

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36)

No. 500-11-042345-120

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

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

and

AERO TECHNICAL US, INC.

Insolvent Debtors

and

FTI CONSULTING CANADA INC.

Monitor

and

NORTHGATEARINSO CANADA INC.

Petitioner

**AVEOS FLEET PERFORMANCE INC.'S CONTESTATION OF THE
AMENDED MOTION TO STRIKE THE *DE BENE ESSE* NOTICE BY DEBTOR
COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT AND FOR
PAYMENT OF POST-FILING OBLIGATIONS**

**IN CONTESTATION TO PETITIONER NORTHGATEARINSO CANADA INC.'S ("NGA") AMENDED
MOTION TO STRIKE THE *DE BENE ESSE* NOTICE BY DEBTOR COMPANY TO DISCLAIM OR
RESILIAE AN AGREEMENT AND FOR PAYMENT OF POST-FILING OBLIGATIONS
(THE "MOTION"), AVEOS FLEET PERFORMANCE INC. ("AVEOS") SUBMITS THE FOLLOWING:**

1. With respect to the allegations contained in paragraphs 1 and 2 of the Motion, it refers this Honourable Court to Exhibits R-1 and R-1a) and denies anything inconsistent therewith;
2. Aveos denies, as drafted, the allegations contained in paragraph 3 of the Motion;
3. Aveos admits having received the letter dated May 1, 2012, but denies its content and the allegations contained in paragraph 4 of the Motion;
4. Aveos admits paragraphs 5 and 6 of the Motion;
5. Aveos denies paragraph 7 of the Motion;
6. Aveos denies, as drafted, the allegations contained in paragraph 7a) of the Motion;
7. Aveos admits the allegations contained in paragraphs 7b) and 7c) of the Motion;
8. With respect to the allegations contained in paragraph 7d) of the Motion, Aveos refers to the Court record, and denies anything inconsistent therewith;
9. Aveos denies the allegations contained in paragraph 7e) of the Motion;
10. Aveos denies, as drafted, the allegations contained in paragraphs 8 and 9 of the Motion and further adds that it was perfectly entitled to terminate the Agreement for faulty execution by NGA effective immediately and without any compensation due and to disclaim and to resiliate the Agreement pursuant to Section 32 of the *Companies' Creditor Arrangement Act* (the "CCAA");
11. Aveos denies the allegations contained in paragraphs 10, 11, 12a) to j) of the Motion, adding, with respect to this last sub-paragraph, that the fee structure agreed upon by NGA was to be competitive with other bidders while the Global Master Services Agreement (the "Global Agreement") was negotiated and is not related to Aveos' current financial situation;
12. Aveos denies the allegations contained in paragraphs 13, 14, 15, 16 and 17 of the Motion;
13. With respect to the allegations contained in paragraph 18 of the Motion, Aveos refers this Court to Exhibit R-1a) and denies anything inconsistent therewith;
14. Aveos admits the allegations contained in paragraph 19 of the Motion;
15. Aveos admits having received the letters dated May 1, 2012 and May 18, 2012 (Exhibits R-1b) and R-4), but denies the content of these letters as well as the allegations contained in paragraphs 20 and 21 of the Motion;

16. Aveos denies the allegations contained in paragraph 22 of the Motion, and adds that if NGA kept the systems running and operating, it was for its own use and not at the request of Aveos;
17. Aveos denies the allegations contained in paragraph 23 of the Motion;
18. Aveos admits having sent the letter dated June 1, 2012 (Exhibit R-5) referred to in paragraph 24 of the Motion and denies anything inconsistent therewith;
19. Aveos admits having received the letter dated June 8, 2012 (Exhibit R-6), but denies the allegations contained in paragraphs 25 and 26 of the Motion;
20. Aveos denies the allegations contained in paragraph 27 of the Motion;
21. Aveos admits having sent the letter dated June 18, 2012 (Exhibit R-7) referred to in paragraph 28 of the Motion and denies anything inconsistent therewith;
22. Aveos admits having received the letter dated June 21, 2012 (Exhibit R-8), but denies the content of said letter as well as the allegations contained in paragraph 29 of the Motion;
23. With respect to the allegations contained in paragraph 30 of the Motion, Aveos refers this Court to Exhibit R-8, denying anything inconsistent therewith;
24. Aveos denies the allegations contained in paragraphs 31, 32, 33, 34 and 35 of the Motion;

AND IN FURTHER CONTESTATION TO THE MOTION, BUT WITHOUT PREJUDICE TO THE FOREGOING, AVEOS ADDS:

PREAMBLE

25. On June 30, 2010, Aveos and NGA entered into the Global Agreement whereby NGA's services were retained to perform certain human resources and payroll services and related processes;
26. More precisely, NGA was retained to develop and provide a fully outsourced human resources solution;
27. All the costs, fees and charges to be paid by Aveos to NGA were exhaustively listed in Schedule 4 of the Global Agreement;
28. It is important to point out that fees for hosting and maintaining the systems that are now claimed by NGA as a post-filing obligation are not specifically listed in Schedule 4 nor anywhere else in the Global Agreement;

