



Court File No. **VLC-S-S-209719**

FORM 66 (RULES 16-1(2) AND 21-5(14))

No. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**In The Matter of the *International Interests in Mobile Equipment
(Aircraft Equipment) Act, S.C. 2005, c.3***

BETWEEN:

MNP LTD., IN ITS CAPACITY AS RECEIVER OF
LAKELESE HELICOPTERS LIMITED PARTNERSHIP,
LAKELESE AIR LTD. AND 1167537 B.C. LTD.

PETITIONER

AND:

LAKELSE HELICOPTERS LIMITED PARTNERSHIP
LAKELSE AIR LTD.; and 1167537 B.C. LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Lakelse Helicopters Limited Partnership
c/o Registered Office

Lakelse Air Ltd.
c/o Registered Office

1167537 B.C. Ltd.
c/o Registered Office

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must:

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner:
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner:

- (c) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you;
- (d) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you;
- (e) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you; or
- (f) if the time for response has been set by order of the court, within that time.

	The address of the registry is: 840 Howe Street Vancouver, BC V6Z 2S9
	The address for service of the petitioner is: c/o McMillan Dubo LLP 320 – 301 Victoria Street Kamloops, B.C. V2C 2A3 Fax number address for service (if any) of the petitioner(s): (250) 434-9485 E-mail address for service (if any) of the petitioner(s): N/A
	The name and office address of the petitioner's lawyer is: McMillan Dubo LLP 320 – 301 Victoria Street Kamloops, B.C. V2C 2A3 Phone: (778) 765-1701 Attention: Sherryl A. Dubo

FORM 11 (RULE 4-5(2))
**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right to serve this petition on the Respondents outside British Columbia on the ground that the proceeding:

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property;
- (b) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to property in British Columbia that is immovable or movable property; and

(c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia and/or by its express terms, the contract is governed by the law of British Columbia, pursuant to section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 upon which the Petitioner relies.

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. Orders pursuant to the *International interests and Mobile Equipment (Aircraft Equipment) Act*, S.C. 2005, c.3 (the “**Cape Town Statute**”):
 - a. Approving transactions for the purchase and sale of certain aircraft assets, as described in Part 2 herein;
 - b. That upon completion of each of the respective transactions, the assets will vest absolutely in each of the purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to any other personal property security registry system; and, for greater certainty, any Claims affecting or relating to the purchased assets be expunged and discharged as against the assets;
 - c. That the net proceeds from the sale of the purchased assets shall stand in place and stead of the assets with the same priority as they had with respect to the assets immediately prior to sale;
 - d. Providing for issuance of Receiver’s Certificates upon closing of the transactions; and
 - e. That the vesting of the purchased assets in the purchaser shall be binding on any licensed insolvency trustee that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, nor shall it constitute or

be deemed a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.

- f. Requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or Ireland to give effect to orders made in this proceeding and to assist the seller or the purchaser in carrying out the terms of orders made in this proceeding, and requesting all courts, tribunals, regulatory and administrative bodies to make such orders and to provide such assistance to the purchasers as may be necessary or desirable to give effect to orders made in this proceeding or to assist the seller or the purchasers in carrying out the terms of any orders made in this proceeding.
2. An Order sealing the Affidavit #2 of Derek Cramm, sworn September 3, 2020, and such further and other affidavits as may be filed on behalf of the Petitioner containing sensitive commercial information with respect to the sale transactions.
3. An Order, if necessary, abridging service of the Petition and Notice of Hearing.
4. Such further and other orders, declarations and directions as counsel may request and this Honourable Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

1. The Petitioner, MNP Ltd. is the receiver of the Respondents, Lakelese Helicopters Limited Partnership (“**Lakelse LP**”), Lakelse Air Ltd. (“**Lakelse Air**”), 1167537 B.C. Ltd., Universal Helicopters Newfoundland and Labrador LP, 70703 Newfoundland and Labrador Inc., Universal Helicopters Holdings LP, and 81924 Newfoundland and Labrador Inc. (collectively the “**Universal Group**”).
2. MNP Ltd. in its capacity as receiver of the Universal Group and not in its personal capacity will hereinafter be referred to as “**MNP**”.
3. Lakelse Air and 1167537 B.C. Ltd. are the limited partners of Lakelse LP.

