

COURT FILE NUMBER 2401-02664

Clerk's stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS GREATER TORONTO AIRPORTS AUTHORITY

RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
TYR LLP
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NOTICE TO THE RESPONDENTS

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: June 24, 2024
Time: **2:00 pm MT**
Where: Calgary, Alberta
Before: The Honourable Justice Romaine presiding on the Calgary Commercial Duty List

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Greater Toronto Airports Authority (“**GTAA**”) seeks an order, substantially in the form attached hereto as **Schedule “B”**, for the following relief:

- (a) a declaration that the unremitted Airport Improvement Fees (the “**AIF**”) collected and held by 1263343 Alberta Inc. dba Lynx Air (“**Lynx Air**”) on behalf of the GTAA pursuant to the AIF Agreement (as defined below) (the “**Unremitted AIF**”) is subject to a trust in favour of the GTAA;
- (b) directing Lynx Air to release the Unremitted AIF in the amount of CAD \$1,659,580.87 to the GTAA from the amount currently held in reserve by Lynx Air to satisfy claims relating to AIF;
- (c) directing Lynx Air to pay the outstanding balance of the Post-Filing Obligations (as defined below) in the amount of \$59,424.30, as required under the ARIO (as defined below);
- (d) the GTAA’s costs of this application on a full indemnity basis; and
- (e) such further and other relief as the GTAA may request and this Honourable Court may grant.

Grounds for making this application:

Parties

2. The GTAA is the operator of Toronto Pearson Airport (“**Pearson Airport**”) pursuant to a Ground Lease dated December 2, 1996, as amended, with Her Majesty the Queen in Right of Canada (the “**Ground Lease**”).
3. Lynx Air commenced operating at Pearson Airport in Toronto on April 11, 2022.

Business Relationship between the GTAA and Lynx Air

4. In order to operate at Pearson Airport, the GTAA requires Air Carriers to enter into a series of agreements governing the relationship between the parties, including the following:
 - a. Air Carrier – Application for Entry (the “**Application for Entry**”);
 - b. GTAA Rules; and
 - c. AIF Agreement.
5. Lynx Air entered into each of the above-noted agreements with the GTAA in order to operate at Pearson Airport. At all relevant times, Lynx Air was an Airport User, Air Operator and Air Carrier (as those terms are used therein and below).
 - (a) *Application for Entry*
6. By signing the Application for Entry, Lynx Air confirmed, among other things, that:
 - a. Lynx Air intended to become a Participating Air Carrier under the AIF Agreement (as defined and described below);

- b. Lynx Air agreed to observe and be bound by the terms and directives issued by the GTAA; and
- c. Lynx Air was required to deliver a security deposit consisting of an Irrevocable Letter of Credit or Letter of Guarantee for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees, and AIF (collectively, the “**Aeronautical Fees and Charges**”).

(b) GTAA Rules

- 7. The GTAA Rules, among other things, set out certain minimum standards and requirements regarding the Aeronautical Fees and Charges, including:
 - a. Air Operators must pay Aeronautical Fees and Charges;
 - b. Air Carriers must enter into the AIF Agreement; and
 - c. Air Carriers must submit a security deposit in a form and amount determined by the GTAA’s Finance Controller and the GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements.

(c) AIF Agreement

- 8. Pursuant to the AIF Agreement, Lynx Air agreed to collect AIF from each Enplaned Passenger (i.e., departing passengers, including connecting passengers) using Pearson Airport at the time of the sale of a ticket to such passengers.
- 9. Lynx Air acknowledged and agreed that: (i) the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues properly belonging to the GTAA and not Lynx Air; (ii) the AIF shall

be held in trust for the benefit of the GTAA; and (iii) that Lynx Air shall remit the AIF to the GTAA on a monthly basis.

10. The AIF collected by Lynx Air was to be used by the GTAA for the purposes of capital programs and capital projects at Pearson Airport.

11. Consistent with the Application for Entry and the GTAA Rules, the AIF Agreement required Lynx Air to deliver to the GTAA a security payment which would act as a guarantee of Lynx Air's obligation to collect and remit AIF.

Letter of Credit

12. On April 12, 2022, Lynx Air provided the GTAA with a security deposit in the form of an Irrevocable Letter of Credit (No. 356141) in favour of the GTAA (the "**Letter of Credit**"). The Letter of Credit was amended several times since April 12, 2022, most recently in June 2023 to the amount of \$3,100,000.

Lynx Air Defaults

13. Following the commencement of operations at Pearson Airport, Lynx Air would collect and remit the AIF to the GTAA on a monthly basis, together with other amounts owing.

14. In October 2023, Lynx Air began falling into arrears on payment of the Aeronautical Fees and Charges (including the remittance of AIF).

15. On February 16, 2024, the GTAA provided notice that Lynx Air was in default of its obligations to pay the Aeronautical Fees and Charges (the "**Notice of Default**").

16. Lynx Air did not respond to the Notice of Default and failed to cure the defaults by February 21, 2024, the deadline provided in the Notice of Default.

17. Under the GTAA Rules, the Notice of Default constitutes a “Notice of Non-Compliance”.

CCAA Proceedings

18. On February 22, 2024, Lynx Air and Lynx Air Holdings Corporation sought and obtained an initial order (the “**Initial Order**”) from this Court commencing proceedings under the *Companies’ Creditors Arrangement Act, RSC 1985, c. C-36* (as amended, the “**CCAA**”).

