



No. **S-231354**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
CANWEST AEROSPACE INC. AND CAN WEST GLOBAL AIRPARTS INC.

PETITIONERS

NOTICE OF APPLICATION

Names of Applicants: CanWest Aerospace Inc. ("**CW Aerospace**") and Can West Global Airparts Inc. ("**CW Airparts**" and, together with CW Aerospace, the "**Petitioners**")

To: Those parties set out in **Schedule "A"** attached hereto.

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Madame Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on May 4, 2023 at 10:00 a.m. for the Orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "B"**, which provides, *inter alia*, that Helo Investments Ltd. (the "**Landlord**"), must provide

continued access to the Petitioners to the Langley Premises immediately from the date hereof until May 31, 2023.

2. Such other relief as this Honourable Court may deem just.

PART 2: FACTUAL BASIS

1. Until April 2023, the Petitioners occupied and operated out of a hangar facility at the Langley Regional Airport in Langley, BC (the "**Langley Premises**"), pursuant to a lease (the "**Lease**") with the Landlord. CW Aerospace is the tenant under the Lease.
2. The term of the Lease ended on December 31, 2022. At the time, CW Aerospace was attempting to negotiate a renewal of the Lease, though that did not occur, and arrangements were made with the Landlord to extend the Lease on a month-to-month basis through to May 31, 2023, to allow the Petitioners time to vacate the Langley Premises.
3. On or around February 27, 2023, the Landlord provided a formal eviction notice to CW Aerospace (the "**Eviction Notice**"), contrary to the arrangement to allow the Petitioners until May 31, 2023 to vacate the Langley Premises.
4. The Eviction Notice stated that CW Aerospace was required to deliver up possession of the Langley Premises on March 31, 2023. As further explained below, it would have been impossible for the Petitioners to move out within this time frame.
5. CW Aerospace had always been current on rent payments during the term of the Lease, though it has not paid rent for April and May due to the on going dispute over the Lease with the Landlord.
6. On March 8, 2023, the Court granted the Initial Order commencing these CCAA proceedings (the "**Initial Order**"), and on March 17, 2023, the Court granted the Amended and Restated Initial Order in these CCAA proceedings (the "**ARIO**").
7. On April 1, 2023, a bailiff acting on behalf of the Landlord (the "**Bailiff**") locked the Petitioners out of the Premises.
8. On April 5, 2023, FTI Consulting Canada Inc. in its capacity as court-appointed monitor in these CCAA proceedings (the "**Monitor**") filed the Second Report of the Monitor, which contained an adverse change report related to the eviction, which contained the following statement on Page 8:

The Monitor contacted the landlord to advise of the stay of proceedings. The landlord responded that despite the ARIO, they had provided a notice to the tenant prior to the commencement of the CCAA proceedings, requesting the Petitioners to vacate the premises prior to March 31, 2023.

9. On April 12, 2023, the Petitioners provided the Bailiff with a time line of three weeks to move out of the Langley Premises from the date they were given full access. This was due to the amount of inventory, equipment and aircraft that had to be removed. There are internal structures owned by CW Aerospace in the Langley Premises such as a paint booth and cleaning rooms that would require an electrician and HVAC mechanic among others to carry out disconnection before starting disassembly and relocation. In addition, several aircraft will need to be moved with crane trucks and/or assembled to be flown out. This work cannot be performed in a condensed timeline. Therefore, it would have been impossible to move out of the Langley Premises in less time than that proposed by the Petitioners.
10. On April 17, 2023, the Bailiff emailed in response, stating that he no longer acted on behalf of the Landlord and no longer had access to the Langley Premises.
11. As of yet, the Petitioners have been unable to access the Langley Premises to retrieve their assets and their customers' assets. Much of the Petitioners' equipment, tools, and parts along with aircrafts belonging to several different customers are still locked up in the Langley Premises, and the Petitioners have been unable to complete contracts related to these aircrafts as a result. This has resulted in lost revenue to the Petitioners in excess of USD\$175,000.
12. The Petitioners were also advised by MAR ONE Aviation, L.L.C., the proposed purchaser of the Petitioners' in these CCAA proceedings (the "**Purchaser**"), that the Purchaser has concerns with completing the purchase of the Petitioners as a result of the foregoing.
13. By continuing to evict the Petitioners from the Langley Premises and barring their access thereto, the Landlord has caused damage to the Petitioners and their business, and has put the prospect of a successful restructuring in these CCAA proceedings at risk. Furthermore, the Landlord's actions above are in breach of the ARIO.

PART 3: LEGAL BASIS

1. The Petitioners rely on:
 - (a) the CCAA;
 - (b) the inherent jurisdiction of this Honourable Court; and
 - (c) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. Section 11 of the CCAA provides that, on application by any person in respect of a debtor company, the Court may, subject to the restrictions set out in the CCAA, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

3. Section 16 of both the Initial Order and the ARIO provide as follows:

During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

4. Section 5 of both the Initial Order and the ARIO define "Business" as the Petitioners' business and "Property" as the Petitioners' "current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof"

5. The Landlord is a corporation and thus a Person according to the terms of Section 16 above. From the date of the Initial Order, any of its rights and remedies against the Petitioners or affecting their Business or Property (as defined by the Initial Order and the ARIO) were stayed and suspended. At no time did they seek consent of the Petitioners, the Monitor, or the Court for their actions.

