

**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")***

AFFIDAVIT OF BROOKS PICKERING

I, BROOKS PICKERING, of the City of Las Vegas, NV USA, **MAKE OATH AND SAY:**

1. I am the Chief Restructuring Officer for SkyGreece Airlines S.A. ("SkyGreece") and, as such, I have personal knowledge of the matters set out below. Where I do not have personal knowledge, I have stated the source of my information and I believe the information to be true.

A. Background

2. 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.

3. On Thursday, 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 Greek financial crisis and the inability of SkyGreece to access and maintain sufficient levels of financing to continue its operations.

4. 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 those operations. Attached as Exhibit "A" to my affidavit is a copy of SkyGreece's press release dated August 27, 2015.

B. CTA Proceedings

5. Since suspending its operations, approximately 6 flights have been cancelled by SkyGreece. As a result of the cancellation of flights, SkyGreece has been overwhelmed by a deluge of regulatory proceedings.

6. In particular, on Friday, August 28, 2015, Gabor Lukacs commenced an application at the Canadian Transportation Agency ("CTA"). Mr. Lukacs appears to be a consumer rights advocate, operating under the banner of "Air Passenger Rights" and representing "Airlines think you have no rights. We prove them wrong. Watch us." As far as I know, Mr. Lukacs is not a customer of SkyGreece.

7. In his application, Mr. Lukacs sought to have SkyGreece post security for \$8.7 million in order to compensate for passenger claims, and to arrange and pay for new transportation for passengers whose flights were cancelled. I attach as Exhibit "B" to my affidavit of a copy of Mr. Lukacs' application (Case No. 15-03912) dated August 28, 2015.

8. At the request of Mr. Lukacs, SkyGreece was directed by the CTA to respond to Mr. Lukacs' request for an expedited process by Monday, August 31, 2015, by 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. Attached as Exhibit "C" to my affidavit is a copy of the CTA's order dated August 28, 2015, in which SkyGreece was to directed respond by 5:00 p.m. on August 31, 2015.

9. 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. I attach as Exhibit "D" to my affidavit a copy of a letter from SkyGreece's counsel, Paliare Roland Rosenberg Rothstein LLP, dated August 31, 2015.

10. 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 from SkyGreece by September 2, 2015. I attach as Exhibit "E" a copy of Mr. Lukacs' request dated August 31, 2015.

11. At approximately 10:45 p.m. on August 31, 2015, Mr. Lukacs served his reply to SkyGreece's response to the expedited process request, a copy of which is attached as Exhibit "F". In response, SkyGreece filed further submissions to the CTA on the issue of Mr. Lukacs' standing. A copy of SkyGreece's submissions dated September 1, 2015 are attached as Exhibit "G".

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. Attached as Exhibit "H" is a copy of the CTA's decision dated September 1, 2015.

13. However, notwithstanding its decision on September 1, in which CTA recognized the complexity of SkyGreece's restructuring efforts, on September 2, 2015, the CTA issued a direction on its own application (Case No. 15-03972) requiring SkyGreece to respond to "show cause" order as to why the CTA should not make 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. I attach as Exhibit "I" to my affidavit a copy of the show cause order issued by the CTA in respect of Case No.15-03972 on September 2, 2015, which includes an excerpt of SkyGreece's International Passenger Rules and Fare Tariff ("Tariff").

15. Among other things, the Tariff provides that, on delay or cancellation of flights, SkyGreece is potentially liable to refund passengers their airfare and/or pay to reroute passengers to their destinations on an alternate airline.

16. Following delivery of its show cause order to SkyGreece on September 2, 2015, the CTA posted the show cause order to its Twitter feed, with a message that, "We've ordered #SkyGreece to prove it is applying its tariff and respecting passenger rights." A copy of the CTA's tweet is attached to my affidavit as Exhibit "J".

17. On September 3, 2014, SkyGreece filed a Notice of Intention to make a Proposal under section 50.4(1) of the *BIA*. A copy of the Notice of Intention is attached as Exhibit "K", along with the Certificate of Filing issued by the Office of the Superintendent of Bankruptcy dated September 3, 2015 and SkyGreece's press release regarding the Notice of Intention.

18. On filing of the Notice of Intention, SkyGreece's lawyers forwarded the Notice of Intention to the CTA. A copy of the letter from Paliare Roland Rosenberg Rothstein LLP to the CTA dated September 3, 2015, is attached as Exhibit "L" to my affidavit.

