

Court File No. CV-10-8647-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

THURSDAY, THE 12th DAY

JUSTICE MORAWETZ

)

)

OF AUGUST, 2010

IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

APPROVAL AND VESTING ORDER
(Sale of Fasken Property)

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as the court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Skyservice Airlines Inc. ("**Skyservice**") for an order (i) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated May 25, 2010 and appended to the Second Report of the Receiver dated June 10, 2010 (as amended from time to time, the "**Sale Agreement**"), which the Receiver was authorized to enter by Order dated June 16, 2010, originally between the Receiver and 2157565 Ontario Inc. ("**215**") with 215 having subsequently assigned its interests in the Sale Agreement to 2238609 Ontario Limited (the "**Purchaser**") pursuant to an assignment agreement dated as of August 5, 2010; and (ii) vesting in the Purchaser Skyservice's right, title and interest in and to the assets described in the Sale

Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of the Receiver dated August 6, 2010 and on hearing the submissions of counsel for the Receiver, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Maria Basurto sworn August 6, 2010, filed:

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion and Motion Record is hereby abridged so that this Motion is properly returnable today, and that all parties requiring service of the Notice of Motion and the Motion Record in respect of this Motion have been duly served, and that further service of such materials upon all interested parties be and is hereby dispensed with and the service of such materials be and is hereby validated in all respects.

2. THIS COURT ORDERS that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Sale Agreement.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved on the terms set out in the Sale Agreement, with such minor amendments as the Receiver and the Purchaser may deem necessary, as mutually agreed upon by them. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of Skyservice's right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 Justice Gans dated March 31, 2010; (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) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C hereto) 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.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of the City of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule D hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule B hereto.

6. 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 Receiver'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.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

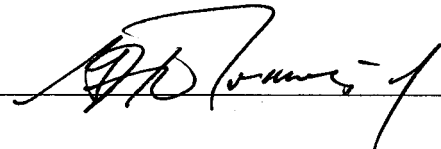
- a) the pendency of these proceedings;
- b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Skyservice and any bankruptcy order issued pursuant to any such applications; and

c) any assignment in bankruptcy made in respect of Skyservice;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Skyservice and shall not be void or voidable by creditors of Skyservice, nor shall it constitute nor be deemed to be a settlement, 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.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. 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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 12 2010

PER / PAR: NB

Schedule A – Form of Receiver’s Certificate

Court File No. CV-10-8647-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
SKYSERVICE AIRLINES INC.**

B E T W E E N:

THOMAS COOK CANADA INC.

Applicant

- and -

SKYSERVICE AIRLINES INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Gans of the Ontario Superior Court of Justice (the "**Court**") dated March 31, 2010, FTI Consulting Canada Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Skyservice Airlines Inc. ("**Skyservice**").

B. Pursuant to an Order of the Court dated June 16, 2010, the Court authorized the Receiver to enter into an agreement of purchase and sale made May 25, 2010 (as amended from time to time the "**Sale Agreement**"), originally between the Receiver and 2157565 Ontario Inc. ("**215**") with 215 having subsequently assigned its interest in the Sale Agreement to 2238609 Ontario Limited (the "**Purchaser**") pursuant to an assignment agreement dated as of August 5, 2010.

C. Pursuant to an Order of the Court dated August 12, 2010, the Court approved the sale transaction contemplated by the Sale Agreement and provided for the vesting in the Purchaser of

Skyservice'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 Receiver to the Purchaser of a certificate certifying the matters set out herein.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver 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 sections 3, 4, 15 and 16 of the Sale Agreement have been satisfied or waived by the Receiver and/or the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI CONSULTING CANADA INC., in its
capacity as court-appointed receiver of the
undertaking, property and assets of
Skyservice Airlines Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Claims to be Expunged

- a) Charge/Mortgage registered on October 22, 2007 against the Real Property as Instrument No. AT1610265 in favour of Roynat Inc.
- b) Transfer of Charge registered on February 25, 2010 against the Real Property as Instrument No. AT2313828 in favour of Thomas Cook Canada Inc.
- c) Charge/Mortgage registered on December 4, 2009 against the Real Property as Instrument No. AT2248072 in favour of Gibralt Capital Corporation.

