

# SUPERIOR COURT

(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-039418-104

DATE: AUGUST 5, 2010

---

BY: **THE HONOURABLE BRIAN RIORDAN**

---

IN THE MATTER OF THE JUDICIAL REORGANIZATION PROCEEDINGS OF:

**COMPANIA MEXICANA DE AVIACION, S.A. DE C.V.**

Insolvent Debtor

and

**MARU E. JOHANSEN**

Foreign Representative / Petitioner

And

**SAMSON BELAIR DELOITTE & TOUCHE INC.**

Information Officer

---

ORDER

(On a Motion for Recognition of Foreign Proceedings)

---

- [ 1 ] **CONSIDERING** the Foreign Representative/Petitioner's *Motion for Recognition of Foreign Proceedings* dated August 5, 2010;
- [ 2 ] **CONSIDERING** the affidavit of Maru E. Johansen dated August 5, 2010, and the exhibits produced in support of the Motion;
- [ 3 ] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**");

**FOR THESE REASONS, THE COURT:**

- [ 4 ] **GRANTS** the *Motion for Recognition of Foreign Proceedings*;
- [ 5 ] **ORDERS** that the time for service of the present Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof;

**RECOGNITION OF THE MEXICAN CONCURSO PROCEEDINGS**

- [ 6 ] **ORDERS** that the restructuring proceedings commenced by **COMPAÑIA MEXICANA DE AVIACION, S.A. DE C.V.** (the "**Foreign Debtor**") pursuant to Mexico's *Ley de Concursos Mercantiles* (the "**Foreign Proceedings**") be and are hereby recognized as a "foreign main proceeding" for the purposes of section 47 CCAA;
- [ 7 ] **ORDERS** that Maru E. Johansen be and is hereby recognized as the Foreign Debtor's "Foreign representative" as defined in section 45 of the CCAA;

**STAY OF PROCEEDINGS**

- [ 8 ] **ORDERS** from this date and until November 10, 2010 (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Foreign Debtor, the Foreign Representative, or affecting the business or the property of the Foreign Debtor (the "**Business**" and the "**Property**", respectively), except with the written consent of the Foreign Debtor and the Foreign Representative, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Foreign Debtor or the Foreign Representative or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court;
- [ 9 ] **ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Foreign Debtor or the Foreign Representative, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Foreign Debtor and the Foreign Representative, or leave of this Court, provided that nothing in this Order shall (i) empower the Foreign Debtor to carry on any business which the Foreign Debtor are not lawfully entitled to carry on, (ii) exempt the Foreign Debtor from

compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien;

- [ 10 ] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Foreign Debtor, except with the written consent of the Foreign Debtor and the Foreign Representative, or leave of this Court;
- [ 11 ] **ORDERS** that, during the Stay Period, (a) all persons, firms, corporations, governmental authorities, airports or air navigation authorities or any other entity (including, without limitation, NAV Canada, Office of the Superintendent of financial Institutions ("OSFI")), having written or oral agreements with Foreign Debtor (including, without limitation, leases, pooling or consignment agreements, multilateral interline traffic agreements, codeshare agreements, Tier III Commercial Agreements, gate access agreements, frequent flyer programs or statutory or regulatory mandates) for the supply of goods and/or services (including, without limitation, real property, computer software and hardware, aircraft parts, aircraft maintenance services and related equipment, ground handling services and equipment, catering, office supplies and equipment, reservations, employee uniforms, crew accommodations, meals and commissary, communication and other data services, accounting and payroll servicing, insurance or indemnity, clearing, banking, cash management, credit cards or credit card processing, transportation, utility or other required services), by or to Foreign Debtor or any of the Foreign Debtor's Business or Property are hereby restrained until further order of this Court from discontinuing, failing to renew on terms no more onerous than those existing prior to these proceedings, altering, interfering with or terminating the supply of such goods or services so long as the normal prices or charges for such goods and services received after the date of this order are paid in accordance with present payment practices (for greater certainty and notwithstanding the terms of any federal or provincial statute or the terms of any lease or any present payment practices, lessors cannot alter, reconcile or recalculate the amount of any rent, operating, maintenance or other expenses payable by Foreign Debtor so as to recover in whole or in part any amount payable by Foreign Debtor in respect of any period of time prior to August 2<sup>nd</sup>, 2010 or to compensate it in whole or in part for not receiving amounts owing to it by Foreign Debtor in respect of any period of time prior to August 2<sup>nd</sup>, 2010, or as may be hereafter negotiated from time to time, and (b) subject to Section 34(7) of the CCAA, all persons being party to fuel consortia agreements, or agreements or arrangements for hedging the price of, or forward purchasing of fuel, are hereby restrained from terminating, suspending, modifying, cancelling or otherwise interfering with such hedging agreements or arrangements, notwithstanding any provisions in such agreements or arrangements to the contrary, provided that nothing herein shall require any bank to accept bankers acceptances issued after August 2<sup>nd</sup>, 2010.
- [ 12 ] **ORDERS** that all persons involved in the collection and distribution of monies in connection with passenger and air cargo operations (including, without limitation, travel agents, tour operators, general sales agents, air carriers and all persons who are members of or associated with the International Air Transport Association ("IATA")) are restrained from suspending Foreign Debtor from membership in IATA or any other air

carriers or travel organization or from stopping, withholding, redirecting or otherwise interfering with any payments payable to Foreign Debtor whether pursuant to bank settlement plans, Airline Reporting Corporation arrangements, the IATA Clearing House or otherwise, provided that the Foreign Debtor shall make all required payments in accordance with the terms of such plans, arrangements and agreements, after the date of this order.

