

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

Skyservice Airlines Inc.

FIFTH REPORT OF THE RECEIVER

August 6, 2010

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

**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

**FIFTH REPORT TO THE COURT SUBMITTED BY
FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS RECEIVER**

INTRODUCTION

1. On March 31, 2010 (the "Date of Receivership"), FTI Consulting Canada Inc. was appointed as receiver (the "Receiver") of all of the assets, undertakings and properties of Skyservice Airlines Inc. ("Skyservice") pursuant to the order of the Honourable Mr. Justice Gans granted upon the application of Thomas Cook Canada Inc. pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* and section 101 of the *Courts of Justice Act (Ontario)*.
2. On June 16, 2010, the Honourable Mr. Justice Morawetz granted an Order (the "Tasken Sale Process Order")

- (i) authorizing the Receiver to enter into the purchase and sale agreement with 2157565 Ontario Inc. (the "Stalking Horse Bidder") dated May 25, 2010 (as amended, the "Fasken Stalking Horse Agreement") for the sale of the property known municipally as 31 Fasken Drive, Toronto, Ontario and related assets as described in the Fasken Stalking Horse Agreement (the "Fasken Property"); and
 - (ii) authorizing the Receiver to continue to pursue other and superior offers in accordance with the marketing process for the Fasken Property described in the Receiver's Second Report (the "Fasken Marketing Process"). A copy of the Receiver's Second Report describing the Fasken Marketing Process and to which the Fasken Stalking Horse Agreement was attached as Appendix A and a copy of the Supplement to the Second Report are attached hereto as Appendix A for ease of reference.
3. The Receiver has filed a number of reports on various aspects of the Receivership. The purpose of this, the Receiver's Fifth Report, is to:
 - (i) inform the Court of the results of the Fasken Marketing Process;
 - (ii) request the granting by this Honourable Court of an approval and vesting order in respect of the sale of the Fasken Property to the Purchaser (defined below) pursuant to the Fasken Stalking Horse Agreement; and
 - (iii) request the granting by this Honourable Court of an approval for the Receiver to consent to the dismissal of an application previously commenced by Skyservice and to take out an order dismissing that application without costs.

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied upon unaudited financial information of Skyservice, Skyservice's books and records, certain financial information prepared by Skyservice and discussions with Skyservice's employees. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or previous reports of the Receiver.

THE FASKEN MARKETING PROCESS

MARKETING ACTIVITIES

6. In accordance with the provisions of the Fasken Sale Process Order, an advertisement with respect to the availability of the Fasken Property was published in the national edition of the Globe and Mail on Thursday June 24, 2010.
7. On July 8, 2010, the Receiver mailed a notice of the availability of the Fasken Property to each of the 433 commercial real estate offices listed in Mississauga and Toronto.
8. The Receiver approached fourteen potential buyers and introduced the opportunity to acquire the Fasken Property.

9. Seven additional parties contacted the Receiver with respect to the potential purchase of the Fasken Property.
10. Twenty one parties requested and were provided with a detailed package of information in respect of the Fasken Property. Site visits were undertaken by nine parties.
11. All interested parties and real estate brokerage companies were advised that a commission of up to 1.5% would be paid to licensed real estate agents who represented interested parties, but only on closing and from the proceeds of sale.
12. A template agreement of purchase and sale was made available to potential purchasers by posting on the Receiver's Website.

OFFERS RECEIVED

13. Pursuant to the Fasken Marketing Process approved by the Fasken Sale Process Order, the deadline for the submission of binding offers was 5:00 p.m. Toronto time on Friday July 30, 2010 (the "Fasken Bid Deadline"). No offers were received by the Fasken Bid Deadline.

THE FASKEN AGREEMENT

14. As described above, the Fasken Marketing Process has been completed and the Receiver now seeks the Approval and Vesting Order (capitalized terms in this section, not otherwise defined are as defined in the Fasken Stalking Horse Agreement).
15. The key terms of the Fasken Stalking Horse Agreement are as follows:

- (i) A purchase price of \$5.3 million for the Purchased Assets (which includes the Fasken Property). The purchase price is subject to customary real estate adjustments on the closing date. A deposit of \$750,000 has been paid by the Purchaser and the balance of the purchase price has been placed in escrow with the Purchaser's solicitors;
 - (ii) The Vendor had the right to solicit higher offers under a "stalking-horse" process and agreed, if there was no Superior Offer by the Bid Deadline to seek the Approval and Vesting Order;
 - (iii) Purchased Assets are being sold on an "as is where is" basis; and
 - (iv) Closing is to occur on the date which is three Business Days after the date on which the Approval and Vesting Order is granted.
16. The Receiver notes that the Stalking Horse Bidder has assigned the Fasken Stalking Horse Agreement to 2238609 Ontario Limited (the "Purchaser") pursuant to an assignment agreement dated as of August 5, 2010 (the "Assignment Agreement"). The Assignment Agreement provides that the Purchaser is an affiliate (as defined in the Business Corporations Act (Ontario)) of the Stalking Horse Bidder and that the Purchaser assumes and agrees to perform all of the covenants and obligations of the Stalking Horse Bidder under the Fasken Stalking Horse Agreement. This assignment was contemplated in Section 18 of the Fasken Stalking Horse Agreement. The Assignment Agreement is attached as Appendix B.

17. The Receiver respectfully submits that the Fasken Marketing Process provided for a broad, open, fair and transparent process, encouraged bidding by third-parties and was reasonable in the circumstances. As such, in the Receiver's view the process followed in this case was appropriate having regard to the principles of the decision in *Royal Bank of Canada v. Soundair Corp.*, 4 O.R. (3d) 1 (Ont. C.A.)
18. The Receiver further submits that the purchase price provided for in the Fasken Stalking Horse Agreement is the highest and best price that has resulted from the Fasken Marketing Process and that the granting of the Approval and Vesting Order is in the best interests of the estate and its stakeholders.
19. Accordingly, the Receiver respectfully requests the granting of the Approval and Vesting Order by this Honourable Court.

DISMISSAL OF APPLICATION

20. On December 11, 2009 Skyservice commenced an application against First Choice Canada Inc. ("FCC"), TUI Travel PLC, TUI Canada Holdings Inc. (together, "TUI"), Sunwing Travel Group Inc. and Sunwing Airlines Inc. (together "Sunwing") (collectively, the "Respondents") in Court File No. CV-09-393220 (the "Application"). In the Application, Skyservice sought, among other things, an injunction restraining the Respondents from completing an amalgamation (the "Amalgamation") of "the operations of Sunwing Vacations with Signature Vacations and Sell Off Vacations" without the prior written consent of Skyservice and, in the alternative, an order for damages. Attached as Appendix C is a copy of the Notice of Application.

21. Counsel for FCC and TUI set out their legal position, that the Application was "without merit", in a letter dated December 14, 2009. Among other things, the letter states that "Skyservice claims that under section 19 [of the Commercial Agreement between FCC and Skyservice], its consent is required for any assignment of the agreement, and that the proposed amalgamation constitutes an anticipatory breach of section 19. However, the Ontario *Business Corporations Act*, the case law, and section 19 of the Commercial Agreement all make clear that an amalgamation is not an assignment." A copy of the letter is attached as Appendix D.

22. As set out in the April 27, 2010 affidavit of Mark Williams, President of Sunwing Airlines Inc., filed in relation to the applications brought by airport and other authorities for seizure of Skyservice aircraft, the Amalgamation, pursuant to which Sunwing Tours Inc. was formed, took place, effective February 5, 2010. Mr Williams states "Sunwing was formed, effective February 5, 2010, as a result of an amalgamation of [FCC] and Red Seal Tours Inc. Sunwing's divisions include "Signature Vacations" and "Sell Off Vacations," which were formerly divisions of [FCC]."

23. The Receiver and its counsel have reviewed the Application and the legal position advanced by counsel to the Respondents. Given the legal position as asserted by counsel to the Respondents and the fact that the Amalgamation has already been completed, the Receiver has concluded it should not pursue the Application further.

24. McCarthy Tétrauld LLP, which is now on the record for Skyservice in the Application, circulated a consent to an order dismissing the Application without costs (the "Consent"). Counsel to FCC and TUI and counsel to Sunwing have each consented to the dismissal without costs. The Receiver seeks authorization to execute the Consent on behalf of Skyservice. The Consent is attached as Appendix E.

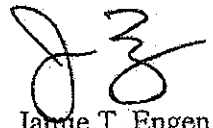
The Receiver respectfully submits to the Court this, its Fifth Report.

Dated this 6th day of August, 2010.

FTI Consulting Canada Inc.
 in its capacity as receiver of
 Skyservice Airlines Inc.
 and not in its personal or corporate capacity



Nigel D. Meakin
 Senior Managing Director



Jamie T. Engen
 Managing Director

Appendix A

The Receiver's Second Report

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

Skyservice Airlines Inc.

SECOND REPORT OF THE RECEIVER

June 10, 2010

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

**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

**SECOND REPORT TO THE COURT SUBMITTED BY
FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS RECEIVER**

INTRODUCTION

1. On March 31, 2010 (the "Date of Receivership"), FTI Consulting Canada Inc. was appointed as receiver (the "Receiver") of all of the assets, undertakings and properties (the "Property") of Skyservice Airlines Inc. ("Skyservice" or the "Company") pursuant to the order of the Honourable Mr. Justice Gans (the "Receivership Order") granted upon the application of Thomas Cook Canada Inc. ("TCCI") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") and section 101 of the *Courts of Justice Act (Ontario)*.

2. The Receiver's first report dated April 14, 2010 (the "**First Report**") was filed in support of the Receiver's motion for, among other things, approval for the Receiver to enter into aircraft return agreements, the aircraft return indemnity agreements and the responsible person agreements with lessors and others to govern the return of aircrafts leased by Skyservice and related arrangements (the "**Aircraft Return Protocol**"). Pursuant to an Order made in the receivership proceedings dated April 15, 2010, Mr. Justice Morawetz approved the Aircraft Return Protocol (the "**Aircraft Return Order**").
3. The purpose of this, the Receiver's Second Report, is to inform the Court of the following:
 - (i) The activities of the Receiver since April 14, 2010, the date of the Receiver's First Report;
 - (ii) Receipts and disbursements for the period from March 31 through May 28, 2010;
 - (iii) The return of the ten aircraft under the Aircraft Return Protocol;and to request the granting by this Honourable Court of:
 - (iv) An order approving the payment of the Break-Fee, as hereinafter defined, in the circumstances set out in the agreement of purchase and sale, as amended, between Skyservice Airlines Inc., acting by its Receiver, and 2157565 Ontario Inc. dated May 25, 2010 (the "**Fasken Agreement**") in respect of Skyservice's premises located at 31 Fasken Drive, Toronto (the "**Fasken Property**");
 - (v) An order approving the marketing plan and sales process proposed by the Receiver for the sale of Fasken Property and the chattels located therein, as contemplated in the Fasken Agreement (the "**Fasken Marketing Process**"); and

- (vi) An order authorizing the Receiver to enter into and implement the Liquidation Services Agreement dated June 9, 2010 (the "LSA") between the Receiver and Century Services Inc. ("Century").

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied upon unaudited financial information of Skyservice, Skyservice's books and records, certain financial information prepared by Skyservice and discussions with Skyservice's employees. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or the Receiver's First Report.

ACTIVITIES SINCE THE DATE OF THE RECIEVER'S FIRST REPORT**CASH**

6. The Receiver has continued to work with the Company's banks to finalize matters with respect to the pre-receivership accounts. On the Date of Receivership, the Receiver froze all Skyservice accounts and transferred funds to the Receiver's accounts. All foreign currency amounts were converted to Canadian Dollars on transfer. The Receiver has agreed to a small holdback by the banks to cover any additional charge-backs that may occur. As reported in the Receiver's First Report, Sunwing has asserted a claim, including a potential proprietary or trust "interest", over funds held by the Receiver, which claim is yet to be determined.

