


ORDERED.

Dated: January 10, 2019


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

ANAA Aviation Holdings I, LLC,

Case No. 6:18-bk-05255-CCJ
Chapter 11

Debtor.

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**ORDER DENYING EXPEDITED MOTION BY SECURED CREDITOR
AIRCRAFT LOGISTICS GROUP, LLC TO DISMISS BANKRUPTCY CASE**

This case came before the Court for trial on the Expedited Motion by Secured Creditor Aircraft Logistics Group, LLC (“ALG”) to Dismiss Bankruptcy Case as Bad Faith Filing with Incorporated Memorandum of Law (Doc. No. 32; the “Motion to Dismiss”). By the Motion to Dismiss, ALG argues that the Debtor filed this case in bad faith and as a result, cause exists to dismiss it under Section 1112(b) of the Bankruptcy Code. The Debtor denies that it filed this case in bad faith. The Court, having taken evidence (including the testimony of a Debtor representative and an ALG representative) and considered the record in this case, denies the Motion to Dismiss.

Background

ANAA Aviation Holdings I, LLC (the “Debtor”) filed a Chapter 11 bankruptcy case on August 28, 2018 (the “Petition Date”). The Debtor owns a 1992 British Aerospace BAE 125 Series 800A fixed wing multi-engine aircraft (the “Aircraft”). The Debtor acquired the Aircraft in 2015

for approximately \$1 million and has spent approximately \$80,000 repairing and renovating the Aircraft. Prior to the Petition Date, the Debtor signed a promissory note in the principal amount of \$650,000 in favor of ALG (the “Note”). To secure payment of the Note, the Debtor granted ALG a security interest in the Aircraft. The Note matured in March 2018, and the parties agreed to extend the Note’s maturity date to June 2018. In June 2018, the parties could not agree to another extension of the Note’s maturity date. ALG then declared the Note in default and started actions to repossess the Aircraft. Prior to ALG obtaining possession of the Aircraft, the Debtor filed this case.

The Debtor is a limited liability company. The Debtor has an authorized officer (Joseph Dillion), a manager (ANAA Global Aviation, Inc.) and a member (Nuzhat Mathin). Nuzhat Mathin owns 100% of the Debtor, and the Debtor does not have any employees. The Debtor’s gross revenue for 2017 was approximately \$310,000. Excluding the Aircraft, the Debtor has nominal assets. By the bankruptcy schedules, the Debtor discloses that ALG is a creditor holding a secured claim for approximately \$400,000, and other creditors hold unsecured claim for a total of approximately \$43,000.

The Aircraft is operated by ANAA Global Aviation, Inc., an affiliate of Debtor, and is subject to a lease with BlackMINE Group, LLC, another affiliate of Debtor. The Aircraft is insured and regularly maintained. The Debtor believes that the value of the Aircraft is between \$850,000 to \$950,000. ALG has filed a claim fully secured by the Aircraft in the amount of \$406,710.43 plus interest and attorneys’ fees.

Shortly after Petition Date, the Debtor filed a plan and disclosure statement. The plan, as later amended, proposes that the Debtor will continue operations and pay ALG’s allowed secured claim in full and other allowed claims. The Debtor also proposes to pay allowed unsecured claims held by insiders (estimated to exceed \$500,000) after payment in full of all other allowed claims,

including allowed unsecured non-insider claims. During the pendency of this case, the Debtor has received an offer to purchase the Aircraft for \$600,000. Because the Debtor believes the value of the Aircraft is much higher, the Debtor has not accepted the offer. The Debtor is actively marketing the Aircraft for sale.

