

**ONTARIO
SUPERIOR COURT OF JUSTICE**

[Commercial List]

THE HONOURABLE

)

TUESDAY, THE 20TH

JUSTICE KOEHNEN

)

DAY OF APRIL, 2021

B E T W E E N :

STEPHEN CAMPBELL

Plaintiff

- and -

**CLAIRVEST GROUP INC., DISCOVERY AIR INC., TOP ACES INC., TOP ACES
HOLDINGS INC., KENNETH ROTMAN, ADRIAN PASRICHA, ROD PHILLIPS,
MICHAEL M. GRASTY, G. JOHN KREDIET, MICHAEL MULLEN, ALAIN
BENEDETTI, THOMAS HICKEY, PAUL BERNARDS, ALAN TORRIE, and JACOB
SHAVIT**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Certification)**

THIS MOTION made by the Plaintiff for an order certifying this action as a class proceeding was heard on April 16, 2021 via Zoom Videoconference.

ON READING the materials filed by the Plaintiff and by the Defendants

AND ON HEARING the submissions of counsel to the Plaintiff and Defendants,

1. **THIS COURT ORDERS** that this action is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.

2. **THIS COURT ORDERS** that the class (“**Class**” or “**Class Members**”) is defined as:

All persons or entities wherever they may reside or are domiciled, that are legal or beneficial owners of the 8.375% convertible unsecured subordinated debentures (the "**Unsecured Debentures**") of Discovery Air Inc. (“**Discovery**”) issued pursuant to the Convertible Debenture Indenture dated May 12, 2011, together with the First Supplemental Convertible Indenture dated November 27, 2014, and the Second Supplemental Convertible Indenture dated May 26, 2017 between Discovery Air Inc. and Computershare Trust Company of Canada.

3. **THIS COURT ORDERS** that the common issues are:

- (a) Did any act or omission of Discovery or any of its affiliates effect a result, or were the business or affairs of Discovery or any of its affiliates carried on or conducted in a manner, or were the powers of the directors of Discovery or any of its affiliates exercised in a manner that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of the Class Members, within the meaning of section 241 of the *Canada Business Corporations Act* (“**CBCA**”)?
- (b) if the answers to (a) is 'yes', should the Court make an order that the Defendants, or any one or more of them, compensate the Class Members pursuant to section 241 (3) of the CBCA?
- (c) if the answer to (a) is 'yes', did any of the alleged oppressive acts cause Class Members to suffer damages?
- (d) what amounts, if any, would have been available to repay the Unsecured Debentures even if any alleged oppressive acts had not occurred?
- (e) if the answer to (b) is 'yes', on what basis should the amount of compensation payable to the Class Members be determined?
- (f) if the answer to (a) is 'yes', are there other remedies that should be ordered by the Court pursuant to section 241 of the *CBCA* to rectify the harm caused by the Defendants, or any of them, to the Class Members as a result of the conduct of those Defendants, or any of them, which was oppressive or

unfairly prejudicial to or that unfairly disregarded the interests of the Class Members?

- (g) Did different Class Members have different reasonable expectations based on the time at which they purchased or held investments in the Unsecured Debentures in Discovery Air?
- (h) Is there any methodology that can be employed to calculate a portion of individual Class Members' damages?
- (i) Should Class Members be grouped into sub-classes to assist in determining any of the above-noted issues?

4. **THIS COURT ORDERS** that Stephen Campbell is appointed as representative Plaintiff for the Class.

5. **THIS COURT ORDERS** that Siskinds LLP, Kalloghlian Myers LLP and Paliare Roland Rosenberg Rothstein LLP are appointed as counsel to the Class.

6. **THIS COURT ORDERS** that any other proceeding based on the facts giving rise to this class proceeding is hereby stayed.

7. **THIS COURT ORDERS** that no other proceeding based upon the facts giving rise to this class proceeding may be commenced without leave of the court.

8. **THIS COURT ORDERS** that the opt out period shall expire ninety (90) days from the date of the issuance of the press release described in the Order respecting notice to be made pursuant to section 17 of the *Class Proceedings Act, 1991*, SO 1992, c 6 (the "**Opt Out Deadline**").

9. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a signed opt out form, a copy of which is attached hereto as **Schedule "A"**, postmarked or emailed by the Opt Out Deadline.

10. **THIS COURT ORDERS** that the Respondents shall pay to the Plaintiff costs in the amount of \$125,000.00, inclusive of disbursements and applicable taxes, within 30 days of the date of this Order.

11. **THIS ORDER BEARS INTEREST** at the rate of two percent per year commencing on the date of this Order.



SCHEDULE "A"

DISCOVERY CLASS ACTION OPT OUT FORM

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.

THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE CLASS ACTION.

DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS ACTION.

THE FOLLOWING PERSONS OR ENTITIES ARE ENTITLED TO OPT OUT:

**Must be
Postmarked
No Later
Than ●**

All persons or entities that are legal or beneficial owners of the 8.375% convertible unsecured subordinated debentures of Discovery Air Inc. issued pursuant to the Convertible Debenture Indenture dated May 12, 2011, together with the First Supplemental Convertible Indenture dated November 27, 2014, and the Second Supplemental Convertible Indenture dated May 26, 2017 between Discovery Air Inc. and Computershare Trust Company of Canada (“**Debentures**”)

Last Name

First Name

Current Address

City

Prov./State Postal Code/Zip Code

Social Insurance Number/Social Security Number/Unique Tax Identifier

Telephone Number (Work)

Telephone Number (Home)

Total number of Discovery Air Inc. Debentures currently held

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing your current holdings of Debentures

Identification of person signing this Opt Out Form (please check):

I represent that I hold Discovery Air Inc. Debentures and am the above identified Class Member. I am signing this form to exclude myself from the participation in the Discovery Air Inc. Class Action.

I understand that by opting out I will never be eligible to receive benefits obtained by the class action and will be unable to participate in any future settlement or judgement with or against any of the Defendants.

Signature: _____

Date: _____

Please send your Opt Out Form by email to discoveryairclassaction@siskinds.com or by mail to [●]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

Siskinds LLP

Barristers & Solicitors

680 Waterloo Street

London, ON N6A 3V8

Michael G. Robb LSUC # 45787G

Tel: (519) 660-7814

Fax: (519) 660-7815

Kalloghlian Myers LLP

2201-250 Yonge Street

Toronto, ON M5B 2L7

Serge Kalloghlian LSO# 55557F

serge@kalloghlianmyers.com

Tel: (647) 812-5615

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th

Toronto, ON M5V 3H1

Massimo Starnino LSO# 41048G

Tel: 416 646 7432

Fax: 416.646.7431

Lawyers for the Plaintiff