4. In or about 2018, Canada Western Bank (“**CWB**”) advanced funds to the Universal Group pursuant to certain loan agreements, and in particular pursuant to a loan agreement with respect to Lakelse LP and 1167537 B.C. Ltd. dated August 2, 2018 as thereafter amended, which funds have not been repaid in full.
5. Following default, CWB appointed MNP Ltd. pursuant to an Appointment of Receiver dated May 27, 2020 (the “**Appointment**”) to be the receiver of all assets, property and undertakings of the Universal Group pursuant to the terms of certain security granted to CWB, including but not limited to the following security in relation to Lakelse LP, Lakelse Air and 1167537 B.C. Ltd. (hereinafter referred to collectively the “**Security**”):
 - a. Aircraft Security Agreement dated September 6, 2018 granted by Lakelse LP and Lakelse Air in favour of CWB in respect of certain helicopters and other aircraft objects (collectively the “**Aircraft Collateral**”);
 - b. General Security Agreement dated September 6, 2018 granted by Lakelse LP in favour of CWB;
 - c. General Security Agreement dated September 6, 2018 granted by Lakelse Air in favour of CWB;
 - d. General Security Agreement dated September 6, 2018 granted by 1167537 B.C. Ltd in favour of CWB; and
 - e. Assignment of Aircraft Lease Agreement dated September 6, 2018 granted by Lakelse LP and Lakelse Air in favour of CWB in respect of various aircraft leases pertaining to certain Aircraft Collateral.
6. Pursuant to the Appointment, CWB vested in MNP all powers and discretions contained in the Security and as provided in the Personal Property Security Acts of British Columbia and Newfoundland (“**PPSAs**”) and the Cape Town Statute, including but not limited to:
 - a. selling the Aircraft Collateral;
 - b. exercising all of the rights and remedies of CWB as a secured party under the PPSAs and the Cape Town Convention;

- c. prosecuting all suits, proceedings and actions which MNP considers necessary or advisable for the proper protection of the Aircraft Collateral; and
 - d. distributing proceeds in accordance with the terms of the Security, PPSAs and Cape Town Convention.
7. Pursuant to the Security, CWB was granted security interests in the Aircraft Collateral including certain helicopters, engines and related equipment owned by Lakelse LP (collectively the “**Lakelse Helicopters**”) which are the subject of this proceeding and are more fully described in **Schedule “A”** to this Petition. CWB also has security interests in all Lakelse LP’s other assets and property.
 8. The Cape Town Statute implemented the *Convention on International Interests in Mobile Equipment* (the “**Cape Town Convention**”) and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the “**Aircraft Protocol**”) in Canada and gave the Cape Town Convention and the Aircraft Protocol direct force of law in Canada.
 9. The Lakelse Helicopters are “aircraft objects” within the meaning of the Aircraft Protocol and CWB’s security interests in the Lakelse Helicopters are “international interests” or “registerable interests” within the meaning of the Cape Town Convention. CWB has registered its security interests with the International Registry in Ireland as required by the Aircraft Protocol. The Security specifically provides for the application of the Cape Town Convention and the Aircraft Protocol. CWB has also registered its security interests in the Personal Property Registries of British Columbia and Newfoundland respectively, pursuant to the PPSAs.
 10. Bear Creek Contracting Ltd. (“**Bear Creek**”), has also registered security interests in the Lakelse Helicopters with the International Registry in Ireland pursuant to the Aircraft Protocol.
 11. The contractual relationship between CWB and Bear Creek, including their relative priorities in respect of the Lakelse Helicopters, is defined by an Intercreditor Agreement dated September 6, 2018 (the “**Intercreditor Agreement**”).
 12. Pursuant to the terms of the Intercreditor Agreement, Bear Creek agreed, *inter alia*:

- a. CWB's security interests have priority over Bear Creek's security interests in Lakelse LP's assets;
 - b. CWB's priority will apply until the full amount of the obligations outstanding to CWB have been repaid in full and CWB's security interests have been released and discharged;
 - c. CWB has the sole and exclusive right without the consent of Bear Creek to, *inter alia*, enforce the Security and sell the Lakelse Helicopters, including appointing a receiver;
 - d. All proceeds from the sale of the assets of Lakesle LP would be distributed:
 - i. firstly to CWB to pay its legal costs, receiver's costs and expenses, protective disbursements, and to repay of principal sums up to \$10,000,000 plus interest, arrears of interest, fees and costs of enforcement;
 - ii. thereafter to Bear Creek in payment of principal sums up to \$2,500,000 plus interest, arrears of interest, fees, and costs of enforcement;
 - iii. thereafter to CWB in payment of any remaining balance; and
 - iv. thereafter, any remaining proceeds to Lakelse LP.
13. Lakelse Air has also registered an interest in the International Registry in respect certain aircraft lease agreements in connection with Lakelse Helicopters, which interest is subject to the interests of CWB pursuant to the Security.
14. There are no other interests in the Lakelse Helicopters registered in the International Registry in Ireland or in the British Columbia and Newfoundland personal property registries.
15. CWB's security interests in Lakelse LP's other property and assets rank in priority ahead of its other creditors, secured and unsecured, other than potentially certain employee claims arising under the Wage Earner's Protection Program (described below).
16. CWB also has security over aircraft objects and other assets and property owned by related companies of the Debtors, Universal Helicopters Newfoundland and Labrador LP, 70703 Newfoundland and Labrador Inc. and 81924 Newfoundland and Labrador Inc. (collectively the "**Universal Entities**"), in relation to credit facilities extended to the Universal Entities.

CWB has also appointed MNP as receiver over the Universal Entities, however this proceeding does not relate to any assets or property owned by any of the Universal Entities, which are Newfoundland companies.

17. The Lakelse Helicopters are situated at the company's facility in Terrace, B.C. MNP has taken possession of them in its capacity as receiver.

18. Marketing

19. MNP engaged Heli Connection for the purposes of marketing the Universal Group helicopters for sale and worked with them to develop a marketing plan to expose the assets to the domestic and international markets.

20. Heli Connection's marketing process included direct contact with potential purchasers, advertisements in industry publications and on their website. Heli Connection also facilitated in-person due diligence by prospective purchasers at the facility in Terrace, BC.

21. Heli Connections has received hundreds of inquiries about the Universal Group helicopters.

22. Heli Connection prepared materials including photographs and technical information with respect to each of the Lakelse Helicopters which were made available to anyone interested in submitting an offer to purchase any of the Lakelse Helicopters.

23. As a result of the marketing process, offers were received to purchase certain of the Universal Group helicopters and eight sales have closed since MNP was appointed as Receiver.

24. Proposed sales of the remaining eight helicopters owned by Lakelse LP are pending, subject to obtaining approval and vesting orders from the Court.

Purchase Agreements

25. MNP has negotiated and signed three Aircraft Purchase and Sale Agreements (the "**Purchase Agreements**") for the eight Lakelse Helicopters. The Purchase Agreements are on similar terms other than price and taking into account variations necessary due to the fact one of the purchasers is located outside of Canada and will be exporting the helicopters it is purchasing outside of Canada following closing of the transaction.

