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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.)	

**RESPONSE OF REORGANIZED ATA TO CITY OF LOS ANGELES
“POINTS AND AUTHORITIES RE NECESSITY FOR ADVERSARY
PROCEEDING FOR IMPOSITION OF INJUNCTIVE RELIEF”**

(LAWA)

ATA Airlines, Inc. ("Reorganized ATA"), responds to the Points And Authorities Re Necessity For Adversary Proceeding For Imposition Of Injunctive Relief (“Objection”) docketed February 15, 2007 (Docket No. 4656) and submitted by the City of Los Angeles acting by and through its Department of Airports ("Los Angeles"). For its response Reorganized ATA says:

The procedural issue before this Court is whether it may enforce its existing injunction against a non-debtor counterparty to an assumed and cured contract absent the initiation of an adversary proceeding by the debtor. The clear answer is “yes.”

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadors 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).

Paragraph 17 of this Court's order ("Confirmation Order") confirming the chapter 11 reorganization plan of the Reorganizing Debtors² (Docket No. 3657) states in relevant part:

The counterparty to any executory contract or unexpired lease listed on Exhibit H who contests the cure listed on Exhibit H must have filed and served an objection to such cure no later than the Plan Objection Deadline or is barred from contesting such cure. . . . This Confirmation Order constitutes approval of such assumptions or assumptions and assignments pursuant to sections 365 and 1123 of the Bankruptcy Code.

Paragraph 18 of the Confirmation Order states in relevant part:

The provisions (if any) of each executory contract and unexpired lease to be assumed under the Plan which are or may be in default shall be satisfied solely by the Cure listed on Exhibit H of the Plan.

The Confirmation Order established the sole Cure of every proposed assumption and barred, i.e. enjoined, the counterparties to the assumed contracts from asserting any other Cure absent compliance with the procedures set forth in the Plan and the Confirmation Order. Los Angeles did not contest the Cure, the assumption of the Operating Permit, or the Plan. The injunction against Los Angeles issued on January 31, 2006 as part of the Confirmation Order. By its motions, Reorganized ATA is seeking enforcement of the injunction issued as part of the Confirmation Order.

An adversary proceeding is not necessary to enforce the Confirmation Order. *See In re Angela Woods*, 316 B.R. 522, 525 (Bankr. N.D. Ill. 2004) (" . . . Rule 7001(7) deals with the initiation of a proceeding to obtain an enforceable injunctive order, not with the enforcement of an order already obtained.") *See also: In re Continental Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999)(adversary proceeding is not required to enforce provisions of a Chapter 11

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") or the Application For

confirmation order because “an adversary proceeding is not necessary where the relief sought is the enforcement of an injunction *previously obtained*” (emphasis in original)). Cf. *In re Texaco, Inc.*, 182 B.R. 937, 945-46 (Bankr. S.D.N.Y. 1995) (enforcement of discharge granted under chapter 11 plan may be made by motion for contempt and adversary proceeding is not necessary); See also Cf. *Amedisys, Inc. et al. v. National Century Financial Enterprises, Inc. (In re National Century Financial Enterprises, Inc.)* 423 F.3d 567, 578 (6th Cir. 2005); *In re LTV Steel Company, Inc.*, 264 B.R. 455, 462-63 (Bankr. N.D. Ohio 2001); *In re Phar-Mor, Inc.*, 152 B.R. 924, 926 (Bankr. N.D. Ohio 1993) (In *Amedisys*, *LTV Steel*, and *Phar-Mor*, the courts rejected the procedural objections asserting the necessity of an adversary proceeding finding that a motion is an appropriate method for a debtor to ask a court to enforce the 362(a) injunction).

As the Courts in *Woods* and *Continental* determined, when a debtor is requesting a Bankruptcy Court to enforce its confirmation order such request for relief may be made by motion. This tenet is logically supported by the further finding that the more stringent requirements for issuing a preliminary injunction are not required when a bankruptcy court is enforcing its own orders or acting to preserve its jurisdiction. See *Matter of S&L Industries, Inc.*, 989 F.2d 929, 932 (7th Cir. 1993); see also *In re Crown Vantage, Inc.* 421 F.3d 963, 975 (9th Cir. 2005).

In the Objection, Los Angeles first quotes the language in Bankruptcy Rule 7001(7) which says that a proceeding to obtain an injunction is an adversary proceeding except when a chapter 11 plan provides for such relief, and then asserts that the Confirmation Order provides no injunctive relief to Reorganized ATA relevant to the assumption of the Operating

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, filed February 7, 2007 (Docket No. 4641).

Permit. As set forth above, paragraph 18 of the Confirmation Order “barred” Los Angeles from asserting pre-confirmation defaults under the Operating Permit. “Barred” means enjoined. The Bankruptcy Rules did not require Reorganized ATA to seek the injunctive relief provided in the Plan by means of an adversary proceeding, and the Bankruptcy Rules do not require Reorganized ATA to seek enforcement of that injunctive relief by means of an adversary proceeding. Los Angeles’ assertion that absent an adversary proceeding this Court is without jurisdiction to enforce its own order is wrong.

The justifications offered and the cases cited by Los Angeles in support of its procedural objection are not applicable to the instant circumstances. The court in *In re Dahlquist*, 33 B.R. 101 (Bankr. D.S.D. 1983) found an adversary proceeding necessary when the debtors sought to enjoin a third party bank from suing the non-debtor wife to collect on a guarantee. *Id.* at 103. The court in *In re Geotel, Inc.*, 145 B.R. 763 (Bankr. E.D.N.Y. 1992) found an adversary proceeding necessary when the trustee sought to compel the debtor’s insurer to extend coverage under the insurance policy to all existing claims. *Id.* at 766. And in *In re Entz*, 44 B.R. 483 (Bankr. D. Ariz. 1984) the court suggested that it “might” lack jurisdiction and that the non-debtor spouse who sought to enjoin the debtor in possession from voting stock that was estate property “should have filed an adversary complaint.” *Id.* at 485. Unlike the parties in *Dahlquist*, *Geotel*, and *Entz*, Reorganized ATA is not seeking new injunctive relief; it is simply seeking enforcement of relief it has already been granted.

Reorganized ATA reserves its right to respond to the “introduction” included in Los Angeles’ Brief as it is not clear if Los Angeles is making this part of its procedural objection, or if it is, as labeled, simply an introduction. However, the general propositions of the law of letters of credit and the cases cited by Los Angeles in its introduction are not applicable to

the relief being sought here. Los Angeles is taking the odd position that, even though there is an order by this Court that all pre-confirmation defaults under the Operating Permit are cured and Los Angeles is specifically enjoined from asserting otherwise, it may nonetheless ignore the Confirmation Order and declare such default. The fact that enforcement of the Confirmation Order took the shape of requiring Los Angeles to rescind its draw against the Letter of Credit does not implicate the independence principle. Reorganized ATA is entitled to rely on the Confirmation Order with respect to its dealings with Los Angeles under the Operating Permit and to seek assistance from this Court to enforce the Confirmation Order.

WHEREFORE, Reorganized ATA requests that the Court deny the relief requested by the City of Los Angeles by and through the Department of Airports in its Points And Authorities Re Necessity For Adversary Proceeding For Imposition Of Injunctive Relief and grant such other 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 15th day of February, 2007, by electronic mail and facsimile transmission on all persons listed below:

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