ACCOUNTS RECEIVABLE

7. The Receiver continues to collect outstanding receivables. Skyservice's books and records show total estimated receivables of approximately \$17.3 million as at Filing Date. However, approximately \$15.5 million is due from parties that could potentially have as yet unquantified counter-claims and potential rights of set off. Collections to date total approximately \$620,000.

INSURANCE

8. The Receiver's insurance advisor reviewed the Company's insurance coverage existing as at the Receivership Date and the Receiver has obtained replacement or additional coverage where considered appropriate. The aircraft insurance policies have now expired or were terminated following the return of the aircraft to the Lessors as described later in this report.

INVENTORY AND EQUIPMENT

9. At the Date of Receivership, Skyservice had inventory and equipment at various locations in Canada, with the majority being located at the Toronto premises, in addition to minor amounts of inventory located in the United Kingdom, the United Arab Emirates, Cuba, the Dominican Republic and Mexico. Inventory and equipment has been consolidated in Toronto where cost effective to do so. Certain other inventory and equipment has been sold locally. The costs of realization and practical difficulties may make the realization of certain inventory and equipment at remote locations unfeasible.

THIRD PARTY ASSET CLAIMS

10. The Receiver has received claims for ownership of assets in the possession of Skyservice from 22 different companies to date. All documentation provided by the companies has been forwarded to the Receiver's legal counsel for review. The Receiver is working with the parties with valid ownership to their assets to return the goods to them. To date the Receiver has accepted the claims of 11 parties.

CLAIMS UNDER SECTION 81.1 OF THE BIA ("30-DAY GOODS CLAIMS")

11. The Receiver received three small 30-day good claims pursuant to section 81.1 of the BIA. Two of the claims have been allowed and the goods in question have been returned. The third claim was disallowed and the disallowance was not disputed within the statutory timeframe.

EMPLOYEES

12. On the Date of Receivership, Skyservice had 1,088 full- or part-time employees. Since the Date of Appointment the Receiver, on behalf of the Company, has issued 1,054 letters of termination. Skyservice continues to retain 34 people to assist with the Receivership, including certain employees specifically identified on the Aircraft Maintenance Organization certificate ("AMO") issued to Skyservice by Transport Canada. The AMO has been maintained as it was required in order to perform maintenance on registered aircraft prior to their return to Lessors and is required to certify parts and tools, which certification is expected to increase asset realizations.

TRUST FUNDS

13. On March 25, 2010, prior to the Date of receivership, Skyservice forwarded \$7.4 million to its legal counsel, Cassels Brock & Blackwell LLP ("Cassels"), to be held in trust for certain amounts that may be owing to employees, amounts that may be owing pursuant to the *Workers Compensation Act*, (Manitoba) and amounts that may be owing in respect of the Air Travellers Security Charge ("ATSC").
14. The Receiver understands from Cassels that approximately \$6.3 million was paid out of the trust funds prior to the appointment of the Receiver. Since the Date of Receivership, the Receiver has consented to Cassels making additional payments totalling approximately \$0.9 million from the trust funds.
15. Based on the information provided by Cassels, current trust fund balances are summarized as follows:

	Employee	WCB	ATSC	Total
	\$000	\$000	\$000	\$000
Initial Amount	6,300	4	1,100	7,404
Pre-receivership Payments	5,218	4	1,053	6,275
Post-receivership Payments	858	0	0	858
Current Balance	224	0	47	271

16. The Receiver intends to assist Cassels in the determination of any final amounts that are payable from the trust funds and discuss arrangements for the release of any surplus with Cassels. To the extent that it is determined that an Order of the Court is necessary or advisable in respect of the foregoing, the matter will be the subject of a subsequent motion.

WEPPA

17. In accordance with the *Wage Earners Protection Program Act* (Canada) ("WEPPA"), the Receiver provided the required information to individuals within 45 days of the Receivership. The Receiver will be providing the required information to Service Canada by June 15, 2010 or such later date as agreed to by Service Canada in accordance with the provisions of WEPPA.
18. The Receiver has also posted information pertaining to WEPPA on its website, and continues to respond to inquiries via email and phone as the messages are received.

UNIONS

19. The Receiver has been in contact with representatives of each of the four unions that represent employees of Skyservice: the Skyservice Cabin Crew Association ("SCCA"), the Skyservice Pilots' Association ("SkyPAC"), Canadian Airlines Dispatchers Association ("CALDA") and the Canadian Auto Workers ("CAW").

20. The Receiver has been in discussions with SCCA and SkyPAC, and has responded to specific requests for training and safety information. The Receiver has photocopied and prepared the information requested and will release the information upon payment from each of SCCA and SkyPAC as reimbursement to the Receiver for costs incurred to reasonably respond to the specific union requests.

LEASED PREMISES

21. As at the Date of Receivership, the Company had leased premises at Mississauga, Montreal, Ottawa, Calgary, Winnipeg, Vancouver, Edmonton and Saskatoon. The Receiver reviewed the leases and concluded that there was no realizable value.
22. The lease for the Mississauga training facility was disclaimed effective April 15, 2010. The remaining real property leases were disclaimed by May 15, 2010.

CRA AUDITS

23. CRA has completed audits in respect of the Company's pre-receivership GST filings, ATSC amounts and airport improvement fees ("AIF"). No significant issues were identified.

WEBSITE AND RECEIVER CONTACTS

24. The Receiver has established a website at <http://cfcanada.fticonsulting.com/skyservice> at which the Receiver will post periodic updates on the progress of the receivership, together with copies of court orders, motion materials and reports filed in the receivership. In addition, the Receiver has created a dedicated email address, skyservice.receiver@fticonsulting.com, and a dedicated telephone number, 1-888-679-5969, which creditors, employees, interested parties and other stakeholders can use to contact the Receiver.

SALES OF ASSETS TO DATE

25. Pursuant to the Receivership Order, the Receiver is empowered and authorized by the Court to market and sell the Property or any part or parts thereof, provided that any individual transaction may not exceed \$750,000 and that the aggregate consideration for all such transactions may not exceed \$3,000,000. To date, the Receiver has completed sales of tourist cards, alcoholic beverages and perishable products for aggregate consideration of \$92,000.

ESCROW AMOUNTS

26. Skyservice was acquired by its current owners pursuant to statutory plan of arrangement in 2007. Consideration in respect of the transaction was paid almost entirely in cash with several contingent amounts (totalling approximately \$17.2 million) placed in escrow at the time. Portions of the escrow funds have been released throughout the last few years, upon satisfaction of specific requirements set out in the applicable agreements with the selling shareholders (the "Vendor"). As of May 25, 2010, there is approximately \$7.2 million currently in the escrow accounts.
27. The remaining escrowed amounts are subject to claims by Skyservice that relate to:
- (i) Breaches of representations and warranties; and
 - (ii) Financial performance thresholds from 2008.
28. The Receiver has been in discussions with representatives of the Vendor regarding the escrowed funds and Skyservice claims, and is in the process of determining next steps toward resolving the disputes and the treatment of the remaining escrowed funds.

RECEIPTS AND DISBURSEMENTS FOR MARCH 31 TO MAY 28, 2010

29. The excess of receipts over disbursements for the period from March 31, 2010 to May 28, 2010 (the "Period"), totalled approximately \$8.6 million, as summarized below:

	\$000
Receipts	
Cash	8,852
Sales	92
Collections under Aircraft Return Agreements	2,448
Accounts Receivable	620
Miscellaneous	122
Total Receipts	12,134
Disbursements	
Occupancy Costs	34
Payroll	1,059
Operating Costs	268
Legal & Professional	2,033
GST	107
Total Disbursements	3,501
Excess of Receipts over Disbursements	8,633

30. In addition to the foregoing, the Receiver currently estimates that it has incurred approximately \$600,000 in accrued obligations, primarily in respect of payroll-related costs, legal and professional fees and other miscellaneous operating costs.

RETURN OF AIRCRAFT

31. As described in the Receiver's First Report, Skyservice had ten leased aircraft located in Canada on the Date of Receivership.
32. Since the date of the First Report, the Receiver and its legal counsel have been working closely with representatives of the aircraft Lessors and their legal counsel to return the aircraft to the Lessors, including:
- (i) Negotiating and executing the Aircraft Return Agreements, Aircraft Return Indemnity Agreements and Responsible Person Agreements;

- (ii) Collecting amounts owing under the Aircraft Return Agreements;
 - (iii) Compiling aircraft records, historical technical compliance reports, substantiating airframe, engine and component times and their Airworthiness Directive status;
 - (iv) Providing documentation supporting hard time component certifications to substantiate aircraft airworthiness status and enable an assessment of the outstanding maintenance programme requirements necessary to obtain a valid certificate of airworthiness; and
 - (v) Providing the documentation required at lease termination.
33. All ten aircraft were returned to the Lessors by April 30, 2010 and have now been deregistered by Skyservice. Pursuant to the Aircraft Return Agreements, the Receiver collected \$856,000 in deposits in respect of return costs and approximately \$1.592 million in respect of accounts receivable showing as owing by the Lessors on the Skyservice books and records. These amounts were collected, subject to agreement with the Lessors on the actual amounts owing in each case.

THE FASKEN AGREEMENT AND THE BREAK-FEE

34. As described in the Receiver's First report, Skyservice owns the Fasken Property, which served as Skyservice's head office and is located at 31 Fasken Drive in the city of Toronto, Province of Ontario. Prior to the Date of Receivership, Skyservice had obtained a number of listing proposals from real estate agents for the listing of the Fasken Property, although no listing agreement had been signed. Following its appointment, the Receiver was contacted by a number of parties who expressed an interest in acquiring the Fasken Property. In addition, the Receiver was contacted by several real estate agents who offered their services to market the Fasken Property.

35. In mid-April 2010, the Receiver invited each of the interested parties to submit expressions of interest to the Receiver by April 30, 2010. The Receiver also invited each of the real estate agents who had expressed an interest in marketing the property to submit listing proposals to the Receiver by April 30, 2010.
36. Having reviewed the listing proposals and expressions of interest received, the Receiver determined that realizations for the sale of the Fasken Property may be maximized by undertaking a "stalking horse" sales process. To that end, the Receiver has caused Skyservice to enter into, subject to Court Approval and subject to the right to seek higher offers, the Fasken Agreement. The key terms of the Fasken Agreement, a copy of which is attached hereto as Appendix A, are summarized as follows:
- (i) A purchase price of \$5.3 million for the purchased assets, being the Fasken Property and the chattels located therein. A deposit of \$750,000 has been paid by the Purchaser and the balance of the purchase price has been placed in escrow with the Purchaser's solicitors;
 - (ii) The Vendor has the right to solicit higher offers under a "stalking-horse" process for 45 days from the date of the Process Order (as defined below);
 - (iii) If the Purchaser is not the successful bidder in the marketing process, they shall be paid a break-fee of \$160,000 (the "Break-Fee") from the proceeds of the sale of the purchased assets; and
 - (iv) Closing is to occur within 60 days of the Process Order.
37. The Purchaser has waived its due diligence condition and the Fasken Agreement is now conditional only upon:

- (i) the Vendor obtaining an order of the Court, in form and content satisfactory to it, acting reasonably (the "Process Order") by June 10, 2010 (subsequently amended to June 16, 2010), authorizing the Vendor to enter into the Fasken Agreement, to conduct the marketing process contemplated by Section 4(a) of the Fasken Agreement and to pay the Break-Fee in accordance with Section 4(a) of the Fasken Agreement;
 - (ii) The Purchaser being the successful bidder in the marketing process; and
 - (iii) The granting of an approval and vesting order.
38. The Receiver believes that the Fasken Agreement is beneficial and as a "stalking-horse" in the proposed marketing process, it will enable the Receiver to achieve the highest and best realization for the Fasken Property and other purchased assets. Furthermore the Receiver is of the view that the Break-Fee is reasonable and warranted in the circumstances. Accordingly, the Receiver respectfully seeks approval of the Break-Fee.

