

2020 01G 4793
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN BANKRUPTCY AND INSOLVENCY

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 UNIVERSAL
HELICOPTERS NEWFOUNDLAND AND LABRADOR LP, 70703
NEWFOUNDLAND AND LABRADOR INC., UNIVERSAL
HELICOPTERS HOLDINGS LP, AND 81924 NEWFOUNDLAND AND
LABRADOR INC.

APPLICANT

AND: UNIVERSAL HELICOPTERS NEWFOUNDLAND AND LABRADOR LP,
70703 NEWFOUNDLAND AND LABRADOR INC., UNIVERSAL
HELICOPTERS HOLDINGS LP, AND 81924 NEWFOUNDLAND AND
LABRADOR INC.

RESPONDENT

AFFIDAVIT #4 OF J. ERIC FINDLAY

I, J. Eric Findlay, CIRP, LIT, CPA of the Town of Grand Lake, in the Province of Nova Scotia make oath and say as follows:

1. I am a Partner, Senior Vice President and Licensed Insolvency Trustee of the Applicant, MNP Ltd. ("MNP" or the "Receiver"), in its capacity as receiver of Universal Helicopters Newfoundland and Labrador LP ("UHNL LP"), 70703 Newfoundland and Labrador Inc. ("70703 NL"), 81924 Newfoundland and Labrador Inc. ("81924 NL"), and Universal Helicopters Holdings LP ("UHH LP") (collectively, "Universal Group").
2. MNP is the named Receiver for the Universal Group as well as for a group of companies related to the Universal Group, Lakelse Helicopters Limited Partnership, ("Lakelse LP"), Lakelse Air Ltd. ("Lakelse Air"), 1167537 B.C. Ltd. ("1167537 BC") (collectively, the "Lakelse Group") appointed under instrument, in both instances, by the Canadian Western Bank ("CWB") effective May 27, 2020 pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c.359, the *Personal Property*

Security Act, S.N.L. 1998 Ch. P-7.1, and the *International Interests in Mobile Equipment (Aircraft Equipment) Act*, S.C. 2005, c.3. As such I have personal knowledge of the matters deposed to herein except as otherwise stated to be based upon information and belief.

3. I am duly authorized to make this Affidavit on behalf of MNP.
4. I have reviewed the Notice of Motion to be filed. The facts set out in the Motion are in my opinion true and correct.
5. All Capitalizations not defined herein are defined in the Originating Application dated October 2, 2020, or the Affidavit #1 of J. Eric Findlay, sworn October 2, 2020.
6. This proceeding is commenced pursuant to the *International Interests in Mobile Equipment (Aircraft Equipment) Act*, which implemented in Canada the United Nations *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")*.
7. MNP is exercising the right under the Cape Town Convention to seek an Order of the Court approving transactions for the sale of helicopters owned by the Universal Group.
8. As is described below, MNP has entered into three Aircraft Purchase and Sale Agreements to sell three helicopters owned by the Universal Group (the "**Purchase Agreements**"), which transactions have not yet closed.
9. I make this affidavit in support of the Receiver's motion for an Approval and Vesting Order pursuant to the Purchase Agreements.

BACKGROUND

10. The background to the within Motion is set out in Affidavit #1 of J. Eric Findlay dated October 5, 2020 and Supplemental Affidavit #1 of J. Eric Findlay dated October 15, 2020.
11. Since the filing of Affidavit #1 of J. Eric Findlay dated October 5, 2020 and Supplemental Affidavit #1 of J. Eric Findlay dated October 15, 2020, the Receiver has continued with the second phase of the Sales Process. There have been nine (9) additional offers which have resulted in the three (3) offers that are the subject of the within Motion for an Approval and Vesting Order.

12. Heli Connections also facilitated in-person due diligence by an additional four (4) prospective purchasers at Universal's facility in Terrace, B.C. and an additional five (5) prospective purchasers at Universal's facilities in Newfoundland and Labrador.