26. The Purchase Agreements are subject to Court approval and are scheduled to close 31 days following Court approval.
27. The Cape Town Convention provides that a court order may be obtained with respect to the sale of the Lakese Helicopters.
28. MNP is seeking such an order because one of the purchasers is located outside of Canada and has advised MNP that an approval and vesting order will be of assistance in facilitating the registration in their jurisdiction of the Lakelse Helicopters they are purchasing. Further, all of the Purchase Agreements are subject to court approval.
29. Pursuant to the requirements of the Cape Town Convention, MNP is required to provide “reasonable” notice of any proposed sale of the Lakelse Helicopters to certain interested parties. The Aircraft Protocol provides that 10 or more “working days” notice satisfies the requirement for “reasonable notice” under the Cape Town Convention.
30. It is anticipated that it will take approximately 30 days from the closing of sale transactions for all the obligations incurred in connection with the Lakelse Helicopters and the sale transactions to be reconciled and paid.

Part 3: LEGAL BASIS

Cape Town Convention and Aircraft Protocol

1. CWB’s rights as a secured creditor, as assigned to MNP as receiver, *vis-à-vis* the Lakelse Helicopters are governed by the Cape Town Convention and Aircraft Protocol.
2. The Cape Town Convention is an international treaty that standardizes transactions involving security interests in high-value movable property such as fixed-wing aircraft and helicopters. Three equipment-specific protocols to the Cape Town Convention have been adopted, including one that is specific to “aircraft objects” – the Aircraft Protocol.

Convention on International Interests in Mobile Equipment, 16 November 2001, Can TS 2013/12 (entered into force 1 March 2006, accession by Canada 28 September 2005)

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft, Can TS 2013/13 (entered into force 1 March 2006, accession by Canada 28 September 2005)

3. Pursuant to the Cape Town Statute, Canada has ratified the Cape Town Convention and the Aircraft Protocol and enacted both domestically thereby giving each the force of law in Canada.

International Interests in Mobile Equipment (Aircraft Equipment) Act, SC 2005 c 3, s.4(1)

4. The Lakelse Helicopters are “aircraft objects” within the meaning of the Aircraft Protocol. CWB’s security interests are “international interests” as defined by the Cape Town Convention and CWB has registered its security interests pursuant to the Cape Town Convention and the Aircraft Protocol.

Aircraft Protocol, Art I.2(c)

Cape Town Convention, Art 1(o)

Sale of Lakelse Helicopters

5. The Cape Town Convention grants a secured creditor with a registered international interest the right to sell aircraft objects free and clear.

Cape Town Convention, Arts 8.1(b) and 9.5

6. The Cape Town Convention also contemplates that the secured creditor may, at its discretion, seek an Order from the court with respect to the sale.

Cape Town Convention, Arts 8.2 and 54.2;

7. In exercising its remedies under the Cape Town Convention, notice must be provided to other interested parties and the secured creditor must act in a commercially reasonable manner in accordance with the applicable security agreements.

Aircraft Protocol, Arts IX.3 and IX.4;

8. The principles in *Royal Bank v. Soundair Corp.* should guide the Court when asked to approve a sale by a secured creditor under the Cape Town Convention. The *Soundair* principles are:

- (a) whether the receiver has made sufficient effort to get the best price for the aircraft objects and did not act improvidently;
- (b) the interest of all the parties with an interest in the aircraft objects;

- (c) the efficacy and integrity of the process by which offers for the aircraft objects were obtained; and
- (d) whether there has been unfairness in the working out of the process by which offers for the aircraft objects were obtained.

Royal Bank of Canada v Soundair Corp, 1991 CarswellOnt 205 (C.A.)

- 9. MNP is seeking Orders with respect to sales of Lakelse Helicopters as is contemplated by Article 8.2 of the Cape Town Convention.
- 10. MNP is aware of only one reported case in Canada in which the Cape Town Statute, Cape Town Convention and the Aircraft Protocol have been applied to date.

