CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-06-000725-149

SUPERIOR COURT
(Class action)

CHANTALE TAILLON

Petitioner

v.

AIMIA CANADA INC.

and

AIMIA INC.

Respondents

MOTION BY RESPONDENTS FOR LEAVE TO SUBMIT RELEVANT EVIDENCE
(Article 1002 *CCP*)

I. INTRODUCTION

1. Respondents Aimia Canada Inc. and Aimia Inc. (collectively, "**Aimia**"), seek leave from this Court to submit relevant evidence, which consists of an affidavit of Pierre-Jean Mayol, Director – Travel Products at Aimia Canada Inc., and the exhibits referred to therein (the "**Affidavit**"), in order to establish that the criteria under Article 1003 *CCP* have not been met.

2. The Affidavit, copy of which is disclosed herewith as **Exhibit R-1**, covers the following topics:

   (a) An overview of the Aeroplan program, including:

      (i) The history of the program;

      (ii) How persons can adhere to the program;

      (iii) How persons can earn Aeroplan miles; and,

      (iv) How persons can use Aeroplan miles to book flight rewards;

   (b) How the amount of taxes, fees & surcharges that are payable to redeem an Aeroplan flight reward are determined; and

   (c) The Government of Canada's National Airports System.

II. BACKGROUND

3. On December 15, 2014, the Petitioner filed a *Motion for authorization to institute a class action and to obtain the status of representative* (the "**Motion**").

4. As appears from paragraph 1 of the Motion, the proposed group is defined as follows:

> *"All natural persons in Canada who, since December 15, 2011, redeemed Aeroplan Miles, through the Aeroplan Program owned and/or operated by Aimia Canada inc. and Aimia inc., to purchase flight tickets and who paid, with respect to such flights, airport improvement fees, and applicable taxes, imposed by the airport authorities operating the following airports :*
>
> *Prince George, BC*
> *Vancouver, BC*
> *Victoria, BC*
> *Calgary, AB*
> *Edmonton, AB*
> *Regina, SK*
> *Saskatoon, SK*
> *Winnipeg, MB*
> *London, ON*
> *Ottawa, ON*
> *Toronto, ON*
> *Montreal Dorval, QC*
> *Quebec, QC*
> *Fredericton, NB*
> *Moncton, NB*
> *Saint John, NB*
> *Halifax, NS*
> *Charlottetown, PEI*
> *Gander, NL*
> *St. John's, NL"*

5. The Motion seeks the restitution of airport improvement fees paid by class members when redeeming Aeroplan miles for flight departing from one of the above-listed airports, along with punitive damages due to Aimia's allegedly false and misleading representations regarding airport improvement fees and the fact that Petitioner alleges that, by requiring Aeroplan members to pay such airport improvement fees when redeeming Aeroplan miles for a flight departing from one of the airports listed above, Aimia was allegedly charging airport improvement fees that it was not allowed to impose.

III. GROUNDS IN SUPPORT OF THE PRESENT MOTION

6. It appears from the Motion that the Court does not have sufficient information to render judgment in light of the criteria set forth by Article 1003 *CCP*, and therefore Aimia should be authorized to submit the additional evidence referred to above.

7. Aimia recognizes that, at the authorization stage, the allegations contained in the Motion must, in principle, be deemed true. However, in accordance with the jurisprudence, it is desirable to allow a Respondent to submit evidence which contradicts allegations contained in such a motion, or demonstrates that such allegations are "*invraisemblables, mensongères ou non plausibles*".

8. Aimia submits that the Motion contains allegations of this nature which can easily be contradicted or shown to be "*mensongères*" by allowing Aimia to submit evidence for this purpose, the most significant of which are the allegations to the effect:

   (a) that it is Aimia, and not Air Canada, that imposed the charges paid by the Petitioner for which restitution is sought;

   (b) that Aimia, rather than Air Canada, collected such charges from class members; and,

   (c) that airport improvement fees are not imposed by Canadian Airport Authorities with the authority of a government.

9. In addition, the Motion contains general allegations which are prejudicial to Aimia, namely that Aimia made false and misleading representations to class members, such that Aimia should be afforded the opportunity to submit evidence which would bring more precision to the allegations made by the Petitioner.