THE FASKEN MARKETING PROCESS

39. Both the Purchaser and the Receiver recognize that there may be parties that are prepared to pay a higher price for the Fasken Property than the purchase price under the Fasken Agreement. Accordingly, the Receiver proposes that a marketing of the Fasken Property to be followed by an auction if other "qualified bidders" are identified. Pursuant to the Fasken Agreement, the Purchaser has agreed to this approach.
40. The Receiver now seeks approval of a marketing process in respect of the Fasken Property (the "Fasken Marketing Process") as follows:

- (i) A list of potential buyers ("**Potential Buyers**") has been identified through independent research and parties who have contacted the Receiver. Potential Buyers will be approached and the opportunity to acquire the Fasken Property introduced;
- (ii) Major commercial real estate brokerage companies will also be advised of the opportunity;
- (iii) An advertisement will be placed in the national edition of the Globe and Mail as soon as practicable following Court approval of the Fasken Marketing Process;
- (iv) Interested parties will be provided with detailed information regarding the Fasken Property to enable them to perform due diligence;
- (v) Interested parties and the real estate brokerage companies will be advised that a commission of up to 1.5% will be paid to a licensed real estate agent (the "**Agent**") representing the ultimate purchaser of the Fasken Property (the "**Fasken Purchaser**"), but only upon the closing of the sale and from the proceeds of sale;
- (vi) Interested parties will be required to submit a binding offer with a net purchase price exceeding \$5,560,000 (i.e. the purchase price under the Fasken Agreement plus the Break-Fee), after deduction of any applicable Agent's commission, with a deposit of at least 15% of the gross purchase price, and otherwise on the same or better terms than the Fasken Agreement using a template agreement (the "**Fasken Template Agreement**") that will be provided by the Receiver and will be based on the Fasken Agreement. Offers must be submitted by no later than 5:00 p.m. Toronto Time, Friday July 30, 2010 (the "**Fasken Bid Deadline**"). The Receiver will determine in its sole discretion if an offer constitutes a superior offer.

- (vii) In the event that a Superior Offer is received by the Receiver from a party other than the Purchaser under the Fasken Agreement (a "**Qualified Bidder**"), the Receiver will conduct an auction (the "**Fasken Auction**"), the specific mechanics, terms, and conditions of which will be set by the Receiver substantially as follows:
- (a) The Fasken Auction, if any, will be conducted by the Receiver, commencing at 10 a.m. Toronto time on or around the date that is 3 business days after the Fasken Bid Deadline or such other date as the Receiver may determine in its sole discretion and may be conducted by e-mail;
 - (b) Bidding will proceed in windows of approximately fifteen minutes each (a "**Bid Window**") or such other time periods as the Receiver may determine in its sole discretion. At the start of each Bid Window, the Receiver will communicate to each Qualified Bidder then participating in the Fasken Auction (the "**Fasken Participating Bidders**") the details of the current best offer, but not the identity of the leading bidder;
 - (c) During each Bid Window, Fasken Participating Bidders may submit a bid which is at least \$50,000 (after deduction of any applicable Agent's commission) higher than the then current leading bid (a "**Revised Bid**");
 - (d) A Fasken Participating Bidder that does not submit a Revised Bid on terms (aside from price) acceptable to the Receiver during any given Bid Window (other than the final Bid Window) will be eliminated from the Fasken Auction and will not be permitted to submit any further bids;

- (e) If no Fasken Participating Bidder submits a Revised Bid during any given Bid Window or if only one Fasken Participating Bidder submits a Revised Bid during any Bid Window, the Fasken Auction will be concluded whereupon the Receiver will enter into a binding agreement of purchase and sale with the Fasken Participating Bidder that submitted the leading bid prior to that final Bid Window on terms (aside from price) acceptable to the Receiver and seek Court approval thereof at the earliest reasonable opportunity; and
- (f) If no Fasken Qualifying Bid is submitted by the Fasken Bid Deadline, the Fasken Marketing Process will end and the Receiver will seek the approval of the Court to complete the transaction contemplated in the Fasken Purchase Agreement.

41. The Receiver believes that the Fasken Marketing Process should achieve the highest and best realization of the Fasken Property and related assets in the circumstances and respectfully requests that this Honourable Court approve the Fasken Marketing Process.

THE LSA

42. Since the Date of Receivership, the Receiver has been contacted by numerous parties expressing interest in the Skyservice inventory of parts and equipment (the "P&E Assets"). Given the nature of the P&E Assets and the degree of interest, the Receiver has concluded that the most efficient and effective way of realizing on the P&E Assets will be through a liquidation auction conducted by a professional liquidator as agent for the Receiver.

43. To that end, the Receiver contacted a number of liquidators and requested that they submit proposals for the liquidation of the P&E Assets by no later than April 23, 2010. Four proposals were received by that date (the “**Initial Proposals**”).
44. The Receiver reviewed the Initial Proposals and determined that there was no clear leading proposal. The liquidators were therefore given the opportunity to improve their proposals, with revised proposals to be submitted by April 30, 2010. Four revised proposals (the “**Revised Proposals**”) were submitted by that date.
45. A summary of the Revised Proposals has been prepared by the Receiver and has been designated as confidential Appendix B to this report. The Receiver is of the view that disclosure of the financial terms of the Revised Proposals may be detrimental to the realization process and is therefore seeking a Sealing Order in respect of Appendix B. Accordingly, Appendix B has not been attached hereto, pending the Court’s decision on the Receiver’s request.
46. The Receiver assessed the four Revised Proposals based on their terms and projected recovery to the Receiver under various assumptions of gross proceeds of realization. The Revised Proposals were comparable in terms of potential recoveries, but the proposal submitted by Century provided the highest net minimum guarantee. Accordingly, the Monitor proceeded to negotiate a definitive liquidation services agreement with Century. The LSA, a copy of which (without schedules) is attached hereto as Appendix C with the financial terms redacted, was executed on June 9, 2010.
47. The Receiver is of the view that approval and implementation of the LSA will provide for the most efficient and effective method of realizing on the P&E Assets. Accordingly, the Receiver seeks approval by this Honourable of the LSA.

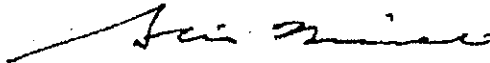
The Receiver respectfully submits to the Court this, its Second Report.

Dated this 10th day of June, 2010.

FTI Consulting Canada Inc.
in its capacity as receiver of
Skyservice Airlines Inc.
and not in its personal or corporate capacity



Nigel D. Meakin
Senior Managing Director



for Jamie T Engen
Managing Director

Appendix A

The Fasken Purchase Agreement

AGREEMENT OF PURCHASE AND SALE

This agreement (this "*Agreement*") dated May ^{25th}, 2010 between 2157565 Ontario Inc. (the "*Purchaser*") and FTI Consulting Canada Inc., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc. ("*Skyservice*") acquired for or used in relation to a business carried on by Skyservice (the "*Vendor*"), provides for the purchase of the Purchased Assets (as defined herein) For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Purchaser and Vendor agree as follows:

1. **Definitions.** For the purposes of this Agreement:

"**Approval and Vesting Order**" means an order of the Court approving this Agreement, exempting this Agreement from the application of the Bulk Sales Act (Ontario) and vesting all right, title and interest of Skyservice in the Purchased Assets to the Purchaser on closing free and clear of all Liens (save and except for the Permitted Encumbrances).

"**Buildings**" means, collectively, all buildings, structures, improvements, erections, appurtenances and fixed equipment located on, in or under the Lands, and "**Building**" means any one of the Buildings.

"**Chattels**" means the inventory, supplies, equipment, machinery, furnishings, furniture, chattels and all other tangible personal or movable property owned by Skyservice and used exclusively in connection with the ownership, operation, maintenance or management of the Lands and Buildings, in each case to the extent the same are located on the Lands.

"**Contracts**" means the existing contracts and agreements entered into by or on behalf of Skyservice or by which Skyservice is bound, in each case with third parties, with respect exclusively to the ownership, development, maintenance, repair and operation of the Lands and Buildings, which are listed and more particularly set out in Schedule A, in each case to the extent the same are assignable, but excluding any insurance policies, Leases, Permitted Encumbrances and any property management contract or contracts with respect to the Lands and Buildings.

"**Court**" means the Ontario Superior Court of Justice.

"**Excluded Assets**" means the property and assets listed and described in Schedule B.

"**Lands**" means the land and premises municipally known as 31 Fasken Drive, Toronto, Ontario, as more particularly described in Schedule C to this Agreement.

"**Leases**" means, collectively, leases, offers to lease, agreements to lease, renewals of leases, and other rights or licences granted by Skyservice or its predecessors in title to possess or occupy space within the Lands and Buildings, together with all security, guarantees and indemnities of the tenants' obligations thereunder, entered into prior to the date hereof, including, without limitation, the lease agreement dated as of June 1, 2009 between Fly Park Inn Inc., as tenant, and Skyservice, as landlord (the "*Fly Park Inn Lease*"), in each case as amended, renewed or otherwise varied to the date hereof, and "**Lease**" means any one of the Leases.

"**Liens**" means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"**Permitted Encumbrances**" means the Liens and encumbrances listed and described in Schedule D.

"**Purchased Assets**" means the Lands, the Buildings, Skyservice's interest in the Leases, the Chattels and the Assignable Contracts, but excluding the Excluded Assets.

2. **Purchase, Purchase Price and Closing Date.** Subject to the terms of this Agreement, the Purchaser agrees to purchase and the Vendor agrees to sell the Purchased Assets on the terms and conditions set out in this Agreement and for the purchase price (the "*Purchase Price*") of \$5,300,000, payable as to \$750,000 by bank draft to be delivered to the Vendor's solicitors, in trust, by the Purchaser within one Business Day of the execution and acceptance of this Agreement to be held as a deposit (the "*Deposit*") in an interest bearing account or term deposit at a Schedule 1 Canadian Chartered Bank with interest to accrue to the benefit of the Purchaser and the balance, subject to the specific adjustments in Section 13, payable to the Vendor, or as it may direct, by cash or bank

- 2 -

draft on the Closing Date (as defined below). If this Agreement is not completed because: (a) the Purchaser does not waive the condition set out in Section 3(a) hereof; (b) the Vendor does not waive the condition set out in Section 4(c) hereof; (c) as of the Closing Date, the representation and warranty of the Vendor set out in Section 8 of this Agreement is untrue or any of the terms, covenants or conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date has not been complied with or performed; (d) the Vendor is unable to obtain the Process Order (as defined below) or the Approval and Vesting Order by the dates set out in this Agreement; or (e) the Vendor sells the Purchased Assets (or any portion thereof) to another party pursuant to Section 4(a) of this Agreement, the Deposit, together with all interest accrued thereon, will be returned to the Purchaser within 3 Business Days. If this Agreement is not completed for any other reason, the Deposit, together with all interest accrued, shall be retained by the Vendor. This transaction will be completed on the date (the "Closing Date") which is 3 Business Days after the date on which the Approval and Vesting Order is issued or such earlier date as the Purchaser and Vendor may agree.

The Vendor and the Purchaser shall use reasonable efforts to agree prior to the Closing Date on an allocation of the Purchase Price between the Lands, the Buildings and the Chattels, provided that such agreement shall in no event be a condition of the closing of the transactions contemplated by this Agreement. If the Vendor and the Purchaser do not agree on an allocation, each shall nonetheless file its tax returns with the relevant revenue authorities based on its own reasonable allocation.

3. **Purchaser's Conditions.** The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Purchaser of each of the following conditions by the date specified, which conditions are for the sole benefit of the Purchaser and which may be waived by the Purchaser in its sole discretion:

- (a) **Due Diligence.** By no later than 5:00 p.m. Toronto time on June 2, 2010 (the "Condition Date"), the Purchaser will be satisfied, in its sole and unfettered discretion, of the title to the Purchased Assets and the suitability of the Purchased Assets for the purposes of the Purchaser including, without limitation, engineering, environmental, economic and market feasibility and any other matter whatsoever that may impact on the viability of the investment in the Purchased Assets by the Purchaser and the Purchaser's board of directors will have approved of this Agreement and the transactions contemplated by this Agreement.
- (b) **Closing Date.** As of the Closing Date, the representations and warranties of the Vendor set out in this Agreement will be true and accurate and of the same effect as if made on and as of the Closing Date, and all the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date will have been complied with or performed.
- (c) **Approval and Vesting Order.** On the Closing Date, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.

