

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

N°: 500-06-000724-142

CHANTALE TAILLON

Plaintiff

v.

AEROPLAN INC. (F.K.A. AIMIA CANADA
INC.)

and

AIMIA INC.

Defendants

**AMENDED APPLICATION BY DEFENDANT AIMIA INC. TO DISMISS THE
PLAINTIFF'S ORIGINATING APPLICATION**

(Articles 51, 168 al. 2 C.C.P.)

I. INTRODUCTION

1. By this Application, Defendant Aimia Inc. ("**Aimia**"), is seeking that the Plaintiff's Originating Application (as defined below) be dismissed against it, given the absence of a legal relationship, or *lien de droit* with the Plaintiff.
2. The Originating Application is manifestly unfounded against Aimia and should be dismissed at this stage of the proceedings.

II. BACKGROUND

3. On July 15, 2014, the Plaintiff filed a *Motion for authorization to institute a class action and to obtain the status of representative* (the "**Motion for Authorization**").
4. On December 14, 2017, the Motion for Authorization was granted by this Court, which judgment was subsequently confirmed by the Court of Appeal on July 5, 2018.
5. On October 3, 2018, following the authorization to institute a class action, the Plaintiff filed an *Application Originating a Class Action in Damages and Interest* (the "**Originating Application**").
6. As appears from paragraph 4 of the Originating Application, the class is defined as follows:

“All consumers domiciled and residing in Quebec who, since December 12, 2011, redeemed Aeroplan Miles, through the Aeroplan Program owned and/or operated by Aimia Canada inc. and Aimia inc. to purchase airline tickets for domestic or US transborder flights operated by Air Canada, Air Canada Rouge or Air Canada Express and who paid a fuel surcharge for such flights.”

7. The Originating Application seeks the restitution of fuel surcharges allegedly paid by class members when redeeming Aeroplan miles for domestic and US transborder flights, along with punitive damages resulting from the Defendants’ allegedly false and misleading representations regarding fuel surcharges and from the alleged fact that by requiring Aeroplan members to pay such fuel surcharges when redeeming Aeroplan miles for domestic and US transborder flights, the Defendants were allegedly charging fuel surcharges that they were not allowed to impose.

III. GROUNDS IN SUPPORT OF THE PRESENT APPLICATION

8. The Originating Application alleges, without further particulars, that Defendants “own and operate” the Aeroplan loyalty program (the “**Aeroplan Program**”).
9. The Originating Application disregards Aimia’s corporate structure, as it has never operated, nor directly owned the Aeroplan Program.
10. As will be detailed below, Aimia has no legal relationship, or *lien de droit* with the Plaintiff, which warrants the dismissal of the Originating Application against it.
11. Subsidiarily, Aimia is entitled to seek that the Originating Application be partially dismissed against it for damages sought after January 10, 2019, date on which Aimia Canada Inc., the owner and operator of the Aeroplan Program, was sold to Air Canada.

B. Ownership Structure of the Aeroplan Program

12. The history of the Aeroplan Program has been set out in the context of these proceedings in a sworn declaration of Mr. Pierre-Jean Mayol (the “**Mayol Declaration**”), which is part of the Court record and which is communicated herewith for convenience as **Exhibit A-1**.
13. The Aeroplan Program was first launched by Air Canada in 1984 and began to be operated as a standalone entity in 2002, as appears from the Annual Information Form for the Financial Year Ended December 31, 2012 (the “**2012 AIF**”), communicated herewith as **Exhibit A-2**.
14. Aimia was incorporated on May 5, 2008, as a result of a reorganization of the Aeroplan Income Fund, as appears from the 2012 AIF, and the Mayol Declaration.

