

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS* NB C31901
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended COM April 2, 2024

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 2, 2024
Time: 2:00 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.

COURT FILE NUMBER 2401-02664

Clerk's Stamp

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Time: 2:00 p.m.
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Order Sought:

1. Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, and together with Lynx Holdco, “**Lynx Air**” or 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) approving the agreement made between The Boeing Company (“**Boeing**”) and the Applicants dated as of March 21, 2024 (the “**Termination Agreement**”);
 - (c) sealing the Confidential Affidavit of Michael Woodward, sworn March 25, 2024 (the “**Confidential Woodward Affidavit**”) on the Court file on the terms of the Restricted Court Access Order attached hereto as **Schedule “C**”; and
 - (d) such further and other relief as the Applicants may request and this Honourable Court may grant.

Basis for this claim:

The CCAA Proceedings

2. On February 22, 2024, the Applicants were granted protection under the CCAA pursuant to the order granted by the Honourable Justice Gill (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. The Initial Order was amended and restated pursuant to the Amended and Restated Initial Order granted by the Honourable Justice Whitling on March 1, 2024, granting a stay of proceedings up to and including April 15, 2024.

4. On March 1, 2024, the Honourable Justice Whitting 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 the Purchase Agreement Number ABQ-PA-04427 dated October 18, 2015, between Boeing and Lynx Opco (the "**Boeing Purchase Agreement**").
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**").
7. Pursuant to the SISP Order and the SISP procedures attached thereto:
 - (a) the Boeing Purchase Agreement could not be made available in the virtual data room (the "**VDR**") or provided to any party without the express written consent of Boeing until such time as the terms of the SISP are amended to the satisfaction of Boeing in its sole discretion or as may be ordered by the Court; and
 - (b) the VDR could only be made available by FTI Consulting Canada Inc. (the "**Monitor**") to each Pre-Qualified Known Potential Bidder (as that term is defined in the SISP) who has executed a non-disclosure agreement with Lynx Air and only after reaching agreement with Boeing on appropriate and acceptable confidentiality protections and terms of access.
8. After numerous and extensive discussions between the Monitor, the Applicants, and Boeing, it became clear that, given the unique nature of the Boeing Purchase Agreement, there were a number of challenges which would make it exceedingly difficult or impossible to effectively market the Boeing Purchase Agreement in a manner that would maximize

value for the Applicants. In addition, Boeing had reasonable and legitimate concerns about protecting its commercial interests (which concerns were recognized in the wording of both the SISP and the SISP Order). As a result, the Applicants and the Monitor concluded that it would likely not be possible to address these issues while at the same time running an open and effective sales process for the Boeing Purchase Agreement.

The Termination Agreement

9. With the conclusion of the SISP quickly approaching, the Applicants and Boeing began negotiations to address a consensual termination of the Boeing Purchase Agreement on mutually agreeable terms and in a value-maximizing manner for the Applicants, subject to court approval.
10. On March 21, 2024, the Applicants and Boeing entered into the Termination Agreement, setting out the terms of the agreed-upon settlement to terminate the Boeing Purchase Agreement in exchange for payment by Boeing of an amount that was satisfactory to the Applicants, the Monitor, and Indigo Northern Ventures LP (“**Indigo**”, the Applicants’ senior creditor and interim lender).
11. The Termination Agreement is fair and reasonable, is beneficial to the Applicants and all of their stakeholders and is consistent with the purpose and spirit of the CCAA. In the circumstances of this CCAA proceeding, the Termination Agreement avoids further delay and disruption to the Applicants’ ability to carry out the SISP, ultimately facilitating a more cost-efficient wind-down.
12. The Monitor and Indigo assisted the parties in the negotiation of the Termination Agreement. The Monitor and Indigo support and approve of the Termination Agreement and the bringing of this application for court approval of same.

Restricted Court Access Order

13. The Applicants seek to seal the Confidential Woodward Affidavit, which contains an unredacted copy of the Termination Agreement.

14. The Confidential Woodward Affidavit contains highly confidential, commercially sensitive information which could materially harm the interests of the Applicants and Boeing if disclosed. Such information includes the payment amount and other confidential business information which could harm the Applicants' and Boeing's commercial interests if it were made public. A Restricted Court Access Order is necessary to prevent the information in the Confidential Woodward Affidavit from forming part of the public record or otherwise being published and disclosed.
15. For these reasons, the usual openness of the Court process would pose a serious risk to an important public interest, namely, the ability to negotiate and honour private commercial agreements. The granting of the Restricted Court Access Order is necessary to prevent this serious risk to this important interest because there are no reasonable alternatives that will prevent such risk. Finally, as a matter of proportionality, the benefits of the Restricted Court Access Order outweigh any deleterious effects on the rights and interests of the public.

