IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Case No. 01-0056 (PJW)
TRANS WORLD AIRLINES, INC., et al.,	)	(Jointly Administered)
Debtors	)	
	)	
	)	

Deadline for Replies: March 5, 2002
Proposed Hearing Date: March 8, 2002

DEBTORS' OBJECTION TO APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS OF MBNA AMERICA BANK, N.A.

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby object to the Application for Allowance and Payment of Administrative Claims (the "MBNA Administrative Claim Application") filed by MBNA America Bank, N.A. ("MBNA") [claims docket nos. 5693, 5909, 8510 and 9396] for the reasons described herein.

Background

1. Trans World Airlines, Inc. ("TWA"), one of the above-captioned debtors-in-possession, entered into an affinity credit card agreement (the "Affinity Agreements") with MBNA in 1999. Under the Agreements MBNA issued credit cards tied to TWA's frequent flyer program. In consideration for TWA's endorsement for MBNA's program, the miles points posted by TWA, TWA's license of its trademarks and logos and for access to TWA's mailing list, MBNA agreed to pay TWA royalties in amounts dependent on the net retail charges made by cardholders using the TWA-tied cards.

2. On January 10, 2001 TWA filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. TWA moved for authority, and received approval from this Court, to conduct a sale of substantially all of its assets pursuant to 11 U.S.C.

§ 363. TWA held an auction on March 5 and 7, 2001 from which American Airlines, Inc. ("American") emerged as the highest bidder. As part of the sale, American purchased "all accounts, accounts receivable, and rights to payment" owned by TWA. *See* Asset Purchase Agreement, § 2.1. The Court approved the sale on March 12, 2001. MBNA did not object to the sale. The sale transaction closed on April 9, 2001, and TWA's assets were sold to TWA, LLC ("LLC"), a wholly-owned subsidiary of American.

3. As of the January 10 petition date, MBNA stopped payment of all royalties, then owing or later accruing, owed to TWA under the Affinity Agreements. In February 2001, MBNA had moved to compel the rejection or assumption of the Affinity Agreements, but before that motion was ruled upon and shortly after the § 363 sale was held, TWA filed a motion to reject the Affinity Agreements and other contracts. The motion to reject the Affinity Agreements was granted on April 9, 2001, and TWA was authorized to reject the Affinity Agreements after seven days notice.

4. MBNA moved for reconsideration of TWA's rejection motion, and on June 11, 2001 also filed a motion for relief from the automatic stay in order to terminate the Affinity Agreements. MBNA filed the MBNA Administrative Claim Application with the claims agent on June 15, 2001 for an amount "not known at this time," claiming alleged material breaches of and defaults under the Affinity Agreements by TWA. On July 31, 2001 MBNA also filed a proof of an unsecured claim in an amount "not known at this time" based on the same alleged material breaches and defaults by TWA.

5. By stipulated consent order, on August 29, 2001 the automatic stay was lifted in order to allow MBNA to exercise its contractual right to terminate the Affinity

Agreements effective September 24, 2001, rather than waiting for TWA to exercise its court-authorized rejection. In separate litigation, American brought suit against MBNA in Texas seeking payment of the accrued royalty obligations American purchased in the §363 Sale.

6. On October 5, 2001, MBNA filed an adversary proceeding against TWA, American and LLC alleging breach of contract, tortious interference and conspiracy to breach the Affinity Agreements. (Ad. Pro. 01-7802) MBNA also sought indemnification for its defense in the Texas litigation brought by American for payment of the past due royalties. In this adversary proceeding, MBNA has asked that its claims be recognized as administrative expenses, that an escrow or administrative reserve be established sufficient to cover MBNA's alleged claims, and that its claims be recognized as setoff and/or recoupment defenses to American's claims in the Texas litigation.

Argument

7. TWA, American and LLC have moved to dismiss MBNA's adversary proceeding for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012. Copies of TWA's, American's and LLC's motions to dismiss and the relevant response and reply briefs are attached hereto. For the same reasons that MBNA's complaint must be dismissed, the MBNA Administrative Claim should also be denied.[1]

[1] TWA's, American's and LLC's motions to dismiss are currently pending in front of Judge Walrath, to whom this adversary proceeding was assigned. TWA believes, for the reasons stated herein, that the dismissal motion will ultimately be successful. TWA has also filed a motion requesting a status conference in front of Judge Walrath regarding the motions to dismiss. TWA believes that, for the reasons stated in the status conference motion and in the motion to shorten filed by TWA with respect to this Objection, TWA's motion to dismiss and this Objection by TWA to the MBNA Administrative Claim Application should be decided prior to the confirmation hearing on the Debtors' plan of reorganization scheduled for March 21, 2002 before Judge Walsh. The next omnibus hearing in these cases is March 8, 2002, before Judge Walsh. TWA acknowledges that it is unlikely that Judge Walsh will hear this Objection and pursuant to the motion to shorten respectfully has requested a hearing on the Objection, before the Judge assigned to hear the Objection, on or about the March 8, 2002 omnibus hearing date.

