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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

ORIGINATING APPLICATION

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 an application for the presiding Judge in Bankruptcy and Insolvency on _____, the 14 day of October, 2020, at 10:00, or so soon thereafter as the application can be heard at the Courthouse, Duckworth Street, St. John's Newfoundland and Labrador.

This Application 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");

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- a. Approving transactions for the purchase and sale of certain aircraft assets, more particularly aircrafts with registration marks C-GNAI and C-FXAL as described as Exhibit A and B in the sealed Affidavit #2 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 Schedule "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 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 sealing the Affidavit #2 of J. Eric Findlay, sworn September 9, 2020, and such further and other affidavits as may be filed on behalf of the Applicant containing sensitive commercial information with respect to the sale transactions.
3. An Order abridging the time for service, validating service, and dispensing with further service of the within Application.
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 Application are:

5. The Applicant, MNP Ltd. is Receiver of Lakelse Helicopters Limited Partnership, Lakelse Air Ltd. and 1167537 B.C. Ltd. (collectively, the "Lakelse Group") and the Universal Group. The Lakelse Group entities are related parties to those entities comprising the Universal Group and are based in the Province of British Columbia.
6. 70703 NL is the general partner of UHNL LP (collectively, the "70703 Partners").
7. 81924 NL is the general partner of UHH LP (collectively, the "81924 Partners").
8. In or about 2017, Canada Western Bank ("CWB") advanced funds to the Universal Group and Lakelse Group pursuant to certain loan agreements, and in particular pursuant to loan agreements with respect to the 70703 Partners dated October 4, 2017 and August 2, 2018, as thereafter amended, which funds have not been repaid in full.
9. Following default, CWB appointed MNP Ltd. pursuant to an Appointment of Receiver dated May 27, 2020 (the "Appointment") to be the receiver of certain assets, property and undertakings of the Universal Group and Lakelse Group pursuant to the terms of certain security granted to CWB, including but not limited to the following security in relation to UHNL LP, UHH LP, 70703 NL and 81924 NL (hereinafter referred to collectively as the "Security"):
 - a. Aircraft Security Agreement dated November 15, 2017 granted the 70703 Partners in favour of CWB in respect of certain helicopters and other aircraft objects (collectively, the "Aircraft Collateral");
 - b. General Security Agreement dated November 15, 2017 granted by UHNL LP in favour of CWB;

- c. General Security Agreement dated November 15, 2017 granted by 70703 NL in favour of CWB;
 - d. General Security Agreement dated September 6, 2018 granted by UHH LP in favour of CWB;
 - e. General Security Agreement dated September 6, 2018 granted by 81924 NL in favour of CWB; and,
 - f. Assignment of Aircraft Lease Agreement dated July 18, 2019 granted by UHNL LP in favour of CWB in respect of various aircraft leases pertaining to certain Aircraft Collateral.
10. Pursuant to the Appointment, CWB vested in the Receiver all powers and discretions contained in the Security and as provided in the Personal Property Security Acts of Newfoundland and Labrador and British Columbia ("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.
11. Pursuant to the Security, CWB was granted security interests in the Aircraft Collateral including certain helicopters, engines and related equipment owned by the 70703 Partners (collectively the "Universal Helicopters") which are the subject of this proceeding and are more fully described in Schedule "A" to this Application. CWB also has security interests in certain other personal property of the Universal Group.
12. 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.
13. The Universal Helicopters are "aircraft objects" within the meaning of the Aircraft Protocol and CWB's security interests in the Universal 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 Newfoundland and Labrador and British Columbia respectively, pursuant to the PPSAs.

14. Bank of Montreal ("BMO"), has also registered security interests in the Universal Groups' personal property.
15. The contractual relationship between CWB and BMO, including their relative priorities in respect of the Universal Helicopters and Rotables, is defined by Intercreditor Agreements dated November 10, 2017 and August 3, 2018 made between the 70703 Partners and BMO (the "Intercreditor Agreements").
16. Pursuant to the terms of the Intercreditor Agreements, BMO agreed, *inter alia*, that:
 - a. CWB's security interests in the Universal Helicopters, and all accessories, avionics and/or other attachments and proceeds thereof, including spare time life components or parts referred to as "Rotables" have priority over BMO security interests in the Universal Group's personal property;
 - 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; and
 - c. CWB has the sole and exclusive right without the consent of BMO to, *inter alia*, enforce the Security and sell the Universal Helicopters, including appointing a receiver.
17. There are no other interests in the Universal Helicopters registered in the International Registry in Ireland or in the Newfoundland and Labrador and British Columbia Personal Property Registries.
18. CWB also has security over aircraft objects and other assets and property owned by the Lakelse Group, in relation to credit facilities extended to the Lakelse Group. CWB has also appointed MNP as receiver over the Lakelse Group, however this proceeding does not relate to any assets or property owned by any member of the Lakelse Group.
19. The Universal Helicopters are situated at the company's facility in Goose Bay, Newfoundland and Labrador, Pasadena, Newfoundland and Labrador, Gander, Newfoundland and Labrador, St. John's, Newfoundland and Labrador, and Terrace, British Columbia (the "Universal Facilities"). MNP has taken possession of them in its capacity as Receiver.

