

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

Case No. 6:03-bk-03571-ABB  
Chapter 7

AIRLINE TRAINING ACADEMY, INC.,

Debtor.

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GEORGE E. MILLS, JR., Trustee

Plaintiff,

vs.

Adv. Pro. No 6:04-ap-00036-ABB

LTI AVIATION FINANCE COMPANY,

Defendant.

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**ORDER**

This matter came on Plaintiff, George E. Mills, Jr., Trustee's ("Trustee") Complaint for the Avoidance of Preferential Transfers and for Turnover of Property of the Estate pursuant to 11 U.S.C. §§ 547 and 550 (Doc. 1), Trustee's Motion for Summary Judgment (Doc. 30), Defendant's, LTI Aviation Finance Company, Motion for Summary Judgment (Doc. 31), and the Joint Stipulation of Facts (Doc. 37). The following Findings of Fact and Conclusions of Law are made after reviewing the evidence.

**FINDINGS OF FACT**

Airline Training Academy Inc. ("Debtor") operated a flight school in Orlando, Florida. Defendant, LTI Aviation Finance Company ("LTI"), was in the business of leasing various types of equipment, including aircraft. LTI leased Debtor twenty (20) single engine aircraft and five (5) twin engine aircraft. Debtor used the aircraft for operating its flight school. The monthly payments on the twenty-five (25) leases totaled \$38,816.40.

Debtor had defaulted on the leases by December 2002. LTI made collection calls to Debtor

for the November and December payments. Debtor was not able to pay its monthly expenses, had only encumbered assets, and had compiled between \$5,000,000 (per the Debtor's schedules) and \$20,000,000 (per the claims register) in debt. Debtor was insolvent.

Debtor restructured its debt with LTI. Both parties entered a loan agreement consolidating the 25 leases on February 24, 2003 ("Loan Agreement"). The Loan Agreement provided for 11 monthly payments of \$29,053.70, and a final balloon payment of \$1,930,624.30. Debtor's monthly payments were lowered. But the principal amount due on the leases was not reduced based on the final balloon payment. The Loan Agreement did not confer new value to the Debtor.

Debtor paid LTI \$59,845.87 as the first payment of the Loan Agreement on February 24, 2003 ("Transfer"). The Transfer conferred an interest of the Debtor to a creditor, LTI. The Loan Agreement consolidated an existing debt based on the 25 leases. The Transfer was made on account of an antecedent debt. The Transfer was made while the Debtor was insolvent.

The Transfer was not made in the ordinary course of business. The Loan Agreement was negotiated during the preference period, after a series of collection calls, and transformed the nature of the debt into a loan agreement. The Transfer and the circumstances surrounding it were not consistent with the parties' prior course of dealings. Debtor closed the flight school a few days after making the Transfer.

A group of student pilots filed an involuntary petition for relief against the Debtor on April 1, 2003. An Order granting relief in the involuntary case *nunc pro tunc* to April 1, 2003 ("Petition Date") was entered on April 10, 2003 (Doc.13). Debtor made the Transfer to LTI on February 24, 2003. The Transfer occurred within ninety days of the Petition Date. George E. Mills was appointed the Chapter 7 Trustee for the bankruptcy estate.

The Transfer allowed LTI to receive more than it would have in a Chapter 7 liquidation. LTI filed an unsecured claim against the estate (Claim No. 394). LTI would have shared the Transfer *pro rata* with the other unsecured creditors in a Chapter 7 liquidation, rather than receiving the full amount of the Transfer.

