

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF JAMES ROBERT TUCKER, RICHARD HEIS AND ALLAN
WATSON GRAHAM OF KPMG LLP, AS JOINT ADMINISTRATORS**
Applicants

**AND IN THE MATTER OF AERO INVENTORY (UK) LIMITED
and AERO INVENTORY PLC**

Respondents

**APPLICATION UNDER SECTIONS 46 AND FOLLOWING OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION RECORD
(Returnable November 11, 2009)**

November 11, 2009

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1. Notice of Application returnable November 11, 2009
2. Pre-Filing Report of KPMG Inc. in its capacity as proposed Information Officer
- A Appendix A to Report of KPMG Inc.
3. Certified copy of the administration application in respect of Aero Inventory (UK) Limited
4. Certified copy of administration application in respect of Aero Inventory plc
5. Certified copy of the order dated November 11, 2009 authorizing the foreign representatives to act in such capacities in respect of Aero Inventory (UK) Limited
6. Certified copy of the order dated November 11, 2009 authorizing the foreign representatives to act in such capacities in respect of Aero Inventory plc
7. Statement in respect of all foreign proceedings in respect of Aero Inventory (UK) Limited and Aero Inventory plc
8. Witness Statement of Colin Lee Trupp, dated November 10, 2009
9. *Insolvency Act*, (1986 c 45), Schedule B1
10. Draft Recognition Order

Tab 1

Court File No.: 09-CL-8456-00CL

**ONTARIO
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NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing on November 11, 2009, at 9:30 am, at Osgoode Hall, 130 Queen Street West, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a

lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 10, 2009

Issued by:


Local registrar

Address of court office 330 University Avenue
Toronto, Ontario

TO: THE ATTACHED SERVICE LIST

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Canadian Counsel to the Applicants

APPLICATION

1. The Applicants make application for an order:
 - (a) Abridging the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
 - (b) Recognizing the administration proceedings (the "**Foreign Proceedings**") commenced in respect of each of Aero Inventory (UK) Limited and Aero Inventory plc (the "**Foreign Debtors**") in the High Court of Justice of England and Wales (Chancery Division, Companies Court) (the "**English Court**") as a "foreign main proceeding" for the purposes of section 47 of the CCAA;
 - (c) Recognizing and enforcing the terms of the orders made by the English Court dated November 11, 2009 in the Foreign Proceedings;
 - (d) Granting a stay of proceedings (the '**Requested Stay**'), as further described below, in respect of the Foreign Debtors;
 - (e) Appointing KPMG Inc. as information officer (in such capacity the "**Information Officer**") in respect of these proceedings;
 - (f) Authorizing the Applicants and the Information Officer to apply from time to time to this Court for advice and directions;
 - (g) Requesting the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom or elsewhere; and
 - (h) Such further and other relief as this Honourable Court deems just.

2. The grounds for the application are:

The Foreign Proceedings each constitute a "Foreign Main Proceeding" in which the Applicants are the "Foreign Representatives"

- (a) the Foreign Debtors are insolvent and have become subject to the Foreign Proceedings as a result of orders of the English Court;
- (b) The Foreign Proceedings are judicial proceedings dealing with creditors' collective interests generally, in which the Foreign Debtors' business and financial affairs are subject to supervision by the English Court for the purposes of considering the Foreign Debtors' restructuring or reorganization options;
- (c) As such, the Foreign Proceedings each constitute a "foreign proceeding" pursuant to subsection 45(1) of the CCAA;
- (d) The Foreign Debtors are part of a multinational corporate group. The registered head office of Aero Inventory plc (the parent company of that corporate group)

and the centre of the main interests of the Foreign Debtors is located in the United Kingdom;

- (e) Based upon the above considerations, the Foreign Proceedings are each a "foreign main proceeding" as defined in subsection 45(1) of the CCAA;
- (f) The Applicants have been appointed as the "administrators" in the Foreign Proceedings to manage the affairs, business and property of the Foreign Debtors and, as such, fall within the definition of "foreign representative" under subsection 45(1) of the CCAA;
- (g) Pursuant to section 46 of the CCAA, the Applicants may apply to the court for recognition of the Foreign Proceedings;
- (h) Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Foreign Proceedings if it is satisfied that the application relates to a "foreign proceeding" and that the Applicants are "foreign representatives";

The Requested Stay is appropriate in the circumstances

- (i) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action suit or proceeding against the Foreign Debtors, subject to any terms and conditions it considers appropriate;
- (j) The primary objective of the administrators in the Foreign Proceedings is the rescue of the Foreign Debtors as a going concern and, failing that, to take certain other measures to achieve the best result for the Foreign Debtors' creditors. For this purpose, the English Court has, inter alia, granted a stay consistent with the Requested Stay;
- (k) The Requested Stay in Canada is essential to the global efforts of the administrators in the Foreign Proceedings, particularly in light of the value and quantity of assets that the Foreign Debtors have at risk within Canada;

The restriction on set-off is necessary in the circumstances

- (l) The requested relief also contains provisions:
 - (i) Restraining the determination and enforcement of any person's rights of set-off pending further order of this Court; and
 - (ii) Requiring that any new purchases of goods from the Foreign Debtors from and after the effective date of the requested relief be paid for on terms acceptable to the Foreign Representative without counterclaim or deduction;

- (m) The above requested relief may be granted pursuant to subsection 49(1) of the CCAA if this Court is satisfied that it is necessary for the protection of the Foreign Debtors' property or the interests of a creditor or creditors;
- (n) The above described relief is necessary in the circumstances to avoid the prejudice to stakeholders that may arise due to the existing credit sales practices of the Foreign Debtors and their primary customers, which may impact the ability of the Foreign Debtors to maintain control over their inventory, obtain payment in respect of such inventory, and to avoid prejudice to the Foreign Debtors' existing secured creditors who have provided financing on the basis of that inventory;
- (o) Substantially all of the Foreign Debtors' inventory in Canada is located onsite at the premises of one of the Foreign Debtors' customers;
- (p) The Foreign Debtors' customer might in the absence of the requested relief purchase large quantities of inventory and assert that no payment is necessary on account of set-off, effectively elevating their claims ahead of existing secured claims;

The recognition of the orders granted in the Foreign Proceedings is appropriate

- (q) For the purposes of ensuring that all interested parties cooperate in the global efforts of the Applicants, the Applicants request that the terms of the orders provided in the Foreign Proceedings be recognized by this Court;
- (r) The orders granted in the Foreign Proceedings provide a useful framework for the global efforts with respect to the insolvency of the Foreign Debtors, which should be adopted by this Court;

The appointment of an information officer is appropriate

- (s) The Information Officer will assist the Court and Canadian stakeholders of the Foreign Debtors; and

General

- (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) a witness statement of Collin Lee Trupp dated November 10, 2009 in connection with the Foreign Proceedings;
 - (b) the report of KPMG Inc., in its capacity as the proposed Information Officer;
 - (c) certified copies of the application to, and orders of, the English Court that commenced the Foreign Proceedings and authorized the Applicants to act as foreign representative in the Foreign Proceedings; and

- (d) such further and other materials as counsel may advise and this Honourable Court may permit.

November 10, 2009

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Court File No: 09-CL- 8456-00CL

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Proceeding commenced at Toronto

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