

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**BETWEEN:**

**THOMAS COOK CANADA INC.**

**Applicant**

**- and -**

**SKYSERVICE AIRLINES INC.**

**Respondent**

**SUPPLEMENTARY MOTION RECORD**

**(for an interpretation of the Arrangement Agreement and for an order with respect to  
liability arising from the KPMG Report, returnable on a date to be fixed)**

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AND TO: **The Service List**

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**Tab**

1. Affidavit of Johnny Ciampi, sworn July 21, 2011

**TAB 1**

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**AFFIDAVIT OF JOHNNY CIAMPI**

I, **Johnny Ciampi**, of the City of Vancouver in the Province of British Columbia,

**MAKE OATH AND SAY:**

**Introduction**

1. At the time relevant to the events discussed in this affidavit, I was the Executive Vice President of Gibralt Capital Corporation ("**Gibralt**"). In that capacity, I was the main negotiating representative of Gibralt in connection with the Arrangement Agreement pursuant to which Gibralt acquired Skyservice Airlines Inc. As such, I have knowledge of the matters to which I hereinafter depose.

2. I am a Chartered Accountant.

3. I have read the affidavit of Ronald Padmore sworn June 29, 2011.

**Mr. Padmore's understanding of the Arrangement Agreement makes no commercial sense and is inconsistent with the parties' subsequent conduct**

4. I understand from Geoff R. Hall of McCarthy Tétrault LLP, counsel for the Receiver,<sup>1</sup> that my subjective understanding of the meaning of the Arrangement Agreement is not admissible as evidence on this motion, and that evidence of the negotiations leading up to the Arrangement Agreement is also not admissible. I will therefore refrain from setting out my subjective understanding of the meaning of the Arrangement Agreement, even though I strongly disagree with the understanding expressed in Mr. Padmore's affidavit. I will also refrain from commenting on Mr. Padmore's version of the negotiations, although once again I strongly disagree with what he has said.

5. I will, however, comment on the commercial efficacy of the Arrangement Agreement if it is interpreted as Mr. Padmore would have the court interpret it. I will also comment on the conduct of the parties after the EBITDA issue arose, which is inconsistent with the interpretation the Former Shareholders are now urging the court to accept.

6. It is well known that business people like certainty to the extent it is achievable. They also dislike litigation, and prefer to have mechanisms in place to avoid having disputes become litigious.

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<sup>1</sup> Capitalized terms which are not otherwise defined have the meanings ascribed to them in the Ninth Report of the Receiver, which I have also read.

7. It appears that there is no dispute between the parties as to over what was to happen if Skyservice's year-end did not change: the EBITDA in question would be determined by the audited financial statements of the company. In other words, neither Skyservice nor the Former Shareholders would have the final word; instead, they would both be bound by the determination of Skyservice's auditor KPMG. Such a mechanism makes commercial sense by providing certainty to both parties and a mechanism to have the EBITDA issue determined by appropriate professionals rather than just left to an argument between two self-interested parties.
8. Conversely, Mr. Padmore's theory that if the year-end did not change the EBITDA issue would be determined by agreement between the parties does not make commercial sense. Such a mechanism would be a recipe for deadlock and litigation, neither of which is commercially desirable.
9. As set out in the Ninth Report of the Receiver, when the EBITDA issue arose in 2009, Skyservice had changed its year-end and so it was not possible simply to use the audited financial statements. Accordingly, the parties started to negotiate the basis on which internally generated financial statements for the appropriate period would be reviewed by KPMG. I was involved in these negotiations on behalf of Skyservice.
10. As outlined in the Ninth Report, these negotiations went on for some time and culminated in an agreement on the terms of KPMG's review, and then the review itself.
11. It would not have made commercial sense for the parties to go through the effort of settling the terms of KPMG's review or to allow KPMG to go through the review (a not inexpensive endeavour) if the review was to be nothing more than a basis for negotiations between the parties as to what the correct EBITDA was.




12. As noted in the Ninth Report, it was only after learning of KPMG's conclusion in October 2009 that the Former Shareholders changed their position and began to assert the position they are now asserting.

**Other disagreements with Mr. Padmore's affidavit**

13. I also disagree with several other statements in Mr. Padmore's affidavit. I understand that not much turns on the points so I will not elaborate upon them, but I do want to be on record as disagreeing with them. The points are as follows:

- (a) I disagree with the assertion in paragraph 25 of Mr. Padmore's affidavit that the reserves were overly conservative. The reserves were carefully calculated based on information available at the time they were determined, and were as accurate as possible.
- (b) Contrary to paragraph 38 of Mr. Padmore's affidavit, I did not tell Mr. Padmore in February 2008 that I believed the \$2 million EBITDA threshold would be reached by April 30, 2008. I simply said no such thing, and did not do anything that should have led Mr. Padmore to that conclusion.

SWORN BEFORE ME at the City of Vancouver in the Province of British Columbia on July 21, 2011



Commissioner for Taking Affidavits for British Columbia & A Notary in and for the Province of ANGELA M. JUBA British Columbia

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\_\_\_\_\_  
Johnny Ciampi

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

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Proceeding Commenced at Toronto

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