

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

TOP JET ENTERPRISES, LTD.,)	
)	
Petitioner,)	
)	
vs.)	
)	Case No. []
SINO JET HOLDING LTD., SKYBLUEOCEAN)	
LTD. and JET MIDWEST GROUP, LLC,)	
)	
Respondents.)	
-----)	

PETITION TO CONFIRM AND ENFORCE FOREIGN ARBITRAL AWARD

Petitioner Top Jet Enterprises, Ltd. (“Petitioner”), by and through the undersigned counsel, for its Petition to Confirm and Enforce Foreign Arbitral Award, alleges as follows:

PRELIMINARY STATEMENT

1. This is a proceeding to confirm and enforce a foreign arbitration award, dated June 22, 2020 (the “Award”). A true and correct copy of the Award is attached hereto as **Exhibit A**.
2. On April 5, 2017, Petitioner commenced an arbitral proceeding (the “Arbitration”) before the Hong Kong International Arbitration Centre (the “HKIAC”).
3. The Arbitration was designated by the HKIAC as Case No. HKIAC/A17071.
4. Petitioner was the sole Claimant in the Arbitration.
5. The Respondents in the Arbitration (the “Respondents”) were as follows:
 - a. The First Respondent was Sino Jet Holding Ltd. (“Sino Jet”), a Cayman Islands corporation;
 - b. The Second Respondent was Skyblueocean Ltd. (“Sky”), a British Virgin Islands corporation; and,

- c. The Third Respondent was Jet Midwest Group, LLC (“JMG”), a Delaware limited liability company.
6. The Arbitration was heard and resolved by a tribunal (the “Tribunal”) of three arbitrators: Mr. Dan Tan, who served as Chair of the Tribunal, Dr. Michael Hwang S.C., and Ms. Jennifer Kirby.
7. The seat of the Arbitration was Hong Kong.
8. Following approximately two years of preliminary proceedings, an in-person hearing on the merits was held in Hong Kong, before the Tribunal, from June 10 to 14, 2019 (the “Hearing”).
9. As stated in the Award: “At the close of the hearing, the Tribunal asked Claimant, Sky and JMG if they had any objections to the way the proceedings had been conducted. No party raised any.” *See* Award ¶ 11.44.
10. Following the Hearing, the Tribunal received post-hearing briefs and various other post-hearing submissions, all described in the Award.
11. Following its deliberations, the Tribunal issued the Award, dated June 22, 2020.
12. The Award grants Petitioner monetary damages against the Respondents (Sino Jet, Sky and JMG), jointly and severally, in the following amounts:
- \$76,043,750; plus,
 - compound interest of 15% per year from June 30, 2019 through June 22, 2020 (the date of the Award), for a total monetary award of \$87,200,000 as of June 22, 2020; plus,
 - simple interest of 4.25% per year from June 23, 2020 until the amount owed is paid in full.

See Award ¶¶ 25.3-25.4.

THE PARTIES

13. Petitioner is, and at times relevant herein has been, a corporation duly organized and existing under the laws of the British Virgin Islands. Petitioner is headquartered in the People's Republic of China.

14. Respondent Sino Jet is, and at all times relevant herein has been, a corporation duly organized and existing under the laws of the Cayman Islands.

15. Respondent Sky is, and at all times relevant herein has been, a corporation duly organized and existing under the laws of the British Virgin Islands.

16. Respondent JMG is, and at all times relevant herein has been, a limited liability company organized under the laws of Delaware, USA.

17. JMG has been, or currently is, a party to three other proceedings before this Court.

- a. **First**, JMG was the sole Defendant in W.D.Mo. Case No. 17-cv-06005 (the "Term Loan Action"). The sole Plaintiff in the Term Loan Action was Jet Midwest International Co., Ltd. ("JM International"). JM International, an affiliate of Petitioner, is a Hong Kong corporation headquartered in the People's Republic of China. On October 26, 2017, this Court entered a judgment of \$6.5 million (the "Term Loan Judgment") against JMG, plus pre- and post-judgment interest, in the Term Loan Action. As of the date of this Petition, JMG has not paid the Term Loan Judgment. Furthermore, pursuant to a ruling of the Eighth Circuit, dated August 2, 2019, JM International has moved for an attorney fee award in the Term Loan Action; that motion is currently pending before this Court.