## CONCLUSIONS OF LAW

One of the main policies of bankruptcy is equality of distribution among creditors of the debtor.<sup>1</sup> This policy is frustrated when a creditor receives a preference. A preference is a transfer that enables a creditor to receive a higher percentage of his claim than he would have received if the transfer had not been made and he had participated in the distribution of assets of the bankruptcy estate.<sup>2</sup> The Trustee avoids preferences to facilitate the bankruptcy policy of evenhanded treatment of creditors.<sup>3</sup>

A preference is established when a transfer of an interest of the debtor is made: (1) to or for the benefit of a creditor; (2) for or on account of an antecedent debt; (3) while the debtor was insolvent; (4) on or within 90 days before the date of the filing of the petition; and (5) allowing such creditor to receive more than such creditor would receive if the case were a case under Chapter 7, the transfer had not been made, and such creditor received payment to the extent provided by Title 11. 11 U.S.C. § 547(b).

The Transfer was made to LTI, a creditor, within 90 days of the filing of Debtor's bankruptcy petition. Debtor was insolvent when the Transfer was made. The Transfer allowed LTI to receive more than it would have had the Transfer not been made and LTI participated in the distribution of assets of the bankruptcy estate. LTI would have shared the Transfer *pro rata* with the other unsecured creditors.

The Transfer was for or on account of antecedent debt. Whether a transfer was made on account of an antecedent debt is determined by whether the creditor could assert a claim against the estate if the transfer had not been made.<sup>4</sup> Debtor owed LTI monthly payments pursuant to twenty-five (25) leases of aircraft. The November and December payments for 2002 were not paid to LTI. Debtor was in default on the leases by December 2002. LTI made frequent collection calls to collect the debt, the November and December payments. LTI could have

sought judgment at that time or attempted to enforce its liens.

Eventually the Debtor negotiated a restructuring of its debt with LTI. The parties entered into a Loan Agreement. The Transfer was made pursuant to the Loan Agreement. The Loan Agreement restructured the prior lease debt of the Debtor.

The debt was past due at the time of the Transfer. LTI would have been able to assert a claim for the debt against the estate if the Transfer had not been made.

The Transfer was not a contemporaneous exchange for new value pursuant to 11 U.S.C. § 547(c)(1). The Creditor must establish: (1) that it extended new value to a debtor in exchange for a payment; (2) that an exchange of payment for new value was intended by the parties; and (3) that the exchange was in fact substantially contemporaneous.<sup>5</sup>

LTI did not establish new value was extended to the Debtor in exchange for payment. "New Value" is defined as money or money's worth in goods, services, new credit, or release of property held by a transferee.<sup>6</sup> New value must provide actual economic benefit.<sup>7</sup> The creditor must supply proof of a specific dollar amount value of any new value provided in exchange for the transfer.<sup>8</sup> Forbearance alone, or an agreement not to foreclose on collateral essential to the debtor's operations does not constitute new value.<sup>9</sup> The contemporaneous exchange for new value defense is only available when a discernable and measurable amount of benefit has been bestowed upon the debtor.<sup>10</sup>

Debtor was in default on the 25 leases with LTI. The parties negotiated a Loan Agreement to resolve the debt owed by Debtor. The Loan Agreement did not provide Debtor with an actual economic benefit. The Loan Agreement lowered Debtor's monthly payments to LTI, but Debtor was still liable to LTI for the principal amount of the 25 leases. Debtor's temporary cash savings do not constitute new value. New value requires more than

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<sup>1</sup> In re Issac Leaseco, Inc., 389 F.3d 1205, 1210 (11<sup>th</sup> Cir.2004) quoting Union Bank v. Wolas, 502 U.S. 151, 160-61 (1991).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> See Presidential Airways, Inc., 228 B.R. 594 (Bankr.E.D.Va.1999); See Virginia-Carolina Fin. Corp., 954 F.2d 193, 197 (4<sup>th</sup> Cir.1992).

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<sup>5</sup> See In re Jotan, 264 B.R. 735, 748 (Bankr.M.D.Fla.2001).

<sup>6</sup> 11 U.S.C. § 547 (a)(2); In re Chase & Sanborn Corp., 904 F.2d 588, 595 (11<sup>th</sup> Cir.1990).

<sup>7</sup> See Jotan, 264 B.R. at 748.

