

**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SKYGREECE AIRLINES S.A., AN INSOLVENT
PERSON, PURSUANT TO SECTION 50.4(1) THE
BANKRUPTCY AND INSOLVENCY ACT (“BIA”)**

NOTICE OF MOTION

THE APPLICANT, SkyGreece Airlines S.A. (“SkyGreece”), will make a motion to a judge of the Commercial List, on Tuesday, September 8, 2015, at 10:00 a.m., or as soon after that time as the motion can heard, at the court house at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion will be heard orally.

THE MOTION IS FOR:

1. An Order pursuant to section 69.6(4) of the *BIA* declaring that the stay of proceedings provided by section 69(1) of the *BIA* applies to the proceedings against SkyGreece commenced at the Canadian Transportation Agency as a result of its suspension of flights on or after August 27, 2015, bearing Case Nos.15-03972 and 15-03912;
2. An order applying the stay under section 69(1) of the *BIA*, *nunc pro tunc*, pursuant to section 69.6(3) of the *BIA* to any and all proceedings against SkyGreece commenced at the Canadian Transportation Agency as a result of its suspension of flights on or after August 27, 2015, including Case Nos.15-03972 and 15-03912; and

3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF THE MOTION ARE:

A. Background

4. SkyGreece is an international airline, based out of Greece, which offers air travel between Athens, Toronto, Montreal, Budapest, Zagreb, and New York. SkyGreece was founded in 2013.
5. On August 27, 2015, SkyGreece announced its decision to temporarily suspend flights owing to financial difficulties. SkyGreece's financial difficulties arose in 2015 as a direct consequence of the broader Greece financial crisis and the inability of SkyGreece to access and maintain sufficient levels of financing to continue its operations.
6. At the time it suspended its operations, SkyGreece expected that it would begin a restructuring process and attempt to source new financing in order to resume its operations.

B. CTA Proceedings

7. Since suspending its operations, approximately 6 flights have been cancelled by SkyGreece to date. As a result of the cancellation of flights, SkyGreece has been overwhelmed by a deluge of regulatory proceedings.
8. In particular, on August 28, 2015, Gabor Lukacs commenced an application, on behalf of his organization Air Passenger Rights, at the Canadian Transportation

Agency ("CTA"). In his application, Mr. Lukacs sought to have SkyGreece post security of \$8.7 million in order to compensate for passenger claims, and to arrange and pay for new transportation for passengers whose flights were cancelled.

9. At the request of Mr. Lukacs, SkyGreece was directed by the CTA to respond to Mr. Lukacs' request for an expedited process by August 31, 2015, before 5:00 p.m. At the time, the CTA advised that, in the event that the request for expedited process was granted, SkyGreece would be required to respond to the merits of Mr. Lukacs' application by 5:00 p.m. on September 2, 2015, in less than a week's time.
10. As a result of the CTA's order, SkyGreece took immediate steps to retain and instruct counsel. On August 31, 2015, SkyGreece's lawyers delivered to the CTA SkyGreece's response with respect to the request for an expedited process.
11. In the midst of responding to Mr. Lukacs' request for an expedited process, Mr. Lukacs also served a further request on SkyGreece for extensive document and information production, for which he sought production by September 2, 2015.
12. On September 1, 2015, having reviewed the materials filed by the parties, the CTA denied Mr. Lukacs' request for expedited process. Specifically, the CTA accepted SkyGreece's submission that the issues raised in Mr. Lukacs' application were complex and that SkyGreece would require sufficient time to respond to the merits of the application in a careful and a comprehensive way.

As a result, SkyGreece was granted until September 21, 2015, to provide its response.

13. Notwithstanding its order on September 1, 2015, the CTA issued an order on September 2, 2015, in a second application (Case No.15-03972) requiring that SkyGreece “show cause” as to why the CTA should not issue an adverse ruling against SkyGreece, as follows:

- take immediate corrective measures to properly apply its international tariff for all passengers affected by schedule irregularities, including:
 - Informing passengers of their options and providing them with a copy of the tariff;
 - Implementing forthwith the options chosen by passengers;
 - Establishing a 1-800 help line where passengers can be directed to a person who can accept and address their claim; and
 - Updating its website to fully explain the measure put in place to address the situation;
- Report to the Agency, within 5 business days, on the evolution of its situation and the measures taken by SkyGreece to comply with its international tariff applicable to this situation and with this Order;

14. On September 3, 2014, SkyGreece filed a Notice of Intention to make a Proposal under section 50.4(1) of the *BIA*.

15. On filing the Notice of Intention, section 69(1) of the *BIA* was triggered.

16. Among other provisions, section 69(1) provides, that “no creditor has any remedy against the insolvent person or the insolvent person’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy”.
17. The purpose of the section 69(1) stay is to allow an insolvent person the time to consider and file a Proposal. The continuation of the CTA’s proceedings is contrary to section 69(1) of the *BIA*.
18. The CTA has taken the position that the section 69(1) stay does not apply to its show cause “investigation” and its proceeding should continue.
19. In this context, the CTA is exercising its adjudicative functions, not its investigatory powers. The CTA “show cause” proceedings and its other proceedings are tantamount to a monetary claim given the nature of the order and the remedies sought.
20. Furthermore, a viable proposal will not be possible if the CTA proceedings are allowed to continue, and it is not contrary to the public interest that the CTA be affected by the section 69(1) stay of the *BIA*.
21. Sections 69(1), 69.6(3), and 69.6(4) of the *BIA*.
22. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. Affidavit of Brooks Pickering, sworn September 4, 2015, with exhibits; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: September 4, 2015

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
t. 416-646-4300
f. 416-646-4301

Kenneth T. Rosenberg (LSUC #21102H)
e. ken.rosenberg@paliareroland.com

Massimo Starnino (LSUC #41048G)
e. max.starnino@paliareroland.com

Debra McKenna (LSUC# 60233P)
e. debra.mckenna@paliareroland.com

Lawyers for the Applicant

TO: Secretary
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec J8X 4B3
e. Secretariat.Secretariat@otc-cta.gc.ca

AND

TO: Gowlings
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, Ontario M5X 1G5

Clifton P. Prophet
t. 416-862-3509
f. 416-863-3509
e. clifton.prophet@gowlings.com

Counsel for Ernst & Young Inc.
in its capacity as Proposal Trustee

AND

TO: Gabor Lukacs
e. lukacs@AirPassengerRights.ca