

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
	§	
SPEEDCAST INTERNATIONAL	§	Case No. 20-32243 (MI)
LIMITED, <i>et al.</i> ,	§	
	§	(Jointly Administered)
Reorganized Debtors. ¹	§	
	§	

NOTICE OF APPEAL

Pursuant to 28 U.S.C. § 158(a) and Rules 8001, *et seq.* of the Federal Rules of Bankruptcy Procedure, Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures, Ltd., Inmarsat Inc., Inmarsat Solutions (US) Inc., Inmarsat Solutions (Canada) Inc., and Inmarsat Solutions AS Norway (collectively, “Inmarsat”), a creditor in the above-captioned cases, hereby appeals from the *Order Denying Inmarsat’s Application for Administrative Expense Claim* (the “Administrative Expense Order”) [Dkt. No. 1799] and accompanying *Memorandum Opinion* (the “Memorandum Opinion”) [Dkt. No. 1798], each entered on December 21, 2021² by the Honorable Marvin Isgur of the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and from all prior adverse rulings subsumed in the Administrative Expense Order and Memorandum Opinion and any and all related findings of fact and conclusions of law, minute entries, orders, supplements and amendments whether signed before, contemporaneous with or after the Administrative Expense Order and Memorandum Opinion.

¹ A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <http://www.kccllc.net/speedcast>. The Reorganized Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

² True and correct copies of the Administrative Expense Order and Memorandum Opinion are attached hereto as **Exhibits A and B**, respectively.

The names of all parties to the Administrative Expense Order and Memorandum Opinion and the names, addresses, and telephone numbers of their respective attorneys of record are as follows:

Creditor/Appellant	Counsel
<p>Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures, Ltd., Inmarsat Inc., Inmarsat Solutions (US) Inc., Inmarsat Solutions (Canada) Inc., and Inmarsat Solutions AS Norway</p>	<p>NORTON ROSE FULBRIGHT US LLP Jason L. Boland Bob B. Bruner 1301 McKinney Street, Suite 5100 Houston, Texas 77010 Telephone: (713) 651-5151 Facsimile: (713) 651-5246 Email: jason.boland@nortonrosefulbright.com bob.bruner@nortonrosefulbright.com</p> <p>-and-</p> <p>STEPTOE & JOHNSON LLP Michael Dockterman 227 West Monroe Street, Suite 4700 Chicago, Illinois 60606 Telephone: (312) 577-1300 Email: mdockterman@steptoe.com</p> <p>Alfred M. Mamlet Joshua R. Taylor 1330 Connecticut Avenue, NW Washington, DC 20036 Telephone: (202) 429-6205 Email: amamlet@steptoe.com jrtaylor@steptoe.com</p>

Debtors/Reorganized Debtors/Appellees	Counsel
<p>Speedcast International Limited; SpeedCast Communications, Inc. f/k/a Caprock Communications Inc. f/k/a Harris Caprock Communications Inc.; SpeedCast UK Holdings Limited; CapRock UK Limited; CapRock Communications Pte. Ltd; Speedcast Cyprus Ltd. f/k/a SAIT Communications Limited; SpeedCast Limited; SpeedCast Group Holdings Pty Ltd; SpaceLink Systems, LLC; SpeedCast Australia Pty Limited f/k/a Australian Satellite Communications Pty Ltd; Satellite Communications Australia Pty Ltd; Oceanic Broadband Solutions Pty Ltd; SpeedCast Managed Services Pty Limited f/k/a Pactel International Pty Ltd f/k/a SpeedCast Pacific Pty Ltd; Maritime Communication Services, Inc.; Telaurus Communications LLC; CCI Services Corp.; HCT Acquisition, LLC; Cosmos Holdings Acquisition Corp.; Globecomm Network Services Corporation; Hermes Datacommunications International Limited; SpeedCast Singapore Pte. Ltd. f/k/a SpeedCast Singapore Pte. Ltd.; SpaceLink Systems II, LLC f/k/a SpaceLink System Inc; CapRock Comunicacoes do Brasil Ltda.; CapRock Participacoes do Brasil Ltda.; Speedcast Canada Limited; CapRock Communications (Australia) Pty Ltd; SpeedCast Norway AS f/k/a Schlumberger Information Technology Services Norge AS f/k/a Harris Norge AS; Globecomm Europe B.V. f/k/a Carrier to Carrier Telecom BV; NewCom International, Inc.; Evolution Communications Group Limited; Speedcast Netherlands B.V. f/k/a Elektrikom BV f/k/a Speedcast Europe BV; SpeedCast Americas, Inc.; SpeedCast France SAS</p>	<p>WEIL GOTSHAL & MANGES LLP Alfredo R Perez Brenda Lynn Funk Stephanie N. Morrison 700 Louisiana, Suite 1700 Houston, Texas 77002-2784 Telephone: (713) 546-5000 Email: Stephanie.Morrison@weil.com Brenda.Funk@weil.com Alfredo.Perez@weil.com</p> <p>Paul R. Genender Amanda Pennington Prugh Jake R. Rutherford 200 Crescent Court, Suite 300 Dallas, Texas 75201 Telephone: (214) 746-7877 Email: Paul.Genender@weil.com Amanda.PenningtonPrugh@weil.com Jake.Rutherford@weil.com</p> <p>Gary T. Holtzer David N. Griffiths Kelly DiBlasi 767 Fifth Avenue New York, NY 10153 Telephone: (212) 310-8000 Email: Gary.Holtzer@weil.com David.Griffiths@weil.com Kelly.DiBlasi@weil.com</p> <p>-and-</p> <p>MCKOOL SMITH, PC John James Sparacino Veronica F. Manning Thomas J. Eisweirth 600 Travis Street, Suite 7000 Houston, Texas 77002 Telephone: (713) 485-7300 Email: jsparacino@mckoolsmith.com vmanning@mckoolsmith.com teisweirth@mckoolsmith.com</p>