10. This Court should allow the proposed evidence to be adduced, for the purpose of evaluating whether the Petitioner has demonstrated a strong appearance of right and that the proposed class action has a reasonable chance of succeeding, as required by Article 1003 (b) *CCP*.

11. In fact, it has been held that equity and the principles of fundamental justice require, even at the authorization stage, that the Court consider allegations and evidence proffered by both the Petitioner and the Respondent(s) in determining if the Petitioner has met the requirements of Article 1003 (b) *CCP*.

12. The evidence which Aimia seeks to adduce will also assist the Court in gaining:

   (a) a general understanding of the Aeroplan program and how it functions, particularly as concerns the redemption of flight rewards;

   (b) a general understanding of how the amount of taxes, fees & surcharges for a flight reward booking are determined, and how they are collected; and,

(c) a general understanding of the Government of Canada's National Airports System.

all of which will certainly be of assistance to the Court in assessing whether the conditions set forth in paragraphs (a) and (b) of Article 1003 *CCP* are met.

13. In sum, the evidence which Aimia seeks to adduce would enable this Court to proceed with an efficient review of the criteria contained at Article 1003 *CCP*, and would result in a more efficient hearing of the Motion.

14. This Court should not prevent itself from having the benefit of evidence which could assist it in its analysis of the threshold criteria set forth in Article 1003 *CCP*.

15. By granting leave to submit the evidence described above, this Court would be ensuring that, as required by the jurisprudence, the authorization hearing will not be a simple formality devoid of any real meaning in which the Court would be bound by allegations and evidence founded solely on editorial choices made to support the sole perspective of the Petitioner.

WHEREFORE MAY IT PLEASE THIS COURT TO:

GRANT the present Motion;

ALLOW Respondents Aimia Canada Inc. and Aimia Inc. to submit an affidavit of Pierre-Jean Mayol, and the exhibits referred to therein, the contents of which shall be limited to the following topics:

(a) An overview of the Aeroplan program, including:

(i) The history of the program;

(ii) How persons can adhere to the program;

(iii) How persons can earn Aeroplan miles; and,

(iv) How persons can use Aeroplan miles to book flight rewards;

(b) How the amount of taxes, fees & surcharges that are payable to redeem an Aeroplan flight reward are determined; and

(c) The Government of Canada's National Airports System.

THE WHOLE without costs, save in the event of contestation.

Montreal, August 19, 2015

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
Attorneys for Respondents
AIMIA CANADA INC. and **AIMIA INC.**

TRUE COPY

Osler, Hoskin & Harcourt

Osler, Hoskin & Harcourt LLP

AFFIDAVIT

I, the undersigned, **ALEXANDRE FALLON**, attorney, exercising my profession at the offices of Osler, Hoskin & Harcourt LLP, situated at 1000 De La Gauchetière West, Suite 2100, in the City and District of Montréal, Province of Québec, do hereby solemnly affirm as follows:

1. I am one of the attorneys representing the Respondents Aimia Canada Inc. and Aimia Inc. herein;

2. I have read the attached motion and all the facts alleged therein are true.

AND I HAVE SIGNED :

ALEXANDRE FALLON

Solemnly affirmed before me,
in Montreal, this 19th day of August 2015

Commissaire à l'assermentation
FRANCE BOULAIS
116,085

Commissioner of oaths for the
Province of Québec

TRUE COPY

Osler, Hoskin & Harcourt LLP

NOTICE OF PRESENTATION

TO: *Savonitto & Ass. Inc.*
c/o Me Michel Savonitto
468 rue Saint-Jean
Bureau 400
Montréal QC H2Y 2S1

Attorneys for Petitioner

TAKE NOTICE that the present *Motion by Respondents Aimia Canada Inc. and Aimia Inc. for leave to submit relevant evidence* will be presented for hearing and allowance on a date and time and place to be determined by the Honourable Kirkland Casgrain of the Superior Court of Québec, given the case management.

Montreal, August 19, 2015

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
Attorneys for Respondents
AIMIA CANADA INC. and **AIMIA INC.**

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