

ORDERED.

Dated: March 20, 2024



Grace E. Robson
United States Bankruptcy Judge

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

In re)	
)	
Via Airlines, Inc.,)	Case No. 6:19-bk-06589-GER
)	Chapter 11
Debtor.)	
_____)	

**ORDER (1) GRANTING MOTION TO ADMINISTRATIVELY CLOSE CASE AND
(2) DENYING AS RESOLVED UNITED STATES TRUSTEE’S MOTION TO DISMISS**

THIS CASE came before the Court on March 19, 2024 at 10:00 a.m. (the “Hearing”) upon the *Debtor’s Motion to Administratively Close Chapter 11 Case* (the “Motion to Administratively Close Case”) (Doc. No. 500) filed by Debtor Via Airlines, Inc. (“Debtor”) and the Objection¹ (Doc. No. 503) thereto filed by Mary Ida Townson, United States Trustee for Region 21 (the “UST”), and upon the *United States Trustee’s Motion to Dismiss or Convert Confirmed Case* (the “Motion to Dismiss”) (Doc. No. 490) filed by the UST and the Response² (Doc. No. 499) thereto filed by Debtor. The Court, having reviewed the Motion to Administratively Close Case and Objection, having reviewed the Motion to Dismiss and Response, and having considered argument of counsel, FINDS, ORDERS and ADJUDGES as follows:

¹ *United States Trustee’s Objection to Debtor’s Motion to Administratively Close Chapter 11 Case* (the “Objection”).

² *Debtor’s Response to United States Trustee’s Motion to Dismiss or Convert Confirmed Case* (the “Response”).

A. On October 8, 2019, Debtor commenced this case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code.³

B. On July 20, 2020, the Court entered the Confirmation Order,⁴ which approved Debtor's plan of reorganization.⁵

C. Once the Plan was confirmed, a Litigation Trust was formed pursuant to which creditors holding general unsecured claims (Class 3) became beneficiaries. The trustee of the Litigation Trust is Ami Vizer (the "Trustee"). The Trustee is authorized to prosecute objections to claims and is responsible for making distributions under the Plan.

D. The Trustee objected⁶ to the ADI Claims⁷ filed by ADI Acquisition Co., LLC and ADI Holdings Company, Inc. (collectively, the "ADI Entities").

E. On September 10, 2021, the Court entered the Order Disallowing ADI Claims,⁸ which sustained the Trustee's objections and disallowed the ADI Claims in their entirety. Additionally, the Order Disallowing ADI Claims awarded attorneys' fees and costs (the "Attorneys' Fees") in favor of the Trustee⁹ and further held both ADI Entities and their counsel jointly liable for the Attorneys' Fees.

F. On September 23, 2021, the ADI Entities filed a notice of appeal of the Order Disallowing ADI Claims.¹⁰

³ Doc. No. 1. All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101–1532.

⁴ *Order Approving Disclosure Statement and Confirming Plan of Reorganization, as Modified, Submitted by Via Airlines, Inc* (the "Confirmation Order") (Doc. No. 252).

⁵ *The Final Plan of Reorganization for Via Airlines, Inc.* (the "Plan") was attached as an exhibit to the Confirmation Order.

⁶ *Creditor Trust's Objection to Allowance of Claim 107 Filed by ADI Holdings Company Inc.* (Doc. No. 291); *Creditor Trust's Objection to Allowance of Claim 105 Filed by ADI Acquisition Co., LLC* (Doc. No. 293).

⁷ Claim Nos. 105 and 107 (the "ADI Claims").

⁸ *Order on Cross Motions for Summary Judgment and Sustaining Debtor's Objections to Claims 105 and 107 of ADI Acquisition and ADI Holdings* (the "Order Disallowing ADI Claims") (Doc. No. 431).

⁹ While the Order Disallowing ADI Claims refers to the "Debtor," the Court in fact awarded attorneys' fees and costs to the Trustee, who prosecuted the claim objections and the summary judgment motion.

¹⁰ *Notice of Appeal* (the "Appeal") (Doc. No. 437).

G. The Appeal was transmitted to the District Court on September 29, 2021.¹¹

H. On September 30, 2021, the Trustee filed an affidavit in support of and setting forth the Attorneys' Fees.¹²

I. Thereafter, the ADI Entities and its former counsel¹³ filed objections¹⁴ to the Attorneys' Fees and requested that the Court refrain from liquidating the Attorneys' Fees in light of the Appeal. After a hearing conducted on November 30, 2021, the Court deferred ruling on the liquidation of the Attorneys' Fees pending the outcome of the Appeal and scheduled a further hearing for May 2, 2022.

J. At the May 2, 2022 hearing, the parties advised the Court that the Appeal was fully briefed, and no other matters were pending that needed resolution in the case. The Court scheduled a further hearing for November 16, 2022.