If the Purchaser does not give written notice to the Vendor of the satisfaction or waiver of its condition set out in Section 3(a), on or prior to the Condition Date, this Agreement will automatically terminate and the Deposit, together with all accrued interest, will be returned to the Purchaser immediately without deduction. The Purchaser will have no obligation to cause the condition set out in Section 3(a) to be satisfied or waived and the Purchaser may refuse to give written notice of the satisfaction or waiver of such condition in its sole, unfettered and subjective discretion.

If the condition set out in Section 3(c) is not satisfied or waived on or before the date that is 60 days after the date of the Process Order, or if the Purchaser is not the successful bidder pursuant to any auction conducted pursuant to Section 4(a), the Purchaser may terminate this Agreement by notice in writing to the Vendor, in which event the Deposit, together with all interest accrued thereon, shall, subject to Section 2 of this Agreement, be returned to the Purchaser and the Vendor's and the Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

4. **Vendor's Conditions.** The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Vendor of each of the following conditions by the date specified, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- (a) **Solicitation of Third Party Offers and Auction.** The Vendor shall be permitted to solicit superior offers ("Superior Offers") for the Purchased Assets for 45 days following the date of the Process Order (the "Bid Deadline"). If, in the determination of the Vendor in its sole, unfettered and

subjective discretion, a Superior Offer is received on or before the Bid Deadline, the Vendor shall conduct an auction for the Purchased Assets. The only parties entitled to bid at such auction shall be the Purchaser and any other party that submits a Superior Offer, as determined by the Vendor, acting reasonably. If, at the completion of the auction, the Purchaser is the successful bidder, the Vendor shall, as soon as reasonably practical, seek the Approval and Vesting Order. If, at the completion of the auction, the Purchaser is not the successful bidder, the Deposit, together with all interest accrued thereon, shall be returned to the Purchaser. In addition, if the Purchaser is not the successful bidder, the Purchaser shall be paid the amount of \$160,000 (the "Break-Fee") from the proceeds of sale of the Purchased Assets to another party.

- (b) Approval and Vesting Order. On the Closing Date, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.
- (c) Purchaser's Financial Capabilities. By no later than 5:00 p.m. Toronto time on the Condition Date, the Vendor will be satisfied, in its sole and unfettered discretion, of the financial capabilities of the Purchaser to pay the balance of the Purchase Price and to complete the transactions contemplated by this Agreement.

If the Vendor does not give written notice to the Purchaser of the satisfaction or waiver of its condition set out in Section 4(c), on or prior to the Condition Date, this Agreement will automatically terminate and the Deposit, together with all accrued interest, will be returned to the Purchaser immediately without deduction. The Vendor will have no obligation to cause the condition set out in Section 4(c) to be satisfied or waived and the Vendor may refuse to give written notice of the satisfaction or waiver of such condition in its sole, unfettered and subjective discretion.

If the condition set out in Section 4(b) is not satisfied or waived on or before the date that is 60 days after the date of the Process Order, or if the Purchaser is not the successful bidder pursuant to any auction conducted pursuant to Section 4(a), the Vendor may terminate this Agreement by notice in writing to the Purchaser, in which event the Deposit, together with all interest accrued thereon, shall, subject to Section 2 of this Agreement, be returned to the Purchaser and the Vendor's and the Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

6. Liability of FTI and Process Order. The Purchaser acknowledges that, notwithstanding any provision to the contrary herein, FTI Consulting Canada Inc. ("FTI") has entered into this Agreement solely in its capacity as court-appointed receiver of all of the assets, undertakings and properties of Skyservice and not in its personal or corporate capacity and that FTI shall in no circumstances incur any personal liability whatsoever in connection with this Agreement.

In addition to any other conditions contained herein, the parties hereto acknowledge and agree that the obligations of the Vendor hereunder are conditional upon the Vendor obtaining an order of the Court, in form and content satisfactory to it, acting reasonably (the "Process Order"), by June 10, 2010 (the "Process Order Deadline Date"), authorizing the Vendor to enter into this Agreement, to conduct the marketing process contemplated by Section 4(a) hereof and to pay the Break-Fee in accordance with Section 4(a) hereof. If the Process Order is not obtained by the Process Order Deadline Date, the Deposit, together with all interest accrued thereon, shall be returned to the Purchaser and this Agreement shall terminate and be of no further force or effect whatsoever.

6. As Is, Where Is. The Purchaser acknowledges and agrees that:
- (a) on the Closing Date, title to the Purchased Assets shall be subject to the Permitted Encumbrances;
- (b) In entering into this Agreement, except as set forth in this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets, including without limitation, the physical and environmental condition of the Lands and Buildings, and the review of the documentation made available to the Purchaser pursuant to this Agreement, and the Purchaser acknowledges that it is not relying on any information furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith; and
- (c) the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of any Purchased Assets (other than the specific adjustments in Section 13 below). The Buyer further acknowledges that it has entered into this Agreement on the basis that the Vendor does not warrant, covenant or

- 4 -

guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets, and the nature and quantum of the claims against the Purchased Assets, in each case as it deemed appropriate and has satisfied itself with regard to these matters; no representation, warranty or condition is expressed or can be implied as to title, description, fitness for purpose, merchantability, condition, assignability, collectability, quantity, outstanding amount, value or quality of, or in respect of any Purchased Assets or any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same, save and except as expressly represented or warranted herein; and without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply hereto and are hereby waived by the Purchaser. The risk of loss of the Purchased Assets shall remain with the Vendor until the Closing Date and any property, liability and other insurance shall remain the responsibility of the Vendor until the transferring of the Purchased Assets on the Closing Date.

The Vendor shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Purchased Assets or the condition thereof save as otherwise expressly provided in this Agreement. The provisions of this Section 6 shall not merge on, but shall survive, closing on the Closing Date.

7. **Contracts.** On or before the Closing Date, the Purchaser shall notify the Vendor which Contracts it is electing to assume provided that such are, by their terms, assumable; failing which it shall be deemed to have elected to assume all of the Contracts ("Assumed Contracts"). The Vendor shall assign to the Purchaser on the Closing Date only such Assumed Contracts that do not contain a restriction prohibiting the assignment thereof and such Assumed Contracts that contain a restriction prohibiting the assignment thereof but where consent from the counterparty is obtained by the Closing Date (the "Assignable Contracts"). The costs of obtaining such consents shall be borne by the Purchaser. The Vendor will be under no obligation to assign to the Purchaser Assumed Contracts that contain a restriction prohibiting the assignment thereof but where consent is not obtained from the counterparty by the Closing Date.

8. **Vendor's Representations.** The Vendor covenants, represents and warrants to and in favour of the Purchaser that:

(a) **Section 116.** Skyservice is not now, and will on the Closing Date not be, a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

9. **Vendor's Deliveries.** The Vendor will provide to the Purchaser within 3 Business Days after the date of execution and acceptance of this Agreement:

(a) All plans of survey, plans, specifications and drawings for the Lands and Buildings that, in the actual knowledge of the Vendor, are in the Vendor's possession or control. The Vendor shall make reasonable inquiries with the current Skyservice employees.

(b) Authorizations addressed to such governmental offices, officials and authorities as the Purchaser may reasonably request (such request to be made not more than one day after the date of execution of this Agreement) authorizing disclosure to the Purchaser's solicitors of any matters relating to the Purchased Assets. Such authorizations shall not contain requests for any inspections other than the Purchased Assets.

(c) All documents that, in the actual knowledge of the Vendor, are in the possession or control of the Vendor pertaining to the environmental status of the Lands and Buildings, including all audits, permits, test reports or certificates of approval in respect of any environmental matters in connection with the Lands and Buildings. The Vendor shall make reasonable inquiries with the current Skyservice employees.

(d) The Leases (including, without limitation, the Fly Park Inn Lease) and the Contracts pertaining to the Lands and Buildings that, in the actual knowledge of the Vendor, are in the Vendor's possession or control. The Vendor shall make reasonable inquiries with the current Skyservice employees.

10. **Interim Period.** From the date of this Agreement until the Closing Date (the "Interim Period"), the Vendor will allow the Purchaser, its representatives and advisers reasonable access to the Purchased Assets during normal business hours at times arranged by appointment with the Vendor to inspect and carry out non-intrusive and non-destructive tests and investigations of the Lands and Buildings including, without limitation, to conduct and complete due diligence and planning with respect to the Purchased Assets, subject to restrictions, if any, contained in

the Leases. The Purchaser hereby indemnifies the Vendor with respect to any damage or claim that results from the Purchaser's access, tests or investigations. The Vendor will not enter into any leases, agreements or other instruments affecting the Lands, Buildings or Chattels during the Interim Period without the prior written consent of the Purchaser, which will not be unreasonably withheld or delayed. The Vendor will provide the Purchaser with all information it may reasonably require to decide whether to provide its consent to any such matters.

11. **Permitted Encumbrances.** The Purchaser shall:

- (a) accept title to the Purchased Assets and subject to the Permitted Encumbrances;
- (b) satisfy itself as to the due compliance with the provisions of such Permitted Encumbrances;
- (c) strictly observe, perform and adhere to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances.

12. **Approval and Vesting Order.** Subject to Sections 4(a) and 5 of this Agreement, the Vendor agrees that it will diligently apply to the Court for the Approval and Vesting Order if there is no Superior Offer by the Bid Deadline or if the Purchaser is the successful bidder following the auction contemplated by Section 4(a) of this Agreement. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Court's approval, including without limitation, such information as the Vendor may require to reasonably evaluate the Purchaser's financial ability to perform its obligations under this Agreement.

13. **Adjustments.** Realty taxes, local improvement rates and charges, water and assessment rates and all current rents, including current basic rent and current additional rent and other charges for the Lands and Buildings, prepaid rents to the extent actually received by the Vendor (and interest accrued thereon, if any) after March 31, 2010 (being the date on which FTI Consulting Canada Inc. was appointed court-appointed receiver of all the assets, undertakings and properties of Skyservice acquired for or used in relation to a business carried on by Skyservice), security deposits to the extent actually received by the Vendor (and interest accrued thereon, if any) after March 31, 2010, prepaid amounts (to the extent actually received by the Vendor after March 31, 2010) or current amounts payable under Assumed Contracts on closing, operating costs, utilities, fuel and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Lands and Buildings will be apportioned and adjusted as of the Closing Date (the day itself to be apportioned to the Purchaser). All right, title and benefit in and to any realty tax refunds or reassessments with respect to the Lands and Buildings for the period commencing on the Closing Date shall be transferred and assigned by the Vendor to the Purchaser on closing. The Vendor and the Purchaser shall jointly direct the municipality to pay any refund or reassessment of realty taxes for the 2010 calendar year to the Vendor and the parties shall readjust the amount of any such refund or reassessment payment between them after the conclusion of any assessment appeal based upon their respective pro rata entitlements thereto (net of any fee payable to any consultant). Notwithstanding the foregoing, the aggregate amount of any adjustments or readjustments pursuant to the undertaking described in Section 15(a) shall not exceed \$100,000 in favour of the Purchaser. Any insurance maintained by the Vendor will not be transferred as of the Closing Date but will remain the responsibility of the Vendor until the Closing Date. The solicitor for the Vendor will deliver a statement of adjustments to the solicitor for the Purchaser not less than 3 Business Days prior to the Closing Date.

14. **Taxes.** The Purchaser shall pay all applicable taxes in addition to the Purchase Price. No goods and services tax or harmonized sales tax will be paid by the Purchaser to the Vendor with respect to the purchase by the Purchaser of the Purchased Assets if the Purchaser provides to the Vendor on or prior to the Closing Date a certificate and indemnity of the Purchaser (a) indicating the Purchaser's registration number for the purposes of the Goods and Services Tax or Harmonized Sales Tax imposed under the Excise Tax Act (Canada) and (b) indemnifying the Vendor for failure of the Purchaser to pay such applicable taxes in connection with the purchase of the Purchased Assets (whether arising from a reassessment or otherwise) and failure to file any returns or other documents required to be filed by the Purchaser with the relevant taxing authorities in connection with the purchase of the Purchased Assets.