29. Further to the filing of a *Petition for the Issuance of an Initial Order* as well as an *Amended Motion for the Issuance of an Amended and Restated Initial Order*, this Honourable Court issued an *Initial Order* with respect to, *inter alia*, Aveos, on March 19, 2012, as amended and restated by further orders issued on March 30, 2012, April 5, 2012 and May 4, 2012 (collectively, the "**Initial Order**"), the whole as appears from the Court record;
30. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed monitor of Aveos (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was granted until April 5, 2012 and subsequently extended until October 25, 2012 by order of the Court (the "**Stay Period**"), the whole as appears from the Court record;
31. On the evening of March 18, 2012, the day prior to the issuance of the Initial Order, Aveos terminated the employment of all of its employees in its airframe division and notified all of its other employees that they were not to report for work as of Monday, March 19, 2012;
32. On March 20, 2012, Aveos filed a *Motion for the Appointment of a Chief Restructuring Officer* (the "**CRO Motion**") and this Honourable Court appointed a Chief Restructuring Officer ("**CRO**") with authority to carry on, manage, operate and supervise the management and operations of the business and affairs of, *inter alia*, Aveos, subject to certain terms and conditions, as appears from the Court record;
33. As a result of the issuance of the Initial Order and the termination of substantially all Aveos employees, the services to be rendered by NGA under the Global Agreement were no longer required and had to be substantially modified and revised;

THE MEMORANDA OF AGREEMENT

34. Following the issuance of the Initial Order, NGA was well aware that its services and costs associated therewith provided for in the Global Agreement were no longer required by Aveos nor warranted or beneficial to Aveos;
35. Based on the foregoing, NGA requested instructions from Aveos as to the services it required further to the issuance of the Initial Order as well as the time frame during which these services had to be provided;
36. Aveos, while dissatisfied with NGA's services, was, at the time, at the mercy of NGA since it could not easily switch to another human resource and payroll services provider;
37. Based on this state of dependency, Aveos had to enter into the agreements more fully described below to assist it with certain specific human resource and payroll services that were required;

38. On March 26, 2012, Aveos and NGA, with the Monitor's consent, entered into a Memorandum of Agreement outlining the specific services that needed to be performed by NGA up until March 31, 2012 (Exhibit R-1a) (the "**Memorandum of Agreement No. 1**"). The costs associated with these services to be rendered up until March 31, 2012 were specifically mentioned in Annex A attached to Memorandum of Agreement No. 1 and were fully paid by Aveos, although the legal fees of NGA's attorneys were unjustifiably and illegally included in the total costs, without being specifically itemized and disclosed;
39. On April 10, 2012, Aveos and NGA further entered into a second Memorandum of Agreement under which NGA undertook to execute the management payroll processing with a payment date being April 11, 2012 (Exhibit R-1a) (the "**Memorandum of Agreement No. 2**"). Once again, the costs of this specific task to be performed by NGA were mentioned in Annex A and fully paid by Aveos;
40. On April 13, 2012, Aveos and NGA entered into a third Memorandum of Agreement, outlining the specific services to be rendered by NGA up until April 28, 2012 (the "**Memorandum of Agreement No. 3**"). The costs mentioned for those specific services that are listed in Annex A attached to Memorandum of Agreement No. 3 were fully paid by Aveos;
41. Amongst other things, under the terms of Memorandum of Agreement No. 3, NGA had the obligation, on or before April 28, 2012, to prepare and file with governmental authorities the Record of Employment for each Aveos employee who was terminated;
42. On April 27, 2012, the Memorandum of Agreement No. 3 was amended to add one specific task required by Aveos from NGA. NGA had committed to perform said task within five days (see letter dated April 27, 2012 filed under Exhibit R-1a) (the "**Amendment**"). Aveos paid NGA in full for this specific task, although it was never completed, NGA being incapable of finishing it in time;
43. Memorandum of Agreement No. 1, Memorandum of Agreement No. 2, Memorandum of Agreement No. 3 and the Amendment are collectively referred to as the "**Memoranda of Agreement**";
44. The Memoranda of Agreement mentioned hereinabove represent the entire agreement between the parties and the only agreement between the parties with respect to the services to be executed after the issuance of the Initial Order and the costs associated therewith;

THE TERMINATION NOTICES

45. By letter dated May 7, 2012 served upon NGA, Aveos informed NGA that the Global Agreement, as amended by the Memoranda of Agreement, was terminated for faulty

execution effective immediately and without any compensation due, the whole for the reasons more fully set out in said letter (Exhibit R-2);

