

2020 01G 4793
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

AMENDED NOTICE OF MOTION

MNP Ltd., in its capacity as Receiver (the "Receiver") of certain assets, undertakings, and property 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"), and not in its personal capacity, will make a motion for the presiding Judge in Bankruptcy and Insolvency on Tuesday, the 16th day of February, 2021, at 2:30 pm or so soon thereafter as the application can be heard at the Courthouse, Duckworth Street, St. John's Newfoundland and Labrador.

This Motion is for the following relief:

1. An Order 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, more particularly aircrafts with registration marks C-FCWR, C-FCNG, C-GVYO and C-GIZY as described in Exhibit

A, B, C and D, respectively, in the sealed Affidavit #7 of J. Eric Findlay and C-GOLF as described in Exhibit A in the sealed Affidavit #8 of J. Eric Findlay;

- b. That upon completion of each of the respective transactions, as evidenced by the filing with this Court of a Receiver's Certificate substantially in the form attached as Appendix "A" to the attached draft Approval and Vesting Order (the "Receiver's Certificate"), 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 existed with respect to the assets immediately prior to sale;
- d. 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; and
- e. 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 that Affidavit #7 of J. Eric Findlay, sworn January 22, 2021, and Affidavit #8 of J. Eric Findlay, sworn February 1, 2021, shall be sealed with the Court until such or further Order from the Court.
3. 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.

The grounds for this Motion are:

4. The facts have been set out in the Originating Application dated October 2, 2020, the Affidavit #1 of J. Eric Findlay, sworn October 2, 2020, the Supplemental Affidavit #1 of J. Eric Findlay, sworn October 15, 2020, Affidavit #4 of J. Eric Findlay, sworn November 30, 2020, Affidavit #6 of J. Eric Findlay, sworn January 22, 2021, and the Supplemental Affidavit #6 of J. Eric Findlay, sworn February 1, 2021, as filed with this Honourable Court.
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. Since the date of the Originating Application, the Receiver has continued with the second phase of the Sale Process, which has resulted in the sales of ~~four (4)~~ five (5) additional Universal Helicopters, subject to obtaining approval and vesting orders from the Court pursuant to this Motion. The remaining one (1) Universal Helicopter remains unsold. These are the final aircrafts in the Universal Helicopter fleet remaining to be sold by the Receiver.

Purchase and Sale Agreements

7. MNP has negotiated and signed ~~four~~ five (5) Aircraft Purchase and Sale Agreements (the "Purchase Agreements") for the Universal Helicopters. The Purchase Agreements are on similar terms other than price and taking into account variations necessary due to each of the purchaser's individual circumstance.
8. The Purchase Agreements are subject to Court approval and are scheduled to close 31 days following Court approval.
9. The Cape Town Convention contemplates that a court order may be obtained with respect to the sale of the Universal Helicopters.

10. MNP is seeking such an order because all Purchase Agreements require that the Receiver warrant that the aircrafts will be delivered free and clear of any and all encumbrances. Further, all Purchase Agreements are subject to court approval.
11. Pursuant to the requirements of the Cape Town Convention, MNP is required to provide reasonable notice of any proposed sale of the Universal Helicopters to certain interested parties pursuant to articles IX.3 and IX.4 of the Aircraft Protocol. The Aircraft Protocol provides that 10 or more working days notice satisfies the requirement for reasonable notice under the Cape Town Convention.
12. 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 Universal Helicopters and the sale transactions to be reconciled and paid.
13. The Applicant relies on articles 8.1(b) and 9.5 of the Cape Town Convention which grants a secured creditor with a registered international interest the right to sell aircraft objects free and clear.
14. The Applicant further pleads articles 8.2 and 54.2 of the Cape Town Convention which contemplates that the secured creditor may, at its discretion, seek an Order from the court with respect to the sale.
15. The materials in support of this Amended Motion include Affidavit #7 of J. Eric Findlay, sworn on January 22, 2021 ("Findlay Affidavit #7") and Affidavit #8 of J. Eric Findlay, sworn on February 1, 2021 ("Findlay Affidavit #8"). There is no substantive evidence contained within the body of the Findlay Affidavit #7 or Findlay Affidavit #8. The Findlay Affidavit #7 and Findlay Affidavit #8 contain commercially sensitive information that, if disclosed to the public, may prejudice the ability of the Receiver, should the transactions with the purchasers, as set out in the Purchase Agreements, not be completed, to maximize the proceeds of any potential future sale, including un-redacted copies of the Purchase Agreements and an appraisal excerpt attached as Exhibits.
16. The Applicant therefore seeks an order sealing the Findlay Affidavit #7 and Findlay Affidavit #8 with the Court to be available only to the parties to these proceedings, and to such other persons as may be authorized by the Court, and be subject in any case to appropriate conditions and limitations on use, until such time that the Universal Helicopters have been sold by the Receiver.
17. The Receiver may seek an order for such further and other grounds as counsel may advise.