15. **Closing Arrangements and Vendor's Deliveries.** Subject to the terms and conditions of this Agreement, this Agreement will be completed at 10:00 a.m. (Toronto time) on the Closing Date at the offices of McCarthy Tétrault LLP in Toronto, Ontario. On the Closing Date, the Vendor will deliver to the Purchaser the following documents:

- (a) **Approval and Vesting Order.** The Approval and Vesting Order. The Vendor shall be responsible for the cost of obtaining and registering the Approval and Vesting Order.

- 6 -

- (b) **Transfer.** The transfer of the Lands, in registerable form, as contemplated by and in accordance with the Approval and Vesting Order. The Purchaser shall be responsible for all costs and expenses (including land transfer tax) relating to the registration of such transfer.
- (c) **General Conveyance.** A general conveyance of the Purchased Assets, which shall include an assignment and assumption of the Leases, Assignable Contracts and Permitted Encumbrances.
- (d) **Certificate.** A Certificate of the Vendor certifying that Skyservice is not a non-resident within the meaning of S. 116 of the Income Tax Act (Canada) and that the representations and warranties of the Vendor contained in this Agreement are true and accurate as of the Closing Date.
- (e) **Undertaking.** An undertaking to adjust and readjust any items properly adjustable pursuant to this Agreement for a period of 60 days following the Closing Date.
- (f) **Keys.** A set of keys and entry devices with respect to the Lands and Buildings and the combination of any locks or vaults to the extent same are in the possession or control of the Vendor.
- (g) **Vacant Possession.** Subject to the Leases, vacant possession of the Lands and Buildings.
- (h) **Other.** Such other transfers, assignments and documents relating to the completion of this Agreement as the Purchaser may reasonably require (which transfers, assignments and documents shall be prepared by the Purchaser at its sole cost).

16. **Closing Deliveries of the Purchaser.** The Purchaser will on the Closing Date deliver to the Vendor the balance of the Purchase Price (plus any applicable taxes that the Vendor is required by applicable law to collect from the Purchaser) by bank draft payable to the Vendor, or as the Vendor may in writing direct; an undertaking to readjust the GST or HST certificate referred to in Section 14 and such other documentation relating to the completion of this Agreement as the Vendor may reasonably require.

17. **Risk.** All Buildings will be and remain until the Closing Date at the risk of the Vendor. Until completion of this Agreement, the Vendor will maintain its current insurance on the Lands and Buildings. Pending completion, the Vendor will hold all insurance policies, if any, and the proceeds from any such policies in trust for the parties as their interests may appear. In the event of damage to the Lands and Buildings in excess of 25% of the replacement cost to the Lands and Buildings, the Purchaser may either terminate this Agreement and have the Deposit and other monies paid under this Agreement by the Purchaser returned together with any accrued interest or, at its option where the proceeds of any insurance are available, take the proceeds of any insurance and complete the purchase.

18. **General.** Time will in all respects be of the essence of this Agreement. Any tender of documents or money may be made upon the Vendor or the Purchaser or upon their respective solicitors and money may be tendered by certified cheque or bank draft. This Agreement will be binding upon and enure to the benefit of the Vendor and the Purchaser and their respective successors and assigns. The Purchaser shall not have the right to assign this Agreement to any corporation or person without the consent of the Vendor, provided the Purchaser shall be entitled to assign this Agreement to an Affiliate (as defined in the *Business Corporations Act* (Ontario)) of the Purchaser; if such assignment is consented to by the Vendor or is made to an Affiliate of the Purchaser, such assignee shall agree in writing with the Vendor to be bound by the Purchaser's obligations under this Agreement; provided that upon such assignment, the Purchaser will not be released from its obligations under this Agreement. This Agreement shall merge on Closing except for Sections 2, 5, 6, 10, 11, 13, 14, 18 and 22. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement. Counterparts may be executed either in an original, email or fax form and the parties agree to adopt any signature received by facsimile as original signatures, provided however that any party providing its signature in such manner promptly forwards to the other party an original of the signed copy of this Agreement which was so emailed or faxed. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and will be treated in all respects as an Ontario contract. The use of headings in this Agreement is for convenience of reference only and will not affect the meaning or construction of this Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, warranties or representations, discussions and negotiations with respect to this Agreement, whether oral or written. If the time limited for the performance or completion of any matter in this Agreement does not fall on a day that the public offices for registering documents to be delivered pursuant to this Agreement are open for business (a "Business Day"), the time so limited will extend to the next following Business Day. The parties will promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things to carry out the true intent of this Agreement.

19. **Electronic Registration.** The Vendor and the Purchaser acknowledge that the electronic registration system (the "*Teraview Electronic Registration System*" or "*TERS*") is operative in the land registry office where the Lands are located and, accordingly, the following provisions shall prevail, namely:

- (a) the Vendor's solicitors and the Purchaser's solicitors shall each be obliged to be authorized TERS users and in good standing with the Law Society of Upper Canada, and they are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any successor version thereto (the "*Document Registration Agreement*" or "*DRA*"), together with the additional requirement that the registering solicitor shall also be obliged to provide the non-registering solicitor with a copy of the registration report printed by TERS upon the registration of the electronic documents, as evidence of the registration thereof, within one Business Day following the Closing Date. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing the transactions contemplated by this Agreement electronically, and shall be executed by both the Vendor's solicitors and the Purchaser's solicitors and exchanged by courier or facsimile transmission between such solicitors (such that each solicitor has a photocopy or faxed copy of the DRA duly executed by both solicitors) by no later than one Business Day before the Closing Date;
- (b) the delivery and exchange of the closing documents and the balance of the Purchase Price, and the release thereof to the Vendor and the Purchaser, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the transfer/deed for the Lands and other closing documents, if any, to be registered electronically; and
 - (ii) shall be governed by the DRA, pursuant to which the solicitor receiving any closing documents, or the balance of the Purchase Price, will be required to hold the same in escrow, and will not be entitled to release the same except in strict accordance with the provisions of the DRA;
- (c) each of the parties agrees that the delivery of any of the closing documents not intended or required to be registered against title to the Lands shall, unless the parties otherwise agree, be by way of delivery of originally signed copies thereof on the Closing Date to the other party or its solicitor; and
- (d) notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "*Tendering Party*") upon the other party (in this Section called the "*Receiving Party*") when the solicitor for the Tendering Party has:
 - (i) delivered all applicable closing documents and/or the balance of the Purchase Price to the Receiving Party's solicitor in accordance with the provisions of this Agreement and the DRA;
 - (ii) advised the solicitor for the Receiving Party in writing that the Tendering Party is ready, willing and able to complete the transactions contemplated by this Agreement in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS in order to complete the transactions contemplated by this Agreement that can be performed or undertaken by the Tendering Party's solicitor without the co-operation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the transfer/deed(s) and any other closing document, if any, to be registered electronically for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing the same for registration by the Receiving Party's solicitor).

20. **Planning Act.** This Agreement will be effective to create an interest in the Lands only if the provisions of the Planning Act (Ontario) are complied with.

21. **Notice.** Any notice, certificate, consent, waiver, amendment or other written communication required or permitted to be given under the Agreement will be in writing made by the parties or their respective solicitors and will be effectively given and made if delivered personally or by facsimile communication:

- 8 -

(a) In the case of the Vendor, addressed to it at:

c/o FTI Consulting Canada Inc.
 TD Waterhouse Tower
 79 Wellington Street
 Suite 2010
 Toronto, ON M5K 1G8
 Attention: Nigel Meakin
 Facsimile No. (416) 649-8101

and at:

c/o FTI Consulting Canada Inc.
 Suite 500
 900 West Hastings Street
 Vancouver, BC V6C 1E5
 Attention: Jamie Engen
 Facsimile No. (604) 698-5571

with a copy to:

McCarthy Tétraut LLP
 Box 48, Suite 5300
 Toronto Dominion Bank Tower
 Toronto, ON M5K 1E8
 Attention: Jamey Gage
 Facsimile No. (416) 888-0673

(b) and in the case of the Purchaser, addressed to it at:

2157585 Ontario Inc.
 27 Fasken Drive
 Toronto, Ontario M8W 1K8
 Attention: President
 Facsimile No. (416) 620-4433

with a copy to:

Blake, Cassels & Graydon LLP
 Box 26, Commerce Court West
 Toronto, Ontario M5L 1A9
 Attention: Carlos Cerqueira
 Facsimile No. 416-863-2653

Any communication given or made will be deemed to have been given or made on the day it was received unless (i) it was received after 5 p.m., or (ii) if such day is not a Business Day, in each of which cases it will be deemed to have been given and made and to have been received on the next following Business Day.

22. **Commissions.** The Purchaser warrants that it has not used an agent in respect of this Agreement. The Purchaser hereby indemnifies the Vendor with respect to any damage, claim or loss that results from any breach of the representation in this Section 22.

23. **Acceptance of Offer.** This Agreement has been executed by the Purchaser and presented to the Vendor as an offer for acceptance by delivery of an original executed copy to the Purchaser on or prior to 5:00 p.m. on May 26th, 2010, failing which this Agreement will be null and void and of no further force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement.

2157585 Ontario Inc.

By: 
Name: Colin P. Hendel
Title: President

By: _____
Name: _____
Title: _____

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

- Schedule A - Contracts
- Schedule B - Excluded Assets
- Schedule C - Lands
- Schedule D - Permitted Encumbrances

IN WITNESS WHEREOF the parties have executed this Agreement.

2167666 Ontario Inc.

By: _____
Name:
Title:

By: _____
Name:
Title:

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc.

By: *[Signature]*
Name: NIGEL D. HEALIN
Title: SENIOR MANAGING DIRECTOR

- Schedule A - Contracts
- Schedule B - Excluded Assets
- Schedule C - Lands
- Schedule D - Permitted Encumbrances

**SCHEDULE A
CONTRACTS**

Nil

SCHEDULE B
EXCLUDED ASSETS

1. All Chattels owned by the tenants pursuant to the Leases.

SCHEDULE C**LANDS**

Municipal Address: 31 Fasken Drive, Toronto, Ontario

Legal Description:

PIN 07420-0020 (LT)

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

SCHEDULE D
PERMITTED ENCUMBRANCES

- (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 Lands 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 Lands.
- (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 Lands, 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 Lands, 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 Lands 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. EB481580 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. EB370383 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.

Barristers & Solicitors
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP
Box 48, Suite 4700
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Telephone: 416 362-1812
Facsimile: 416 868-0673
mccarthy.ca

Jonathan See
Direct: 416 601-7560
Fax: 416 868-0673
E-Mail: jsee@mccarthy.ca

June 4, 2010

VIA E-MAIL

Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Attention: Iris Tam

Dear Ms. Tam:

Re: Agreement of purchase and sale dated May 25, 2010 between 2157565 Ontario Inc., as purchaser, and FTI Consulting Canada Inc., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc., as Vendor, relating to the property municipally known as 31 Fasken Drive, Toronto, Ontario, as amended to the date hereof (the "Purchase Agreement")

On the authority and instructions of my client, FTI Consulting Canada Inc., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc., I have been asked to confirm an agreement between our respective clients to an extension to the Process Order Deadline Date, as such term is defined in the Purchase Agreement. Presently, the Process Order Deadline Date is set to expire on June 10, 2010. An extension of that date to 5:00 p.m. on June 16, 2010 is requested. All other terms and conditions of the Purchase Agreement would remain unchanged and effective and time shall remain of the essence.

Also, on behalf of my client, I confirm receipt of the Purchaser's notice of waiver or satisfaction of condition pursuant to Section 3(a) of the Purchase Agreement prior to 5:00 pm on the Condition Date.

