BLG clients Aimia Inc. and Kognitiv Corporation have a significant win

June 22, 2020

BLG is pleased to announce that the Quebec Superior Court (Civil Division) in the District of Montreal (the Court) issued a decision in favour of our clients Aimia Inc. and Kognitiv Corporation, dismissing the application for injunctive relief filed by Air Canada and Aeroplan Inc.

Air Canada had taken an Application for provisional, interlocutory and permanent injunction to enjoin Aimia Inc. and Kognitiv Corporation Inc. from closing their announced merger.

The proposed combination of Aimia's Loyalty Solutions business, which includes Intelligent Shopper Solutions and the Air Miles Middle East program, with a subsidiary of Kognitiv Corporation, an innovator in loyalty peer-to-peer trading and collaborative commerce, was announced on April 29, 2020. Air Canada had argued that the transaction would breach non-competition and confidentiality provisions included in Aimia's $516 million sale of loyalty program Aeroplan to Air Canada in November 2018.

Due to COVID-19, the hearing was held virtually, over a full day on June 5 before Justice Gary Morrison. He issued his decision dismissing the Application for interlocutory injunction. This is a significant victory that has allowed Aimia and Kognitiv to close their $534 million transaction a few hours after the court released its reasons. Of particular importance is the Court's finding that: *Drafting an agreement with a view to avoiding the breach of another, is not in itself, evidence of bad faith.* It was alleged that such drafting circumvented the intent of the covenant, but the Court obviously did not agree.

This is yet another example of BLG's commitment to work seamlessly across the country as One Firm to the benefit of our clients. Our Corporate Team structured the merger and our Disputes advocates vigorously defended our clients against the injunction. BLG has been at the forefront of the shift to remote court appearances, examinations and mediations. Our clients know that we are fearless advocates who achieve winning outcomes by anticipating what's next. We continue to defend and advise our clients in these unusual times.

Our Disputes advocates were lead by Alex De Zordo who pleaded the injunction along with a team that included Dan Grodinsky, Freddy Pletcher, Andrew Hennigar, Mikhail Ilinets, James Cantwell, Francois Hawkins, Fannie St-Cyr, Linda Latreille, Van Khiai Luong and Brigitte Bujold. Our Corporate Team members, Freddy Pletcher and Andrew Hennigar, structured the merger.

By

David Di Paolo, Alexander De Zordo, Andrew Hennigar, Daniel Grodinsky, Mikhail Ilinets, James Cantwell, Van Khai Luong

Expertise

Disputes

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