Third Eye Capital Corporation v. Ranch Energy Corporation, 2019 ABQB 780

- 11. A similar order as is sought by MNP was granted by Justice Hainey in an unreported decision in *ECN Aviation Inc. v. Great Slave Helicopters Ltd.*, Ontario Superior Court of Justice.

ECN Aviation Inc. v. Great Slave Helicopters Ltd.,
Ontario Superior Court of Justice (Commercial List),
Court file No. CV-19-615468-00CL, dated March 8, 2019

Sealing of the Affidavit #2 of Derek Cramm

- 12. The materials in support of this Petition include Affidavit #2 of Derek Cramm, sworn on September 3, 2020 (“**Cramm Affidavit #2**”). There is no substantive evidence contained in the body of the Cramm Affidavit #2. The Cramm Affidavit #2 contains commercially sensitive information as it attaches as exhibits un-redacted copies of the Purchase Agreements, a schedule detailing the offers received to date, and an appraisal excerpt.
- 13. MNP seeks an order that the Cramm Affidavit #2 be sealed to ensure that the information with respect to the purchase prices being paid for the Lakelse Helicopters and appraisal values do not become public in the event that one of the sale transactions does not close and MNP is forced to re-market some of the Lakelse Helicopters. Public disclosure of the information poses a serious risk to the marketing process and could negatively impact the price potential purchasers are willing to offer, to the detriment of creditors.

14. The Court has jurisdiction to order that certain materials filed with the Court be sealed in the Court file. The Supreme Court of Canada has stated that such an order can be granted where:
- (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of the litigation because reasonable alternative measures will not prevent the risk; and
 - (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

Sierra Club v Canada (Minister of Finance), 2002 SCC 41 (“*Sierra Club*”) at para 53.

15. The materials sought to be sealed fit within the test established in *Sierra Club*.

Part 4: MATERIAL TO BE RELIED ON

16. Affidavit #1 of Derek Cramm.
17. Affidavit #2 of Derek Cramm, to be filed under seal.

The petitioner estimates that the hearing of the petition will take 1 hour.

Date: September 9, 2020



Signature of
 petitioner lawyer for petitioner
Sherryl A. Dubo

SCHEDULE "A"
(Lakelse Helicopters)

Registration Mark: C-GPWV
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 1637
Year of Manufacture: 1982
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-46054C

Registration Mark: C-FNBR
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2565
Year of Manufacture: 1992
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-46166C

Registration Mark: C-GBCN
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2609
Year of Manufacture: 1992
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-46053C

Registration Mark: C-FLQX
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2786
Year of Manufacture: 1994
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-43096C

Registration Mark: C-GMNI
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2896
Year of Manufacture: 1995
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-46147C

Registration Mark: C-GPWL
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2956
Year of Manufacture: 1996
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-43443C

Registration Mark: C-FLQH
Manufacturer: Eurocopter
Model: AS350B2-SD2
Serial No.: 2970
Year of Manufacture: 1997
Engine Manufacturer: Honeywell
Engine Model: LTS101-700D-2
Engine Serial No.: LE-46161C

Registration Mark: C-FLAQ
Manufacturer: Eurocopter
Model: AS335N
Serial No.: 5669
Year of Manufacture: 1999
Engines Manufacturer: Turbomeca
Engines Model: Arrius 1A
Engines Serial Nos.: 2285 and 2006

Along with any and all components and attachments including but not limited to propellers, avionics, gear box and any other attachments to the above referenced aircraft and engines.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master

No. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**In The Matter of the *International Interests
in Mobile Equipment
(Aircraft Equipment) Act, S.C. 2005, c.3***

BETWEEN:

**MNP LTD., in its capacity as Receiver of
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PETITIONER

AND:

**LAKELSE HELICOPTERS
LIMITED PARTNERSHIP
LAKELSE AIR LTD.
1167537 B.C. LTD.**

RESPONDENTS

PETITION TO THE COURT

FILE NO. 1300-186

SAD/aj

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