	<p>Gayle R. Klein One Manhattan West 395 9th Avenue, 50th Floor New York, New York 10001 Telephone: (212) 402-9400 Email: gklein@mckoolsmith.com</p>
U.S. Trustee	<p>Counsel</p> <p>Hector Duran, Jr. Stephen Douglas Statham 515 Rusk, Ste 3516 Houston, Texas 77002 Telephone: (713) 718-4650 Email: hector.duran.jr@usdoj.gov stephen.statham@usdoj.gov</p>

Dated: December 31, 2021

Respectfully submitted,

/s/ Jason L. Boland

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Counsel to Inmarsat Global Limited, et al.

Certificate of Service

I hereby certify that on December 31, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and served on counsel for the Debtors/Reorganized Debtors.

/s/ Jason L. Boland

Jason L. Boland

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**ENTERED**
December 21, 2021
Nathan Ochsner, Clerk

IN RE:


SPEEDCAST INTERNATIONAL
LIMITED, *et al.*,
Debtors.§
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CASE NO: 20-32243

Jointly Administered
CHAPTER 11**ORDER**

For the reasons set forth in the Memorandum Opinion on this date, Inmarsat's application for an administrative expense is denied.

SIGNED 12/21/2021



Marvin Isgur
United States Bankruptcy Judge

EXHIBIT B

ENTERED

December 21, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

**SPEEDCAST INTERNATIONAL
LIMITED, *et al.*,
Debtors.**

§
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CASE NO: 20-32243

**Jointly Administered
CHAPTER 11**

MEMORANDUM OPINION

SpeedCast and Inmarsat entered a series of contracts during their long business relationship. The last of those contracts terminated all claims Inmarsat may have against SpeedCast except for any “Permitted Claims.” Inmarsat argues SpeedCast owes a “Shortfall Amount” under one of their contracts as a Permitted Claim. For the reasons set forth below, SpeedCast owes no Shortfall Amount.

BACKGROUND

Inmarsat Global Limited and its affiliates operate a satellite network that provides communications services. (ECF No. 1640 at 2). For many years, SpeedCast International Limited and its affiliates distributed Inmarsat’s maritime communication services. (ECF No. 1640 at 2). Inmarsat delivered the maritime services to SpeedCast under various Master Service Agreements. (ECF No. 1640 at 2). These agreements set forth the services Inmarsat would provide SpeedCast, the charges for the services, and the parties’ respective obligations. (ECF No. 1562 at 3). The parties also entered a “Strategic Alliance Agreement” on June 10, 2016. (ECF No. 1640 at 2). Under the Strategic Alliance Agreement, SpeedCast received a thirty percent discount on Inmarsat’s services. (ECF No. 1640 at 2–3). Additionally, SpeedCast had to meet certain



minimum targets for deploying Inmarsat’s satellite services at the end of each calendar year or it was obligated to pay a Shortfall Amount. (ECF No. 1640 at 3).¹

SpeedCast and its affiliated debtors commenced chapter 11 cases on April 23, 2020. (ECF No. 1532 at 2). On November 13, 2020, the parties entered an “Asset Sale Agreement” and a “Deed of Termination and Release” in which SpeedCast agreed to transfer most of its Inmarsat maritime customer contracts to Inmarsat in exchange for a payment and a mutual release of claims except for certain “Permitted Claims.”² (ECF No. 1640 at 4). The Permitted Claims are:

[A]ny claims for payment by an Inmarsat Entity for services delivered by the relevant Inmarsat Entity to a SpeedCast Entity after 23 April 2020 under, and otherwise on the terms of, any *Existing Agreement* or the *Surviving Agreement*, including any applicable interest, fees or costs relating to such payment claims which are, or become, due and payable under the terms of the relevant Existing Agreement or the Surviving Agreement (as applicable).

(ECF No. 1629-1, Exhibit E at 5) (emphasis added). The Strategic Alliance Agreement and the relevant Master Service Agreements are either an Existing Agreement or the Surviving Agreement. (ECF No. 1629-1, Exhibit E at 4, 6).

SpeedCast did not meet its minimum target for 2020. (ECF No. 1640 at 6). Inmarsat issued a shortfall invoice of \$2,161,890.00 on March 31, 2021 and filed an administrative expense claim on April 9, 2021. (ECF No. 1640 at 6). SpeedCast disputes that it owes the Shortfall Amount. (ECF No. 1641).