8. First, MBNA has failed to allege a breach of contract claim against TWA. Each alleged breach of the Affinity Agreements claimed by MBNA in the MBNA Administrative Claim Application or its adversary proceeding is based on a contractual provision that is unenforceable because it conflicts with TWA's statutory rights under the Bankruptcy Code and orders previously entered by this Court in this case. As this Court has held, a contractual provision that would extinguish a party's rights under the Bankruptcy Code is not enforceable. *See In re Trans World Airlines, Inc.*, 261 B.R. 103 (D. Del. 2001). TWA cannot be held liable for allegedly breaching these unenforceable provisions.

9. Secondly, MBNA has failed to allege circumstances entitling it to indemnification under the Affinity Agreements. The Affinity Agreements only provide for indemnification for the defense of suits filed against MBNA based on products or services of TWA. MBNA's defense of the Texas suit brought by American arose from MBNA's refusal to pay its accrued obligations. The Texas suit does not arise from TWA's products or services and therefore does not implicate the indemnity provisions of the Affinity Agreements.

10. Third, MBNA has failed to allege a conspiracy claim against TWA because MBNA has admitted there is no actionable underlying tort. *See* MBNA America Bank N.A.'s Memorandum in Opposition to Motions to Dismiss by American Airlines, Inc., Trans World Airlines, Inc. and TWA Airlines LLC ("MBNA Opp.") at 37. MBNA initially alleged in its complaint that the actions of TWA and American in effecting the sale of TWA's assets amounted to a conspiracy to breach the Affinity Agreements. However, MBNA admitted in its opposition to the dismissal motions that the Bankruptcy-Code-authorized-conduct underlying its

conspiracy claim was, in fact, not wrongful. *See* MBNA Opp. at 37. Lacking an underlying tort, TWA cannot be held liable for conspiracy.

11. Even if this Court should recognize that MBNA has alleged a claim against TWA, such a claim is not entitled to administrative expense priority under 11 U.S.C. § 503. The Bankruptcy Code dictates relative priorities among creditors. Administrative expense status is reserved for claims that have (1) arisen from a post-petition transaction with the debtor and (2) which provided, as a result of the transaction, a substantial benefit to the estate. *See In re Pinnacle Brands*, 259 B.R. 46, 51 (D. Del. 2001).

12. Each of MBNA's claims is undisputedly based upon the pre-petition Affinity Agreements. Therefore, MBNA cannot establish even the first prong of the test. In addition, MBNA cannot establish that it has conferred a benefit or provided services to the estate from its refusal to pay the accrued royalties or defense of itself in the Texas suit brought by American.

Conclusion

13. MBNA has failed, both in the MBNA Administrative Claim Application and in its adversary proceeding, to establish that it is entitled to have its claims allowed as administrative expense claims. The MBNA Administrative Claim Application should be denied, and MBNA's claims, to the extent MBNA is able to prove them in the adversary proceeding, should be treated like all other pre-petition general unsecured claims.

14. In light of the foregoing, the Debtors respectfully request that the Court deny the MBNA Administrative Claim Application and grant such other further relief as is just and equitable.

February 21, 2002

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
TRANS WORLD AIRLINES, et al.,[1]	)	Case No. 01-0056 (PJW)
	)	Jointly Administered
Debtors.	)	
	)	
	)	

CERTIFICATE OF SERVICE

I, Bruce Grohsgal, hereby certify that on the 21st day of February, 2002 I caused a copy of the following document(s) to be served on the individuals on the attached service list in the manner indicated:

DEBTORS' OBJECTION TO APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS OF MBNA AMERICA BANK N.A.

February 21, 2002

Bruce Grohsgal (Bar No. 3583)

[1] Debtors are the following entities: Trans World Airlines, Inc., Ambassador Fuel Corporation, LAX Holding Company, Inc., Mega Advertising, Inc., Northwest 112th Street Corporation, The TWA Ambassador Club, Inc., Trans World Computer Services, Inc., Transcontinental & Western Air, Inc., TWA Aviation, Inc., TWA Group, Inc., TWA Standards & Controls, Inc., TWA Stock Holding Company, TWA-D.C. Gate Company, Inc., TWA-LAX Gate Company, Inc., TWA Logan Gate Co., Inc., TWA-NY/NJ Gate Company, Inc., TWA-Omnibus Gate Company, Inc., TWA-San Francisco Gate Company, Inc., TWA-Hangar 12 Holding Company, Inc., Ozark Group, Inc., TWA Nippon, Inc., TWA Employee Services, Inc., TWA Getaway Vacations, Inc., Trans World Express, Inc., International Aviation Security, Inc., Getaway Management Services, Inc., and The Getaway Group (U.K.), Inc.

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