

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

**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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF DISCOVERY AIR INC.

APPLICANT

**MOTION RECORD
(Reporting Requirements and Other Relief)
(returnable April 18, 2018)**

April 11, 2018

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APPLICANT

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TAB 1

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

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APPLICANT

**NOTICE OF MOTION
(Reporting Requirements and Other Relief)
(returnable April 18, 2018)**

Discovery Air Inc. (“**Discovery**” or the “**Applicant**”) will make a motion to Justice Hainey of the Commercial List on **Wednesday, April 18, 2018 at 9:30 a.m.** or as soon as after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard:

in writing under subrule 37.12.1(1) because it is made without notice;

in writing as an opposed motion under subrule 37.12.1(4); or

orally.

THE MOTION IS FOR ORDERS:

- (a) abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) Relieving the Applicant from any obligation to comply with any applicable reporting or disclosure requirements (as set out in more detail below) during the pendency of the CCAA Proceedings (defined below);

- (c) Ordering that neither the Applicant, nor the Monitor, or any of their respective officers, directors, employees or other representatives shall have any liability for any such non-compliance;
- (d) To the extent necessary, lifting the stay of proceedings in these CCAA Proceedings for the sole purpose of permitting the Ontario Securities Commission and any other securities regulatory authority in any province or territory in Canada (the “**Regulatory Authorities**”) to issue Cease Trade Orders (defined below) if any when required pursuant to applicable securities law;
- (e) Approving the Monitor’s Reports (defined below) and the activities of the Monitor set out therein; and
- (f) such further and other relief as counsel may request and this Honourable Court deem just;

THE GROUNDS FOR THE MOTION ARE:

- (a) On March 21, 2018 (the “**Filing Date**”) Discovery was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of this Honourable Court and KSV Kofman Inc. (“**KSV**”) was appointed as monitor (the “**Monitor**”) in the CCAA proceedings (the “**CCAA Proceedings**”);
- (b) From the outset, Discovery has indicated that the main purpose of its CCAA proceedings is to conduct a sale process for the sale of Discovery’s remaining assets which are comprised of its equity interests in its wholly owned subsidiaries, its 9.7% minority interest in Top Aces Holdings Inc. and miscellaneous assets (collectively, the “**Discovery Assets**”);
- (c) On April 4, 2018, this Court approved a sale solicitation process (“**SSP**”) for the marketing and sale of the Discovery Assets and four (4) stalking horse agreements which collectively provided for the sale of the entirety of the Discovery Assets;

- (d) Upon completion of all of the transactions under the SSP, Discovery will have no remaining assets;

REPORTING REQUIREMENTS

- (e) The shares of Discovery were publicly traded on the Toronto Stock Exchange (“TSX”) up until May 31, 2017 when Discovery completed a going private transaction with the approval of the Ontario Superior Court of Justice (Commercial List);
- (f) Since that time, the shares of Discovery have been privately held and Discovery remains a “reporting issuer” in respect of its unsecured listed debentures pursuant to an indenture dated May 12, 2011 (the “**Unsecured Listed Debentures**”);
- (g) The Unsecured Listed Debentures traded on the TSX until the Filing Date at which time trading was suspended;
- (h) Discovery is required to make timely and periodic disclosure under applicable securities laws which include, among other things, the requirement to file an annual information form (“AIF”), management discussion and analysis (“MD&A”), audited financial statements and CEO/CFO certifications thereof (“FS”) within 90 days of Discovery’s financial year end, which is January 31st;
- (i) Discovery’s next filing date for its AIF, MD&A and FS is April 30, 2018 and the cost and time associated with the preparation of an AIF, MD&A and the FS is significant and requires substantial time to be expended by members of management, as well as outside professionals;
- (j) It is estimated that the costs of preparing these documents is \$300,000 to \$400,000 which were not contemplated in any DIP budgets supporting the Court approved DIP facility;
- (k) Extensive information as to Discovery’s financial status has been and will continue to be disclosed in connection with the CCAA Proceedings by both the Applicant and the Monitor;

- (l) the Ontario Securities Commission has advised it does not object to the relief being sought;

