

# In the Court of Appeal of Alberta

**Citation: Edmonton Regional Airports Authority v Lynx Air Holdings Corporation,  
2024 ABCA 380**

**Date:** 20241122  
**Docket:** 2401-0244AC  
**Registry:** Calgary

**Between:**

**Edmonton Regional Airports Authority, Halifax International Airports Authority,  
The Calgary Airport Authority, Vancouver Airport Authority, and  
Winnipeg Airports Authority Inc.**

Applicants

- and -

**Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air**

Respondents

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**Reasons for Decision of  
The Honourable Justice Jane A. Fagnan**

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Application for Permission to Appeal

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**Reasons for Decision of  
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[1] The applicant airport authorities seek permission to appeal the decision published as: *Greater Toronto Airports Authority v Lynx Air Holdings Corporation*, 2024 ABKB 514. Permission to appeal is required under s 13 of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 and Rule 14.5(1)(f) of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] The applicants and 1263343 Alberta Inc dba Lynx Air are parties to a Memorandum of Agreement between the Air Transport Association of Canada, Signatory Air Carriers, and Certain Airports which governs the collection and remittance of airport improvement fees. Those fees are charged to all departing air passengers by the airport authorities to fund capital expenditure projects relating to the respective airports for the benefit of the public. Pursuant to the Memorandum of Agreement, air carriers like Lynx collect the fees from departing passengers and subsequently remit them on a monthly basis to the airport authorities.

[3] On February 22, 2024, Lynx obtained an initial order pursuant to the CCAA. At that time, it was \$4 million in arrears on its remittance of airport improvement fees to the applicants. On May 24, 2024, the applicants filed an application seeking an order declaring that the unremitted fees owed to the applicants were subject to an express, implied, or constructive trust. The Greater Toronto Airports, who had a separate agreement with Lynx, filed a similar application. The King's Bench justice determined that no trust was created between the applicants and Lynx in relation to the fees. She determined that the Toronto airports' agreement did create a trust.

[4] The applicants seek leave to appeal on the grounds that the justice erred in the contractual interpretation of relevant provisions in the Memorandum of Agreement and, alternatively, erred in failing to impose a constructive trust.

[5] The test for permission to appeal under s 13 requires "serious and arguable grounds that are of real and significant interest to the parties": *Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, 2020 ABCA 178 at para 16. The following are relevant considerations:

(a) Is the point on appeal of significance to the practice?

[6] I am satisfied that the interpretation of this industry wide agreement is of significance to the practice. The Memorandum of Agreement has been in place since 1999 and applies to many signatory air carriers and airports. The appeal relates to fees paid by travelers which are intended to be used by airport authorities to maintain and improve the airport facilities for the benefit of the public.

(b) Is the point raised of significance to the action itself?

[7] The issue raised is one of significance to the applicants. The Calgary Airport Authority, in particular, is owed over \$2 million. Further, the matter is of precedential significance as the Memorandum of Agreement continues to govern the relationship between numerous carriers and airports across the country.

(c) Is the appeal *prima facie* meritorious or, on the other hand, is it frivolous?

[8] The “not frivolous” standard is a very low threshold. The parties have expounded upon their arguments at length in their written and oral submissions. Having considered those arguments, I am satisfied that the grounds put forward by the applicants are not frivolous.

(d) Will the appeal unduly hinder the progress of the action.

[9] The liquidation of Lynx has been completed. The funds in question are being held in the Monitor’s trust account and are accruing interest. The Monitor’s mandate has been extended to January 31, 2025. There are a number of unrelated continuing matters which have yet to be finalized. Counsel for the applicants advises that the primary secured creditor, Indigo, who was owed over \$90 million in principal and over \$20 million in interest and costs, has received \$87 million since the CCAA filing. Indigo has not conveyed any concerns regarding delay. I am satisfied that the appeal will not unduly hinder the progress of the action.

[10] Permission to appeal is granted.

Application heard on November 20, 2024

Reasons filed at Calgary, Alberta  
this 22nd day of November, 2024

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Fagnan J.A.

**Appearances:**

K.L. Fellowes, KC

A. Bell

for the Applicants

T. Gelbman

J.L. Treleaven

for the Respondents