Can you please confirm, on behalf of your client, (a) that the said extension is acceptable and (b) that the Purchaser received the Vendor's notice of waiver or satisfaction of condition pursuant to Section 4(c) of the Purchase Agreement prior to 5:00 pm on the Condition Date by executing the acknowledgement set forth below and returning a copy of this letter to me.

McCarthy Tétrault

- 2 -

Yours very truly,

McCarthy Tétrault LLP

Per:


Jonathan See

JS/js

c.

Nigel Meakin, FTI Consulting Canada Inc. (via fax 416-649-8101)
Jamie Engen, FTI Consulting Canada Inc. (via fax 604-696-5571)
Jamey Gage, McCarthy Tétrault LLP (via fax 416-868-0673)
President, 2157565 Ontario Inc. (via fax 416-620-4433)
Carlos Cerqueira, Blake, Cassels & Graydon LLP (via fax 416-863-2653)

McCarthy Tétrault

- 3 -

ACKNOWLEDGEMENT

The undersigned, on behalf of 2157565 Ontario Inc., hereby (a) agrees to the foregoing extension of the Process Order Deadline Date and (b) confirms receipt of the Vendor's notice of waiver or satisfaction of condition pursuant to Section 4(c) of the Purchase Agreement prior to 5:00 pm on the Condition Date.

Dated this 7th day of June, 2010.

Blake, Cassels & Graydon LLP

Per:  _____

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

Skyservice Airlines Inc.

SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER

June 17, 2010

**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

**SUPPLEMENT TO THE
SECOND REPORT TO THE COURT SUBMITTED BY
FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS RECEIVER**

INTRODUCTION

1. On March 31, 2010 (the "**Date of Receivership**"), FTI Consulting Canada Inc. was appointed as receiver (the "**Receiver**") of all of the assets, undertakings and properties (the "**Property**") of Skyservice Airlines Inc. ("**Skyservice**" or the "**Company**") pursuant to the order of the Honourable Mr. Justice Gans (the "**Receivership Order**") granted upon the application of Thomas Cook Canada Inc. ("**TCCI**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") and section 101 of the *Courts of Justice Act (Ontario)*.
2. To date the Receiver's has filed two Reports. The Receiver's Second Report was filed, inter alia, in support of the Receiver's motion for an Order approving:

- (i) the payment of the Break-Fee, as defined in the Second Report, in the circumstances set out in the agreement of purchase and sale, as amended, between Skyservice Airlines Inc., acting by its Receiver, and 2157565 Ontario Inc. dated May 25, 2010 (the “**Fasken Agreement**”) in respect of Skyservice’s premises located at 31 Fasken Drive, Toronto (the “**Fasken Property**”); and
 - (ii) the marketing plan and sales process proposed by the Receiver for the sale of Fasken Property and the chattels located therein, as contemplated in the Fasken Agreement (the “**Fasken Marketing Process**”).
3. At the return of the motion, the Court requested that the Receiver file a supplemental report to provide additional commentary in respect of the Break-Fee and commission payable in connection with the Fasken Agreement and Fasken Marketing Process. Accordingly, the Receiver has prepared this supplement to the Receiver’s Second Report.

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied upon unaudited financial information of Skyservice, Skyservice’s books and records, certain financial information prepared by Skyservice and discussions with Skyservice’s employees. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or the Receiver's previous reports.

THE BREAK-FEE

6. As described in the Second Report, the Fasken Agreement provides for the payment of a Break-Fee of \$160,000, being 3% of the Purchase Price, in the circumstances set out in the Fasken Agreement. In addition to the Break-Fee, the Fasken Marketing Process approved by the Court on June 16, 2010, provides that a commission of up to 1.5% will be paid to a licensed real estate agent (the "Agent") representing the ultimate purchaser of the Fasken Property (the "Fasken Purchaser") if a sale proceeds other than under the Fasken Agreement, but only upon the closing of the sale and from the proceeds of sale. Accordingly, the third-party "deal costs" for the sale of the Fasken Property will be:
 - (i) 3% in the event that the Fasken Agreement is completed; or
 - (ii) Between 3% and 4.5% in the event that a sale is completed as a result of a superior offer in the Fasken Marketing Process.
7. As noted in the Second Report, the Receiver obtained a number of listing proposals from real estate brokers. The proposed commission structures ranged from 2.5% to 4% for a sale with the listing agent representing both buyer and seller and from 3.5% to 5% for a sale with a co-operating broker.

8. While no commission or fee would have been payable if the Receiver had agreed to sell the Fasken Property to the Purchaser under the Fasken Agreement with no further marketing efforts, such a sale would not, in the Receiver's view, have been appropriate in the circumstances and would have been unlikely to receive court approval having regard to the applicable principles set out in *Soundair*.¹
9. Accordingly, in any circumstance, commissions in the range 2.5% to 5% would have been payable on a sale of the Fasken Property as compared to the 3%-4.5% combined Break-Fee and broker commission under the Fasken Agreement and Fasken Marketing Process. Accordingly, in the Receiver's view, the total "deal costs" are not materially different than they would have been if a traditional listing approach had been adopted.
10. In the Receiver's view, having a binding agreement which provides a base-line for the marketing of the Fasken Property removes down-side risk while preserving the upside potential for the benefit of creditors. In addition, given the level of interest expressed in the Fasken Property, the Receiver believes that a competitive bid and auction process has the potential to result in a higher realization than a traditional listing process where individual offers are assessed and dealt with on whatever timeframe they may be submitted.
11. Moreover, the real estate brokers' proposals for a traditional listing approach suggested a 3-6 month timeframe to complete. The Fasken Marketing Process contemplates offers being submitted by July 30, 2010, with an auction to be conducted approximately 3 days later, if required. As such, the Fasken Marketing Process is expected to conclude the sale of the Fasken Property in less time than a traditional listing approach.


¹ Royal Bank of Canada v. Soundair Corp., 1991 Can LII 2727 (ON C.A.)

12. Finally, the Fasken Purchaser has already undertaken its due diligence and incurred other expenses associated with negotiating the Fasken Agreement. The Fasken Purchaser was only willing to act as the stalking-horse if compensated for such costs in the event that it is not ultimately the purchaser. In order for an auction process to be effective, while providing downside protection, a stalking-horse bid is required. The Break-Fee provided in the Fasken Agreement helps to compensate for costs of acting as a stalking-horse purchaser and, therefore, helps to ensure there is a stalking-horse bid.
13. Therefore, the Receiver is satisfied that a "stalking horse" process is appropriate in the circumstances. As noted in the Second Report, the Receiver is of the view that the "stalking horse" Fasken Agreement and Fasken Marketing Process should achieve the highest and best realization of the Fasken Property and related assets in the circumstances.

The Receiver respectfully submits to the Court this supplement to the Second Report.

Dated this 17th day of June, 2010.

FTI Consulting Canada Inc.
in its capacity as receiver of
Skyservice Airlines Inc.
and not in its personal or corporate capacity



Nigel D. Meakin
Senior Managing Director

Appendix B

The Assignment Agreement

ASSIGNMENT OF PURCHASE AGREEMENT

THIS ASSIGNMENT dated as of the 5th day of August, 2010.

BETWEEN:

2157565 ONTARIO INC.

(the "Assignor")

- and -

2238609 ONTARIO LIMITED

(the "Assignee")

WHEREAS:

A. The Assignor entered into an agreement of purchase and sale dated May 25, 2010, as amended (collectively, the "Purchase Agreement"), for the purchase from FTI Consulting Canada Inc., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc. ("Skyservice") acquired for or used in relation to a business carried on by Skyservice (the "Vendor") of, *inter alia*, certain lands and premises municipally known as 31 Fasken Drive, Toronto, Ontario;

B. Pursuant to Section 18 of the Purchase Agreement, the Assignor may assign the Purchase Agreement to an Affiliate (as defined in the *Business Corporations Act* (Ontario)) of the Assignor, provided that the assignee agrees in writing to be bound by the Assignor's obligations under the Purchase Agreement and that upon such assignment, the Assignor will not be released from its obligations under the Purchase Agreement;

C. The Assignee is an Affiliate of the Assignor;

D. The Assignor has agreed to assign its interest in the Purchase Agreement to the Assignee in the manner hereinafter set out; and

E. All capitalized terms used herein, and not otherwise defined herein, have the same meanings herein as ascribed to them in the Purchase Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Assignment. Effective as of the date of this Assignment, the Assignor hereby absolutely assigns, transfers and sets over unto the Assignee all of the Assignor's right, title and interest in and to the Purchase Agreement, together with all of the Assignor's right, title and

- 2 -

interest in and to an escrow agreement dated June 3, 2010 among the Assignor, the Vendor and Blake, Cassels & Graydon LLP (the "Escrow Agreement").

2. **Assumption.** Effective as of the date of this Assignment, the Assignee hereby assumes and covenants and agrees to perform all of the Assignor's covenants and obligations under the Purchase Agreement and the Escrow Agreement. The Assignee hereby covenants and agrees that the Assignee will observe, perform and fulfill each and every covenant, proviso, obligation, term and condition of the Assignor in, to and under the Purchase Agreement and the Escrow Agreement or shall cause the same to be observed, performed and fulfilled, both before and after Closing.

3. **Indemnities.**

- (a) The Assignor shall indemnify and save the Assignee harmless from and against all liabilities, actions, suits, losses, costs, damages, awards or expenses the Assignee may suffer or incur or be put to in connection with or arising out of any breach by the Assignor in observing or performing any of its obligations under the Purchase Agreement or the Escrow Agreement before the date of this Assignment; and
- (b) The Assignee shall indemnify and save the Assignor harmless from and against all liabilities, actions, suits, losses, costs, damages, awards or expenses the Assignor may suffer or incur or be put to in connection with or arising out of any breach by the Assignee in observing or performing any of its obligations under the Purchase Agreement or the Escrow Agreement from and after the date of this Assignment.

4. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Province of Ontario.

5. **Enurement.** This Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner will promptly forward to the other party an original of the signed copy of this Assignment which was so faxed.

IN WITNESS WHEREOF the parties have executed this Assignment as of the date first mentioned.

2157565 ONTARIO INC.
By: Colin T. Hunter
Name: COLIN HUNTER
Title: CHAIRMAN

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

2238609 ONTARIO LIMITED
By: Colin T. Hunter
Name: COLIN HUNTER
Title: CHAIRMAN

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

Appendix C

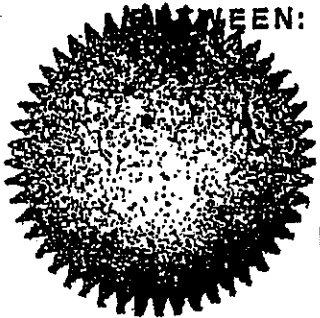
Notice of Application

Court File No.:

CV-09-393220

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



SKYSERVICE AIRLINES INC.

Applicant

- and -

FIRST CHOICE CANADA INC., TUI TRAVEL PLC,
TUI CANADA HOLDINGS INC.,
SUNWING TRAVEL GROUP INC. and
SUNWING AIRLINES INC.

