

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

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 Friday, the 18<sup>th</sup> day of December, 2020, at 11:00 am 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-GLSH, C-GDCA and C-GAHS as described as Exhibit A, B and C in the sealed Affidavit #5 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 the Affidavit #5 of J. Eric Findlay, sworn November 30, 2020, shall be sealed with the Court until such or further Order from the Court.
3. An Order abridging the time for service, validating service, and dispensing with further service of the within Motion.
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.

**The grounds for this Motion are:**

5. 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, and the Supplemental Affidavit #1 of J. Eric Findlay, sworn October 15, 2020, and filed with this Honourable Court.
6. 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.
7. 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 three (3) additional Universal Helicopters, subject to obtaining approval and vesting orders from the Court pursuant to this Motion. The remaining three (3) Universal Helicopters remain unsold.

**Purchase and Sale Agreements**

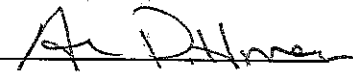
8. MNP has negotiated and signed three Aircraft Purchase and Sale Agreements (the "**Purchase Agreements**") for the Universal Helicopters. The Purchase Agreements are on similar terms other than price and taking into account variations necessary due to the fact one of the purchasers is located outside of Canada and will be exporting the helicopter it is purchasing outside of Canada following closing of the transaction.
9. The Purchase Agreements are subject to Court approval and are scheduled to close 31 days following Court approval.
10. The Cape Town Convention contemplates that a court order may be obtained with respect to the sale of the Universal Helicopters.

11. 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 Universal Helicopter they are purchasing. Further, all Purchase Agreements are subject to court approval.
12. 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.
13. 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.
14. 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.
15. 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.
16. The materials in support of this Application include Affidavit #5 of J. Eric Findlay, sworn on November 30, 2020 ("**Findlay Affidavit #5**"). There is no substantive evidence contained within the body of the Findlay Affidavit #5. The Findlay Affidavit #5 contains 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, a schedule detailing the offers received to date, and an appraisal excerpt attached as Exhibits.
17. The Applicant therefore seeks an order sealing the Findlay Affidavit #5 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.
18. The Receiver may seek an order for such further and other grounds as counsel may advise.

19. 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;
  - d. Affidavit #5 of J. Eric Findlay, to be filed under seal; and
  - e. Such further and other material as counsel may advise and this Court may permit.
20. For further clarity, Affidavit #2 of J. Eric Findlay and Affidavit #3 of J. Eric Findlay are not relevant to the within Motion.

DATED AT St. John's, Newfoundland and Labrador, this 2<sup>nd</sup> day of December, 2020.

**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  
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

**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 \_\_\_\_\_, 2020 between the Receiver and

\_\_\_\_\_ (the "Purchaser") a copy of which is attached to the Affidavit #5 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 #5 of J. Eric Findlay, sworn November 30, 2020, 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 \_\_\_\_\_, 2020

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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: \_\_\_\_\_, 2020, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
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

**Wiskair Helicopters Ltd.**

520 Orville Wieben Cres.  
Thunder Bay, ON  
P7E 6M9

**Gogal Air Services Ltd.**

P.O. Box 599  
Snow Lake, Manitoba  
Canada R0B 1M0

**Hanley Air Service Inc.**

12-31-3 W3rd  
Hanley, Saskatchewan

**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

**Heli Holdings Limited**

To their counsel:  
Gowling WLG  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5  
Attn: E. Patrick Shea