IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re	)	Chapter 11 Case
	)	
ATA Holdings Corp., *et al.*[1]	)	Case No. 04-19866-BHL
	)	(Jointly Administered)
	)	
	)	
Debtors.	)	
	)	

JOHN HANCOCK LEASING CORPORATION'S REPLY TO DEBTORS' OBJECTION TO MOTION FOR AN ORDER (A) COMPELLING DEBTORS TO COMPLY WITH THE ORDER AUTHORIZING DEBTORS TO REJECT CERTAIN AIRCRAFT EQUIPMENT, (B) FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS AND (C) GRANTING CERTAIN OTHER RELIEF

John Hancock Leasing Corporation ("Hancock Leasing") hereby submits this Reply (the "Reply") to the Debtors' Objection (the "Objection") to Hancock Leasing's Motion for an Order (a) Compelling Debtors to Comply with the Order Authorizing Debtors to Reject Certain Aircraft Equipment (b) for Allowance and Payment of Administrative Claims and (c) Granting Certain Other Relief (the "Motion").[2] In further support of the Motion, Hancock Leasing respectfully states as follows:

INTRODUCTION

1. The Objection characterizes the Motion as an attempt by Hancock Leasing to convert a pre-petition rejection damages claim, based on a breach of return conditions

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[1] The Debtors are the following entities: ATA Holdings Corp. (04-19866); ATA Airlines, Inc. (04-19868); Ambassadair Travel Club, Inc. (04-19869); ATA Leisure Corp. (04-19870); Amber Travel, Inc. (04-19871); American Trans Air Execujet, Inc. (04-19872); ATA Cargo, Inc. (04-19873); and Chicago Express Airlines, Inc. (04-19874).

[2] Capitalized terms not specifically defined herein have the meanings given in the Motion.

under the Lease, into an administrative expense claim. That is incorrect. Hancock Leasing seeks to compel the Debtors' compliance with the Court's January 3, 2005 Order Authorizing Debtors to Reject Certain Aircraft Equipment (the "Rejection Order"), which was specifically negotiated and intended to apply to the rejection of the Leased Aircraft and the Leased Engines owned by Hancock Leasing (together, the "Leased Equipment").

2. As more fully set forth below, the Rejection Order expressly requires the Debtors, ***prior to*** the Rejection Effective Date, to (***a***) reinstall the Leased Engines in the Leased Aircraft and (***b***) deliver to Hancock Leasing all records and documents required to be maintained with respect to the Leased Equipment under applicable law. It is the Rejection Order, ***not*** the Lease, upon which the Motion is based.

3. The Debtors assert that possession of the Leased Equipment was surrendered to Hancock Leasing on November 30, 2004 pursuant to a letter of that date to Mr. David Santom of Hancock Leasing (the "Santom Letter"), and that therefore the Rejection Effective Date occurred on the date of the Rejection Order. See Objection, at ¶ 14. However, the purported November 30, 2004 surrender of the Leased Equipment did not comply with the Rejection Order, because the Debtors did not even attempt to install the Leased Engines or to return any records and documents relating to the Leased Equipment to Hancock Leasing until months later, and still have not done so in accordance with the Rejection Order's requirements. Under the express terms of the Rejection Order, these failures render the purported surrender of the Leased Equipment ineffective and justify the relief requested in the Motion.

THE REJECTION ORDER REQUIRES THE DEBTORS TO REINSTALL THE LEASED ENGINES AND TO DELIVER CURRENT DOCUMENTATION FOR THE LEASED EQUIPMENT PRIOR TO THE REJECTION EFFECTIVE DATE

4. The Rejection Order states that "[t]o the extent the Debtors have (***a***) removed any of the Leased Engines from the Leased Aircraft in which they were originally installed; or (***b***) installed those Leased Engines in other aircraft, the Debtors, at their own expense, shall reinstall the Leased Engines, ***prior to the Rejection Effective***

Date, in the Leased Aircraft in which they were originally installed." Rejection Order, at ¶ 7 (emphasis added).

5. Paragraph 7 of the Rejection Order thus makes clear that (***a***) the Debtors are required by the Rejection Order to reinstall the Leased Engines in the Leased Aircraft, and (***b***) such reinstallation is a condition precedent to the occurrence of the Rejection Effective Date. Because the Leased Engines have not been installed in the Leased Aircraft, see Motion, at ¶¶ 9-11, the Rejection Effective Date has not yet occurred.

6. In paragraph 16 of the Objection, the Debtors deny that reinstallation of the Leased Engines is a condition precedent to rejection. However, the Debtors ignore that paragraph 7 of the Rejection Order, in addition to paragraph 2, establishes conditions for the rejection and surrender of the Leased Equipment. See Objection, at ¶ 16 (citing only Paragraph 2 of the Rejection Order). The Debtors' Objection thus fails to address the basis and substance of the Motion.

7. The term "installation" as used in the Rejection Order can only sensibly mean installation pursuant to the requirements of applicable law, namely Federal Aviation Administration ("FAA") regulations. See Motion, at ¶ 9. However, even adopting the Debtors' "practical" interpretation of the term "installation," Objection, at 16, the earliest date on which reinstallation of the Leased Engines in the Leased Aircraft occurred, according to the ATA Maintenance Logs, is March 16, 2005. See Declaration of Wade C. Walker (attached as Exh. 1), at ¶ 3 & Exh. A thereto.[3]

8. The Debtors' failure to return records and documents relating to the Leased Equipment in accordance with the Rejection Order is another reason why the Rejection Effective Date has not occurred. Paragraph 2 of the Rejection Order states that

[3] For this reason, Hancock Leasing is entitled, at a minimum, to an administrative expense claim for unpaid rent accruing on and from the sixtieth day following the Petition Date through the date on which surrender and return was effective.

the Rejection Effective Date shall be the later of (***a***) the date of the Rejection Order (January 3, 2005) and (***b***) "the date of actual surrender and return of the Leased Aircraft, Leased Engines, and other rejected aircraft equipment (***including all "equipment" as defined under section 1110 of the Bankruptcy Code***) (expressly including spare parts, if any, and all records and documents relating thereto)." Rejection Order, at ¶ 2 (emphasis added).

9. Section 1110 of the Bankruptcy Code defines "equipment" to include "all records and documents relating to such equipment that are required, under the terms of security agreement, ***lease***, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment." 11 U.S.C. § 1110(a)(3)(B) (emphasis added). Accordingly, it is necessary to refer to the Lease to determine the requirements of the Rejection Order with respect to records and documents.

10. Section 16(c) of the Lease requires the Debtors to "deliver to [Hancock Leasing] all logs, manuals, certificates and inspection, modification and overhaul records ***which are required to be maintained with respect thereto under applicable rules and regulations of the FAA and Department of Transportation.***" Lease (excerpt attached hereto as Exh. 2), at § 16(c) (emphasis added). Thus the FAA rules and regulations control the relevant definition of records in the Lease, which in turn provides the content of the defined term "records and documents" in the Bankruptcy Code and the Rejection Order. Because applicable FAA regulations require that the Current Manuals be maintained, see Motion, at ¶ 21, the Debtors' failure to return the Current Manuals with the Leased Equipment rendered their purported November 30, 2004 surrender ineffective.

11. The Debtors argue that the Rejection Order does not require them to deliver the Current Manuals and other missing records and documents relating to the Leased Aircraft and Leased Engines, apparently because these are not in their possession. See Objection, at ¶ 17 ("The only reasonable interpretation of the Rejection Order is that

the Debtors were only required to surrender all equipment, parts and supporting documentation *in their possession* in order to effectuate the rejection of the Aircraft."). Once again, the Debtors ignore the plain language of the Rejection Order, which specifically requires them to return "all" documents relating to the Leased Equipment, as defined in the applicable portions of the Bankruptcy Code, the Lease, and the FAA's rules and regulations, without reference to what the Debtors do or do not possess.

12. Because the Current Manuals have not been returned, the Rejection Effective Date has not occurred. Even if this Court were to adopt the Debtors' view that the Debtors are not required to provide records and documents not in their possession, the Debtors did not return all of the records and documents that they ***did*** possess until February 14, 2005 — months after the Debtors' purported November 30, 2004 surrender of the Leased Equipment. See Declaration of Wade C. Walker, at ¶ 4.[4]

13. At bottom, the Debtors' Objection to properly installing the Leased Engines and returning the requisite records and documents is that doing so will require the Debtors to spend money that will consequently not be available for other creditors. See Objection, at ¶ 18, 22, 33, 34. However the Debtors had the opportunity to raise this concern at the time the Rejection Order was negotiated. The result of that negotiation process was a Rejection Order that requires the Debtors, "***at their own expense***," to reinstall the Leased Engines (Rejection Order, at ¶ 7), and to return to Hancock Leasing "all documents and records relating" to the Leased Equipment — including those required under applicable provisions of the Bankruptcy Code, the Lease, and the FAA rules and regulations (Id., at ¶ 2). The Rejection Order places the financial burden of meeting those conditions on the Debtors as administrative expenses, just as it places other financial burdens on Hancock Leasing. The Debtors' attempt to re-allocate those burdens

[4] For this reason, Hancock Leasing is entitled, at a minimum, to an administrative expense claim for unpaid rent accruing on and from the sixtieth day following the Petition Date through the date on which the surrender and return was effective.

by ignoring the express provisions of the Rejection Order that it participated in drafting is unavailing.

HANCOCK LEASING'S PROPERTY DAMAGE CLAIM AND OTHER CLAIMS ARISING FROM THE DEBTOR'S POST-PETITION CONDUCT ARE ADMINISTRATIVE CLAIMS

14. Completely unrelated to the issue of the Rejection Effective Date is the damage which the Debtors deliberately inflicted upon the Leased Engines. As more fully set forth in the Motion and supporting Declaration of Walter Adrushenko, the Leased Engines were tagged as "serviceable" upon arrival in Roswell, New Mexico, where they were due to be installed in the Leased Aircraft by the Debtors pursuant to the Rejection Order. However, during the course of the purported "installation," the Debtors instructed their aircraft service provider, AAR, to build up the Leased Engines in accordance with out-of-date manufacturer's maintenance manuals and to use unserviceable parts that the Debtors knew would render the Leased Engines unserviceable. As a result of this deliberate post-petition conduct by the Debtors, the Leased Engines are now unserviceable and Hancock Leasing's property has been damaged.

15. The Objection mischaracterizes this property damage claim as a claim for breach of return conditions under the Lease that should be treated as a pre-petition, unsecured claim. Nowhere in the Motion does Hancock Leasing allege that the Debtors' intentional damage to the Leased Engines constituted a breach of the return conditions. Hancock Leasing's claim is not a breach of contract claim, but rather a tort claim for damage intentionally inflicted on the Leased Engines post-petition.

16. The Debtors assert that their failure to properly complete the reinstallation of the Leased Engines in the Leased Aircraft "merely goes to the question of [Hancock Leasing's] general unsecured rejection damages, and such a dispute does not affect the determination of whether the rejection has occurred." Objection, at ¶ 16. However, the Debtors should not be permitted to ignore the requirements of this Court's order and

relegate any claim for non-compliance with such order to the status of a pre-petition breach of contract claim.

17. The Court's ruling in the AMR matter, cited by the Debtors, see Objections, at ¶¶ 19-22, does not apply here because there was no claim that AMR's engines were rendered unserviceable by the Debtors' wrongful post-petition conduct. Moreover, AMR sought to imply in the rejection order applicable to its aircraft the requirement that equipment be returned in ***functioning*** condition, see Objection, Exh. A, at 21, without any apparent basis for doing so. In contrast, Hancock Leasing relies on the express terms of the different Rejection Order applicable to its Leased Equipment.

18. Therefore Hancock Leasing stands by the allegations set forth in the Motion, in particular that the Rejection Effective Date has not yet occurred. Hancock Leasing seeks compliance with the terms of the Rejection Order, and asserts administrative expense claims (***a***) to the extent that the Debtors fail to comply with the Rejection Order, including, without limitation, the failure to install the Leased Engines in accordance with applicable law; (***b***) for damages intentionally inflicted by the Debtors upon the Leased Engines; (***c***) for statutory accrual of rent under the Lease pursuant to Section 365(d)(10) of the Bankruptcy Code from and after the 60th day following the Petition Date until the occurrence of the Rejection Effective Date; and (***d***) for fair use of the Leased Aircraft and Leased Engines under Section 503(b)(1)(A) of the Bankruptcy Code for the first 60 days following the Petition Date.

Respectfully submitted,

/s/ Thomas N. Eckerle

Thomas N. Eckerle (#6651-49)
Thomas N. Eckerle P.C.
5557 North Meridian Street
Indianapolis, Indiana 46208-2657
Telephone: (317) 726-1533
Fax: (317) 257-7623
E-mail: eckerle@laweck.com

and

George E. B. Maguire
Stephen Vaccaro
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: (212) 909-6000
Fax: (212) 909-6836

Attorneys for John Hancock Leasing Corporation