15. Since its incorporation, Aimia never directly owned nor operated the Aeroplan Program.
16. For the duration of the class period, up to the sale of the Aeroplan Program (as further detailed below), the Aeroplan Program was owned and operated by Aimia Canada Inc. (formerly Aeroplan Canada Inc.) ("**Aimia Canada**"), a wholly owned subsidiary of Aimia, as appears from the Mayol Declaration and the 2012 AIF.
17. Aimia Canada exists and operates as a standalone legal entity, with its own Board of Directors, making its own management decisions.
18. Aimia exercised its rights of supervision and control over the operations of the Aimia Canada, which is expected from a sole shareholder of a privately held corporation.
19. It is well established that control by a shareholder of a corporation (whether it is an individual or another corporation) is not sufficient to disregard the separate legal personality of the corporation.
20. Therefore, Aimia's inclusion in the Originating Application baffles the paramount principle of Canadian corporate law that a corporation is an independent legal entity not to be confused with its shareholders.
21. There exists no legal relationship, or *lien de droit* between the Plaintiff and Aimia, as it cannot be held responsible for the alleged faults of its subsidiary.
22. The Originating Application is clearly unfounded against Aimia and should be dismissed, given that Aimia never operated, nor directly owned the Aeroplan Program.
23. Aimia's inclusion in the Originating Application constitutes an abuse of procedure, which warrants its dismissal at this stage of the proceedings.

C. Sale of the Aeroplan Program

24. The Originating Application does not limit in time the damages sought against Aimia.
25. On November 26, 2018, Aimia entered into a share purchase agreement, whereby it sold the shares of Aimia Canada, and with it, the Aeroplan Program, to Air Canada (the "**Sale Transaction**"), as appears from a press release, communicated herewith as **Exhibit A-3**, and the Share Purchase Agreement entered into among Aimia, Air Canada and Aimia Canada, communicated herewith as **Exhibit A-6**.
26. On January 10, 2019, the Sale Transaction closed (the "**Closing Date**"), as appears from a press release, communicated herewith as **Exhibit A-4**.

27. Aimia Canada is now owned by Air Canada, as appears from the *État de renseignements d'une personne morale au registre des entreprises* for Aimia Canada (now Aeroplan Inc.), communicated herewith as **Exhibit A-5**.
28. As a result of the Sale Transaction, Aimia no longer has any tangible connection to the operation of the Aeroplan Program.
29. Aimia cannot be held liable for alleged faults of a third party, unrelated to its corporate structure or its operations.
30. Aimia is therefore justified to seek, subsidiarily, that the Originating Application be partially dismissed against it for damages sought after the Closing Date.

IV. CONCLUSION

31. In light of the foregoing, the Originating Application against Aimia is manifestly unfounded.
32. Aimia's inclusion in the present proceedings is abusive, given the clear absence of a *lien de droit* between the Plaintiff and Aimia.
33. Accordingly, the Originating Application should be dismissed against Aimia.
34. Subsidiarily, the Originating Application should be partially dismissed against Aimia for damages sought as of the Closing Date.
35. The present Amended Application to Dismiss is well founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Amended Application;

DISMISS the Plaintiff's action against the Defendant AIMIA INC.;

Subsidiarily:

GRANT the present Amended Application;

PARTIALLY DISMISS the Plaintiff's action against the Defendant AIMIA INC. as to the damages sought after January 10, 2019;

THE WHOLE with legal costs.

Montreal, January 17, 2020

Osler, Hoskin & Harcourt

Osler, Hoskin & Harcourt, LLP

1000 De La Gauchetière Street West, Suite 2100
Montréal, Québec H3B 4W5

Telephone: (514) 904-8100

Telecopier: (514) 904-8101

Attorneys for Defendant **AIMIA INC.**

c/o Mtre Éric Préfontaine / Mtre Alexandre Fallon

Emails: eprefontaine@osler.com /

afallon@osler.com

notificationosler@osler.com

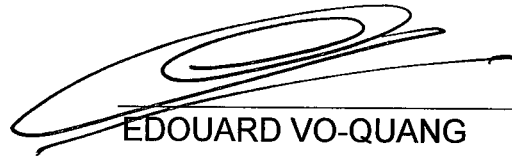
Our file: 1163083

SWORN DECLARATION

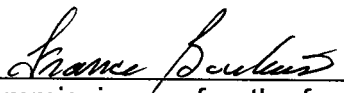
I, the undersigned, **Edouard Vo-Quang**, having a place of business at 525 Viger Avenue West, Suite 1000, in the City and District of Montréal, Province of Québec, do hereby solemnly affirm as follows:

1. I am the General Counsel and Corporate Secretary of the defendant Aimia Inc.;
2. I have read the attached amended application and all the facts alleged therein are true.

