

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
JUSTICE MORAWETZ

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WEDNESDAY, THE 13<sup>th</sup> DAY  
OF OCTOBER, 2010



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

APPROVAL AND VESTING ORDER  
(Hangar Sale)

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as the court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Skyservice Airlines Inc. ("Skyservice") acquired for, or used in relation to a business carries on by Skyservice, including all proceeds thereof, for an order (i) approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Skyservice Investments Inc. (the "Purchaser") dated September 29, 2010 and appended to the Seventh Report of the Receiver dated September 30, 2010 (the "Seventh Report"); 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 Seventh Report and on hearing the submissions of counsel for the Receiver, Greater Toronto Airports Authority (the "GTAA") 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 October 1, 2010, filed:

1. THIS COURT ORDERS that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Sale Agreement.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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.
3. 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.

4. THIS COURT ORDERS that the Receiver shall not deliver to the Purchaser the Receiver's Certificate until either GTAA Lease Approval (as defined in the Sale Agreement) has been obtained or until further Order of this Court.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Peel 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 tenant pursuant to the leasehold interest identified in Schedule D hereto (the "**Real Property**"), and is hereby directed to delete and expunge from title to the Real Property all of the Claims 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.

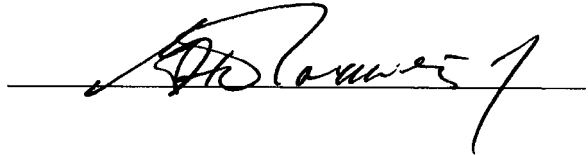
9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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.:

OCT 13 2010

PER / PAR:



**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 October 13, 2010, the Court approved the agreement of purchase and sale made as of September 29, 2010 (the "**Sale Agreement**"), between the Receiver and Skyservice Investments Inc. (the "**Purchaser**") 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 and 5 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) Notice of Charge of Lease registered on October 22, 2007 as Instrument No. PR1357827;
- (b) Application registered on March 30, 2010 as Instrument No. PR1797692.

## SCHEDULE C

### Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

- (1) Restrictions, easements, rights-of-way, restrictive covenants, building schemes, licenses, servitudes, watercourse, right of water, right of access or user, airport, zoning regulations, or other similar rights in land (including, without limitation, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph cable television conduits, poles, wires or cables) granted to or reserved by other persons and rights reserved 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 marketability of the lands described as Part of Lot 9, Land Registrar's compiled plan no. 1006, designated as Part 2, Reference Plan 43R-11367, S/T and T/W easements described in RO1129884, Mississauga, Ontario as described in PIN 13526-0009 (LT) (the "**Leasehold Lands**") and Improvements (as defined in the Sale Agreement).
- (2) Security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the development, management, ownership and operation of the Leasehold Lands and Improvements.
- (3) The reservations, exceptions, limitations, provisions and conditions expressed in the original grant from the Crown, as the same may varied by statute.
- (4) Subdivision agreements, site plan control agreements, servicing agreements, encroachment agreements, development agreements, tunnel agreements, and other similar agreements with governmental authorities affecting the development or use of the Leasehold Lands and Improvements and security given therefore, provided same are in good standing in all material respects.
- (5) Facility sharing, cost sharing, common use, servicing, reciprocal, tunnel or other similar agreements relating to the use and/or operation of the Leasehold Lands and Improvements and/or adjoining properties and security given by the parties thereto to each other to secure the performance of their respective obligations there under.
- (6) Encumbrances respecting minor encroachments by the Leasehold Lands and Improvements over neighboring lands or easements or rights-of-way and/or improvements on neighboring lands encroaching on the Leasehold Lands and Improvements including, without limitation any encroachments as shown on the survey or any rights of adverse possession which neighboring property owners may enjoy as the result of the location of fences located on the Leasehold Lands.
- (7) Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Leasehold Lands and Improvements for the purposes for which they are presently held.
- (8) All liens, encumbrances, restrictions, easements, rights of way, leases and tenancies, agreements, restrictions, instruments and interests affecting or registered against title to the Leasehold Lands and Improvements from time to time.
- (9) the "Head Lease" (as defined in the GTAA Lease).