K. At the November 16, 2022 hearing, the parties appeared and advised the Court that they were awaiting a ruling on the Appeal. The Court scheduled a further hearing for May 9, 2023.

L. At the May 9, 2023 hearing, the parties appeared and advised the Court that they were still awaiting a ruling on the Appeal. The Court scheduled a further hearing for November 7, 2023.

M. The parties appeared again on November 7, 2023 and advised the Court they were still awaiting a ruling on the Appeal. The Court advised the parties that a further hearing would

¹¹ Transmittal of Notice of Appeal to District Court (Doc. No. 440).

¹² Notice of Filing Affidavit of Attorney's Fees and Costs (Doc. No. 441).

¹³ Counsel for the ADI Entities filed a *Motion to Withdraw as Local Counsel for ADI Holdings Company, Inc. and ADI Acquisition Co., LLC* (Doc. No. 445), which the Court granted in the *Order Granting Motion to Withdraw as Local Counsel for ADI Acquisition Company, LLC and ADI Holdings Company, Inc.* (Doc. No. 460).

¹⁴ *Response and Objection to the Affidavit of Attorney's Fees and Costs (Doc. No. 441) by Richard Blackstone Webber, II and Zimmerman, Kiser & Sutcliffe, P.A.* (Doc. No. 448); *Response and Objection to the Affidavit of Attorney's Fees and Costs (Dkt. 441) by ADI Holdings Company, Inc., ADI Acquisition Company, LLC, Dana Hobart, and Buchalter APC* (Doc. No. 450).

not be scheduled until there was a ruling on the Appeal, and on November 8, 2023, the Court entered the *Order Deferring Future Hearings*.¹⁵

N. On November 27, 2023, the UST filed its Motion to Dismiss seeking to dismiss or convert the case to Chapter 7 for “cause” under 11 U.S.C. § 1112(b) based on Debtor’s failure to pay quarterly fees that the UST assessed in the amount of \$141,212.47.

O. On December 8, 2023, Debtor filed the Motion to Administratively Close Case, and represented that all allowed, administrative, secured, and priority claims have been paid in full.

P. On December 8, 2023, Debtor filed the Amended Financial Reports¹⁶ reflecting administrative claims totaling \$185,000 and priority claims totaling \$437,742 have been paid as of September 30, 2023.¹⁷

Q. On December 8, 2023, Debtor also filed its Response to the Motion to Dismiss indicating the Amended Financial Reports reflect distributions in lower amounts which significantly reduce the quarterly fees owed, and that Debtor would pay the amounts determined to be owed within seven days of such determination.

R. The Court conducted a preliminary hearing on the Motion to Dismiss on December 12, 2023. Debtor and the UST agreed to continue the hearing in order to allow the UST to review the Amended Financial Reports to determine whether the assessment for quarterly fees should be adjusted. However, the UST also indicated it would be objecting to the Motion to Administratively Close Case, and on December 19, 2023, the UST filed its Objection.

S. The Court conducted hearings on January 24, 2024 and February 22, 2024. At the February 22, 2024 hearing, the UST confirmed its receipt of a year’s worth of financial information

¹⁵ Doc. No. 485.

¹⁶ Doc. Nos. 495, 496, 497 and 498 (the “Amended Financial Reports”).

¹⁷ See Doc. No. 498 at 7.

from Debtor and further indicated the financial information was being reviewed in connection with Debtor's amended financial reports. However, the UST advised the Court that no determination had been made regarding whether an adjustment to the quarterly fee assessment was appropriate.

T. Debtor represented at multiple hearings, as well as in its Financial Report for the quarter ending December 31, 2023¹⁸ that all allowed administrative, secured, and priority claims were paid. Therefore, the only matters requiring adjudication by the Court were the Motion to Dismiss (based on non-payment of outstanding UST fees) and the potential for further proceedings depending on the outcome of the Appeal.¹⁹

U. Debtor's Financial Report for the quarter ending December 31, 2023 reflects that Debtor was not current with quarterly U.S. Trustee fees. However, at the Hearing, the UST represented that Debtor has paid all required UST fees and filed all required Financial Reports, thereby resolving the bases for the Motion to Dismiss.

DISCUSSION

The issue to be decided is whether the case can and should be "administratively" closed despite the pendency of the Appeal. Debtor argues the Court should administratively close the case because the Appeal is the only outstanding matter that precludes entry of a final decree and the continued exposure to UST fees prejudices Debtor's operations and reorganization efforts.²⁰

The UST argues that because the Appeal is pending, the estate is not "fully administered," and therefore the case cannot be closed. The UST also argues that the Bankruptcy Code does not provide for the administrative closure of a corporate Chapter 11 case and therefore closure is not

¹⁸ Doc. No. 507.