[ 13 ] **ORDERS** that, notwithstanding anything else contained herein, no creditor of the Foreign Debtor shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any new credit to the Foreign Debtor;

[ 14 ] **PROHIBITS** the Foreign Debtor from selling or otherwise disposing of, outside the ordinary course of its business, any of its Property in Canada that relates to the Business and prohibits the Foreign Debtor from selling or otherwise disposing of any of its other Property in Canada, without the prior approval of this Honourable Court;

#### **NO INTERFERENCE WITH RIGHTS**

[ 15 ] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Foreign Debtor, except with the written consent of the Foreign Representative and the Foreign Debtor, or leave of this Court.

#### **INFORMATION OFFICER**

[ 16 ] **ORDERS** that:

- a) SAMSON BELAIR DELOITTE & TOUCHE INC. is hereby appointed as information officer (in such capacity, the "**Information Officer**");
- b) The Information Officer is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may require;
- c) The Information Officer is hereby authorized and empowered to respond to reasonable requests for information from stakeholders;
- d) Establish and maintain a Service List of all parties who will have filed a Notice of Appearance with the Information Officer;
- e) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Foreign Proceedings and such other information as the Information Officer believes to be material; and

- f) The Foreign Representative and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfillment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Foreign Representative or the Information Officer for the fulfillment of the duties of the Information Officer, except with prior leave of this Court obtained on not less than seven (7) days notice to the Information Officer and the Foreign Representative;

#### AID AND ASSISTANCE OF OTHER COURTS

[ 17 ] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory of Canada or any court or any judicial, regulatory or administrative body of Mexico and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this order.

#### ADMINISTRATION CHARGE

[ 18 ] **ORDERS** that COMPANIA MEXICANA DE AVIACION, S.A. DE C.V. shall pay the fees and disbursements of the Foreign Representative, the Foreign Representative's counsel, the Information Officer and the Information Officer's counsel, if any, incurred in connection with or with respect to the Restructuring, whether incurred before or after the present Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested;

[ 19 ] **DECLARES** that the Petitioner's legal counsel, the Information Officer and the Information Officer's legal counsel, if any, as security for the professional fees and disbursements incurred both before and after the issuance of the present Order, as the case may be, be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property, save and except:

- Airbus A319-100 Aircraft, bearing Manufacturer's Serial Number 1630, Aircraft registration mark XA-MXG;
- Airbus A319-100 Aircraft, bearing, Manufacturer's Serial Number 1805, Aircraft registration mark XA-MXJ;
- Airbus A319-100 Aircraft, bearing, Manufacturer's Serial Number 1673;
- Airbus A319-100 Aircraft, bearing, Manufacturer's Serial Number 1742;

the whole for an amount limited to \$250,000 (the "**Administration Charge**");

[ 20 ] **ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all



purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect;

- [ 21 ] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interest, priorities, charges, encumbrances or security of whatever nature or kind affecting the Property,

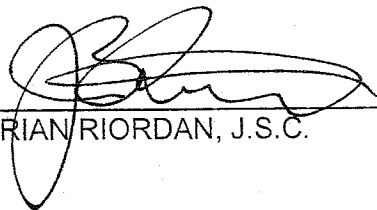
### GENERAL PROVISIONS

- [ 22 ] **ORDERS** that the Information Officer or the Foreign Representative may apply to this Court for advance and direction in connection with the discharge or variation of their powers and duties under this order;
- [ 23 ] **ORDERS** that nothing in this Order shall prevent the Foreign Representative or the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Foreign Debtor, the Business or the Property.
- [ 24 ] **DECLARES** that the order to be rendered on the present Motion and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [ 25 ] **ORDERS** that each of the Foreign Representative, the Foreign Debtor and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
- [ 26 ] **ORDERS** that the Foreign Representative shall publish a notice as required by subsection 53(b) of the CCAA in The National Post and La Presse for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.
- [ 27 ] **ORDERS** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon three (3) juridical days notice to the Foreign Representative / Petitioner's attorneys, to the Information Officer, at the coordinates indicated below, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this court may order:

- i) Me. Marc Duchesne  
Me. François D. Gagnon  
Me. Mathieu Lévesque  
BORDEN LADNER GERVAIS LLP  
1000 De La Gauchetière West, Suite 900  
Montréal, Québec, H3B 5H4  
Counsel for the Foreign Representative/Petitioner  
Emails: mduchesne@blgcanada.com  
fgagnon@blgcanada.com  
malevesque@blgcanada.com

ii) Mr. Pierre Laporte  
Mr. Jean-François Nadon  
SAMSON BÉLAIR/DELOITTE TUOCHE INC.  
1, Place Ville-Marie, Suite 3000  
Montréal, Québec, H3B 5K1  
Information Officer  
Emails : pilaporte@deloitte.ca  
          jnadon@deloitte.com

- [ 28 ] **ORDERS** that the Foreign Representative, the Foreign Debtor, the Information Officer, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List to be kept by the Information officer, to the extent practicable, and the Information Officer may post a copy of any or all such materials on its website;
- [ 29 ] **ORDERS** that the present order shall be effective as of 12:00 a.m. eastern standard daylight time on the date of the order;
- [ 30 ] **DECLARES** that the present Order shall be executory notwithstanding appeal;
- [ 31 ] **THE WHOLE WITHOUT COSTS.**

  
BRIAN RIORDAN, J.S.C.

Me François D. Gagnon  
Me Mathieu Lévesque  
BORDEN LADNER GERVAIS s.e.n.c.r.l., l.l.p.  
Attorneys for Foreign Representative / Petitioner