18. The following documentary evidence will be used at the hearing of this Motion:
- a. Affidavit #1 of J. Eric Findlay as previously filed;
 - b. Supplemental Affidavit #1 of J. Eric Findlay as previously filed;
 - c. Affidavit #4 of J. Eric Findlay as previously filed;
 - d. Affidavit #6 of J. Eric Findlay dated January 22, 2021;
 - e. Affidavit #7 of J. Eric Findlay dated January 22, 2021, to be filed under seal; and
 - f. Supplemental Affidavit #6 of J. Eric Findlay dated February 1, 2021;
 - g. Affidavit #8 of J. Eric Findlay dated February 1, 2021, to be filed under seal; and
 - h. Such further and other material as counsel may advise and this Court may permit.
19. For further clarity, Affidavit #2 of J. Eric Findlay, Affidavit #3 of J. Eric Findlay, and Affidavit #5 of J. Eric Findlay are not relevant to the within Motion.

DATED AT St. John's, Newfoundland and Labrador, this 22nd day of January, 2021.

AMENDED AT St. John's, Newfoundland and Labrador, this 1st day of February, 2021

BENSON BUFFETT PLC INC.



Sean M. Pittman
Solicitors for the Receiver
Whose address for service is:
Suite 900, Atlantic Place
215 Water Street, P. O. Box 1538
St. John's, NL A1C 5N8

TO: Those persons and entities identified in Schedule "B"

SCHEDULE A

2020 01G 4793

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *International
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Equipment) Act*, S.C. 2005, c.3

**BETWEEN: MNP LTD., IN ITS CAPACITY AS RECEIVER OF UNIVERSAL
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HELICOPTERS HOLDINGS LP, AND 81924 NEWFOUNDLAND AND
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APPLICANT

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

RESPONDENT

APPROVAL AND VESTING ORDER

BEFORE the Honourable Justice _____

UPON reading the Originating Application of MNP Ltd., in its capacity as Receiver (the "**Receiver**") of certain assets, undertakings, and property 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**"), and not in its personal capacity, pursuant to articles 8.2 and 54.2 of the International Interests in Mobile Equipment (Aircraft Equipment) Act, S.C. 2005, c.3 (the "**Cape Town Convention**"), **AND UPON** reading the material as filed by counsel, **AND UPON** hearing Sean Pittman, counsel for the Applicant, Allison Philpot, counsel for Bank of Montreal, Maeve Baird, counsel for the Minister of Canada Revenue Agency and no one else appearing **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The sale transaction (the "**Transaction**") contemplated by the Aircraft Purchase and Sale Agreement (the "**Purchase Agreement**") dated _____, _____ between the Receiver

and _____ (the "Purchaser") a copy of which is attached to the Affidavit #__ of J. Eric Findlay, is hereby approved and the Transaction is commercially reasonable.

2. Upon the Receiver's receipt in full of the cash purchase price from the Purchaser and the delivery from the Receiver to the Purchaser of a certificate substantially in the form attached as **Appendix "A"** (the "**Receiver's Certificate**"), all as more particularly contemplated in the Purchase Agreement, the Respondents' and the Receiver's right, title and interest in and to the assets described in the Purchase Agreement and set out in Appendix "A" to Receiver's Certificate (collectively, the "**Purchased Assets**") shall vest absolutely in the Purchaser, 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 personal property security registry system; and, for greater certainty, this Court orders that all of the Claims affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
4. The net proceeds from the sale of the Purchased Assets (the "**Proceeds**") shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate any Claims shall attach to such Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
5. The Receiver is to provide the Bank of Montreal and the Canada Revenue Agency 30 days notice prior to the distribution of Proceeds.
6. Notwithstanding:
 - a. these proceedings;
 - b. any applications for a bankruptcy order in respect of the Respondents now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - c. any assignment in bankruptcy made by or in respect of the Respondents,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order 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.

Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

7. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
8. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body (including Transport Canada), wherever located, to give effect to this Order and to assist the Receiver and the Purchaser in carrying out the terms of this Order and the transfer of title to the Purchased Assets to the Purchaser as is contemplated by paragraph 3. All courts, tribunals, regulatory and administrative bodies (including Transport Canada) are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and the Purchaser as may be necessary or desirable to give effect to this Order or to assist the Receiver and the Purchaser in carrying out the terms of this Order and the transfer of title to the Purchased Assets to the Purchaser as is contemplated by paragraph 3.
9. Affidavit #7 of J. Eric Findlay, sworn January 22, 2021, and Affidavit #8 of J. Eric Findlay, sworn February 1, 2021, shall be sealed with the Court until such or further Order from the Court.

DATED at St. John's, Newfoundland and Labrador, this _____ day of _____, 2021.

Court Officer

APPENDIX A

2020 01G 4793

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*, SC 2005, c. 3, as amended

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

RECEIVER'S CERTIFICATE

RECITALS:

- A. Pursuant to their Security, Canadian Western Bank appointed MNP Ltd. as the Receiver of all assets, property and undertakings of Universal Helicopters Newfoundland and Labrador LP (the "Debtors").
- B. Pursuant to an Order dated _____, the Court approved the Receiver completing the agreement for purchase and sale made as of _____ (the "Purchase Agreement") between the Receiver and the Purchaser and provided for the vesting in the Purchaser of the Debtor's and Receiver's right, title and interest in and to the assets set out in Appendix "A" attached hereto (collectively, the "Assets"), which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming:
 - i. the payment by the Purchaser of the purchase price for the Assets; and

ii. the Transaction contemplated pursuant to the Purchase Agreement has completed to the satisfaction of the Receiver, subject only to the post-closing obligations provided for in the Purchase Agreement.

C. Unless otherwise indicated herein, capitalized terms not otherwise defined have the meaning attributed to them in the Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets, payable at Closing pursuant to the Purchase Agreement;
2. Any conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and/or the Purchaser where applicable; and
3. The Transaction contemplated by the Purchase Agreement has been completed, subject to any post-closing obligations provided therein.

Dated: _____, 2021, at _____.

MNP Ltd. in its capacity as receiver for Universal Helicopters Newfoundland and Labrador LP, 70703 Newfoundland and Labrador Inc., Universal Helicopters Holdings LP, and 81924 Newfoundland And Labrador Inc.

Per: _____
[Name]
[Title]

Dated at St. John's, Newfoundland and Labrador, Canada, the ___ day of _____, 2021.

Court Officer

Appendix "A" to Receiver's Certificate

Assets

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

SCHEDULE B
SERVICE LIST

**Supreme Court of Newfoundland
and Labrador General Division, in
Bankruptcy and Insolvency**

P.O. Box 937
313 Duckworth Street
St. John's, NL A1C 5M3

Ford Credit Canada

At their registered office:
Stewart McKelvey
100 New Gower St
St. John's, NL A1C 6K3

Canada Revenue Agency

Sir Humphrey Gilbert Building
165 Duckworth Street
St. John's NL A1B 1G4

Export Development Canada

510 Topsail Rd
St. John's, NL A1E 2C2

Custom Helicopters Inc.

2985 Airport Rd
Kamloops, BC V2B 7W8

Niche Aviation Inc.

2917 Springfield Rd.
Kelowna, BC V1X 4N5

Guardian Assets Inc.

538 Hurricane Drive
Calgary, AB T3Z 3S8

Bank of Montreal

To the counsel of their Receiver:

Cox & Palmer
Brunswick Square
1 Germain St, suite 1500
Saint John, NB E2L 4V1
Attn: Josh McElman

Canadian Western Bank

To their counsel:

Borden Ladner Gervais LLP
Waterfront Centre
200 Burrard St #1200
Vancouver, BC V7X 1T2
Attn: Kendall Anderson

Westcan Aircraft Sales & Salvage Ltd.

100 - 2985 Airport Rd
Kamloops, BC V2B 7W8