Sales Process

20. MNP engaged Heli Connection for the purposes of marketing the Universal Helicopters and Lakelse Group helicopters for sale and worked with them to develop a marketing plan to expose the assets to the domestic and international markets.
21. 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 Universal Facilities.
22. Heli Connections has received hundreds of inquiries about the Universal Helicopters and Lakelse Group helicopters.
23. Heli Connection prepared materials including photographs and technical information with respect to each of the Universal Helicopters which were made available to anyone interested in submitting an offer to purchase any of the Universal Helicopters.
24. As a result of the marketing process, offers were received to purchase certain of the Universal Helicopters and Lakelse Group helicopters and eight sales have closed since MNP was appointed as Receiver.
25. Proposed sales of two (2) of the Universal Helicopters owned by UHNL LP are pending, subject to obtaining approval and vesting orders from the Court pursuant to this Application. The remaining nine (8) Universal Helicopters remain unsold.

Purchase and Sale Agreements

26. MNP has negotiated and signed two 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.
27. The Purchase Agreements are subject to Court approval and are scheduled to close 31 days following Court approval.
28. The Cape Town Convention contemplates that a court order may be obtained with respect to the sale of the Universal Helicopters.

29. 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, both Purchase Agreements are subject to court approval.
30. 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.
31. 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.
32. 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.
33. 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.
34. The materials in support of this Application include Affidavit #2 of J. Eric Findlay, sworn on October 2, 2020 ("Findlay Affidavit #2"). There is no substantive evidence contained within the body of the Findlay Affidavit #2. The Findlay Affidavit #2 contains commercially sensitive information that, if disclosed to the public, may prejudice the ability of the Receiver, should the transactions with the Purchasers 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.
35. The Applicant therefore seeks an order sealing the Findlay Affidavit #2 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 Aircrafts have been sold by the Receiver.
36. The Receiver may seek an order for such further and other grounds as counsel may advise.

37. The following documentary evidence will be used at the hearing of this Application:
- a. Affidavit #1 of J. Eric Findlay;
 - b. Affidavit #2 of J. Eric Findlay, to be filed under seal; and
 - c. Such further and other material as counsel may advise and this Court may permit.

DATED AT St. John's, Newfoundland and Labrador, this 2nd day of October, 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 "A"

ISSUED AT St. John's in the
Province of Newfoundland and Labrador,
this 5 day of October, A.D., 2020.



Trial Co-Ordinator

2020 01
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
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AND: UNIVERSAL HELICOPTERS NEWFOUNDLAND AND LABRADOR LP,
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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, IT IS HEREBY ORDERED AS FOLLOWS:

1. The time for service of the Notice of Hearing and supporting materials is hereby abridged such that this application is properly returnable the date of the hearing.
2. 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 #2 of Derek Cramm, is hereby approved and the Transaction is commercially reasonable.

3. 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 Schedule "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 Purchased Assets described in the Purchase Agreement 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.
4. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
5. The net proceeds from the sale of the Purchased Assets 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 net proceeds from the sale of the Purchased Assets 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.
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, wherever located, to give effect to this Order and to assist the Receiver and the Purchaser in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies 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.
9. Affidavit #2 of Derek Cramm shall be sealed with the Court and be available only to the parties affected by 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 as the Purchased Assets have been sold by the Receiver.

DATED at St. John's, Newfoundland and Labrador, this _____ day of _____, 2020

Court Officer

SCHEDULE A

2020 01

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

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *International
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Equipment) Act*, SC 2005, c. 3, as
amended

BETWEEN: MNP LTD., IN ITS CAPACITY AS RECEIVER OF UNIVERSAL
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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 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 right, title and interest in and to 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 at St. John's, Newfoundland and Labrador, Canada, the ___ day of _____, 2020.

Court Officer