



COURT FILE NUMBER 25-2386427
25-2386434

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE DIVISION I PROPOSAL
PROCEEDINGS OF ASPEN AIR CORPORATION and ASPEN
AIR U.S. CORP.

JUDICIAL CENTRE CALGARY

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McMILLAN LLP
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Attention: Adam C. Maerov
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Email: adam.maerov@mcmillan.ca
File: 258090

I hereby certify this to be a true copy of the original order of which it purports to be a copy.

Dated this 20 day of November, 2018

[Signature]
Registrar at Calgary
Bankruptcy Division of the
Court of Queen's Bench of Alberta

DATE ON WHICH ORDER WAS PRONOUNCED: November 20, 2018
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre
NAME OF JUSTICE WHO MADE THIS ORDER: Justice K.M. Horner

UPON THE APPLICATION by Aspen Air Corporation (“Aspen”) and Aspen Air U.S. Corp. (“Aspen US”) for an order approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale dated November 9, 2018 (the “Sale Agreement”) between Aspen US and Aspen Air U.S., LLC (the “Purchaser”), a copy of which is attached as Exhibit “A” to the Affidavit of Onkar Dhaliwal, sworn November 9, 2018 (the “Dhaliwal Affidavit”), and an Assignment and Assumption Agreement between the Purchaser, Aspen US, Aspen (together with Aspen US, the “Vendor”) and Invico Diversified Income Fund Limited Partnership dated November 16, 2018 (the “Assignment Agreement”), a copy of which is attached as Exhibit “A” to the Affidavit of David Tsumagari sworn November 20, 2018

(the “**Tsumagari Affidavit**”), and vesting in the Purchaser the Vendor’s right, title and interest in and to the assets described in the Sale Agreement and the Assignment Agreement (the “**Assets**”);

AND UPON HAVING READ the Dhaliwal Affidavit, the Tsumagari Affidavit, the Reports filed by the proposal trustee, Deloitte Restructuring Inc. (the “**Proposal Trustee**”), the Affidavits of Service of David Tsumagari, sworn November 16, 2018 and November 19, 2018 and all other material and evidence filed to date in the within proceedings; **AND UPON HEARING** the submissions of counsel for the Vendor, the Purchaser, the Proposal Trustee and other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE AND DEFINITIONS

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. Unless otherwise defined in this Order, all capitalized terms used in this Order shall have the meanings given to them in the Sale Agreement.

APPROVAL OF TRANSACTION

3. The Transaction is hereby approved, and the execution of the Sale Agreement and the Assignment Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor and the Purchaser may agree. The Transaction is in the best interests of the Vendor, its creditors and its other stakeholders, and therefore the Sale Agreement and the Transaction contemplated thereby is authorized, ratified, deemed commercially reasonable and approved.

CASH RESERVE

4. On the Closing Date, a cash reserve in the amount of CAD \$215,000 plus USD \$25,000 shall be established using funds from the Purchaser (the “**Cash Reserve**”), which Cash Reserve shall be held by the Proposal Trustee or any trustee in bankruptcy that may be appointed in respect of either or both of the Aspen Companies (a “**Cash Reserve Trustee**”) in a segregated account or accounts (“**Cash Reserve Account**”) in trust for the benefit of Persons entitled to be paid the Cash Reserve Costs, defined below, for the purpose of paying the Cash Reserve Costs in accordance with this Order.

5. The Cash Reserve Costs shall consist of the amounts outstanding on the Closing Date or, to the extent expressly provided below, arising thereafter, on account of the following things:

- (a) amounts secured by the Administration Charge (as defined in the Order granted in these proceedings on June 26, 2018 (the “**Initial Order**”), including but not limited to amounts owing to the Proposal Trustee, counsel to the Proposal Trustee, counsel to the Vendor and US Counsel to the Proposal Trustee and the Vendor), the D&O Charge (as defined in the Initial Order and including, for greater certainty, claims for wages indirectly secured by the D&O Charge that accrue prior to the Closing Date); and
- (b) an amount sufficient to fund the costs of administration of any bankruptcy of either or both of Aspen and Aspen US;

(collectively, the “**Cash Reserve Claims**”);

but in each case, only to the extent that such Cash Reserve Claims are not paid by Aspen or Aspen US or to the extent the Purchaser so elects to assume such liabilities on the Closing Date as permitted by the Sale Agreement.

6. The Cash Reserve Trustee shall, from time to time after the Closing Date, reduce the amount of the Cash Reserve as and to the extent that the Cash Reserve Trustee and Purchaser agree, or this Court determines, that it, or portions of it, are no longer required to satisfy Cash Reserve Costs by distributing to the Purchaser the amount of such reductions. All right, title and interest in any amounts in the Cash Reserve Account that are not used to pay Cash Reserve Costs in accordance with this Order shall vest absolutely in the Purchaser as at the Closing Date and shall be paid to the Purchaser in accordance with this paragraph.