AND I HAVE SIGNED:


EDOUARD VO-QUANG

Solemnly affirmed before me,
in Montreal, this 17th day of January
2020


Commissioner of oaths for the
Province of Québec



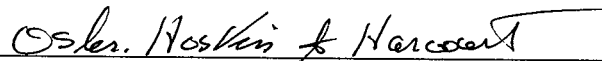
NOTICE OF PRESENTATION

TO: *Savonitto & Ass. Inc.*
Me Michel Savonitto
Me Carl Consigny
468 Saint-Jean Street
Suite 400
Montréal QC H2Y 2S1
Attorneys for Plaintiff

Société d'avocats Torys, S.E.N.C.R.L.
Me Sylvie Rodrigue
Me Matthew Angelus
1, place Ville-Marie
Suite 2880
Montréal QC H3B 4R4
Attorneys for Defendant Aeroplan inc.
(F.K.A. Aimia Canada inc.)

TAKE NOTICE that the present *Amended Application by Defendant Aimia Inc. to Dismiss the Plaintiff's Originating Application* will be presented for hearing and allowance on January 22, 2020, at 9 h 15, at a place to be determined by the Honourable Martin Castonguay of the Superior Court of Québec, given the case management.

Montreal, January 17, 2020



Osler, Hoskin & Harcourt, LLP
1000 De La Gauchetière Street West, Suite 2100
Montréal, Québec H3B 4W5
Telephone: (514) 904-8100
Telecopier: (514) 904-8101
Attorneys for Defendant **AIMIA INC.**
c/o Mtre Éric Préfontaine / Mtre Alexandre Fallon
Emails: eprefontaine@osler.com /
afallon@osler.com
notificationosler@osler.com
Our file: 1163083

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

N°: 500-06-000724-142

CHANTALE TAILLON

Plaintiff

v.

AEROPLAN INC. (F.K.A. AIMIA CANADA
INC.)

and

AIMIA INC.

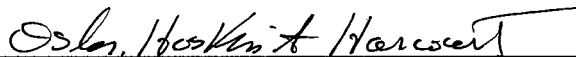
Defendants

AMENDED LIST OF EXHIBITS

(AMENDED APPLICATION BY DEFENDANT AIMIA INC. TO DISMISS THE PLAINTIFF'S
ORIGINATING APPLICATION)

- Exhibit A-1: Sworn declaration of Mr. Pierre-Jean Mayol dated August 28, 2015;
- Exhibit A-2: Annual Information Form for the Financial Year Ended December 31, 2012;
- Exhibit A-3: Press release dated November 26, 2018;
- Exhibit A-4: Press release dated January 10, 2019;
- Exhibit A-5: *État de renseignements d'une personne morale au registre des entreprises* for Aimia Canada (now Aeroplan Inc.);
- Exhibit A-6: Share Purchase Agreement entered into among Aimia, Air Canada and Aimia Canada.

Montreal, January 17, 2020



Osler, Hoskin & Harcourt, LLP

1000 De La Gauchetière Street West, Suite 2100

Montréal, Québec H3B 4W5

Telephone: (514) 904-8100

Telecopier: (514) 904-8101

Attorneys for Defendant **AIMIA INC.**

c/o Mtre Éric Préfontaine / Mtre Alexandre Fallon

Emails: eprefontaine@osler.com / afallon@osler.com

notificationosler@osler.com

Our file: 1163083

No. : 500-06-000724-142

SUPERIOR COURT
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

CHANTALE TAILLON

Petitioner

v.

AIMIA CANADA INC.

-and-

AIMIA INC.

Respondents

AMENDED APPLICATION BY DEFENDANT
AIMIA INC. TO DISMISS THE PLAINTIFF'S
ORIGINATING APPLICATION (Articles 51, 168
al. 2 C.C.P.), AMENDED LIST OF EXHIBITS
AND EXHIBIT A-6

ORIGINAL

Me Éric Préfontaine
Me Alexandre Fallon

Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière St. West, Suite 2100
Montréal, QC, Canada H3B 4W5
eprefontaine@osler.com; afallon@osler.com

Tel: 514.904.8100 Fax: 514.904.8101

Code : BO 0323 O.F. : 1163083