Discussion

The court may dismiss a Chapter 11 case for cause under Section 1112(b) of the Bankruptcy Code if the debtor files a petition in bad faith.¹ To determine if the debtor has filed a petition in bad faith, the court may consider any factor that demonstrates “an intent to abuse the judicial process and the purposes of the reorganization provisions” or, in particular, any factor that demonstrates the petition was filed “to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.”² A particular test does not exist to determine if the debtor filed a petition in bad faith.³

In *Phoenix Piccadilly*, the Eleventh Circuit identified six circumstantial factors courts may consider when determining whether a case was filed in bad faith:

- (i) The debtor has only one asset, the property, in which it does not hold legal title;
- (ii) The debtor has few unsecured creditors whose claims are small in relation to the claims of the secured creditors;
- (iii) The debtor has few employees;
- (iv) The property is the subject of a foreclosure action as a result of arrearages on the debt;
- (v) The debtor's financial problems involve essentially a dispute between the debtor and the secured creditors which can be resolved in the pending state court action; and
- (vi) The timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights.⁴

While the foregoing factors help courts identify a debtor filing a petition in bad faith, the factors are “non-exhaustive and not to be rigidly applied.”⁵ And, even if all of these factors are present, the Court has broad discretion in determining whether or not the case should be dismissed for bad faith.⁶

The Court acknowledges that all the circumstantial factors are present in this case. The Debtor has one significant asset -- the Aircraft. The Debtor has few non-insider unsecured creditors whose claims are small in relation to ALG's secured claim. The Debtor does not have employees. The Debtor's financial problems appear to involve a dispute between the Debtor and ALG. ALG initiated the process to repossess the Aircraft due to a default. And, the Debtor filed this case after ALG started the process to repossess the Aircraft.

Despite the presence of these circumstantial factors, the Court finds that the Debtor did not file this case in bad faith. The Debtor filed this case in an honest attempt to reorganize. This case has been pending for about four months. The Debtor is actively marketing the sale of the Aircraft and seeks the highest offer to pay all creditors. Within two weeks of filing this case, the Debtor filed a plan and disclosure statement. A hearing on the disclosure statement, as amended, will occur shortly. To date, the Debtor has complied with this Court's orders and the requirements of the Bankruptcy Code.

The dispute between the Debtor and ALG has been of short duration (about one month) and occurred when the parties could not agree to terms that would further extend the Note's maturity date. Although the bankruptcy filing and imposition of the automatic stay has delayed ALG's ability to repossess the Aircraft, "[i]f the Court were to consider every bankruptcy filed made for the purpose of taking advantage of the automatic stay as evidence of a bad faith filing, the protection offered by the automatic stay would be meaningless."⁷ The Court believes the Debtor should have an opportunity to attempt reorganization and will not dismiss the case at this time. Accordingly, for the reasons stated above, the Motion to Dismiss (Doc. No. 32) is denied.

Attorney Edward M. Fitzgerald is directed to serve a copy of this order on interested parties and file a proof of service within three (3) days of entry of the order.

¹ See *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1394 (11th Cir. 1988).

² *Phoenix Piccadilly*, 849 F.2d at 1394 (citing *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984).

³ *Phoenix Piccadilly*, 849 F.2d at 1394.

⁴ *Phoenix Piccadilly*, 849 F.2d at 1394-95.

⁵ *In re State Street Houses, Inc.*, 356 F.3d 1345, 1347 (11th Cir. 2004).

⁶ See *In re Southside Church of Christ of Jacksonville, Inc.*, 572 B.R. 384, 388-89 (Bankr. M.D. Fla. 2017)(Funk, J.)(holding that the debtor did not file a Chapter 11 case in bad faith even though the debtor met most of *Phoenix Piccadilly* factors); *In re Harco Co. of Jacksonville, LLC*, 331 B.R. 453, 456 (Bankr. M.D. Fla. 2005)(Proctor, J.) (“[T]he Eleventh Circuit does not appear to suggest that the [*Phoenix Piccadilly*] factors, if applicable, mandate dismissal.”); See also *Singer Furniture Acquisition Corp. v. SSMC, Inc. N.V.*, 254 B.R. 46, 51 (M.D. Fla. 2000).

⁷ *Harco Co.*, 331 B.R. at 458.