- (10) the "Airport Regulations" and the "Airport Construction Code" (both as defined in the GTAA Lease) and all environmental policies of GTAA.
- (11) the "Approved Land Use Plan" (as defined in the Head Lease).
- (12) any "Facility Alteration Permit" (as defined in the GTAA Lease).
- (13) any "Security Deposit" (as defined in the GTAA Lease), as increased pursuant to the Consent to Assignment of Lease and Assumption Agreement dated August 10, 2007 between GTAA, as landlord, Skyservice F.B.O. Inc., as assignor and Skyservice Airlines Inc., as assignee (the "Skyservice Consent") and subsequently increased to an amount equal to nine (9) months of "Minimal Rent" (as defined in the GTAA Lease) or any "Security Interest" (as defined in the GTAA Lease) which shall continue to attach to the Purchased Assets.
- (14) all other limitation upon or reservations as to the use of the "Premises" (as defined in the GTAA Lease) including without limitation those set out in Sections 2.2, 9.1, 9.2, 11.1 (as amended by the Skyservice Consent) and 11.2 of the GTAA Lease.
- (15) all financial or monetary claims relating to the GTAA Lease and any ancillary agreements and the use of the Premises, including without limitation "Rent" and "Additional Rent" (both as defined in the GTAA Lease) calculated from the Closing Date and any environmental liability of the Tenant and any successor arising from an "Environmental Event" (as defined in the GTAA Lease) and all other Tenant's Covenants (as defined in the GTAA Lease).

## **SCHEDULE D**

### **Real Property**

The lease dated November 1, 2000 between the Greater Toronto Airport Authority ("GTAA"), as landlord, Sky Service F.B.O. Inc. (the "Original Tenant"), as tenant, dated November 1, 2000 and referred to as Lease YZ 3095, which Lease was subsequently assigned to Skyservice pursuant to an assignment of lease and assumption agreement dated March 22, 2007 between the Original Tenant, as assignor, and Skyservice, as assignee, as amended by a consent to assignment of lease and assumption agreement dated August 10, 2007 between the Original Tenant, Skyservice and the GTAA, as further amended from time to time, notice of which was registered against title to the lands legally described as Part of Lot 9, Land Registrar's compiled plan no. 1006, designated as Part 2, Reference Plan 43R-11367, S/T and T/W easements described in RO1129884, Mississauga, Ontario as described in PIN 13526-0009 (LT) on April 3, 2002 as Instrument No. PR225068 (notice of lease) and notice of the assignment thereof on October 1, 2007 as Instrument No. PR1346088 (notice of assignment of lessee interest).

IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

B E T W E E N :

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**APPROVAL AND VESTING ORDER  
(Hangar Sale)**

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Lawyers for FTI Consulting Canada Inc.  
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IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.

BETWEEN:

THOMAS COOK CANADA INC.

- and -

SKYSERVICE AIRLINES INC.

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

13 OCT 2010

October 13, 2010.

H. Meredith for Receiver.

J. Maher for C.S.T.

S. Galbraith for Thomas Cook.

D. Irving for G.T.A.F.

C. Burns - Summary.

The order was not approved. I am satisfied that the order is reasonable in the circumstances, and it is approved.

This order relates to the lease and 674 FF relates to the lease and 674 FF to be addressed as a future

Note, if necessary.

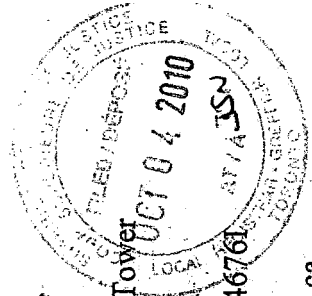
Order to go in the form submitted.

H.H. Merritt

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding Commenced at Toronto

MOTION RECORD  
(Returnable October 13, 2010)



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