APPROVAL OF MONITOR'S REPORTS AND ACTIVITIES

- (m) The pre-filing report of KSV as proposed monitor, the first report of the Monitor dated March 29, 2018 (the "**First Report**"), the Monitor's supplement to the First Report dated April 3, 2018 and the Second Report of the Monitor (to be filed) (the "**Second Report**" and collectively, the "**Monitor's Reports**") set out the activities of the Monitor and have provided useful information to the Court;
- (n) The activities of the Monitor have been in accordance with the CCAA, the Initial Order, the SSP approval order dated April 4, 2018 and have provided assistance to the Court;

GENERAL

- (o) The provisions of the CCAA; and
- (p) Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The affidavit of Paul Bernards, sworn April 11, 2018;
- (b) The Second Report of the Monitor, to be filed; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 11, 2018

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Lawyers for the Applicant

TO: The Attached Service List

**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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF DISCOVERY AIR INC.

APPLICANT

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IN THE MATTER OF THE COMPANIES' CREDITORS
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ONTARIO
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COMMERCIAL LIST

Proceeding commenced TORONTO

NOTICE OF MOTION
(Reporting Requirements and Other Relief)
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Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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APPLICANT

**AFFIDAVIT OF PAUL BERNARDS
(sworn April 11, 2018)**

I, Paul Bernards, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the Chief Financial Officer of Discovery Air Inc. (“**Discovery**” or the “**Applicant**”), a position that I have held since April 1, 2014. Prior to that time, I was a consultant to Discovery from March 17 to April 1, 2014. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

- 2. This Affidavit is sworn in support of a motion by Discovery for orders, *inter alia*:
 - (a) Relieving the Applicant from any obligation to comply with any applicable reporting or disclosure requirements (as set out in more detail below) during the pendency of the CCAA Proceedings (defined below);
 - (b) Ordering that neither the Applicant nor the Monitor nor any of their respective officers, directors, employees or other representatives shall have any liability for any such non-compliance;

- (c) To the extent necessary, lifting the stay of proceedings in these CCAA Proceedings for the sole purpose of permitting the Ontario Securities Commission and any other securities regulatory authority in any province or territory in Canada (the “**Regulatory Authorities**”) to issue Cease Trade Orders (defined below) if any when required pursuant to applicable securities law; and
- (d) Approving the reports of KSV and the Monitor and the activities of the Monitor (as both such terms are defined below) set out therein.

BACKGROUND

3. On March 21, 2018 (the “**Filing Date**”), Discovery was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of this Honourable Court and KSV Kofman Inc. (“**KSV**”) was appointed as monitor (the “**Monitor**”) in the CCAA proceedings (the “**CCAA Proceedings**”).

4. Further details regarding the background of Discovery and the facts leading up to these proceedings are set out in my initial affidavit sworn March 21, 2018 (my “**Initial Affidavit**”), and therefore not repeated herein.

EVENTS SINCE FILING

5. Since the commencement of the CCAA proceedings, Discovery has been in communication with many of its and its subsidiaries’ key stakeholders to advise them of the proceedings and to assure key customers, suppliers and employees of the subsidiaries of the intention to continue to operate in the ordinary course during the CCAA Proceedings.

6. On April 4, 2018, Discovery brought a motion before the Court seeking approval of: (a) a sale solicitation process (“**SSP**”) for the sale of Discovery’s remaining interest in its three (3) operating subsidiaries, Great Slave Helicopters Ltd. (“**GSH**”), Air Tindi Ltd. (“**ATL**”) and Discovery Mining Services Ltd. (“**DMS**”) and its remaining 9.7% minority interest in Top Aces Holdings Ltd. (“**TA Holdings**”), the parent of Top Aces Inc. (“**Top Aces**”); and (b) four (4) stalking horse agreements each dated as of March 21, 2018 (the “**Stalking Horse Agreements**”)

related to the sales of each of GSH, ATL, DMS and TA Holdings for the sole purposes of acting as stalking horse agreements in the SSP; and (c) an extension of the stay of proceedings (the “**Stay**”) to and including June 30, 2018. Discovery’s April 4 motion was responded to by the “ad hoc committee of holders of 8.375% unsecured debentures of Discovery Air Inc.” who requested that the motion be adjourned until April 18, 2018. The request for adjournment was overruled and the Order approving the SSP, the Stalking Horse Agreements and extending the Stay was granted.