¹ The parties stipulated that all of the services Inmarsat provided SpeedCast were described in and controlled by the Master Service Agreements: “The Inmarsat Services were provided to Speedcast prior to the Petition Date under various master service agreements” (ECF No. 1640 at 2). The Strategic Alliance Agreement varied the amount that SpeedCast was obligated to pay for those services.

² The Asset Sale Agreement and Deed of Termination and Release terminated the Strategic Alliance Agreement and most of the distribution agreements effective January 1, 2021. (ECF No. 1640 at 5). The Court approved this transaction on December 11, 2020. (ECF No. 1640 at 5).

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Proceedings affecting the debtor-creditor relationship are core proceedings under 28 U.S.C. § 157(b)(2)(B). Venue is proper in this District consistent with 28 U.S.C. §§ 1408 and 1409.

DISCUSSION

This dispute is a matter of contract interpretation. The parties disagree whether the shortfall amount under the Strategic Alliance Agreement is a Permitted Claim.

The parties agree that services were delivered under Master Service Agreements. (ECF No. 1640 at 2). They also agree that the Strategic Alliance Agreement varies the price terms of the Master Service Agreements by the inclusion of a noncontingent thirty percent discount and a contingent shortfall amount. (ECF No. 1640 at 2–3).

Based on the documents filed by the parties, there is no dispute that Inmarsat invoiced for post-petition services under its Master Service Agreements and that Speedcast paid the amount invoiced by Inmarsat. Inmarsat seeks to recover the Shortfall Amount solely by asserting an administrative claim arising under the Strategic Alliance Agreement. Inmarsat does not seek to recover any unpaid amounts under the Master Service Agreements. Accordingly, the Court must answer only the narrow question of whether a Shortfall Amount under the Strategic Alliance Agreement is a Permitted Claim under the Deed of Termination and Release.

Under the Deed of Termination and Release, a Permitted Claim is one “for services delivered . . . under, and otherwise on the terms of . . . any Existing Agreement or the Surviving Agreement” The phrase “under, and otherwise on the terms of” implies that the services must be delivered both “under” and “otherwise on the terms of” an Existing Agreement or the Surviving Agreement to qualify as a Permitted Claim. *See Velazquez v. Countrywide Home Loans Servicing (In re Velazquez)*, 660 F.3d 893, 897 (5th Cir. 2011) (“[T]he word ‘and’ is often construed as

conjunctive.”); *Bruce v. First Fed. Sav. and Loan. Ass’n of Conroe, Inc.*, 387 F.2d 712, 715 (5th Cir. 1988) (“The word ‘and’ is therefore to be accepted for its conjunctive connotation rather than as a word interchangeable with ‘or’ except where strict grammatical construction will frustrate clear legislative intent.”); *Am. Bankers Ins. Grp. v. U.S.*, 408 F.3d 1328, 1332 (11th Cir. 2005) (“[U]nless the context dictates otherwise, the word ‘and’ is presumed to be used in its ordinary sense, that is, conjunctively.”); *Crank v. Fed. Emergency Mgmt. Agency*, Case No. CV 18-410-BAJ-EWD, 2019 WL 9899509, at *3 (M.D. La. Aug. 8, 2019). *Cf. Bd. of Ins. Comm’rs of Tex. v. Guardian Life Ins. Co. of Tex.*, 142 Tex. 630, 180 S.W.2d 906, 908 (1944) (noting that “and” and “or” are typically not interchangeable, but “and” may be interpreted as “or” where necessary to “effectuate the manifest intention of the user.”). Additionally, a court’s primary concern in construing a written contract is to ascertain the parties’ true intent as expressed in the contract. *Valence Operating Co. V. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005) (citing *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003)); *Gulf Ins. Co. v. Burns Motors, Inc.*, 22 S.W.3d 417, 423 (Tex. 2000); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

The parties’ dispute whether they intended to release SpeedCast from any Shortfall Amount when they entered the Deed of Termination and Release. Without the guidance of mutual intent nor reason to depart from the ordinary interpretation, “and” is conjunctive in the Permitted Claim definition.

Inmarsat delivered its services under the Master Service Agreements, not the Strategic Alliance Agreement. The Shortfall Amount arises under the terms of the Strategic Alliance Agreement. Because the services were not delivered “under” the Strategic Alliance Agreement, the “terms of” the Strategic Alliance Agreement are irrelevant to the resolution of this dispute. The services were delivered both “under” and “otherwise on the terms of” the Master Service

Agreements, but the Master Service Agreements provide no basis upon which Inmarsat may seek the Shortfall Amount. Because (1) no services were delivered under the Strategic Alliance Agreement; (2) a Permitted Claim is one for services delivered under, and otherwise on the terms of an Existing Agreement or the Surviving Agreement; and (3) the Master Service Agreements do not provide for a Shortfall Amount, Inmarsat's shortfall claim is not a Permitted Claim as defined in the Deed of Termination and Release.

CONCLUSION

A separate order will be entered.

SIGNED 12/21/2021



Marvin Isgur
United States Bankruptcy Judge