

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TECT AEROSPACE GROUP HOLDINGS,
INC., et al.,¹

Debtors.

EQUITY BANK,

Plaintiff,

vs.

TECT AEROSPACE GROUP HOLDINGS, INC.,
et al., THE BOEING COMPANY, CENTRAL
KANSAS AEROSPACE MANUFACTURING,
LLC and HALL INDUSTRIAL SERVICES, INC.,

Defendants.

Chapter 11

Case No. 21-10670 (KBO)

(Jointly Administered)

Adv. Pro. No. 21- _____ (KBO)

COMPLAINT

Plaintiff, Equity Bank (“Plaintiff”), by and through its undersigned counsel, hereby brings this Complaint against defendants the above-captioned debtors (the “Debtors”), The Boeing Company (“Boeing”), Central Kansas Aerospace Manufacturing, LLC (“CKAM”), Hall Industrial Services (“Hall Industrial”), and collectively with the Debtors, Boeing, and CKAM, the “Defendants”), and alleges as follows:

THE PARTIES

1. Plaintiff Equity Bank is a wholly owned banking subsidiary of Equity Bancshares,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is TECT Aerospace Group Holdings, Inc., c/o Riveron RTS, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.



Inc., a bank holding company organized under the laws of Kansas.

2. The defendant Debtors are chapter 11 debtors in the above-captioned jointly administered bankruptcy proceedings and a party to a certain Asset Purchase Agreement (defined below).

3. The defendant The Boeing Company is a corporation organized under the laws of Delaware. Service of Process may be effectuated upon Boeing upon its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

4. The defendant Central Kansas Aerospace Manufacturing, LLC is a limited liability company organized under the laws of Delaware. Service of Process may be effectuated upon CKAM upon its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

5. The defendant Hall Industrial Services, Inc. is a corporation organized under the laws of Kansas. Service of process may be effectuated upon Hall Industrial upon its registered agent, Scott C. Hall, 1221 E. Murdock, Wichita, KS 67214.

JURISDICTION, VENUE AND STANDING

6. This adversary proceeding asserts claims against Defendants arising from their transactions with the above-captioned debtors (the “Debtors”), as provided herein.

7. This Court has original jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b).

8. Venue is proper in this District pursuant to 28 U.S.C. § § 1408 and 1409.

9. This action is brought pursuant to Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), including to obtain an injunction or other equitable relief. Contemporaneously herewith, Equity Bank is filing its motion seeking certain

injunctive and other equitable relief (the “TRO Motion”) and seeks a temporary restraining order or preliminary injunction against the Defendants.

10. This Court has personal jurisdiction over the Defendants pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure.

11. Solely with respect to the relief sought herein, this is a core proceeding pursuant to 28 U.S.C. § 157(b) such that the Court may enter a final order consistent with Article III of the United States Constitution. Pursuant to Bankruptcy Rule 7012(b), and Local Rule 7012-1, Plaintiff does not consent to the entry of a final order by the Court in connection with the relief sought by the Debtors’ Motion to Abandon, as defined herein).

FACTS

12. On March 31, 2017, TECT Hypervelocity, Inc. (“Hypervelocity”) one of the Debtors, entered into an equipment lease agreement (the “Lease”) of the Equipment from non-Debtor affiliate SPEF Monolithic, LLC, as lessor. The Equipment was subject to the security interest of Equity Bank. Over time and prior to April 5, 2021, additional equipment was added to the Lease.

13. On April 5, 2021 (the “Petition Date”), the Debtors commenced the above-captioned bankruptcy cases (the “Bankruptcy Cases”), and on July 31, 2021, the Debtors filed a motion [Docket No. 406] (the “Rejection Motion”) seeking to reject two unexpired leases for equipment located at their Kansas facilities, including the lease for certain equipment (the “Equipment”) between debtor/defendant TECT Hypervelocity, Inc., as lessee, and non-Debtor affiliate SPEF Monolithic, LLC, as lessor (“SPEF Monolithic”).