¹⁹ As of the entry of this Order, the Appeal is still pending. *ADI Acquisition Co. LLC v. Vizer (In re Via Airlines, Inc.)*, No. 6:21-cv-01604-CEM (M.D. Fla. filed Sept. 29, 2021).

²⁰ The parties do not dispute that Debtor is required to pay quarterly fees to the Office of the United States Trustee until the case is converted, dismissed, or closed. *See* 28 U.S.C. § 1930(a)(6). However, per Local Rule 3022-1(b)(1), a final decree will not be entered until all contested matters and objections to claims are concluded.

appropriate as a matter of law. Finally, the UST argues that seeking to administratively close the case to avoid the payment of statutory fees is improper.

Closure of Chapter 11 Case

Closure of a Chapter 11 case is implemented by the entry of a final decree after an estate is “fully administered.”²¹ “A final decree is essentially an administrative task, a docket entry reflecting the conclusion of a case for record-keeping purposes.”²² Typically, a Chapter 11 case is closed when a plan has been confirmed, distributions have commenced, and there are no longer any active matters being litigated in the bankruptcy court.

Administrative Closure

Debtor seeks an “administrative closure.” The Bankruptcy Code does not define “administrative closure.” “[T]he concept of administrative closing appears to be a legal construct intended to represent something qualitatively less final than [a] statutory closing [under Section 350].”²³ Administrative closure has been approved without objection from the UST in cases involving individual Chapter 11 debtors because individual debtors do not receive a discharge until the completion of all plan payments²⁴ which may take up to five years, and not having to pay UST fees arguably increases the distribution to creditors.²⁵ Many bankruptcy courts, including all of

²¹ Fed. R. Bankr. P. 3022.

²² *In re Roman Catholic Church of the Archdiocese of Santa Fe*, No. 18-13027-t11, 2023 WL 2747061, at *3 (Bankr. D.N.M. Mar. 31, 2023) (quoting *McClelland v. Grubb & Ellis Consulting Servs. Co. (In re McClelland)*, 377 B.R. 446, 453 (Bankr. S.D.N.Y. 2007)).

²³ *In re Garcia*, No. 12-41403-MSH, 2018 WL 3524581, at *3 (Bankr. D. Mass. July 20, 2018).

²⁴ 11 U.S.C. § 1141(d)(5).

²⁵ See, e.g., *In re Garcia*, 2018 WL 3524581, at *4 (first citing *In re Necaise*, 443 B.R. 483, 493 (Bankr. S.D. Miss. 2010); and then citing *In re Johnson*, 402 B.R. 851, 854 (Bankr. N.D. Ind. 2009)) (“Finally, relieving individual chapter 11 debtors seeking a discharge from paying a reopening fee is consistent with the goal of administrative closure—to encourage maximum payments to creditors.”).

those located in Florida, provide for “administrative closing” for Chapter 11 cases involving individual debtors.²⁶

However, while there is no controversy surrounding administrative closure of Chapter 11 cases involving individual debtors, the UST argues that neither the Bankruptcy Code nor the Bankruptcy Rules provide a mechanism to allow corporate debtors to seek an administrative closure. The UST argues that administrative closure is not warranted in corporate Chapter 11 cases because, unlike in individual Chapter 11 cases, corporate debtors obtain a discharge at the time a plan is confirmed.²⁷

Fully Administered

Section 350 of the Bankruptcy Code provides for the closure of a case after an estate is “fully administered.”²⁸ Rule 3022 of the Federal Rule of Bankruptcy Procedure provides for entry of a final decree closing a Chapter 11 case after an estate is “fully administered.” However, the term “fully administered” is not defined in the Bankruptcy Code or Bankruptcy Rules. The 1991 Advisory Committee Note on Bankruptcy Rule 3022 provides the following guidance:

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business

²⁶ Local Rule 3022-1(b)(2)(A) (“Administrative Closing. After the entry of an order of confirmation and the disposition of all adversary proceedings, contested matters, and objections to claims, individual debtors may file a motion to administratively close the Chapter 11 case. The debtor, any creditor, or any other party in interest may file a motion to reopen an administratively closed case at any time without the necessity of paying a filing fee.”); *see also* Bankr. N.D. Fla. R. 3022-1(B)(2) (“Administrative Closing. After the entry of an order of confirmation and the disposition of all adversary proceedings, contested matters, and objections to claims, individual debtors may file a motion to administratively close the Chapter 11 case. The debtor, any creditor, or any other party in interest may file a motion to reopen an administratively closed case at any time without the necessity of paying a filing fee.”); Bankr. S.D. Fla. R. 5010-1(A)(4) (filing fee is not required for motion that seeks to reopen a Chapter 11 case involving an individual debtor whose case was closed after confirmation of a plan but prior to entry of discharge).