19. In their letter to the CTA, SkyGreece's lawyers advised that, as a consequence of the Notice of Intention being filed, the CTA "show cause" proceeding was stayed under section 69(1) of the *Bankruptcy and Insolvency Act* ("*BIA*").

20. Following receipt of SkyGreece's Notice of Intention and its letter from counsel, the CTA advised SkyGreece's lawyers, via voicemail message, that it took the position that the *BIA* stay did not apply to its "investigation" under section 69.6 of the *BIA*.

21. By email dated September 3, 2015, a copy of which is attached as Exhibit "M", the CTA was advised that SkyGreece disagreed with the CTA's interpretation of the *BIA* and, if necessary, a motion would be brought to enforce the stay.

22. Since advising the CTA of SkyGreece's Notice of Intention, SkyGreece continues to be served with materials regarding the CTA proceedings, notwithstanding the stay. In particular, Mr. Lukacs has provided submissions on implications the *BIA* stay (Exhibit "N") and the CTA has issued decisions regarding Mr. Lukacs' standing (Exhibit "O") and his allegations of a breach of procedural fairness (Exhibit "P"), in which the CTA specifically issues a decision that the CTA proceedings are not stayed by application of 69(1) of the *BIA*. The CTA states:

The current proceeding is not a proceeding by a creditor; it is an "own motion" investigation on statutory compliance by a regulator. Pursuant to subsection 69.6(1) of the *BIA*, SkyGreece cannot invoke bankruptcy to avoid compliance with a statutory obligation, unless otherwise specified in the *BIA*. In light of the above, the Agency finds that the notice does not have the effect of automatically staying this proceeding pursuant to subsection 69(1) of the *BIA*.

C. Impact of CTA Proceedings

23. As the Restructuring Officer for SkyGreece, I am very concerned that the continuation of the CTA Proceedings will serve to undermine SkyGreece's efforts to restructure itself, with a view to being able to provide compensation to its creditors, including its passengers.

24. SkyGreece currently has no available cash. Funds that would ordinarily be available to it are being withheld by third party payment processors on account of anticipated chargebacks. Third party sources have funded professional fees on an interim basis to the extent of approximately \$250,000, and SkyGreece is attempting to negotiate additional interim financing for the purpose of its restructuring. However, these funds will be needed to finance the development of an operational and financial restructuring plan, and the search for exit financing to fund that plan. In addition, it is of paramount importance that the attention of SkyGreece's officers be focused on these tasks.

25. Over the past week, SkyGreece has had to expend considerable financial and human resources responding to the CTA Proceedings, and, as indicated above, it simply does not have the resources necessary to allow it to continue to prioritize those proceedings at this time. I am very concerned that, despite the best intentions of all the persons involved, SkyGreece is set to falter under the weight of litigation, to the prejudice of all of its stakeholders, including its customers.

26. I am not aware of any prejudice to the public interest that would result from the stay of the CTA Proceedings. In that regard, I note the following:

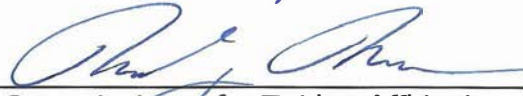
- (a) SkyGreece's ability to provide compensation to passengers as contemplated by the various CTA Proceedings depends on the success of these restructuring proceedings.

- (b) SkyGreece is not currently flying. It has only one plane, and that plane is currently under seizure by its financier, and is presently grounded at Pearson International Airport in Toronto. As a result, there are no passengers in the air.
- (c) SkyGreece has, through its Proposal Trustee, implemented a conduit for the exchange of information with its stakeholders, including its passengers.
- (d) SkyGreece will, as part of these proceedings, be required to identify its universe of creditors (including passengers) and assess their claims.

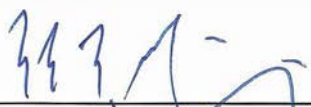
27. I also note that SkyGreece is prepared to share information with the CTA regarding the progress of its restructuring efforts, including its effort to identify passengers and ascertain their claims, on a voluntary basis, provided that it is able to do so informally and confidentially.

28. I swear this affidavit in support of the relief sought in SkyGreece's Notice of Motion, and for no other purpose.

SWORN before me at *Clark County,*
State of Nevada
 this *4th* day of September, 2015, by
Brooks Pickering.



 A Commissioner for Taking Affidavits



Brooks Pickering