PUBLIC REPORTING REQUIREMENTS

7. As was set out in my Initial Affidavit, the shares of Discovery were listed on the Toronto Stock Exchange (“**TSX**”) until May 2017, at which time Discovery completed a going private transaction. The shares of Discovery have been privately held since that time. Discovery remains a “reporting issuer” in respect of its unsecured listed debentures (the “**Unsecured Listed Debentures**”) pursuant to an indenture dated May 12, 2011. The Unsecured Listed Debentures traded on the TSX until the Filing Date.

8. Discovery is required to make timely and periodic disclosure under applicable securities laws. Discovery’s timely disclosure includes, among other things, the requirement to file an annual information form (“**AIF**”), management discussion and analysis (“**MD&A**”), audited financial statements and CEO/CFO certifications thereof (“**FS**”) within 90 days of Discovery’s financial year end, which is January 31st. Discovery’s next filing deadline for its AIF, MD&A and FS is April 30, 2018.

9. The cost and time associated with the preparation of an AIF, MD&A and the FS is significant. It requires substantial time to be expended by members of management, as well as outside professionals, namely auditors and external counsel. Discovery is operating with a skeleton staff of only six (6) employees who have been retained to assist the Monitor to complete the SSP, which is their primary focus. Further, prior to filing, one of the employees key to the FS process resigned, making it even more difficult for Discovery to complete this process. Discovery is no longer a going concern for financial reporting purposes and, as such, our auditors have advised that a complete restatement of the financial reports using fair value accounting would be necessary in order to obtain an audit opinion. This significant change will result in additional costs, consume a considerable amount of management time and cannot be completed within the

reporting deadline of April 30, 2018. Although it is difficult to estimate manpower and time, my best estimate is that the cost of preparing these documents is \$300,000 to \$400,000, which were not contemplated in any DIP budgets supporting the Court approved DIP facility.

10. As was demonstrated by the cash flow forecast filed with my Initial Affidavit, and as set out in the supplemental report to the Monitor’s First Report dated April 3, 2018, Discovery does not have the funds required to comply with its upcoming filing deadline. I also believe there is very little or no utility in the preparation of any of these documents. Extensive information as to Discovery’s financial status has been and will continue to be disclosed in connection with the CCAA proceedings by both the Applicant and the Monitor, including its estimated cash flow forecast through the end of June 2018. It has also been clear from the outset of the proceedings that the purpose of these proceedings is to provide a process in which Discovery can sell all of its remaining assets. Upon the completion of the SSP, Discovery is likely to have no remaining assets.

11. Trading of the Unsecured Listed Debentures was suspended upon the CCAA filing on March 21, 2018 and continues to remain suspended. On March 27, 2018, Discovery received a letter from the TSX confirming that the TSX had determined to delist Discovery’s securities as of the close of market on April 27, 2018. The TSX also confirmed that trading would remain suspended. On March 28, 2018, Discovery issued a press release announcing the delisting. Attached as **Exhibit “A”** is a copy of the press release.

12. Discovery is now seeking an Order that will authorize it to cease compliance with its public reporting obligations during the pendency of the CCAA proceedings and will protect Discovery, the Monitor and both of their officers, directors, employees and other representatives from Discovery’s failure to comply with its filing requirements. Absent such protection, I am concerned that Discovery’s board of directors may choose to resign which would be detrimental to the SSP process.


13. In order to facilitate the seeking of this relief, Discovery’s counsel has had discussions with the Ontario Securities Commission (“OSC”). I am advised by Jennifer Stam of Goldman Sloan Nash and Haber LLP, Discovery’s insolvency counsel, that the OSC has advised it will not object to Discovery seeking this relief from the CCAA Court. Discovery anticipates that, as a result of such failure to comply, the OSC and other securities regulatory authorities in Canada may issue

cease trade orders for failure to make its upcoming filings (“Cease Trade Orders”). Discovery does not intend to object to the issuance of such Cease Trade Orders.