19. On March 1, 2024, this Court granted an Amended and Restated Initial Order (the “**ARIO**”).

Outstanding Aeronautical Fees and Charges

20. At the time the Initial Order was granted (the “**Filing Date**”), Lynx Air owed \$4,759,580.87 to the GTAA on account of Aeronautical Fees and Charges, consisting of the following (the “**Outstanding Pre-Filing Obligations**”):

a. AIF: \$1,782,424.04

b. Aeronautical Fees: \$2,977,156.83

21. In the period following the Filing Date until the cessation of its operations, Lynx Air incurred additional Aeronautical Fees and rent at Pearson Airport totalling \$247,208.30 (the “**Post-Filing Obligations**”).

22. On February 23, 2024, Lynx Air made payment to the GTAA in the amount of \$187,784.00 in respect of the Post-Filing Obligations, leaving an unpaid balance of \$59,424.30 (of which \$50,567.36 is post-filing unremitted AIF).

23. The ARIO requires Lynx Air to pay for all Post-Filing Obligations.

GTAA draws on the Letter of Credit

24. Given Lynx Air's failure to cure the above-noted defaults, on February 23, 2024, the GTAA drew on the Letter of Credit.

25. On February 29, 2024, the GTAA received payment under the Letter of Credit.

26. As it was entitled to do in its sole discretion, the GTAA applied the Letter of Credit as follows:

- a. first, to the Aeronautical Fees outstanding in the Pre-Filing Period, in the total amount of \$2,977,156; and
- b. second, the remaining funds in the amount of \$122,843.17 were applied to the AIF incurred in the Pre-Filing Period that was unremitted.

27. After application of the funds from the Letter of Credit, AIF in the amount of \$1,659,580.87 remains unremitted (as above, the "**Unremitted AIF**").

28. In February 2024, Lynx Air made several payments towards the Post-Filing Obligations. However, Post-Filing Obligations in the amount of CAD \$59,424.30 remain owing and outstanding.

Lynx Air Fails to Pay Unremitted AIF

29. On April 12, 2024, Lynx Air acknowledged and agreed that the AIF Agreement created a trust relationship in respect of the Remaining AIF Monies.

30. Lynx Air takes the position that all AIF collected by Lynx Air on behalf of the GTAA has been satisfied by the application of the Letter of Credit.

31. To date, the Unremitted AIF remains to be remitted and transferred to the GTAA.

AIF Reserve

32. On April 15, 2024, this Court granted an order, among other things, (i) requiring Lynx Air to establish a reserve to satisfy claims (“**AIF Claims**”) by the GTAA and certain other airport authorities to the AIF, if any, in an amount no less than \$6,879,000 (the “**AIF Reserve**”); (ii) directing that all AIF Claims (if any) may be asserted exclusively against the AIF Reserve; and (iii) directing that AIF Claims against the AIF Reserve shall be paid out of the AIF Reserve only after the existence of any such AIF Claims have been proven.

Material or evidence to be relied on:

33. All pleadings and proceedings filed in the within Action;

34. Affidavit of Jason Boyd, sworn May 24, 2024; and

35. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

36. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

37. *Judicature Act*, RSA 2000, c J-2.

38. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

39. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

40. None.

How the application is proposed to be heard or considered:

41. By WebEx Video Conference, before the Honourable Justice Romaine presiding on the Calgary Commercial Duty List on June 24, 2024 at 2:00 pm MT.

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"

Please see the below Webex details for the hearing scheduled in 2401 02664 - LYNX AIR HOLDINGS CORPORATION v. COMPANIES CREDITORS ARRANGEMENT ACT on June 24 at 2:00 PM MT before Justice Romaine.

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"

PROPOSED FORM OF ORDER

COURT FILE NUMBER	2401-02664	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTERS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , R.S.C. 1985, c C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR	
APPLICANTS	GREATER TORONTO AIRPORTS AUTHORITY	
RESPONDENTS	LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR	
DOCUMENT	ORDER	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	TYR LLP 488 Wellington Street W Suite 300-302 Toronto, Ontario M5V 1E3 Solicitor: Jason Wadden Telephone: 416.627.9815 Facsimile: 416.862.6666 Email: jwadden@tyr.com	

DATE ON WHICH ORDER WAS PRONOUNCED: June 24, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Romaine

UPON THE APPLICATION of the Greater Toronto Airports Authority (“**GTAA**”) in relation to Airport Improvement Fees (“**AIF**”) collected and held by 1263343 Alberta Inc. dba Lynx Air (“**Lynx Air**”) on behalf of the GTAA pursuant to the AIF Agreement dated January 1, 2023 and certain other agreements; **AND UPON** having read the Application, the Affidavit of Jason Boyd sworn on May 24, 2024, and the Affidavit of Service of [●] sworn [●]; **AND UPON** hearing the submissions of counsel for the GTAA, counsel for Lynx Air, and any other counsel or interested parties present;

IT IS HERBY ORDERED AND DECLARED THAT:

Declaration

1. The \$1,659,580.87 in unremitted AIF collected and held by Lynx Air on behalf of the GTAA (the “**Unremitted AIF**”) is subject to a trust and therefore does not form part of the Lynx Air insolvency estate.

Release of Unremitted AIF from AIF Reserve

2. Lynx Air shall release the Unremitted AIF to the GTAA from the amount held in reserve by Lynx Air to satisfy claims relating to AIF.

Payment of Post-Filing Obligations

3. Lynx Air shall pay the outstanding balance of Aeronautical Fees and rent incurred by Lynx Air following the date of the Initial Order to the GTAA in the amount of CAD \$59,424.30.

Costs

4. Lynx Air shall pay the GTAA’s costs of this Application on a full indemnity basis.

Service

5. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.
6. Service of this Order shall be deemed good and sufficient by:
 - a. serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order;
 - iv. posting a copy of this Order on the Monitor’s Website at: <http://cfcanada.fticonsulting.com/lynxair/>; and
 - v. service on any other person is hereby dispensed with.
7. 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.