PURCHASE AND SALE AGREEMENTS

13. MNP has received offers to purchase three (3) helicopters owned by the 70703 Partners as follows:

Make:	Model:	Year	Serial No:	Registration:	Location:
Bell	Textron 206L	1976	45048	C-GAHS	Pasadena, NL
Bell	Textron 206L	1976	45021	C-GDCA	Goose Bay, NL
Bell	Textron 206L	1975	45018	C-GLSH	Goose Bay, NL

14. MNP has negotiated and signed three (3) Purchase Agreements and has received a deposit from the purchasers. The Purchase Agreements require the full purchase price, net of the deposit, to be paid on closing and provide that each of the helicopters are being sold on an "as is, where is" basis. The sale transactions set out in the Purchase Agreements are scheduled to close 31 days after a Court Order approving the sale is granted.
15. The Purchase Agreements contain similar terms, except for the purchase prices and variations necessitated by the fact one of the purchasers is located outside of Canada and will be exporting one of the helicopters outside of Canada following closing of the transaction. Un-redacted copies of the Purchase Agreements are attached as Exhibits A, B and C to the Affidavit #5 of J. Eric Findlay.
16. The Cape Town Convention requires that interested persons be given reasonable notice of any proposed sale of the Universal Helicopters. The Aircraft Protocol provides that ten or more working days notice satisfies the requirement for reasonable notice under the Cape Town Convention.
17. The Cape Town Convention provides for a Court Order with respect to the sale of aircraft. MNP is seeking an Order because one of the purchasers under the Purchase Agreements is located outside of Canada and they have advised MNP that an Order will be of assistance in facilitating

the registration in their jurisdiction of the aircraft they are purchasing. The sale transactions set out in all Purchase Agreements are conditional upon obtaining Court approval.

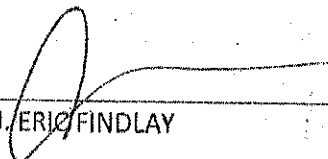
18. CWB has expressed to MNP its support for the proposed sale of the three (3) helicopters pursuant to the Purchase Agreements.
19. MNP also intends to make the Motion herein available to creditors by posting a copy to the website maintained by MNP for the receivership of the Universal Group and Lakelse Group. MNP also intends to serve a copy of the Motion on the Federal Crown.
20. It is anticipated that within 30 days following closing of the sale transactions set out in the Purchase Agreements, all the obligations incurred in connection with the three (3) helicopters and the sale transactions will be reconciled and paid. Ultimately it is intended that the proceeds will be applied in payment of the WEPP claims, and then in accordance with the Intercreditor Agreements.
21. In general terms, the Intercreditor Agreements provides for payment of MNP's fees and disbursements, then payment to CWB in respect of the realization of the Universal Helicopters and Rotables, together with all attachments, spare parts, replacements, substitutions, exchanges, trade-ins, accessories and accessions

RECOMMENDATION

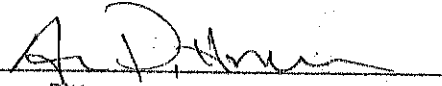
22. I do verily believe that:

- a. Sufficient effort has been made to obtain the best price for the three (3) helicopters subject to Purchase Agreements. The offers accepted by MNP are the highest offers received;
- b. The interests of all parties have been considered and that approval of the proposed sales is in the best interest of all interested parties. Many helicopter operators tend to make acquisitions of aircraft during the spring and summer months and then save cash in the fall and winter. Approval of the sales would minimize the costs associated with storing the aircraft, which would provide a larger return to creditors; and
- c. Offers were obtained through a fair and integrous sales process.

EXECUTED at the City of Dartmouth, in the Province of Nova Scotia, and SWORN BEFORE ME through to the use of audio-visual technology in accordance with the *Temporary Alternate Witnessing of Documents Act*, SNL2020 Chapter T-4.001 on December 1, 2020.



J. ERIC FINDLAY



Sean Pittman
Barrister-NL