Respondents

APPLICATION UNDER Rule 14.05(3)(d), (g) and (h) of the
Rules of Civil Procedure and Section 101 of the *Courts of
Justice Act, R.S.O. 1990, c.C.43, as amended*

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on Tues day, the 16th day of MARCH, 2010, at 10:00 a.m., at 130 Queen Street West, Toronto, Ontario or such other place as the court advises.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's

-2-

lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 11, 2009

Issued by


Local registrar

Address of 393 University Avenue
court office Toronto, Ontario, M5G 1E5

- TO: FIRST CHOICE CANADA INC.**
1685 Tech Avenue, Unit #2
Mississauga, ON L4W 0A7
- TO: TUI TRAVEL PLC**
c/o TUI Canada Holdings Inc.
1685 Tech Avenue, Unit #2
Mississauga, ON L4W 0A7
- TO: TUI CANADA HOLDINGS INC.**
1685 Tech Avenue, Unit #2
Mississauga, ON L4W 0A7
- TO: SUNWING TRAVEL GROUP INC.**
27 Fasken Drive
Toronto, ON M5W 1K6
- TO: SUNWING AIRLINES INC.**
27 Fasken Drive
Toronto, ON M5W 1K6

APPLICATION

1. The Applicant, Skyservice Airlines Inc. ("Skyservice"), makes application for:
- (a) a declaration that, pursuant to a Commercial Agreement between Skyservice and First Choice Canada Inc. ("First Choice") dated June 11, 2006, as amended (the "Commercial Agreement"), the Respondents cannot legally implement or otherwise complete a proposed amalgamation (the "Proposed Amalgamation") of the operations of Sunwing Vacations with Signature Vacations and Sell Off Vacations without the prior written consent of Skyservice;
 - (b) an interim and interlocutory Order requiring the Respondents to disclose to Skyservice and its legal counsel all relevant details and documentation pertaining to the Proposed Amalgamation for the purposes of this proceeding, thus enabling Skyservice to assess its rights pursuant to the Commercial Agreement;
 - (c) an interim, interlocutory and permanent injunction restraining the Respondents, and their respective affiliates, associates, agents, officers, directors, employees and related entities from, directly or indirectly, implementing or otherwise completing the Proposed Amalgamation without the prior written consent of Skyservice, and in any event, without first providing Skyservice and its legal counsel with the details and documentation referenced in paragraph (b) above;
 - (d) in the event that the injunction requested in paragraph (c) above is not granted by this Honourable Court and in the alternative thereto:
 - (i) a declaration that the implementation or completion of the Proposed Amalgamation:

- 4 -

- (a) Is a "FCC Termination Event", as described in Section 16.3 of the Commercial Agreement; and
 - (b) entitles Skyservice to terminate the Commercial Agreement in accordance with Section 16.3 thereof;
- (ii) an Order requiring First Choice to forthwith pay to Skyservice the various amounts (collectively, the "Early Termination Sum") referenced in Section 16.4.1 of the Commercial Agreement upon the declarations in paragraph (d)(i) above being granted and upon Skyservice exercising its right to terminate the Commercial Agreement;
- (e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended;
 - (f) costs of the application on a substantial indemnity basis, and
 - (g) such further and other relief as to this Honourable Court seems just.

2. The grounds for the application are:

- (a) Skyservice is a corporation incorporated pursuant to the laws of Canada which operates a fleet of aircraft for charter to various travel tour operators;
- (b) First Choice is a corporation incorporated pursuant to the laws of Canada which operates as a travel tour operator through its "Signature Vacations" and "Sell Off Vacations" divisions;
- (c) TUI Travel PLC ("TUI PLC") is a parent company to First Choice and is a leading international leisure travel business based in the United Kingdom which operates in numerous countries throughout the world, including Canada;

- (d) TUI Canada Holdings Inc. ("TUI Canada") is a wholly-owned subsidiary of TUI PLC which operates in Canada as a provider of travel tours;
- (e) Sunwing Travel Group Inc. ("Sunwing") is a Canadian travel supplier specializing in providing vacation packages to consumers and operates in conjunction with its wholly-owned subsidiary, Sunwing Airlines Inc.;
- (f) In or about June of 2006, First Choice and Skyservice entered into the Commercial Agreement (and subsequently into corresponding Charter Agreements), which was subsequently amended in November of 2008;
- (g) Pursuant to the terms of the Commercial Agreement, Skyservice agreed to provide aircraft charter services to First Choice and First Choice agreed to charter Skyservice's aircraft on various terms and conditions;
- (h) Section 16.3 of the Commercial Agreement provides that Skyservice has the right to terminate the Commercial Agreement upon the continuance of any "FCC Termination Event", which includes a breach by First Choice of its obligations under the Commercial Agreement (or the Charter Agreement);
- (i) In accordance with Section 16.4 of the Commercial Agreement and in the event of a termination of the Commercial Agreement by Skyservice pursuant to Section 16.3 thereof, First Choice is contractually obligated to pay various amounts to Skyservice (the "Early Termination Sum");
- (j) Section 19 of the Commercial Agreement provides that First Choice is not entitled to assign any of the rights or obligations under the Commercial Agreement without the prior written consent of Skyservice;
- (k) In September of 2009, the Respondents announced that they intended to implement and complete the Proposed Amalgamation. The full details of the Proposed Amalgamation have not been disclosed to

Skyservice despite requests therefor; however, it is the understanding of Skyservice that the Proposed Amalgamation contemplates, among other steps:

- (i) First Choice being acquired by Sunwing;
 - (ii) TUI PLC making an investment in Sunwing resulting in TUI Canada owning 25% of the voting shares and 49% of the equity shares of Sunwing; and
 - (iii) First Choice merging with an entity related to or affiliated with Sunwing, which entity will then "inherit" the rights and obligations of First Choice in the Commercial Agreement;
- (l) By announcing the intention to implement and complete the Proposed Amalgamation without the prior written consent of Skyservice, First Choice is in anticipatory breach of section 19 of the Commercial Agreement (with the other Respondents knowingly inducing a breach thereof), which will cause irreparable harm to Skyservice and its business unless injunctive relief is granted to restrain the implementation and completion of the Proposed Amalgamation;
- (m) If injunctive relief is not granted, the breach of section 19 of the Commercial Agreement will result in an "FCC Termination Event" and thereby entitle Skyservice to payment of the "Early Termination Sum" by First Choice in the amount prescribed by section 16.4.1 of the Commercial Agreement;
- (n) The Commercial Agreement, as amended, was made and is expressly governed by and is to be construed in accordance with the laws of the Province of Ontario;
- (o) Rules 14.05(3)(d), (g) and (h), 17.02(f), (h), (i), (o), and (p), 38 and 40 of the *Rules of Civil Procedure*;

- 7 -

- (p) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (q) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of a representative of Skyservice sworn in support of this application; and
- (b) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

December 11, 2009

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Lorne S. Silver LSUC #24238L
Tel: 416-869-5490
Fax: 416-840-3018

Robert B. Cohen LSUC#: 32187D
Tel: 416-869-5425
Fax: 416-350-6929

Lawyers for the Applicant

Court File No.: CU-09-393 220

FIRST CHOICE CANADA INC. et al
and
RESPONDENTS

SKYSERVICE AIRLINES INC.
APPLICANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at TORONTO

NOTICE OF APPLICATION

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Lorne S. Silver LSUC #24238L
Tel: 416-869-5490
Fax: 416-840-3018

Robert B. Cohen LSUC#: 32187D
Tel: 416-869-5425
Fax: 416-350-6829

Lawyers for the Applicant

Appendix D

December 14, 2009 Letter



Blake, Cassals & Graydon LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents
 199 Bay Street
 Suite 2800, Commerce Court West
 Toronto ON M5L 1A9 Canada
 Tel: 416-863-2400 Fax: 416-863-2653

Paul B. Schabas
 Dir: 416-863-4274
 paul.schabas@blakes.com

December 14, 2009

VIA FACSIMILE

Reference: 73757/5

Lorne Silver
 Cassels Brock & Blackwell LLP
 2100 Scotia Plaza, 40 King Street West
 Toronto, ON M5H 3C2

Dear Mr. Silver:

Re: First Choice Canada Inc. et al. ats Skyservice Airlines Inc.

We are in receipt of your letter dated Friday, December 11, and the attached application for an injunction returnable March 16, 2010. We can confirm that we represent the Respondents First Choice Canada Inc. ("FCCI"), TUI Travel PLC ("TUI Travel") and TUI Canada Holdings Inc. However, our clients presently intend to complete the transaction upon receipt of certain regulatory approvals, which may occur later this week.

Your suggestion that the transaction be delayed simply because you have filed this application at the eleventh hour, some ten weeks after the transaction was announced and following several other proceedings and regulatory approvals in which your client was involved, is unreasonable and untenable.

Your application is clearly without merit, for the reasons set out below.

A. No Serious Question to be Tried

First, there is no serious question to be tried. Skyservice alleges that FCCI is breaching section 19 of the June 11, 2006 Commercial Agreement between FCCI and Skyservice (the "Commercial Agreement") as a result of the proposed amalgamation of FCCI with a subsidiary of Sunwing Travel Inc. ("Sunwing Travel"). Skyservice claims that under section 19, its consent is required for any assignment of the agreement, and that the proposed amalgamation constitutes an anticipatory breach of section 19.

However, the Ontario *Business Corporations Act*, the case law, and section 19 of the Commercial Agreement all make clear that an amalgamation is not an assignment. An amalgamating corporation continues as the amalgamated corporation, and its rights and liabilities continue; there is no assignment of those rights and liabilities.

Section 174 of the Ontario *Business Corporations Act*, which applies to the proposed amalgamation, provides: "Two or more corporations, including holding or subsidiary corporations, may amalgamate and continue as one corporation." Section 179(b) provides that:

21947900.1

MONTRÉAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com



Page 2

179. Upon the articles of amalgamation becoming effective,

(b) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of each of the amalgamating corporations [emphasis added]

The Supreme Court of Canada has held in *R. v. Black & Decker Manufacturing Co.*, [1975] 1 S.C.R. 411 at p. 415, that no "new" corporation is created, and no "old" corporation is extinguished upon amalgamation. Justice Dickson noted (at p. 421): "The analogies of a river formed by the confluence of two streams, or the creation of a single rope through the intertwining of strands have been suggested by others." See also: *British Columbia Hydro and Power Authority v. British Columbia (Environmental Appeal Board)*, [2005] 1 S.C.R. 3, 2005 SCC 1, rev'ing (2003), 229 D.L.R. (4th) 1, 2003 BCCA 438.

In light of the continuation of an amalgamated company and its liabilities, in *Loeb Inc. v. Cooper* (1991), 6 O.R. (3d) 259 (Gen. Div.), Justice Henry specifically rejected the very argument that Skyservice is asserting here. Following *Black & Decker*, *supra* and similar decisions of the Supreme Court and Ontario Court of Appeal, he held that an amalgamation of a tenant did not result in assignment of a lease, and thus did not result in any breach of a term in the lease prohibiting assignment by the tenant without the consent of the landlord.

Indeed, consistent with the statute and the cases, section 19 of the Commercial Agreement specifically distinguishes between "successors" by amalgamation, and "assigns" for which permission of Skyservice is needed.

Accordingly, the assertion in your application that the proposed amalgamation requires Skyservice's consent and that FCCI is in anticipatory breach of the Commercial Agreement and will trigger a "Termination Event" under section 16.3 of the Commercial Agreement, is untenable.

B. No Irreparable Harm to Skyservice

Second, there is no irreparable harm to Skyservice. Skyservice has explicitly admitted at paragraph 2(n) of its notice of application that if FCCI breached section 19 of the Commercial Agreement, the damages that Skyservice would claim would be an "early termination sum" under section 16.4.1 of the Commercial Agreement. Even if Skyservice's claim that the proposed amalgamation breaches the Commercial Agreement had merit (which is denied), it would be fully compensable in damages.

As your client knows, FCCI is well aware of its contractual obligations in the Commercial Agreement, which was confirmed again by Colin Mitchell, President of FCCI, to Skyservice by letter faxed December 12, 2009.

21947900.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com



C. The Balance of Convenience Weighs against Skyservice

Third, the balance of convenience weighs against the injunction sought by Skyservice, for several reasons. TUI Travel, FCCI and Sunwing Travel have genuine commercial reasons for entering into the transaction, and have pursued the necessary regulatory approvals for it over the past few months.

For example, the Proposed Transaction was subject to notification to the Commissioner of Competition (the "Commissioner") pursuant to section 114(1) of the *Competition Act*. On September 29, 2009, the parties to the proposed transaction (the "Parties") filed their respective pre-merger notification filings with the Competition Bureau, along with a letter to the Commissioner wherein they requested the issuance of either an advance ruling certificate under section 102(1) of the *Competition Act* or, in the alternative, a "no action letter" confirming that she does not, at this time, intend to commence proceedings under s. 92 of the *Competition Act* in connection with the proposed transaction. The Parties' pre-merger notification filings were associated with a 30-day statutory waiting period, which expired on October 29, 2009.