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

- (1) Rights reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant, agreement or permit, including the right to terminate same or to require annual payments as a condition to the continuance thereof, which do not materially adversely affect the use, value or marketability of the Lands, Buildings or Chattels.
- (2) The reservations, exceptions, limitations, provisos and conditions, if any, expressed in the original grant from the Crown, as the same may varied by statute.
- (3) Registered subdivision agreements, site plan control agreements, servicing agreements, encroachment agreements, development agreements, tunnel agreements, and other similar agreements with governmental authorities or public utilities affecting the development or use of the Lands, Buildings or Chattels and security given therefor, provided same are in good standing in all material respects.
- (4) Registered facility sharing, cost sharing, common use, servicing, reciprocal, tunnel and other similar agreements relating to the use and/or operation of the Lands, Buildings or Chattels and/or adjoining properties and security given by the parties thereto to each other to secure the performance of their respective obligations thereunder.
- (5) Encumbrances respecting minor encroachments by any portion of the Real Property and Buildings over neighbouring lands or easements or rights of way and/or minor encroachments on the Lands and Buildings by improvements on neighbouring lands including, without limitation, any minor encroachments as shown on any survey of the Real Property.
- (6) Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use, value or marketability of the Real Property, Buildings or Chattels for the purposes for which they are presently held.
- (7) (i) All Liens, encumbrances, restrictions, easements, rights of way, leases and tenancies, agreements and interests affecting title to the Real Property, Buildings or Chattels which are registered by the Purchaser or are registrations which arise directly or indirectly due to the actions or the omissions of the Purchaser, (ii) notices of leases registered by or on behalf of tenants of the Real Property and Buildings, and (iii) those registrations, if any, registered after the Condition Date with the consent of the Purchaser pursuant to the terms of this Agreement.
- (8) Instrument No. EB158733 registered on September 23, 1955 is an amendment to the Toronto Malton Airport Zoning Regulations.
- (9) Instrument No. EB216574 registered on June 17, 1959 is a Notice by the Department of Transport of Malton Airport zoning regulations.

- (10) Instrument No. EB255931 registered on March 13, 1962 is a Notice by the Department of Transport of Toronto Malton Airport zoning regulations.
- (11) Instrument No. EB412063 registered on January 29, 1973 is a Notice by the Department of Transport, Canada, of Airport zoning regulations.
- (12) Instrument No. EB461590 registered on May 3, 1976 is an Order In Council of the Privy Council of Canada, dated February 10, 1976, to amend Toronto International Airport zoning regulations.
- (13) Instrument No. E317117 registered on March 27, 2000 is a Notice by Her Majesty the Queen in Right of the Department of Transport Canada of Pearson Airport zoning regulations.
- (14) Instrument No. EB363078 registered on September 26, 1969 is an Agreement dated September 15, 1969, made between Bob-Clare Investments Limited and The Corporation of the Borough of Etobicoke, which agreement relates, inter alia, to the connection of a building sewer to a storm sewer situate on the street.
- (15) Instrument No. EB370363 registered on May 21, 1970 is an Agreement dated May 19, 1970, made between Bob-Clare Investments Limited and The Corporation of the Borough of Etobicoke, which agreement relates, inter alia, to the connection of a building sewer to a storm sewer.
- (16) Instrument No. E570750 registered on July 19, 2002, is a Notice of Change of Address – Owner dated July 17, 2002 to change the address of Skyservice Airlines Inc.

Schedule D – Real Property

Municipal Address: 31 Fasken Drive, Toronto, Ontario

Legal Description:

PIN 07420-0020 (LT)

PT BLK B, PL 7994, PART 1, 64R8871; T/W EB367331; ETOBICOKE, CITY OF TORONTO

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**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**APPROVAL AND VESTING ORDER
(Sale of Fasken Property)**

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