²⁷ 11 U.S.C. § 1141(d)(1).

²⁸ 11 U.S.C. § 350(a).

or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code.²⁹

Bankruptcy Rule 3022 provides bankruptcy courts flexibility in determining whether an estate is fully administered,³⁰ and such determination is in the court's discretion based on consideration of numerous case-specific, procedural, and practical factors.³¹ Each request should be analyzed on a case-by-case basis,³² and a court should analyze the factors referenced in the Advisory Committee Note as well as any other relevant factors in making its determination.³³ Not all of the factors listed in the Advisory Committee Notes are required to be present to establish a case is fully administered.³⁴

With the foregoing in mind, the Court weighs the factors as follows:

(1) Whether The Order Confirming The Plan Has Become Final	The Confirmation Order became final on July 20, 2020. This factor weighs in favor of closing the case.
(2) Whether Deposits Required By The Plan Have Been Distributed	The Litigation Trust was funded and payments on all other claims have been distributed. This factor weighs in favor of closing the case.
(3) Whether The Property Proposed By The Plan To Be Transferred Has Been Transferred	The Administrative Claim Reserve was funded prior to the Effective Date of the Plan to pay all allowed administrative claims, and the Litigation Trust was funded.

²⁹ Fed. R. Bankr. P. 3022 advisory committee's note to 1991 amendment.

³⁰ *Spierer v. Federated Dep't Stores, Inc. (In re Federated Department Stores, Inc.)*, 43 F. App'x 820, 822 (6th Cir. 2002) (citing *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997)).

³¹ *In re Union Home & Indus., Inc.*, 375 B.R. 912, 917 (B.A.P. 10th Cir. 2007).

³² *Id.* (quoting *In re Federated Dep't Stores*, 43 F. App'x at 822).

³³ *Id.* at 916-17.

³⁴ *Id.* at 917.

	This factor weighs in favor of closing the case.
(4) Whether The Debtor Or The Successor Of The Debtor Under The Plan Has Assumed The Business Or The Management Of The Property Dealt With By The Plan	The successor of Debtor under the Plan, i.e., the Trustee of the Litigation Trust, has assumed management of the property dealt with by the Plan. This factor weighs in favor of closing the case.
(5) Whether Payments Under The Plan Have Commenced	Payments under the Plan have commenced. This factor weighs in favor of closing the case.
(6) Whether All Motions, Contested Matters, And Adversary Proceedings Have Been Finally Resolved	There is a pending appeal regarding the ADI Claims and the UST's Motion to Dismiss (based on unpaid UST fees). It is possible that the District Court may reverse and remand the disallowance of the ADI Claims to this Court requiring further adjudication of the matter. In addition, Debtor's failure to pay UST fees is a basis to dismiss the case. This factor does not weigh in favor of closing the case.

The sixth factor is the only factor that does not appear to weigh in favor of finding the estate is fully administered. Local Rule 3022-1 contemplates entry of a final decree after the disposition of all contested matters and objections to claims. The pendency of the Appeal means the *case* is not fully administered;³⁵ however, Section 350 and Bankruptcy Rule 3022 require that an *estate* be fully administered. Upon entry of the Confirmation Order, the Litigation Trust was formed to prosecute Causes of Action and distribute proceeds to holders of allowed general unsecured claims.³⁶ The proceeds will not pass through Debtor's estate. Because the Litigation Trust has succeeded Debtor's estate's interests, and all other claims have been paid pursuant to the terms of the Plan, the Court finds that Debtor's estate has been fully administered in accordance with the Plan. While it is possible that the District Court will remand the Appeal back to this Court

³⁵ The Motion to Dismiss has been resolved by Debtor becoming current on the UST fees and filing all required Financial Reports.

³⁶ Plan 21-22 (Doc. No. 252 at 29-30).

for further proceedings, that possibility does not require the Court to keep the case open.³⁷ If further proceedings are required, the Trustee could seek to reopen the case under Section 350(b).

This ruling is not an invitation for corporate debtors to seek administrative closure of Chapter 11 cases. This ruling is limited to the unique facts and circumstances of this case.

Accordingly, it is

ORDERED:

1. The Motion to Administratively Close (Doc. No. 500) is **GRANTED**.
2. The case is administratively closed effective as of **March 19, 2024**.
3. The Motion to Dismiss (Doc. No. 490) is **DENIED AS RESOLVED**.

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Attorney Justin Luna is directed to serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within three (3) days of entry of the Order.

³⁷ *But see In re 1095 Commonwealth Ave. Corp.*, 213 B.R. 794 (Bankr. D. Mass. 1997) (finding that the Court could not enter a final decree before pending appeals were resolved and denying the debtor's motion for an order that no further quarterly fees of the United States Trustee would accrue or be payable by the estates).