VESTING OF PROPERTY

7. Upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form and substance set out in Schedule “A” hereto (the “**Proposal Trustee’s Certificate**”), all of the Vendor’s right, title and interest in and to the Assets described in the Sale Agreement and the Assignment Agreement shall vest absolutely in the name of the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, encumbrances, other financial or monetary claims, or interests, whether or not they have attached or been perfected, registered

or filed and whether secured, unsecured or otherwise, and whether by payment, set off or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Order granted in these proceedings on June 26, 2018; and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the *Uniform Commercial Code* (United States) or any other personal property registry system,

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances as defined in the Sale Agreement). For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

8. The Purchaser is authorized to file, register or otherwise record a certified copy of this Order and the Proposal Trustee’s Certificate with the appropriate filing office, agency, clerk(s) and/or recorder(s), including without limitation in the location of the Assets within Canada and/or the United States, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the sale of the Assets free and clear from any and all Claims, including the release of all liens, claims, encumbrances and interests in the Assets as of the Closing Date (as defined in the Sale Agreement) of any kind or nature whatsoever, and any registrar or other person in control or otherwise supervising any register or office of registration or recording is hereby authorized and directed to transfer, convey and assign the Assets to the Purchaser and delete any Claims or Encumbrances.

9. Under no circumstances shall the Purchaser be deemed a successor of or to the Vendor for any Claims of any kind or nature whatsoever against or in the Vendor or the Assets, other than as expressly agreed to by Purchaser in the Sale Agreement. Following the delivery of the Proposal Trustee’s Certificate, no person with a Claim shall interfere with the Purchaser’s title to or use and enjoyment of the Assets based on or related to such Claim or any actions that the Vendor may take in the within proceedings.

10. The Vendor and the Proposal Trustee are each authorized and directed to take all necessary steps and to execute and deliver all such conveyance documents, bills of sale, assignments, conveyances, transfers, deeds, representations, indicia of title, tax elections, documents and instruments of whatsoever nature or kind, to register or file any such documents or notices thereof with any office of registration or

recording, and for the conveyance of the Assets to the Purchaser, as may be reasonably necessary or desirable to consummate the Transaction in accordance with the terms of the Sale Agreement.

11. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Vendor.

13. The Vendor and all persons who claim by, through or under the Vendor in respect of the Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Assets and, to the extent that any such persons remains in possession or control of any of the Assets, they shall forthwith deliver possession thereof to the Purchaser.

14. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by the Vendor, or any person claiming by or through or against the Vendor.

15. The Purchaser shall be authorized, as of the Closing Date, to operate under any Governmental Authority (as defined in the Sale Agreement), license, permit, registration and authorization or approval of or given to the Vendor with respect to the Assets, and all such licenses, permits, registrations and authorizations and approvals shall be and shall be deemed to have been transferred to the Purchaser as of the Closing Date.

16. The Proposal Trustee is to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof to the Purchaser.

17. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and section 20(e) of the *Alberta Personal Information Protection Act*, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll

information pertaining to its past and current employees, including personal information of those employees listed in the Sale Agreement, The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

18. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Aspen or Aspen US and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of Aspen or Aspen US; and
- (d) the provisions of any federal, provincial or state statute;

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Aspen or Aspen US and shall not be void or voidable by creditors of Aspen or Aspen US, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

19. Provided that the Sale Agreement has not been terminated in accordance with its terms, any proposal or arrangement that may be filed by Aspen or Aspen US in these shall not derogate or otherwise affect any right or obligation of the Vendor or the Purchaser under the Sale Agreement unless otherwise agreed by the Vendor or the Purchaser. The Sale Agreement and the Assignment Agreement and any ancillary documents related thereto shall not be repudiated, disclaimed or otherwise compromised in these proceedings.

20. The Proposal Trustee, the Vendor, and the Purchaser shall be at liberty to apply for further advice, assistance and directions as maybe necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

MISCELLANEOUS MATTERS

21. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor, the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor, the Proposal Trustee and their agents in carrying out the terms of this Order.

22. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

23. Service of this Order on any party not attending this application is hereby dispensed with.



J.C.C.Q.B.A.

Schedule "A"

Proposal Trustee's Certificate

COURT FILE NUMBER	25-2386427 25-2386434
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY IN THE MATTER OF THE DIVISION I PROPOSAL PROCEEDINGS OF ASPEN AIR CORPORATION and ASPEN AIR U.S. CORP.
JUDICIAL CENTRE	CALGARY
DOCUMENT	<u>APPROVAL AND VESTING ORDER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McMILLAN LLP 1700, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Adam C. Maerov Phone: 403.215.2752 Fax: 403.531.4720 Email: adam.maerov@mcmillan.ca File:

RECITALS

- A. Pursuant to a Notice of Intention to Make a Proposal filed by each of Aspen Air Corporation and Aspen Air U.S. Corp. pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Deloitte Restructuring Inc. consented to act as the proposal trustee (the "**Proposal Trustee**") of Aspen Air Corporation ("**Aspen**") and Aspen Air U.S. Corp. ("**Aspen US**").
- B. Pursuant to an Order of the Court dated November 20, 2018, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated November 9, 2018 (the "**Agreement of Purchase and Sale**") between Aspen US and Aspen Air U.S., LLC (the "**Purchaser**"), and an Assignment and Assumption Agreement between the Purchaser, Aspen US, Aspen (together with Aspen US, the "**Vendor**") and Invico Diversified Income Fund Limited

Partnership dated November 16, 2018 (the “**Assignment Agreement**”), and vesting in the Purchaser the Vendor’s right, title and interest in and to the assets described in the Sale Agreement and the Assignment Agreement (the “**Assets**”); which vesting is to be effective with respect to the Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in sections 4.1, 4.2 and 4.3 of the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 4.1, 4.2 and 4.3 of the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

This Certificate was delivered by the Proposal Trustee at Calgary on _____, 2018.

Deloitte Restructuring Inc., in its capacity as
Proposal Trustee of the Debtors, and not in its
personal capacity

Per: _____
Name:
Title: