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

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

**APPLICATION FOR PRELIMINARY INJUNCTION AND REQUEST FOR
CONSOLIDATED HEARING ON THE MERITS AND ORDER TO SHOW CAUSE WHY
THE CITY OF LOS ANGELES SHOULD NOT BE HELD IN CONTEMPT**

(LAWA)

ATA Airlines, Inc. ("Reorganized ATA"), acting within the times established by this Court's order ("Restraining Order") issued from the bench on January 25, 2007 and entered on the docket January 26, 2007 (Docket No. 4621) and pursuant to 11 U.S.C. §§ 105, 365 and 1141 and Federal Rule of Bankruptcy Procedure ("FRBP") 7065, now applies for a preliminary injunction ("Application") to this Court against the City of Los Angeles acting by and/or through its Department of Airports ("Los Angeles") to enforce this Court's order confirming the chapter 11 reorganization plan of the Reorganizing Debtors.² ATA has filed a request for an extension

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassador 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 C8 Airlines, Inc. f/k/a Chicago Express Airlines, Inc. (04-19874).

² Capitalized terms not defined herein shall have the meanings associated in the First Amended Joint Chapter 11 Plan of Reorganization for Reorganizing Debtors, as immaterially modified (the "Plan")

("Extension Request") of the Restraining Order for an additional ten days (Docket No. 4634) and for expedited discovery ("Expedited Discovery Request") (Docket No. 4635) related to the "default" alleged by Los Angeles as the basis for its attempted draw on the Letter of Credit posted on behalf of the Reorganized ATA.

Reorganized ATA requests that the Court consolidate a hearing on the merits of this dispute with this Application and further requests that this Court issue an order to show cause why Los Angeles should not be held in contempt for acting in violation of the Confirmation Order.

In support of its Application, Reorganized ATA states as follows:

JURISDICTION

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. This Court entered an order (the "Confirmation Order") confirming the Amended Joint Plan Of Reorganization (as immaterially modified) (the "Plan") on January 31, 2006 (the "Confirmation Date") (Docket No. 3657). The Plan became effective on February 28, 2006.

2. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought herein are Sections 105, 365, and 1141 of the Bankruptcy Code.

RELIEF REQUESTED

4. For the reasons stated below, Reorganized ATA applies to this Court for a preliminary injunction against Los Angeles consolidated with a hearing on the merits of the dispute, to enforce compliance by Los Angeles with this Court's Confirmation Order. Reorganized ATA further requests that this Court issue an order to show cause why Los Angeles should not be held in contempt for failing to comply with the terms of this Court's Restraining Order and for failing to comply with this Court's Confirmation Order.

PROCEDURAL BACKGROUND

5. Reorganized ATA filed an Emergency *Ex Parte* Motion for Temporary Restraining Order with this Court on January 25, 2007 ("TRO Motion") (Docket No. 4615).

6. Following notice, a telephonic hearing was held on January 25, 2007 ("TRO Hearing"), at which Walter Oetzell, attorney appearing on behalf of Los Angeles, participated.

7. At the conclusion of the TRO Hearing on January 25, 2007, this Court issued an order from the bench instructing Los Angeles to cease its efforts to collect on any alleged default under the Non-Exclusive Operating Permit Between The City Of Los Angeles And American Trans Air dba American Trans Air Covering The Use Of Landing Facilities with a term commencing July 1, 2002 and ending June 30, 2007 (the "Operating Permit") which order was docketed January 26, 2007 (Docket No. 4621) and which ordered and directed Los Angeles to "notify National City Bank immediately that the City is rescinding its draw demand on Letter

of Credit SCL008692 effective immediately and the City shall communicate this to National City Bank without any delay."³

8. Four days after the Court's bench order, late in the evening of January 29, 2007, Los Angeles sent a memorandum to National City Bank rescinding its draw demand against the Letter of Credit.

9. Following repeated and for the most part unsuccessful attempts to discuss both substantive and procedural matters with counsel for Los Angeles, Reorganized ATA filed its Extension Motion and Expedited Discovery Motion on February 5, 2007.

FACTS

10. Reorganized ATA and Los Angeles are counterparties to the Operating Permit by virtue of the assumption of the Operating Permit by Reorganized ATA pursuant to the Confirmation Order.

11. Pursuant to the Confirmation Order, specifically paragraph 17, and as part of the Court authorized assumption, any and all defaults through the Confirmation Date under the Operating Permit, if any, were found to be cured and satisfied completely and solely by the cure amount set forth on Exhibit H to the Plan.

12. Los Angeles did not object to the assumption and cure of the Operating Permit and did not object to the Plan.

13. Los Angeles received notice of both the proposed assumption of the Operating Permit (including ATA's position that there were no existing monetary defaults and therefore no required "cure" payments) and the proposed confirmation of the Plan.

³ A corrected Restraining Order was subsequently entered on January 29, 2007 (Docket No. 4626); however, the correction did not affect this Court's directive to Los Angeles.

14. Reorganized ATA's liabilities under the Operating Permit are backed by Letter of Credit SCL008692 issued by National City Bank of Indiana ("Letter of Credit") naming Los Angeles World Airports as beneficiary. The current amount of the Letter of Credit is \$228,000.00.

15. Reorganized ATA has outstanding letters of credit totaling an estimated \$28 million dollars securing its liabilities under permits and landing right agreements with other airports, many of which permits and landing right agreements were assumed pursuant to the Confirmation Order.

16. On January 24, 2007 after 10:00 a.m. EST, National City Bank, as issuer of the Letter of Credit, advised Reorganized ATA that it had received a draw request from Los Angeles against the Letter of Credit in the amount of \$228,000.

17. The Letter of Credit draw demand from Los Angeles Airport asserts that "American Trans Air, Inc. is in default under the Operating Agreement Dated July 2, 2002 between the City of Los Angeles and American Trans Air, Inc." (the "Draw Demand"). The Draw Demand was attached as Exhibit A to the TRO Motion (Docket No. 4616).

18. The Operating Permit is the same document referenced in the Draw Demand. Aff. of Brian T. Hunt, ¶ 4 filed with the TRO Motion (Docket No. 4616).

19. Reorganized ATA is not in default under the assumed Operating Permit. Aff. of Brian T. Hunt, ¶ 3 (Docket No. 4616).

20. Email correspondence dated September 15, 2006 from Paiyu Chiu, Revenue Section, Los Angeles World Airports to Cathy Miles at Reorganized ATA asserts that under "updated pre-petition schedule due to LAWA as of June 8, 2006" totals \$644,787.82 and is primarily "the sum of two retro adjustments – invoice #21050656153 \$260,147.20 FY2004 LAX

landing fee reconciliation and Inv. #2105066168 retro rent for 8/1/03 – 10/26/04 \$242,692.04."

(LAWA Email 9/15/2006)

21. ATA paid \$463,348.80 to Los Angeles, during the chapter 11 case, on Los Angeles' asserted prepetition claims under the Operating Permit. The amounts asserted in the LAWA Email 9/15/2006 represent amounts computed and asserted by LAWA after the Operating Permit was assumed and cured by the Confirmation Order. The Draw Demand constitutes an assertion by Los Angeles that ATA was in default of the Operating Permit prior to the assumption pursuant to this Court's orders of the Operating Permit by Reorganized ATA.

STANDARD FOR PRELIMINARY INJUNCTION

22. While the initial motion filed by Reorganized ATA and this Application are styled as seeking injunctive relief against Los Angeles, the thrust of the relief sought is to have this Court enforce its already existing injunctions contained in the Confirmation Order. To enforce its own orders or to exercise its powers under Section 105(a) of the Bankruptcy Code, the Seventh Circuit does not require bankruptcy court to determine its course of action under the common standard for preliminary injunctions in civil trials of inadequate remedy at law and irreparable harm. *See Matter of S&L Industries, Inc.*, 989 F.2d 929, 932 (7th Cir. 1993). As the Seventh Circuit observed:

The Bankruptcy Act provides the court with broad equitable powers to preserve its own jurisdiction: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Accordingly, a bankruptcy court can enjoin proceedings in other courts when it is satisfied that such proceedings would defeat or impair its jurisdiction over the case before it. In other words, the court does not need to demonstrate an inadequate remedy at law or irreparable harm. *See In re Chicago, Milwaukee, St. Paul and Pacific R. Co.*, 738 F.2d 209, 213 (7th Cir.1984); *In re Chateaugay Corp.*, 93 B.R. 26, 29 (S.D.N.Y.1988). Of course the moving party must still establish a likelihood of success on the merits.

Id.; see also *In re Crown Vantage, Inc.* 421 F.3d 963, 975 (9th Cir. 2005) ("The only requirement for the issuance of an injunction under § 105 is that the remedy conform to the objectives of the Bankruptcy Code." and quoting *Matter of S& L Industries, Inc.*).

ARGUMENT FOR RELIEF

Reorganized ATA does not dispute the existence of the so named "independence principle" *i.e.*, that letter of credit transactions involve three relationships: that of the bank to its customer who purchases the letter of credit; that of the bank to the beneficiary to whom it makes a promise to pay; and finally, that between the customer and the beneficiary, and that each of those three transactions must be treated separately. 1 RICHARD A. LORD, WILLISTON ON CONTRACTS § 2.23 (4th ed 1999). This dispute does not affect these independent relationships; instead the question is whether a non-debtor counter-party to an executory contract that is assumed and cured pursuant to the order of a bankruptcy court can ignore a court's order that establishes that no defaults exist under the assumed contract and contrary to such order assert and represent that pre-assumption defaults do exist.

As the documents in Reorganized ATA's possession indicate that Draw Demand sent by Los Angeles to National City Bank was an attempt to collect fees it felt it was due for activities under the Permit that occurred prior to the Confirmation Date, the Draw Demand was made in direct violation of this Court's Confirmation Order. To draw against the Letter of Credit, Los Angeles had to declare a default under the Operating Permit and represent to National City Bank that such an uncured default exists. The Confirmation Order established that all defaults, if any, existing under the Operating Permit were cured through the Confirmation Date. Therefore, Los Angeles' Draw Demand based on an asserted default for fees allegedly owed under the Operating Permit prior to the Confirmation Date cannot stand and is barred by

this Court's Confirmation Order. No aspect of the independence principle provides a basis to ignore the effect of the Confirmation Order.

Documents prove that the Debtors' estates paid Los Angeles not less than \$463,348.80 on amounts owed to Los Angeles prior to the Petition Date under the Operating Permit in response to threats by Los Angeles to terminate the Operating Permit during the Chapter 11 Cases.

Los Angeles received notice of the proposed assumption and cure of all defaults under the Operating Permit. Los Angeles received notice of the proposed confirmation of the Plan. Los Angeles did not object to the proposed assumption of the Operating Permit, and Los Angeles did not object to the proposed confirmation of the Plan. The Plan and Confirmation Order are *res judicata* to Los Angeles' efforts to collect for any alleged additional pre-confirmation defaults.

This Court may enforce its orders and enjoin actions that are in contravention of the objectives of the Bankruptcy Code. *See In re Crown Vantage, Inc.* 421 F.3d at 975. It is surely an objective of the Bankruptcy Code to bring finality to any dispute concerning defaults under an assumed contract by the issuance of an order pursuant to Sections 365 and 1141 of the Bankruptcy Code authorizing the assumption of contracts and establishing a cure of all defaults. To allow a counter-party to engage in actions violating this Court's order and judgment would undermine one of the fundamental principles of the Bankruptcy Code – allowing a debtor a fresh start.

WHEREFORE, Reorganized ATA requests that the Court (1) advance the hearing on the merits of this dispute to the hearing scheduled on the motion for preliminary injunction and order Los Angeles to show cause why its actions are not in contempt of this Court's order

and to restrain Los Angeles from taking such action or (2) in the alternative, issue a preliminary injunction against the City of Los Angeles, Department of Airports prohibiting it from any further collection efforts of any kind related to fees of any kind under the Operating Permit resulting from activities by ATA during the times prior to the Confirmation Date, and (3) grant such other and further relief as is just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on this 7th day of February, 2007, by electronic mail and facsimile transmission on all persons listed below:

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