARABLE PREJUDICE**

[13] Air Canada told the Court that the Air Canada Fixed Assets are essential to its maintenance operations as planned, and if Aveos proceeds with the sale thereof, it will have no choice but replacing them at substantial costs. This is serious in a context where the whole issue could be settled, or decided upon, within a very short period of time.

[14] This is prejudicial to Air Canada, specially that Mr. Larry Suzuki of Maynards has established the minimum value of the Air Canada Fixed Assets (located in Montreal and Vancouver) at between 125 000 \$ and 200 000 \$. These figures are nominal compared to the costs for Air Canada to replace the Air Canada Fixed Assets.

[15] Moreover, the Court is very concerned with Aveos' financial situation and by the fact that it has to vacate the Leased Premises by September 30, 2012. Aveos has incurred important expenses to organize, and proceed with, the Auction.

[16] As mentioned above, Aveos and Maynards have not sold the Air Canada Fixed Assets located in Vancouver, even though they were not prevented from doing so by the Lalonde Judgment.

[17] In the ongoing restructuring process of Aveos, the latter does not have the luxury of keeping spending additional funds to dispose of the Air Canada Fixed Assets, should its position be well founded.

[18] Time is of the essence for Aveos, and it has to secure the value of the Air Canada Fixed Assets to protect its position, should it be retained by the Court.

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<sup>1</sup> Exhibit P-9, Section 2.2(f).

**SECURITY TO BE FURNISHED**

[19] In such event, Air Canada will most probably consider buying the Air Canada Fixed Assets so as to avoid replacing them at high costs and, in such circumstances, Aveos will certainly compare any such offer from Air Canada with an alternative auction.

[20] On the other hand, if Air Canada is successful with its Amended Motion, the Air Canada Fixed Assets will still be in the Leased Premises and Air Canada will be able to maintain its planned maintenance operations, with minimal costs.

[21] In fact, both parties may suffer serious damages.

[22] But the Court is of the opinion that the practical side of the situation should prevail to minimize, in the circumstances, Aveos' and Air Canada's respective potential damages.

[23] Therefore, the Court, using its discretionary powers, will suspend the Auction, or any sale, of the Air Canada Fixed Assets until the earliest of the judgment on the merits of the Amended Motion, and September 14, 2012, at 3:00 pm, subject to Air Canada furnishing security to guarantee a fixed minimum value for the said assets.

[24] The Court is satisfied, from the proof heard at the Hearing, that the sale of the Air Canada Fixed Assets should generate proceeds of at least 150 000 \$, and the security will therefore be fixed at said amount.

[25] The Court urges the parties to schedule the resumption of the Hearing as soon as possible and, in the meantime, to do their best to consider settling this matter.

**FOR THESE REASONS, THE COURT :**

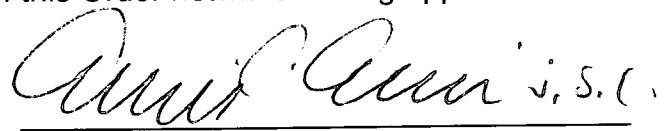
[26] **GRANTS** in part Air Canada's second request for a safeguard order;

[27] **SUSPENDS** the Auction, or any sale, of the Air Canada Fixed Assets until the earliest of the judgment on the merits of the Amended Motion, and September 14, 2012, at 3:00 pm;

[28] **ORDERS** Air Canada to furnish, before 9:00 am on August 23, 2012, security in the amount of 150 000 \$ to guarantee a minimum value for the Air Canada Fixed Assets, failing which the Auction or any sale thereof will then be automatically authorized to proceed;

[29] **ORDERS** the provisional execution of this Order notwithstanding appeal.

[30] **COSTS** to follow.

  
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LOUIS J. GOUIN, J.S.C.

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Date of hearing: August 21, 2012

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