14. On August 18, 2021, the Court entered an order [Docket No. 424] (the “Rejection Order”) granting the relief requested in the Rejection Motion. The Rejection Order approved the

rejection of the lease related to the Equipment effective as of July 31, 2021. Accordingly, as of July 31, 2021, the Debtors were divested of any interest in the Equipment.

15. On May 21, 2021, the Debtors filed a motion [Docket No. 192] seeking authorization to, among other things, sell substantially all of their assets related to their Kansas manufacturing business in accordance with the requested bidding procedures, and on July 13, 2021, the Court entered an order approving the sale of the Debtors' Kansas assets to the defendants Boeing and CKAM (collectively, the "Purchaser") pursuant to the asset purchase agreement (the "Asset Purchase Agreement")² [Docket No. 372] (the "Sale Order"). Equity Bank understands that the Asset Purchase Agreement, among other things, designated certain assets, including real property lease at the Park City Facility to the Purchaser. The Debtors' sale of their Kansas assets closed on August 6, 2021.

16. On November 11, 2021, Equity Bank and SPEF Monolithic entered into a surrender agreement, by and through which, among other things, SPEF Monolithic surrendered the Equipment to Equity Bank. Accordingly, and effective November 11, 2021, Equity Bank became the owner of the Equipment, and the Equipment is currently located at the Park City Facility.

17. On November 23, 2021, the Debtors filed a motion to abandon the Equipment [Docket No. 634] (the "Motion to Abandon").³

² Although the Debtors have never filed the schedules to the Asset Purchase Agreement, Equity Bank understands that (subject to proof of the same), the Purchaser defendants have a possessory interest of the leasehold through January 29, 2022. After that, if the Debtors do not assume and assign the lease to the Purchaser, the lease of the Park City Facility will be rejected pursuant to 11 U.S.C. § 365(d). Notably, although referenced in the Abandonment Motion, the Debtors never filed schedules to the Asset Purchase Agreement or provided a copy of the schedules to Equity Bank. Accordingly, there is no evidence whether the underlying lease of the Park City Facility has been transferred to the Purchaser.

³ The idea that the Debtors filed the Abandonment Motion on its own behalf, or for its benefit, is as illusory as the abandonment relief sought by the Abandonment Motion in the first instance. The Debtors have no interest in the Equipment, and they have no interest in the Park City Facility, save a potential reversionary interest, but if the Debtors do not assume and assign the Lease to the Purchaser or the Purchasers' designee, the Lease will be certainly be rejected as the Debtors have no operations to use at the facility and they do not have the financial wherewithal to pay the ongoing expenses for the Lease.

18. The title of “motion to abandon” was a misnomer, at best. The Debtors sought relief that was (and still is) inapplicable. Specifically, the Debtors sought pursuant to Section 554 of the Bankruptcy Code, to abandon property in which they no longer have an interest because the underlying lease has already been rejected. As stated in the Equity Bank Objection, Equity Bank had no objection to the Debtors’ request for “abandonment” of the Equipment, as such relief is moot.

19. But abandonment was not what the Abandonment Motion was really about. By and through the Abandonment Motion, the Debtors also sought to remove, disassemble or otherwise dispose of the Equipment without any factual or legal predicate for such a request, including seeking relief in the proposed order that was not included in the Abandonment Motion in the first instance: “The Debtors, or their designee, including the Buyer, are authorized to remove, disassemble or otherwise dispose of the Equipment without liability to any party, including SPEF Monolithic and Equity Bank.” (emphasis added). In other words, the Debtors sought authority to remove, disassemble or destroy the rights of a third party without being financially responsible for any damage caused.

20. On December 7, 2021, Equity Bank filed a response in opposition to the Motion to Abandon [Docket No. 639] (the “Equity Bank Objection”). On December 8, 2021, counsel for the Debtors advised that they were not going forward with the Motion to Abandon at the hearing scheduled for December 14, 2021, and the Motion to Abandon would be continued until the next omnibus hearing scheduled for January 25, 2022.

