



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00693758-00CL

DATE: MARCH 27, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: ORIGINAL TRADERS ENERGY INC. v. HIS MAJESTY THE KING IN  
THE RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE et al

BEFORE: MADAM JUSTICE KIMMEL

**PARTICIPANT INFORMATION**

**For APPLICANT:**

Name of Person Appearing	Name of Party	Contact Info
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**For RESPONDENT:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] KPMG Inc., in its capacity as the Court-appointed monitor of the OTE Group (as defined below) in these proceedings under the CCAA (in such capacity, the "Monitor"), seeks the following relief:

- a. an Order (the "AirSprint Funds Order"), among other things:
  - i. approving the AirSprint Settlement (as defined below) between AirSprint Inc. ("AirSprint") and the OTE Group, and authorizing and directing AirSprint to remit the Remaining AirSprint Funds (as defined below) to the Monitor; and
  - ii. declaring that the US\$5,482,779.85 remitted by AirSprint to the Monitor pursuant to this Court's Order dated July 17, 2023, and all interest accrued thereon, and the Remaining AirSprint Funds are the property of the OTE Group; and
- b. an Order (the "Distribution Order"), among other things, authorizing the Monitor to distribute proceeds received from Allstar Auctions Inc. ("Allstar") pursuant to the Vehicle Transaction (as defined below).

[2] The Monitor's motion record was served on the service list and no one indicated that they oppose any of the relief sought.

[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Monitor's Eighth Report dated March 18, 2024 (the "Eighth Report").

### The Distribution Order

[4] The court is satisfied, for the reasons indicated in the Monitor's Eighth Report and in the Monitor's factum that it is just and appropriate to grant the requested Distribution Order. None of the affected Vehicle Leasing Companies, nor the OTE Group's primary secured creditor Royal Bank of Canada ("RBC"), have indicated any opposition to this order. It arises out of the court's approval of the Vehicle Transaction in a previous Vehicle Approval and Vesting Order and is supported by a security review opinion from the Monitor's counsel. As stated in the Eight Report:

- a. The Monitor believes that the Distributions are appropriate in the circumstances. Each of the Vehicle Leasing and Financing Companies had valid security interests in the Vehicles, and aside from the Unperfected Interest, all security interests were perfected. The claims of the Vehicle Leasing and Financing Companies now appropriately stand against the proceeds of the Vehicle Transaction. Although perfection did not occur in respect of the Unperfected Interest, the Unperfected Interest was otherwise valid, binding and enforceable and created a valid security interest in the relevant collateral. Further, the Amended and Restated Initial Order granted by this Court does not prevent the filing of any registration to preserve or perfect a security interest.

- b. The amounts to be distributed represent the payment of all obligations owing from the OTE Group to each of the relevant Vehicle Leasing and Financing Companies, except for RBC, and will not exceed the full amount of those obligations. Further, the Distributions will ensure that interest does not continue to accrue for amounts owed in respect of the Vehicles. The Distributions are supported by the OTE Group.

[5] It is well-established that this Court has the authority pursuant to section 11 of the CCAA to approve distributions to creditors (whether interim or final) during the pendency of CCAA proceedings, even where such distributions occur outside of a plan of compromise or arrangement. This Court has routinely approved such distributions. See *Re Nortel Networks Corporation et al*, 2014 ONSC 4727 at paras 54-55, 58; *AbitibiBowater Inc. (Arrangement relatif a)*, 2009 QCCS 6461, at para 71; *Greenspace Brands Inc, Re* (June 15, 2023) ONSC (Commercial List), Court File No CV-23- 00697516-00CL (Ancillary Relief Order) (McEwen, J).

[6] The Distribution Order shall issue in the form signed by me today.

#### The AirSprint Funds Order

[7] The Eighth Report describes the AirSprint Settlement, which is subject to court approval, as follows:

- a. AirSprint shall forthwith remit US\$535,000.00 to the Monitor, on behalf of the OTE Group, (the "Remaining AirSprint Funds"), and shall retain the residual US\$315,000.00 to address ongoing costs and re-marketing fees associated with the sale of fractional interests in the jet and to cover legal fees incurred in concluding this settlement with the Monitor; and
- b. upon the remittance of the Remaining AirSprint Funds, AirSprint shall be released from all liability (save and except for liability related to gross negligence or willful misconduct) to the OTE Group, the Monitor, or the Mareva Respondents and related parties in connection with any fractional jet interests purchased prior to these CCAA Proceedings, other than AirSprint's ongoing obligation to respond to information requests from the Monitor in connection with the Monitor's ongoing investigations.

[8] The Monitor recommends the approval of the AirSprint Settlement for the reasons stated in its Eighth Report. The court is satisfied that the financial terms of the AirSprint Settlement set out in (a) above are fair and reasonable and appropriate within the established criteria for approving settlements under s. 11 of the CCAA and the applicable authorities, such as *Nortel Networks Corporation (Re)*, 2018 ONSC. 6257 at para 24 and *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, 2013 ONSC 1078, at para 49.

[9] In its prior Mareva Decision, and having regard to interests asserted in the AirSprint fractional interests by some or all of the Mareva Defendants that were withdrawn in the course of that previous motion, the court has previously determined that the AirSprint Funds do not belong to the Mareva Respondents, but are in fact the property of the OTE Group. See *Original Traders Energy Ltd, (Re)*, 2024 ONSC 325 at para 95. Consistent with this, the sworn statement of worldwide assets provided to the Monitor by Page and 265 in connection with the Mareva Motion did not include the AirSprint Property.

[10] However, the court raised some questions about the need for and/or its jurisdiction to make certain declarations and orders relating to, or expanding upon, the release described in (b) above. Counsel for Mr. Page and his corporations was not in attendance today, although by not appearing and based on prior communications with counsel for the Monitor, is understood not to be opposing the AirSprint Funds Order. Counsel for Cox appeared in a different capacity, and confirmed simply that she had instructions not to oppose this motion but no instructions beyond that.

[11] AirSprint is seeking finality, which is not unreasonable. The issue from the court's perspective is what is necessary or appropriate to ask the court to order or declare to achieve this, beyond what has already been said in the Mareva Decision and what the parties may agree to as between and among themselves.

[12] The Monitor's motion in respect of the AirSprint Funds Order is adjourned to a case conference to be scheduled before me, with counsel for the "Other Parties" (not all of whom appeared today) in attendance. The Commercial List Scheduling Office may contact me to look for time out of regular court hours if there is no time available within the window that the parties consider appropriate for dealing with this AirSprint Funds Order.

[13] In the interim, having heard the concerns of the court with certain provisions of the draft order, the parties should also re-group and consider whether these concerns can be addressed by amendments to the proposed form of order or through commercial documents. To the extent that the identified paragraphs remain (in their current or an amended form) in the next draft AirSprint Funds Order presented to the court, the parties are invited to provide further authority or precedent for same, keeping in mind that this court will continue to carefully scrutinize third party release and bar order language.



KIMMEL J.