

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

NOTICE OF MOTION

Sunwing Tours Inc. (“**Sunwing**”) will make a motion to the Court, on June 16, 2010 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER

- a) abridging the time for service of the Notice of Motion and Motion Record, if necessary, and that the motion is properly returnable on June 16, 2010;
- b) lifting the stay of proceedings for the purpose of allowing Sunwing to (i) commence an application to the Court to have Skyservice Airlines Inc. (“**Skyservice**”) be adjudged bankrupt (the “**Bankruptcy Application**”) pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), and (ii) take all steps necessary

and incidental to the commencement of the Bankruptcy Application, provided that no further steps shall be taken to obtain a bankruptcy order without the prior written consent of the Receiver (as defined below) or further order of the Court;

- c) adjourning the hearing of the Bankruptcy Application *sine die*; and
- d) such further and other relief as Sunwing may request and this Honourable Court shall deem just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

- (a) On March 31, 2010, FTI Consulting Canada Inc. (“**FTI**”) was appointed as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Skyservice;
- (b) The receivership of Skyservice is explicitly a liquidation;
- (c) In addition to certain trust or proprietary claims that Sunwing has asserted against Skyservice and in the receivership, Skyservice is indebted to Sunwing in an amount exceeding \$4.9 million for costs and damages incurred as a result of Skyservice’s receivership and its consequent failure to provide certain charter flight services to Sunwing. These costs and damages include, without limitation, costs of securing flight services from other carriers on very short notice, Skyservice inventory write offs, customer protection and compensation costs, loss of revenue and other costs. In addition to the losses occasioned by Sunwing as a direct or indirect result of Skyservice’s failure to provide flight services, Sunwing has incurred significant costs in mitigating its losses;
- (d) Sunwing seeks a lifting of the stay to commence the Bankruptcy Application in order to establish the date of initial bankruptcy event for the purposes of the BIA and to avail itself of rights and remedies under the BIA;

- (e) The Receiver has acknowledged in its Pre-appointment Report dated March 31, 2010 that its review of various secured parties' security was subject to the usual assumptions and qualifications with respect to preferences and other forms of impeachable transactions and therefore, such review has not been undertaken;
- (f) At this time, the commencement of the Bankruptcy Application is solely for the purpose of establishing the date of initial bankruptcy event and the hearing of the bankruptcy application is to be deferred;
- (g) Sunwing proposes that FTI be designated as the proposed trustee in bankruptcy on the Bankrupt's Application.
- (h) The Receiver does not oppose the lifting of the stay of proceedings for the purpose of allowing Sunwing to commence the Bankruptcy Application;
- (i) Sunwing is a significant unsecured creditor of Skyservice. The lifting of the stay for the purpose of commencing the Bankruptcy Application is appropriate and equitable in the circumstances, as it establishes the date of initial bankruptcy event and thereby preserves rights and remedies of all unsecured creditors under the BIA. As Skyservice is no longer carrying on business and is in liquidation, the lifting of the stay for the sole purpose of fixing the date of initial bankruptcy event will not be prejudicial to Skyservice or other creditors of Skyservice;
- (j) The grounds set out in the Affidavit of Mark Williams, to be sworn (the "**Williams Affidavit**");
- (k) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (l) Section 187(11) of the BIA; and
- (m) Such further grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The Williams Affidavit; and
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

June 14th, 2010

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street, Suite 2800
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Steven J. Weisz, LSUC No.: 32102C
Tel: 416-863-2616

Katherine McEachern LSUC #38345M
Tel: 416-863-2566

Chris Burr LSUC No.: 55172H
Tel: (416) 863-3301
Fax: (416) 863-2653

Lawyers for Sunwing Tours Inc.

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Proceeding Commenced at Toronto

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BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
Box 25, Commerce Court West
199 Bay Street, Suite 2800
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