21. On December 8, 2021, Equity Bank sent a letter to the Debtors and the Purchaser, a copy of which is attached to Equity Bank’s TRO Motion as **Exhibit A**, and is incorporated herein as if stated in full, which concluded as follows:

Please assure us that no further action will be taken on this matter to remove and dismantle the equipment. We would appreciate that you confirm in writing that no further action will be taken. Equity Bank reserves the right to proceed with appropriate legal action if you commence dismantling or removal of the equipment secured to Equity Bank prior to the ruling of a court of competent jurisdiction.

Equity Bank never heard back from either the Debtors or the Purchaser.

22. Prior to and since the filing of the Motion to Abandon, Equity Bank and the Purchaser had been discussing potential resolutions with respect to the Equipment, including selling the Equipment to a third party. It was therefore surprising to Equity Bank when, on the evening of December 14, 2021, Equity Bank first learned from a third party that the Debtors and/or the Purchaser were in the process of dismantling and removing the Equipment from the Park City Facility. Again, neither the Debtors nor the Purchaser ever informed Equity Bank that it was dismantling and removing the Equipment.

23. Attached to the TRO Motion as **Exhibit B** is the declaration of David King (the “King Declaration”), the facts of which are incorporated herein in full to support this Complaint. Mr. King is the Wichita Area President for Equity Bank and the person responsible for the loan from Equity Bank to Monolithic LLC and SPEF Carriage Assembly LLC.

24. As set forth in the King Declaration, Mr. King arrived at the Park City Facility around 8:15 a.m. (central) on December 15, 2021, at which time, he identified defendant Hall Industrial Services, Inc.’s truck, trailer and other equipment located outside the Park City Facility. This equipment seemed to be consistent with what would be required to rig, move, and haul heavy machinery such as the equipment previously pledged as collateral by SPEF Monolithic LLC, which was surrendered by SPEF Monolithic LLC to Equity Bank.

25. At approximately 8:22 a.m. (central), Mr. King made contact with Christy Ballinger, who had been Mr. King’s primary contact on site for previous inspections, and Ms.

Ballinger accompanied Mr. King in the Park City Facility. While in the Park City Facility, Mr. King observed that workers had begun dismantling the Makino MAG.3 cell at the far north end of the machining facility. These machines are serial numbers 137 and 148 and are Makino MAG.3 EX machines. Further, Mr. King witnessed at least four (4) individuals dismantling various parts and components of these machines and the associated pallet system. Mr. King was informed that the dismantled equipment was being moved to the north warehouse, which is just on the other side of an interior wall in the Park City Facility. Mr. King was also informed that the Ingersoll Rand machines would be dismantled next. This machinery contained serial numbers 2N00034, 2N00035, and 2N00036 and are part of the collateral package secured to Equity Bank and surrendered by SPEF Monolithic LLC to Equity Bank. Further, Mr. King walked through the facility and confirmed the only machines that were currently being dismantled were in the initial machining cell I saw that consists of S/N 137 and S/N 148.

26. During his December 15, 2021 visit to the Park City Facility, Mr. King also saw Hal Pho, a representative of the Purchaser. Mr. King informed Mr. Pho that he was from Equity Bank and they did not have our permission to touch or dismantle the Equipment and that Equity Bank had been clear in its communication on that topic. Mr. Pho told Mr. King they were going to continue doing what they are doing to the equipment, and Mr. King reiterated that Equity Bank had given no one permission to touch or dismantle the Equipment. Mr. Pho again responded they were going to continue doing what they are doing with the Equipment.

CLAIMS FOR RELIEF

Count I

**For Injunctive Relief to Maintain Status Quo
(Against all Defendants)**

27. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 26 as if fully set forth herein.

28. Notwithstanding the pending Motion to Abandon, the Defendants have commenced a process of dismantling and removing the Equipment from the Park City Facility. Equity Bank seeks entry of a temporary restraining order subject to further injunctive relief, precluding the Defendants from removing, disassembling, or otherwise disposing of the Equipment.

