

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE 16th
)
JUSTICE HAINEY) DAY OF MARCH, 2020
)

B E T W E E N:



IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF AIR GEORGIAN LIMITED,
A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by Air Georgian Limited (the “**Debtor**”) (a) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor and 2746904 Ontario Inc. (the “**Purchaser**”) dated March 9, 2020, and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”); (b) extending the time for filing a proposal (c) increasing the maximum borrowing available in Post-Filing Advances (as defined the Order of this Court dated February 26, 2020, the “**February 26 Order**”); (d) sealing certain confidential appendices to the Second Report (defined below); and (e) approving the first report of the Proposal Trustee (defined below) dated February 23, 2020 (the “**First Report**”) and the Second Report and the activities of the Proposal Trustee described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eric Edmondson sworn March 9, 2020 (the “**Affidavit**”) and the second report of KPMG Inc. in its capacity as proposal trustee (in such capacity, the

“**Proposal Trustee**”) dated March 12, 2020 (the “**Second Report**”), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee, 2229275 Alberta Ltd. (“**222**”) and those other parties present, as indicated on the counsel slip, no other parties present, although properly served as appears from the affidavits of service of Jennifer Stam sworn March 10, 2020 and Katie Parent sworn March 10, 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement, appended to the Second Report, by the Debtor is hereby authorized and approved, with such minor amendments as the Debtor and the Purchaser may deem necessary. The Debtor is hereby authorized and directed to take such additional steps and execute such additional documents including for the provision of transition services as contemplated by the Sale Agreement, as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Proposal Trustee's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated February 26, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) all Excluded Obligations, as that term is defined in the Sale Agreement (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include Permitted Encumbrances as defined in the Sale Agreement including, without limitation, the Encumbrances granted by the Debtor in connection

with the 222 Secured Debt (as defined in the Sale Agreement) and the DIP Lender's Charge) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets. For greater certainty, in respect of the receivables which are Purchased Assets owing by Air Canada (or any of its affiliates, each, an "**Air Canada Party**") owing to the Debtor pursuant to the Amended and Restated Commercial Agreement dated April 1, 2014 between Air Canada and the Debtor and the Transition Agreement dated as of April 12, 2019 between Air Canada and the Debtor, the vesting of such Purchased Assets in the Purchaser pursuant to this Order shall not affect any rights of set off in respect of such receivables that may be held by any Air Canada Party and nothing in this Order acknowledges or creates a right of set off by an Air Canada Party which did not or does not currently exist.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "D" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order and any transition service agreement entered into in connection with the Transaction shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

Honey T per McE...
due to COVID-19 crisis

Schedule A – Form of Proposal Trustee’s Certificate

Estate File No. 32-2613323

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF AIR GEORGIAN LIMITED,
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THE LAWS OF ONTARIO**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to the Notice of Intention to Make a Proposal of Air Georgian Limited (the “**Debtor**”), dated January 31, 2020, pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), KPMG Inc. was appointed as the trustee of the proposal (the “**Proposal Trustee**”) of the Debtor.

B. Pursuant to an Order of the Court dated March • , 2020, the Court approved the agreement of purchase and sale made as of March • , 2020 (the “**Sale Agreement**”) between the Debtor and [NAME OF PURCHASER] (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Proposal Trustee and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Debtor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**KPMG Inc., in its capacity as trustee of the
proposal of Air Georgian Limited, and not in its
personal capacity**

Per: _____

Name: Katherine Forbes

Title: Senior Vice-President

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Proceeding commenced TORONTO

APPROVAL AND VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Jennifer Stam (LSO #46735J)
Tel: 416-597-5017
Email: stam@gsnh.com

Lawyers for the Debtor, Air Georgian Limited