6. Section 18 of the Initial Order and the ARIO provide as follows:

During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

7. Despite the prohibitions contained in Section 16 of the ARIO, the Landlord continued its eviction of CW Aerospace from the Langley Premises, and has continued to bar access of the Petitioners from the Langley Premises even though all of its rights and remedies against the Petitioners, or affecting their Business and Property, were stayed and suspended. This has been to the detriment of the Petitioners' Business, as the Landlord's actions have so far costed the Petitioners over USD\$175,000 in revenue, which further impacts their cashflow through these CCAA proceedings. The Petitioners' Property is also affected, as it remains locked in the Langley Premises beyond the reach of the Petitioners.

8. In ending the Lease and continuing to evict CW Aerospace, the Landlord is also in breach of Section 18 of the ARIO.

9. It is irrelevant that the Eviction Notice was delivered prior to the date of the Initial Order. The provisions of Sections 16 and 18 of the ARIO would not be meaningful if a person were permitted to continue enforcing their rights or to end their agreements with the Petitioners just because notice thereof was provided before commencement of these CCAA proceedings. Debtors wishing to seek

protection under the CCAA may otherwise be discouraged from doing so, as they would not be able to effectively stay third party rights and remedies, to the detriment of enabling restructurings and other transactions under the CCAA.

10. Given the foregoing, the Landlord is in breach of the ARIO.
11. In order to remedy the Landlord's breach, the Petitioners submit it is appropriate in the circumstances to grant the relief sought and require the Landlord to provide the Petitioners with continued access to the Langley Premises in order effect the removal of the contents therein.

PART 4: MATERIAL TO BE RELIED ON

1. The Second Report of the Monitor; filed April 5, 2023.
2. The Affidavit No. 4 of Thomas Jackson, sworn May 1, 2023.
3. The other materials filed in these CCAA proceedings.
4. Such other materials as this Honourable Court may allow.

The Applicants estimate that the application will take 30 minutes.

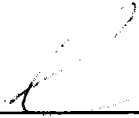
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33;
- (b) file the original of every Affidavit, and of every other document, that:
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the Applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: May 1, 2023



Signature of Lawyer for Applicants
Lawyer: Nick Carlson

This NOTICE OF APPLICATION is prepared by Nick Carlson of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.891.7797, Email: NCarlson@cwilson.com) (File #: 54101-0001).

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- with the following variations and additional terms:

Date: _____
[dd/mmm/yyyy]

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

Schedule "A"

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PETITIONERS

SERVICE LIST

Updated: May 1, 2023

Name of Counsel:	Name of Parties:
Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 Attention: Christopher J. Ramsay / Katie G. Mak / Nick Carlson / Jaime Landa (Assistant) Email: CRamsay@cwilson.com; KMak@cwilson.com; NCarlson@cwilson.com; JLanda@cwilson.com Tel: 604-687-5700	<i>Counsel for the Petitioners</i>

Name of Counsel:	Name of Parties:
<p>FTI Consulting Canada Inc. 1502 - 701 West Georgia Street Vancouver, BC V7Y 1C6</p> <p>Attention: Craig Munro Huw Parks</p> <p>Email: craig.munro@fticonsulting.com; Huw.Parks@fticonsulting.com</p> <p>Tel: 604-757-6108</p>	<p><i>Monitor</i></p>
<p>DLA Piper (Canada) LLP Suite 2800, Park Place 666 Burrard St Vancouver, BC V6C 2Z7</p> <p>Attention: Colin Brousson Dannis Yang (Assistant)</p> <p>Email: colin.brousson@dlapiper.com; dannis.yang@dlapiper.com</p> <p>Tel: 604-643-6400</p>	<p><i>Counsel to the Monitor</i></p>
<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: Jordan Schultz Eamonn Watson Avic Arenas (Paralegal) Chelsea Denton (Assistant)</p> <p>Email: jordan.schultz@dentons.com; eamonn.watson@dentons.com; avic.arenas@dentons.com; chelsea.denton@dentons.com</p> <p>Tel: 604-691-6452 / 604-629-4997</p>	<p><i>Counsel to Royal Bank of Canada</i></p>
<p>Kornfeld LLP 1100 – 505 Burrard Street Vancouver, BC V7X 1M5</p> <p>Attention: Douglas Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p>Tel: 604-331-8303</p>	<p><i>Counsel to Business Development Bank of Canada</i></p>

Name of Counsel:	Name of Parties:
Ministry of Attorney General PO Box 9280 Stn Prov Govnt Victoria, BC, V8W 9J7 Email: AGLSBRevTaxInsolvency@gov.bc.ca ;	<i>Attorney General for the Province of BC</i>

Schedule "B"

No. **S-231354**
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE JUSTICE
FITZPATRICK

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May 4, 2023

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 4th day of May, 2023 (the "Order Date"); AND ON HEARING Christopher J. Ramsay, counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCA"), and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. All capitalized terms herein shall have the meanings given to them in the Notice of Application of the Petitioners in these CCAA proceedings dated May 1, 2023 unless otherwise defined herein;
2. The Landlord shall provide the Petitioners with continued access to the Langley Premises from the date hereof until May 31, 2023 (the "**Move Out Term**");
3. The Landlord shall not obstruct the Petitioners from removal of their assets and their customers' assets during the Move Out Term; and
4. The Petitioner, CW Aerospace, shall pay rent to the Landlord at the price previously paid pursuant to the Lease for the month of May.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Petitioners
Lawyer: Christopher Ramsay

BY THE COURT

Registrar

SCHEDULE "A"

LIST OF COUNSEL

Christopher Ramsay	The Petitioners
Jordan Schultz	Royal Bank of Canada
Colin Brousson	FTI Consulting Canada Inc., in its capacity as the Monitor of the Petitioners