29. The Motion to Abandon has been continued until January 25, 2022, and despite the Motion being pending and seeking authority for specific relief, the Defendants have begun removing, dissembling or otherwise disposing of the Equipment.

30. The Defendants did not inform Equity Bank that it was dismantling and removing the Equipment and objects to the Defendants and Equity Bank has not consented to such dismantling and removal of the Equipment under the circumstances.

31. Equity Bank sought assurances from the Debtors and Purchaser defendants that they would not take further action to prevent such dismantling and removal of the Equipment and these requests were ignored or the Debtors and Purchasers failed to provide such assurances.

32. Equity Bank seeks an injunction seeking an order, process or judgment that is necessary or appropriate to carry out the proper administration of these chapter 11 cases.

33. Substantially contemporaneously herewith, Equity Bank is filing its TRO Motion seeking an injunction and the bases for the requested relief provided in the motion are incorporated herein as if stated in full.

34. Defendants have and continue to disrupt the status quo by removing, disassembling or otherwise disposition of the Equipment, and such action has and would immediately cause irreparable harm to Plaintiff.

35. The Defendants are capable maintaining the status quo at the Park City Facility and ensuring the Equipment's safety and preventing such further immediate and irreparable harm to Equity Bank.

36. This court has the power to grant an injunction pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure.

37. Plaintiff seeks and under the circumstances is entitled to, injunctive relief to maintain the status quo and ensure that the Defendants continue to securely and safety continue to protect Equity Bank's Equipment.

Count II

Declaratory Judgment - declaring that the automatic stay provided by 11 U.S.C. § 362 is lifted or not applicable (Against the Debtors)

38. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 37 as if fully set forth herein.

39. The Plaintiff is entitled to declaratory judgment that the automatic stay provided 11 U.S.C. § 362(a) be lifted or is not applicable over the Equipment.

40. By and through the Motion to Abandon, the Debtors sought to remove, disassemble, or otherwise dispose of the Equipment without any factual or legal predicate for such a request.

41. As part of the relief sought in the proposed form of order, the Debtors, or their designee, including the Purchaser, sought court approval to authorize the removal, disassembly, or otherwise disposition of the Equipment without liability to any party.

42. Equity Bank opposed the Abandonment Motion as provided in the Equity Bank Objection and the Motion to Abandon was continued. Notwithstanding this apparent step in the right direction, the Defendants took to self-help to remove, dissemble, or otherwise dispose of Equity Bank's Equipment.

43. Equity Bank intends to pursue any and all rights resulting from the Defendants' egregious conduct relating to a matter and Equipment that is the subject of a pending motion before this Court including without limitation pursuing any rights in the appropriate state or federal court.

44. To this end, Equity Bank requests this Court to declare that it may exercise its rights to the Equipment without regard to any threats or alleged violations of the automatic stay that may be argued to be in effect pursuant to section 362 of the Bankruptcy Code and hold the Defendants responsible for their removal, disassembly, or otherwise disposal of Equity Bank's Equipment.

Count III

Money Judgment (Against all Defendants)

45. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 44 as if fully set forth herein.

46. The Defendants have caused the partial disassembly and removal of the Equipment from the Park City Facility.

47. The Equipment is owned by Equity Bank, and none of the Defendants have any property interest in the Equipment.

48. Equity Bank has not authorized the Defendants to disassemble or remove the Equipment from the Park City Facility.

49. The Defendants do not have authority from any court or tribunal of competent jurisdiction to have disassembled or removed the Equipment from the Park City Facility.

50. Equity Bank has suffered damages as a result of disassembly or/or removal of the Equipment from the Park City Facility caused by the Defendants.

51. Equity Bank is entitled to monetary damages as a result of the Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting the relief requested and such other or further relief as is just and proper.

Dated: December 16, 2021

MORRIS JAMES LLP

/s/ Eric J. Monzo

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