14. If this relief is granted by this Court, Discovery will issue a press release to confirm that it has been authorized to cease compliance with its public reporting requirements.

15. For the foregoing reasons, I do not believe there is significant benefit to the granting of this relief and that no party will be unduly prejudiced as a result.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 11th day of April, 2018.



Commissioner for taking affidavits



PAUL BERNARDS

TAB A

DISCOVERY AIR

Discovery Air Receives Delisting Decision by TSX

Toronto, ON - March 28, 2018 - Discovery Air Inc. (the "Company") announced today that The Toronto Stock Exchange ("TSX") has advised the Company that, in connection with the Company's previously disclosed filing under the Companies' Creditors Arrangement Act, the TSX has determined to delist the Company's 8.375% Convertible Unsecured Subordinated Debentures (the "Debentures") effective at the close of market on April 27, 2018, and that trading of the Debentures will remain suspended until such time.

About Discovery Air

Discovery Air, through its subsidiaries, is a specialty aviation business with operations in the medevac equipped aircraft services, air charter services, helicopter operations and transport and logistics support sectors. Discovery Air's unsecured convertible debentures trade on the Toronto Stock Exchange (symbol DA.DB.A).

For further information, contact Investor Relations at 866-903-3247.

This is Exhibit "A" referred to in the affidavit of Paul Bernard sworn before me at Toronto this 11 day of April, 2018
[Signature]
A Commissioner for taking Affidavits for Ontario

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DISCOVERY
AIR INC. (the "APPLICANT")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

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(SWORN APRIL 11, 2018)

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TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 18TH
)
JUSTICE HAINEY) DAY OF APRIL, 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

**ORDER
(Reporting Requirements and Other Relief)**

THIS MOTION, made by Discovery Air Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, approving certain relief from requirements for public reporting and approving the Monitor's Reports (defined below), 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 April 11, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Second Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated April 11, 2018 (the "**Second Report**"), filed, and on hearing the submissions of counsel for the Applicant, the Monitor and Clairvest Group Inc., no one else appearing although duly served as appears from the Affidavit of Service of Katie Parent sworn ■, 2018, 2018, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Second Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

REPORTING REQUIREMENTS

2. **THIS COURT ORDERS** that, during the pendency of these CCAA proceedings, the Applicant shall not be required to comply with any applicable reporting or disclosure requirements or obligations requiring, among other things, the filing of any annual information forms, management discussion and analysis or audited financial statements (including related audits, reports and certifications), under the *Securities Act* (Ontario) or any applicable securities law in any province or territory in Canada including the regulations and rules made and forms prescribed thereunder and any published rules, instruments, policy statements, blanket orders and rulings of Canadian securities regulatory authorities.

3. **THIS COURT ORDERS** that none of the Applicant, nor the Monitor, or any of their respective officers, directors, employees or other representatives shall have any liability for any such non-compliance referred to in paragraph 2 above.

LIFT OF STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that, for greater certainty, to the extent necessary, the stay of proceedings granted in favour of the Applicant in the Initial Order dated March 21, 2018 (as extended) is hereby lifted for the sole purpose of permitting the Ontario Securities Commission and any other securities regulatory authority in any province or territory in Canada to issue cease trade orders if and when required pursuant to applicable securities law.

APPROVAL OF MONITOR'S REPORTS

5. **THIS COURT ORDERS** that the report of KSV in its capacity as proposed monitor dated March 21, 2018, the first report of the Monitor dated March 29, 2018 (the "**First Report**"), the Monitor's supplement to the First Report dated April 3, 2018 and the Second Report (collectively the "**Monitor's Reports**") and the activities described in each such report be and are hereby approved.

GENERAL

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

7. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DISCOVERY AIR INC. (the "APPLICANT")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER
(Reporting Requirements and Other Relief)

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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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced TORONTO

MOTION RECORD
(Reporting Requirements and Other Relief)
(returnable April 18, 2018)

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