

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

THE HONOURABLE MR.)
JUSTICE HAINEY)
FRIDAY, THE 22ND
DAY OF JUNE, 2018



IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DISCOVERY AIR INC.

APPLICANT

**APPROVAL AND VESTING ORDER
(Top Aces)**

THIS MOTION, made by Discovery Air Inc. (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Sale Agreement**") between the Applicant and CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partners IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (collectively, the "**Purchasers**") dated March 21, 2018, and appended to the affidavit of Paul Bernards, sworn June 15, 2018, and vesting in the Purchasers the Applicant's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**"), the Notice of Cross-Motion of the Ad Hoc Committee of Holders of \$34.5 million principal amount of unsecured debentures (the "**Ad Hoc Committee**"), the affidavit of Lauren Pearce affirmed on June 18, 2018, and the Exhibits thereto, filed, and on hearing the

submissions of counsel for the Applicant, the Monitor, the Purchaser, the Ad Hoc Committee, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Katie Parent sworn June 15, 2018 and affidavit of service of Karen Jones, sworn June 18, 2018, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record and the Fourth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and the Purchasers, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchasers substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in 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: (i) any encumbrances or charges created by the Order of the Honourable Justice Haaney dated March 21, 2018 (the "**Initial Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" or the Assumed

Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that all counterparties to any Contract (as defined in the Sale Agreement) to which Top Aces Holdings Inc. or Top Aces Inc. is a party or beneficiary, are prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the 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 that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;


the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor and their respective agents 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 Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 22 2018

PER / PAR: 

Schedule "A" - Form of Monitor's Certificate

Court File No.: CV-18-594380-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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APPLICANT

**MONITOR'S CERTIFICATE
(Top Aces)**

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2018, KSV Kofman Inc. was appointed as the monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated ■, 2018, the Court approved the agreement of purchase and sale made as of March 21, 2018 (the "Sale Agreement") between the Applicant and CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partnership IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (collectively, the "Purchasers") and provided for the vesting in the Purchasers of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement

have been satisfied or waived by the Applicant and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchasers have paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**KSV KOFMAN INC., in its capacity as
Monitor of Discovery Air Inc., and not in its
personal capacity**

Per: _____
Name:
Title:

Schedule "B" – Permitted Encumbrances

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER
(TOP ACES)

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