Affidavit or other evidence to be used in support of this application:

16. The Confidential Affidavit of Michael Woodward, sworn February 22, 2024;
17. The Affidavit of Micheal Woodward, sworn February 22, 2024;
18. The Affidavit of Michael Woodward, sworn March 25, 2024;
19. The Confidential Affidavit of Michael Woodward sworn March 25, 2024;
20. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

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. *Rules of Court, Alta Reg 124/2010.*
25. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

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"

Subject: WEBEX CONFIRMATION: 2401 02664 - LYNX AIR HOLDINGS CORPORATION v. COMPANIES CREDITORS ARRANGEMENT ACT - Apr 02, 2024, 02:00 PM - SIDNELL, J - Confirmed

The above booking is Confirmed

File #(s) : 2401 02664

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

Date/Duration:

Apr 02, 2024 02:00 PM

Total: 60 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: CCAA

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



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DOCUMENT **ORDER**

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Calgary, AB T2P 1N2

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Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: April 2, 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 Air (the “**Applicants**”); **AND UPON** having read the Application, the agreement dated March 21, 2024 between The Boeing Company (“**Boeing**”) and the Applicants (the “**Termination Agreement**”), the Confidential Affidavit of Michael Woodward sworn February 22, 2024, the Affidavit of Michael Woodward sworn March 25, 2024, and the Confidential Affidavit of Michael Woodward sworn March 25, 2024; **AND UPON** reading the Second Report of FTI Consulting Canada Inc. in its capacity as monitor of the Applicants (the “**Monitor**”), to be filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Boeing,

counsel for the Monitor, and counsel for any other party present at the application; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)*, R.S.C. 1985, c. C-36, as amended by the Honourable Justice Gill on February 22, 2024 and the amended and restated initial order granted by the Honourable Justice Whitling on March 1, 2024;

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.

APPROVAL OF THE TERMINATION AGREEMENT

2. The Termination Agreement is hereby approved, and the execution of the Termination Agreement by the Applicants is hereby authorized and approved, with such minor amendments as the Applicants, with the consent of the Monitor, may deem necessary.
3. The Applicants and Boeing are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable, with the consent of the Monitor, for the completion of the transaction contemplated by the Termination Agreement.

MISCELLANEOUS

4. 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

Schedule “C”

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



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

DOCUMENT **ORDER**
(Restricted Court Access 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

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File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: April 2, 2024
JUSTICE WHO MADE THIS ORDER: The Honourable Justice Sidnell
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

UPON THE APPLICATION of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (the “**Applicants**”); **AND UPON** having read the Application, the Affidavit of Michael Woodward sworn March 25, 2024, the Confidential Affidavit of Michael Woodward sworn February 22, 2024, and the Confidential Affidavit of Michael Woodward sworn March 25, 2024 (the “**Confidential Woodward Affidavit**”); **AND UPON** reading the Second Report of FTI Consulting Canada Inc. in its capacity as monitor of the Applicants (the “**Monitor**”), to be filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Boeing, counsel

for the Monitor, and counsel for any other party present at the application; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)*, R.S.C. 1985, c. C-36, as amended by the Honourable Justice Gill on February 22, 2024 and the amended and restated initial order granted by the Honourable Justice Whitling on March 1, 2024;

IT IS HEREBY ORDERED AND DECLARED THAT:

5. Subject to further Order of this Honourable Court, the Confidential Woodward Affidavit shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the *Alberta Rules of Court*, subject to further Order of this Court made on notice to the Applicants.
6. The Clerk of this Honourable Court shall file the Confidential Woodward Affidavit in a sealed envelope, and the Confidential Woodward Affidavit and envelope shall each have attached to them a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED
BY LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA
INC. DBA LYNX AIR WHICH IS SEALED PURSUANT TO THE
RESTRICTED COURT ACCESS ORDER ISSUED BY THE
HONOURABLE JUSTICE SIDNELL ON APRIL 2, 2024.

7. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying, or varying the terms of this Order, with such application to be brought on notice to the Applicants and the Monitor.

Justice of the Alberta Court of King's Bench