On October 22, 2009 competition counsel for TUI Travel and Sunwing Travel was advised that the Competition Bureau had received only one complaint in respect of the proposed transaction, very likely from Skyservice. Notwithstanding this complaint, the Competition Bureau completed its substantive review of the proposed transaction in approximately 40 days and issued a no-action comfort letter to the Parties on November 10, 2009.

The Parties also filed notification of the Proposed Transaction pursuant to section 53.1 of the *Canada Transportation Act* with the Minister of Transport, Infrastructure, and Communities (the "Minister") and the Secretary of the CTA on September 29th, 2009. Section 53.1 of the Act states that every transaction subject to notification under the *Competition Act* which involves a transportation undertaking must also be notified to the Minister and, where it involves an air transportation undertaking, to the CTA. While the proposed transaction does not in fact "involve" a transportation undertaking, as neither of the merging parties supply transportation services (instead they provide package holidays), out of an abundance of caution, the Parties filed a notice with the Minister and the CTA.

If the Minister concludes that a proposed merger or acquisition may not be in the public interest, the parties are precluded by sections 53.2 and 53.3 of the *Canada Transportation Act* from completing the proposed transaction unless it is approved by the Governor in Council, and the CTA determines that the transaction would result in an undertaking that is "Canadian" as defined in subsection 55(1) of that Act. In this case, the Minister considered the public interest, and decided that the transaction could proceed without such further reviews. On October 29, 2009, he sent the parties a letter dated October 28, 2009 stating that he is of the opinion that the proposed transaction does not raise any issues with respect to the public interest as it relates to national transportation.

Accordingly, both the Commissioner of Competition review to protect competition in Canada, and the Minister of Transportation review to protect the public interest as it relates to national transportation, resulted in approvals of the proposed transaction.

The only outstanding approval required by the parties prior to the completion of the proposed transaction is Sunwing Airline's request for a ruling on Canadian status under section 55(1) of the

21947900.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com

Page 4

Act. That request has been before the CTA since October 2, 2009, and the decision could be issued as early as this week.

Consequently, and having regard to the competitive and seasonal nature of the vacation tour industry, it would be unjust to allow this transaction — which has already been subject to rigorous scrutiny by the responsible regulators — to be delayed indefinitely due to a very weak claim which, in any event, could be addressed by way of damages.

We note as well that Skyservice has made no undertaking as to the very significant damages that TUI Travel, FCCI and Sunwing Travel would incur if the injunction were wrongfully granted.

D. This Application Comes Too Late

Fourth, Skyservice has not been diligent in bringing this application. The proposed transaction was publicly announced on September 29, 2009. That announcement stated that "TUI Travel will contribute its Canadian operations [which include FCCI] ... and Sunwing will contribute its operations to the strategic venture." It further stated: "The deal is subject to regulatory and competition approvals and is expected to be completed by the end of November." [emphasis added] Skyservice clearly has that document, as Skyservice quoted from it, and cited it, in a November 10 letter from its lawyer, Gerard Chouest, to the Canadian Transportation Agency (the "CTA" or the "Agency") (Exhibit C to the affidavit sworn by Gerard Chouest on December 8, 2009 in Skyservice's motion for leave to appeal to the Federal Court of Appeal in *Skyservice Airlines v. Canadian Transportation Agency* (Court File No. 09-A-41) (the "Chouest Affidavit")).

According to the Chouest Affidavit, Skyservice retained him as legal counsel just two days after the transaction was announced, on October 1, 2009, and advised him then of its interest in the proposed transaction. Since then, Skyservice, through experienced counsel, has made multiple submissions and applications to the relevant regulatory bodies on the proposed transaction and has brought three other court applications for review of decisions of the CTA and the Minister. This application, therefore, is the fourth judicial proceeding brought by Skyservice in this matter — yet without any explanation as to why it was not brought earlier.

As noted above, TUI Travel believes that Skyservice contacted the Competition Bureau, and it is clear that Skyservice has made multiple attempts over the last 10 weeks to intervene in the CTA and Minister of Transportation approvals.

Mr. Chouest states in his affidavit that he contacted the CTA several times in October. He wrote to the Agency on October 31 and November 10 (Chouest Affidavit, Exhibits A, B and C). On November 10, 2009, Skyservice sought leave to participate in the proceedings before the CTA as an interested party. In that letter, Skyservice noted that it understood that: "The operations of Sunwing Vacations would be merged with those of TUI's tour operator in Canada, Signature Vacations (FCCI)" (Chouest Affidavit, Exhibit C). Skyservice further stated that "Sunwing Travel would own 100% of the merged tour operator and 100% of Sunwing Airlines." While Skyservice's description of the proposed transaction was inaccurate, it is clear that Skyservice understood for at least a month before it commenced

21947900.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com



its December 11 application for an injunction that FCCI, its counterpart in the Commercial Agreement, was merging in some form with a Sunwing Travel affiliate.

According to the letter from the Minister that is at Exhibit J of the Chouest Affidavit, Mr. Giguere of Skyservice also wrote to him on November 2 and 9.

Moreover, as noted earlier, the current application for an injunction is the fourth judicial proceeding brought by Skyservice in relation to the proposed transaction. Skyservice has brought an application, issued November 26, for judicial review by the Federal Court of Appeal of the CTA's November 25 interlocutory decision regarding its participation as an intervener in the proceedings before the Agency (*Skyservice Airlines Inc. v. Canadian Transportation Agency*, Court File No. A-474-09). Skyservice also commenced a motion on December 7 for leave to appeal the same decision to the Federal Court of Appeal (*Skyservice Airlines v. Canadian Transportation Agency*, Court File No. 09-A-41). In addition to these two Federal Court of Appeal proceedings, Skyservice has also brought an application to the CTA for reconsideration of the same decision on December 4.

None of these proceedings has any merit. The application for judicial review is barred by s. 18.5 of the *Federal Courts Act*, as it is not the proper procedure. Moreover, an interlocutory decision is only subject to judicial review or appeal in exceptional circumstances that do not apply here. Skyservice's application for reconsideration is based on its objections to a letter received by the CTA two days after the decision sought to be reconsidered, which is clearly irrelevant to the decision.

On November 27, 2009, Skyservice also had a notice of application for judicial review issued in respect of the letter it received from the Minister of Transportation and Transport Canada on November 24, 2009 (*Skyservice Airlines v. Attorney General of Canada*, Court File No. T-1993-09). In that letter, the Minister merely states that the concerns raised in Skyservice's November 2 and 9 letters to him are matters within the jurisdiction of the Competition Bureau and the CTA, and that he had already determined (on October 28, 2009) under s. 53.1 of the *Canada Transportation Act* that the public interest with respect to the national transportation system was not engaged by the proposed transaction. This application is also without merit. The Attorney General of Canada has already written to Skyservice (on December 4) to advise that the application must be reconstituted and amended as it is brought against the wrong parties and it is not clear what "decision" is sought to be reviewed, and whether it is a reviewable decision at all.

It is apparent from the Chouest Affidavit and from Skyservice's actions over the past 10 weeks that Skyservice has known about the proposed transaction since at least October 1. Given the information in TUI's public September 29 announcement, Skyservice should have known from at least that date that FCCI was involved in the transaction. It is clear from its November 10 letter to the CTA that Skyservice has known for at least a month that FCCI was merging in some form with a Sunwing Travel affiliate. Despite this knowledge, Skyservice has delayed taking any action with respect to the alleged anticipatory breach of its Commercial Agreement with FCCI. Indeed, Skyservice has launched a multiplicity of proceedings — regardless of their merit — yet it has not acted diligently regarding its purported claim under the Commercial Agreement.

21847900.1

MONTRÉAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com

Page 6

E. Conclusion

In light of the foregoing, our clients intend to close the transaction as soon as possible after Sunwing Airlines Inc. receives a ruling from the CTA confirming that it will remain Canadian owned and controlled for purposes of the *Canada Transportation Act* after the transaction. If that ruling is released this week, the transaction may close before the December 18 triage court hearing scheduled by Skyservice.

Yours very truly,

Paul B. Schabas

PBS/jvo

cc: B. Facey
C. Baagan Flood
E. Nobbs, Q.C.
C. Scott
P. Mitchell

21947900.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com

Appendix E

Consent

Court File No. CV-09-393220

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SKYSERVICE AIRLINES INC.

Applicant

- and -

**FIRST CHOICE CANADA INC., TUI TRAVEL PLC,
TUI CANADA HOLDINGS INC., SUNWING TRAVEL GROUP INC.
and SUNWING AIRLINES INC.**

Respondents

APPLICATION UNDER Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure* and
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended

CONSENT

THE PARTIES HERETO, by their lawyers, consent to an order dismissing this application without costs, in the form attached as Schedule "A" hereto, and certify that the order being consented to does not affect the rights of any person under disability.

Dated:

July 29, 2010


BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9
Fax: (416) 863-2653

Paul Schabas (LSUC#: 26355A)
Tel: (416) 863-4274
Brian A. Facey (LSUC#: 34261F)
Tel: (416) 863-4262
Catherine Beagan Flood (LSUC#: 43013U)
Tel: (416) 863-2269

**Lawyers for the Respondents,
First Choice Canada Inc., TUI Travel PLC,
and TUI Canada Holdings Inc**

- 2 -

Dated:

MCCARTHY TÉTRAULT LLP
 Suite 5300, Toronto Dominion Bank Tower
 Toronto ON M5K 1E6

Geoff R. Hall LSUC#: 347010
 Tel: 416 601-7856
 Fax: 416 868-0673

**Lawyers for the Applicant,
 Skyservice Airlines Inc.**

Dated: August 4, 2010

Lax O'Sullivan Scott LLP per [Signature]
LAX O'SULLIVAN SCOTT LLP
 145 King Street West
 Suite 1920
 Toronto, ON M5H 1J8
 Fax: (416) 598 3730

*(as authorized by
 Charles F. Scott)*

Charles F. Scott
 Tel: (416) 646-7997

Paul Michell
 Tel: (416) 644-5359

**Lawyers for the Respondents,
 Sunwing Airlines Inc. and Sunwing Travel
 Group Inc.**

SCHEDULE "A"

Court File No. CV-09-393220

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
) , THE
) DAY OF , 2010

BETWEEN:

SKYSERVICE AIRLINES INC. Applicant

- and -

**FIRST CHOICE CANADA INC., TUI TRAVEL PLC,
TUI CANADA HOLDINGS INC., SUNWING TRAVEL GROUP INC.
and SUNWING AIRLINES INC.** Respondents

**APPLICATION UNDER Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure* and
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended**

ORDER

THIS MOTION, made by the Defendants First Choice Canada Inc., TUI Travel PLC, and TUI Canada Holdings Inc., for an Order dismissing this application without costs, was read this day at the City of Toronto, Ontario.

ON READING the Consent of the parties, filed:

- 1. THIS COURT ORDERS** that this application be dismissed without costs.

SKYSERVICE AIRLINES INC. Applicant

FIRST CHOICE CANADA INC. et al

and Respondents

Court File No: CV-09-393220

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9
Fax: (416) 863-2653

Paul B. Schabas LSUC#: 26355A
Tel: (416) 863-4274

Brian A. Facey LSUC#: 34261F
Tel: (416) 863-4262

Catherine Beagan Flood LSUC#: 43013U
Tel: (416) 863-2269

Lawyers for the Respondents
First Choice Canada Inc., TUI Travel PLC,
and TUI Canada Holdings Inc.

-2-

Court File No: CV-09-393220

SKYSERVICE AIRLINES INC. Applicant and Respondents FIRST CHOICE CANADA INC. et al

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

CONSENT

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9
Fax: (416) 863-2653

Paul B. Schabas LSUC#: 26355A
Tel: (416) 863-4274

Brian A. Facey LSUC#: 34261F
Tel: (416) 863-4262

Catherine Beagan Flood LSUC#: 43013U
Tel: (416) 863-2269

Lawyers for the Respondents
First Choice Canada Inc., TUI Travel PLC,
and TUI Canada Holdings Inc.
#1448796v.2