<sup>8</sup> See Id. at 749.

<sup>9</sup> See Id.

<sup>10</sup> See In re Spada, 903 F.2d 971 (3<sup>rd</sup> Cir. 1990).

merely a temporary benefit.<sup>11</sup> The Loan Agreement did not waive any of the principal amount due under the leases and included previously accrued interest in the initial payment (Transfer). LTI has not established an economic benefit to the Debtor provided by the Loan Agreement.

The Transfer was not made in the ordinary course of business pursuant to 11 U.S.C. § 547(c)(2). The affirmative defense of ordinary course of business requires LTI to establish: (1) the debt was incurred in the ordinary course of the parties' business; (2) the payment was made in the ordinary course of the parties; and (3) the payment was made according to ordinary business terms. The purpose of the ordinary course of business defense is "to leave undisturbed normal financial relations...."<sup>12</sup>

Whether a payment is made in the ordinary course of business is determined by: (1) the prior course of dealings of the parties; (2) the amount of the payments; (3) the timing of the payments; and (4) the circumstances surrounding the payments.<sup>13</sup> Debtor had defaulted on 25 leases after failing to make monthly payments. LTI called Debtor on a daily basis to collect payment. Debtor was in financial distress and could not make the monthly payments. The parties' negotiated a restructuring of the debt. The restructuring transformed the debt into a loan. The Transfer and the surrounding circumstances were not consistent with the parties' prior course of dealings. LTI did not establish the Transfer was made in the ordinary course of the parties' business.

The ordinary course of business defense requires the creditor to establish the payment was in accordance with industry standards.<sup>14</sup> An objective inquiry serves two purposes. First, it provides a basis "to evaluate the parties' self-serving testimony that an extraordinary transaction which was in fact intended as a preference towards a particular creditor was instead part of a series."<sup>15</sup> Second, it reassures other creditors "that deals have not been worked out

favoring a particular creditor, which would permit a preference to slide under the Section 547 fence."<sup>16</sup>

The mere restructuring of a debt does not take a resulting payment outside of the ordinary course of business.<sup>17</sup> The payment was within the ordinary course of business even though it arose out of a deferral agreement.<sup>18</sup> The deferral agreement, common in the industry, was negotiated more than six months before the payment and only restructured one year's payment on the note.<sup>19</sup> There were no unusual debt collection practices.

The restructuring in this case happened during the preference period, after a series of collection calls, and imposed a substantial administrative fee on the Debtor. The restructuring transformed the nature of the debt into a loan agreement and condensed the duration of the payment obligations. LTI did not establish that the transfer arising out of the Loan Agreement was consistent with industry standards. Therefore, it is

**ORDERED, ADJUDGED and DECREED** that Defendant's, LTI Aviation Finance Company, receipt of \$59,845.87 from Airline Training Academy, Inc., is a voidable transfer pursuant to 11 U.S.C. §§ 547 and 550.

Dated this 9<sup>th</sup> day of March 2005.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Court

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<sup>11</sup> See Id. at 751 (citing In re Jet Florida Systems, Inc., 861 F.2d 1555, 1558-59 (11<sup>th</sup> Cir.1988)).

<sup>12</sup> Issac Leaseco, 389 F.3d at 1210.

<sup>13</sup> See In re C.J. Spirits, Inc., 238 B.R. 889 (Bankr.M.D.Fla.1999).

<sup>14</sup> See Issac Leaseco, 389 F.3d at 1210.

<sup>15</sup> See Issac Co., 339 F.3d at 1210 quoting In re A.W. & Associates, 136 F.3d at 1442 n.10 (citation omitted),

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<sup>16</sup> See Id. quoting In re A.W. & Associates (citation omitted).

<sup>17</sup> See In re Gilbertson, 90 B.R. 1006 (Bankr.N.D.1988).

<sup>18</sup> See Id.

<sup>19</sup> See Id. at 1012.