- b. **Second**, JMG was a Defendant in W.D.Mo. Case No. 18-cv-06019 (the “Fraudulent Transfer Action”). JM International filed the Fraudulent Transfer Action against JMG, and the owners of JMG, for the purpose of collecting the Term Loan Judgment that JMG refuses to pay. On May 26, 2020, this Court entered judgment in the Fraudulent Transfer Action in favor of JM International. Nevertheless, as of the date of this Petition, JMG still has not paid the Term Loan Judgment.
- c. **Third**, JMG is the sole Defendant in W.D.Mo. Case No. 17-cv-06085 (the “Side Letter Case”). The sole Plaintiff in the Side Letter Case is JM International. The Side Letter is a case seeking damages based on breach of contract and promissory estoppel, separate and distinct from the Term Loan Action. As of the date of this Petition, the Side Letter Case remains pending.

JURISDICTION AND VENUE

18. This Court has original jurisdiction over this proceeding pursuant to 9 U.S.C. § 203 and pursuant to the New York Convention on the Enforcement and Recognition of Foreign Arbitral Awards (the “Convention”).

19. This Court has personal jurisdiction over each Respondent because, *inter alia*:

- a. JMG’s principal place of business is in Kansas City, Missouri.
- b. As discussed below, Sky and JMG submitted to the jurisdiction of this Court by asserting a claim against Sino Jet in proceedings before this Court. This Court thereafter dismissed that claim in favor of arbitration, resulting in the Arbitration at issue in this proceeding.
- c. The dispute submitted to arbitration arose out of contracts that: created a joint venture that involved each of the Respondents and was centered at an aircraft

consignment facility in Kansas City, Missouri, where the joint venture kept its physical inventory; required and led to the transaction of business in Missouri; required and led to the use and possession of real estate in Missouri; and were ultimately breached in Missouri. *See, e.g.*, Award ¶¶ 13.18-13.27.

- d. Substantive meetings between the parties' representatives, regarding the business of the joint venture, also were held in Kansas City, Missouri.
20. Venue is proper before this Court pursuant to:
- a. 9 U.S.C. § 204;
 - b. 28 U.S.C. § 1391(b)(1); and,
 - c. 28 U.S.C. § 1391(b)(2).
21. In the alternative, venue is proper before this Court pursuant to 28 U.S.C. § 1391(b)(3).

THE AGREEMENT TO ARBITRATE

22. As described in Paragraph 4.1 of the Award, the Arbitration was conducted pursuant to the arbitration clause contained in Section 9.2 of the Shareholders Agreement (the "SHA"), among all parties hereto, or their predecessors in interest, dated December 14, 2015. *See* Award ¶ 4.1. That clause reads as follows:

9.2. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination, validity or invalidity thereof, shall be submitted to and settled by arbitration in Hong Kong by the Hong Kong International Arbitration Centre (the "**HKIAC**") in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules (the "**HKIAC Rules**") in force in accordance with the HKIAC Rules then in force. The place of arbitration shall be in Hong Kong. There shall be three (3) arbitrators. The claimants to the dispute shall collectively choose one arbitrator, and the respondents shall collectively choose one arbitrator, within thirty (30) days after the delivery of the Notice to the other Party. Both arbitrators shall agree on the third arbitrator within thirty (30) days of their appointment. If any of the members of the arbitral tribunal have not been appointed within thirty (30)

days after the Arbitration Notice is given, the relevant appointment shall be made by the Secretary-General of the HKIAC. The arbitration shall comply with the Arbitration Ordinance Chapter 341 of the Laws of Hong Kong.

Id. (quoting SHA § 9.2) (emphasis in original).

23. A true and correct copy of the SHA, as originally executed, along with each amendment to the SHA, is attached hereto as **Exhibit B**. At the request of the Tribunal during the Arbitration, the parties created and agreed upon a single document reflecting the original text of the SHA as modified by each subsequent amendment to the SHA. A true and correct copy of that document is attached hereto as **Exhibit C**.

**THIS COURT’S ORDER CONFIRMING THE VALIDITY AND ENFORCEABILITY
OF THE AGREEMENT TO ARBITRATE**

24. After JM International filed the Term Loan Action, JMG responded by filing a counterclaim and third-party complaint against Petitioner, Sino Jet and JM International. *See* Term Loan Action, Docket No. 12. In addition, Sky filed a motion to intervene in the Term Loan Action for the purpose of asserting the same counterclaim and third-party complaint against Petitioner, Sino Jet and JM International. *Id.*, Docket No. 13.

25. In an Order dated June 7, 2017, this Court dismissed the counterclaim and third-party complaint. *See* Term Loan Action, Docket No. 33 (the “June 7, 2017 Order”), a copy of which is attached hereto as **Exhibit D**. This Court found that the arbitration clause contained in the SHA is “valid and mandatory,” such that any claims arising from or relating to the SHA “must be settled through arbitration.” *See* June 7, 2017 Order at 6. As the counterclaim and third-party complaint arose from and related to the SHA, it was dismissed in favor of arbitration. *Id.*

26. The Award confirms that, pursuant to the arbitration clause contained in the SHA, the Tribunal has jurisdiction over the Arbitration. *See* Award ¶ 25.2.

THE ARBITRATION AND AWARD

27. The contents of the Award are respectfully incorporated by reference into this Petition.

28. As described in the Award, Sky and JMG were represented by counsel in the Arbitration and actively participated in the Arbitration.

29. Sino Jet was served with notice of the Arbitration but did not appear.

30. As discussed above, the Hearing was conducted from June 10 to 14, 2019, before the Tribunal in Hong Kong. The Hearing was attended by counsel for Petitioner and by counsel for Sky and JMG. At the Hearing, witnesses for Petitioner, Sky and JMG testified and were subject to cross-examination.

31. Following the Hearing, the parties made various post-hearing written submissions.

32. While the Award is entitled “Partial Award,” it disposes of every claim and issue in the Arbitration, with the exception of attorneys’ fees and costs, in accordance with Article 34 of the 2013 HKIAC Arbitration Rules, which govern the Arbitration. *See* Award ¶ 25.7. The Award is entitled “Partial Award” because the quantification of fees and costs will be addressed in a subsequent award. *Id.*

33. In the Arbitration, Petitioner asserted two claims against Respondents: (i) a breach of contract claim, and (ii) in the alternative, a fraud claim. In the Award, the Tribunal found in favor of Petitioner on its breach of contract claim and thereby deemed the fraud claim moot.

34. In the Arbitration, Sky and JMG asserted a counterclaim against Petitioner. In the Award, the Tribunal dismissed that counterclaim on the merits. As discussed above, the relief granted in the Award is monetary damages in the amount of \$87,200,000 as of the date of the

Award, with such sum accruing simple interest at 4.25% per annum until paid. *See* Award ¶¶ 25.3-25.4.

35. The Tribunal awarded the monetary damages described above in favor of Petitioner and against each of the Respondents, jointly and severally.

36. As of the date of this Petition, none of the Respondents have paid any of the monetary damages assessed against them in the Award.

37. There is no ground for refusing or deferring recognition or enforcement of the Award.

COUNT ONE: CONFIRMATION OF ARBITRAL AWARD

38. Petitioner repeats and realleges the allegations set forth in Paragraphs 1 through 37 hereof.

39. Chapter 2 of the Federal Arbitration Act provides:

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

See 9 U.S.C. § 207.

40. The Award is an arbitral award falling under the New York Convention, within the meaning of 9 U.S.C. § 202.

41. In accordance with 9 U.S.C. § 207, Petitioner has filed this Petition within three years of the date of the Award.

42. There is no ground for refusing or deferring recognition or enforcement of the Award pursuant to 9 U.S.C. § 207 or otherwise.

43. Petitioner therefore respectfully requests that this Court confirm and enforce the Award and enter judgment accordingly in favor of Petitioner and against Respondents, jointly and severally.

WHEREFORE, Petitioner respectfully requests that this Court enter judgment granting the following relief in favor of Petitioner:

- a. confirming the Award pursuant to 9 U.S.C. § 207;
- b. as provided in the Award, granting monetary damages in favor of Petitioner, and against the Respondents jointly and severally, in the amount of (i) \$76,043,750, plus (ii) compound interest of 15% per year from June 30, 2019 through June 22, 2020 (the date of the Award), for a total of \$87,200,000 as of June 22, 2020;
- c. awarding simple interest of 4.25% per year from June 23, 2020 until the judgment is paid in full;
- d. awarding Petitioner its fees and costs incurred of this proceeding, including its attorneys' fees; and,
- e. granting Petitioner such other and further relief as this Court deems just and proper.

Date: July 2, 2020

Respectfully submitted,

By: /s/ Carrie Phillips

Kirk T. May, Mo. Bar # 31657

Carrie Phillips, Mo. Bar #69278

GM LAW PC

1201 Walnut Street, Suite 2000

Kansas City, MO 64106

Tel.: 816-471-7700

Email: kirkm@gmlawpc.com

Email: carriep@gmlawpc.com

Attorneys for Petitioner Top Jet Enterprises, Ltd.