46. The May 7, 2012 letter was served along with a *De Benne Esse* Notice by Debtor Company to Disclaim or Resiliate an Agreement pursuant to Section 32 CCAA;
47. On May 11, 2012, NGA, through its legal counsel, replied to the May 7, 2012 letter by, *inter alia*, confirming that the Global Agreement as amended by the Memoranda of Agreement was terminated effective immediately, but claiming payment of the termination fee;
48. Aveos was entitled to terminate the Global Agreement as amended by the Memoranda of Agreement for faulty execution effective immediately and without any compensation, since NGA's defaults were numerous and of significant importance. Without limiting the generality of the foregoing, these defaults include:
 - a) Failure to build interfaces between NGA system and third parties and have them operate without disruption or error (Sunlife, VF Solutions, Manulife, AON);
 - b) Failure to deliver the compensation module on time;
 - c) Failure to correct problem that was causing errors with core employee information (i.e. employment status, family status, number of dependents);
 - d) Failure to correct process to handle payment for employees on sick leave (i.e. employees were double-paid);
 - e) Failure to configure system to correctly calculate vacation pay for temporary union employees;
 - f) Failure to configure and correct, on a timely basis, for pension deductions for union employees participating in Aveos' defined benefit pension plan;
 - g) Failure to provide a customized report writing capability, or, in the alternative, provide a reasonable (and free of charge) work-around for this lack of capability;
 - h) Inadequate support from the call center;
 - i) Failure to correct, on a timely basis, the issue of pay stub information for banked time changing, based on when the pay stub was printed (did not hold data for a specific pay period as static);
 - j) Failure to manage the significant volume of change forms required to track employee movement, thus causing Aveos to hire a dedicated full-time employee and, in addition, NGA charging Aveos for an additional full-time resource;

- k) Failure to provide Aveos with proper access to the “ticket” system;
 - l) Failure to produce ROEs on a timely basis;
 - m) Failure to provide certain payroll services on a timely basis (or the assurance that such services would be completed on time, without error), such that Aveos had to run a payroll manually (payroll to adjust for amounts previously deducted from employees’ pay at Aveos’ request). NGA subsequently entered this information into the wrong pay period, causing problems with employees’ Employment Insurance benefits from Service Canada;
 - n) Failure to provide basic and standard functionality, including:
 - i) Ability to process a mass termination;
 - ii) Ability to deduct for donation withdrawals at source;
 - iii) Ability to prepare tax documents (T-4) with up-to-date and correct pension deduction information;
 - iv) Ability to account for sick leave (i.e. not double-pay employees);
 - v) Ability to use front-end access to reporting system;
 - vi) Ability to customize reports extracted from the system;
 - vii) Ability to adjust retroactively for wage increases;
 - viii) Ability to manage the volume of change forms required to track employee internal movement;
 - ix) Ability to produce and deliver ROEs on a timely basis;
 - x) Ability to track employee wage progression;
 - xi) Ability to manage process for banking statutory holidays that fell within an employee’s vacation period;
49. Without prejudice to its other grounds as described above, Aveos was in any event entitled and fully justified to terminate the Global Agreement as amended by the Memoranda of Agreement pursuant to Section 32 CCAA, since the contractual relationship with NGA was seriously impeding Aveos’ restructuring process by (i) pressuring its cash flow, and (ii) compromising its restructuring, or its chances of presenting a viable plan of arrangement or compromise to its creditors, the whole as will be proven at the hearing;

50. The continuation of the execution of the Global Agreement would have negatively impacted all of Aveos' stakeholders in a context where these services were no longer required nor warranted as part of the restructuring alternatives and options contemplated and implemented by Aveos.
51. In any event, on April 13, 2012, NGA indicated to Aveos that it was not interested in continuing to provide services because the number of employees had been greatly reduced, thus putting Aveos well below the minimum amount of employees NGA was willing to service, and even went as far as offering to provide Aveos with names of other human resource and payroll services providers;
52. Pursuant to Section 32(7) CCAA, the termination fee claimed by NGA must be considered and treated as an unsecured provable claim under a plan of arrangement or compromise;

THE SO-CALLED POST-FILING OBLIGATIONS


53. Following the expiry of the term of the Memoranda of Agreement, Aveos never agreed nor accepted to pay fees for hosting and maintaining the system;
54. The Global Agreement does not provide for payment of such fees, even in its exit phase;
55. In any event, Aveos no longer had access to such system at any time or in any manner whatsoever after April 28, 2012;
56. In fact, between April 28, 2012 and May 10, 2012, the system was not accessible due to technical problems encountered by NGA;
57. On May 11, 2012, NGA formally deactivated Aveos' access to the system;
58. After April 28, 2012, the system was only accessible by NGA and was kept up and running by NGA to allow it to complete all the records of employment;
59. The records of employment had to be provided on April 28, 2012, but only completed on June 22, 2012 by NGA due to its own fault and inability to provide same in a timely fashion and in accordance with its contractual obligation;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

DISMISS Petitioner's Amended Motion to Strike the *De Bene Esse* Notice by Debtor Company to Disclaim or Resiliate an Agreement and for Payment of Post-Filing Obligations;

THE WHOLE with costs.

Montreal, August 31, 2012


FRASER MILNER CASGRAIN LLP
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No. 500-11-042345-120

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Me Martin Poulin

File: 548732-1

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