

Michael J. Edelman
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, NY 10019
Phone: (212) 407-7700

Counsel to Macquarie Rotorcraft Leasing Holdings Limited

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,

Debtors.

Chapter 11

**Case No. 18-13648 (SMB)
(Jointly Administered)**

**MOTION OF MACQUARIE ROTORCRAFT LEASING HOLDINGS
LIMITED, AS PURCHASER, FOR ENTRY OF ORDER DISMISSING
CHAPTER 11 CASES FOR (A) MSN 4466 TRUST: CASE NO. 18-13718,
AND (B) MSN 1251 TRUST: CASE NO. 18-13751, EFFECTIVE AS OF
CLOSING DATE UNDER MACQUARIE PURCHASE AGREEMENT**

Macquarie Rotorcraft Leasing Holdings Limited (“**Macquarie**”), by and through its undersigned counsel, hereby moves for entry of an order (the “**Motion**”), substantially in the form annexed hereto as Exhibit A, dismissing the chapter 11 cases of MSN 4466 Trust and MSN 1251 Trust (which MSN 1251 Trust is now known as MSN 20184 Trust) (collectively, the “**Macquarie Trust**”)¹ effective as of the Closing Date under the Macquarie Purchase Agreement (defined below). Macquarie respectfully states as follows:

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

¹ The Macquarie Trusts, as debtors in these jointly administered chapter 11 cases, are: (a) MSN 4466 Trust: Case No. 18-13718, and (b) MSN 1251 Trust (which MSN 1251 Trust is now known as MSN 20184 Trust): Case No. 13751 (collectively, the “**Owner Trust Debtors**”).



JURISDICTION

1. The Court has jurisdiction to consider this Motion pursuant to section 1334 of title 28 of the United States Code. This matter is a core proceeding under section 157 of title 28. Venue is proper before the Court pursuant to sections 1408 and 1409 of title 28.

2. The statutory predicates for the relief requested herein are sections 105, 305, 349 and 1112 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 1017, 2002, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 9006-1 and 9077-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”).

RELEVANT BACKGROUND

A. The Debtors

3. The Owner Trust Debtors, along with one-hundred and forty-one affiliated entities (collectively, the Owner Trust Debtors and such other debtors and debtors-in-possession, the “**Debtors**”), commenced these chapter 11 cases (the “**Chapter 11 Cases**”) on November 25, 2018 (the “**Petition Date**”). The Macquarie Trusts are Debtors in these jointly-administered cases.

B. The Sale Process

4. The Debtors filed their motion to establish the sales procedures and obtain approval for the sale of substantially all of the Debtors assets on December 10, 2018 [Docket No. 64] (the “**Sale & Bidding Procedures Motion**”).

5. On December 20, 2018, this Court held a hearing on the Sale & Bidding Procedures Motion and determined to approve the sales procedures requested by the Debtors. Accordingly, on December 21, 2018, the Court entered the *Order Approving (A) Bidding Procedures, (B) Bid Protections, (C) Form and Manner of Notice of Cure Costs, Auction, Sale Transaction, and Sale*

Hearing, and (D) Date for Auction, if Necessary, and Sale Hearing (the “**Bid Procedures Order**”)
[Docket No. 159].

6. As this Court is aware, Macquarie is the stalking horse purchaser for a vast majority of the Debtors’ assets pursuant to that certain *Stock and Asset Purchase Agreement*, dated as of December 7, 2018 (the “**Macquarie Purchase Agreement**”), by and between certain of the Debtors, as sellers, and Macquarie, as the stalking horse purchaser.

7. As set forth in a Notice of Cancellation of Auction, filed by the Debtors on January 7, 2019 [Docket No. 216], Macquarie was the only bidder to submit a qualified third party bid under the Bid Procedures Order. Accordingly, as set forth in such notice, Macquarie was designated as the successful third party bidder in accordance with the Bid Procedures Order.

8. On February 12, 2019, this Court held a hearing to consider the approval of the Macquarie Purchase Agreement and the related purchase and assumption transactions (collectively, the “**Macquarie Sale Transactions**”) with respect to the assets contemplated to be purchased by Macquarie (or its designees) under such Macquarie Purchase Agreement (other than certain assets excluded from such sale by three sets of secured lender-credit bid transaction) (collectively, the assets sold to Macquarie under the Macquarie Sale Transactions, the “**Macquarie Transferred Assets**”). On February 15, 2019. This Court entered its *Order (I) Approving Purchase Agreement among Debtors And Macquarie, (II) Authorizing Sale of Certain Of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (Iii) Authorizing Assumption and Assignment Of Certain Executory Contracts And Unexpired Leases In Connection Therewith, and (IV) Granting Related Relief* [Docket No. 444 (the “**Macquarie Sale Order**”). The Macquarie Sale Order authorized the Debtors to consummate the Macquarie Sale Transactions.

9. Among the other assets, rights and property interests included within the Macquarie Transferred Assets are all owner participation and all equity and beneficial rights and interests in and to the Macquarie Trusts.

10. In accordance with the terms of the Macquarie Purchase Agreement and the Macquarie Sale Order, the Macquarie Sale Transactions closed on March 13, 2019 (the “**Closing Date**”). As a result of such closing, Macquarie is the owner of all owner participation and all equity and beneficial rights and interests in and to the Macquarie Trusts.

DISCUSSION

11. Pursuant to section 1112 of the Bankruptcy Code, the Court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1112(b)(1). Courts have “wide discretion” in determining whether “cause” exists, *In re BH S & B Holdings, LLC*, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010), and may use their “equitable powers to reach an appropriate result in individual cases,” *C-TC 9th Ave. P’ship v. Norton Co. (In re C-TC 9th Ave. P’ship)*, 113 F.3d 1304, 1311 n.5 (2d Cir. 1997) (citing H.R. Rep. 95-595, 95th Cong., 1st Sess. (1977), 1978 U.S.C.C.A.N. 5787, 6363-64). In addition to the list of “causes” set forth in section 1112(b)(4), courts have held that cause exists for dismissal where “there is no useful purpose in retaining jurisdiction over a chapter 11 case.” *In re Hospitality Assocs. of Tappan Zee, Ltd. P’ship*, 102 B.R. 369, 372 (Bankr. S.D.N.Y. 1989).

12. Section 305 of the Bankruptcy Code authorizes the Court to dismiss a case where “the interests of creditors and the debtor would be better served by such dismissal...” 11 U.S.C. § 305(a)(1). Courts consider a variety of factors in determining whether to grant relief under section 305, including: (i) the economy and efficiency of administration, (ii) whether another forum is available to protect the interests of both parties, (iii) whether federal proceedings are necessary to reach a just and equitable solution, (iv) whether there is an alternative means of

achieving an equitable distribution of assets, (v) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case, (vi) whether a non-federal insolvency has proceeded so far that it would be costly and time consuming to start afresh with the federal bankruptcy process, and (vii) the purpose for which bankruptcy jurisdiction has been sought. *In re Paper Partners I, L.P.*, 283 B.R. 661, 679 (Bankr. S.D.N.Y. 2002). Courts have held that dismissal under section 305 is appropriate where, among other things, “there is nothing which can be reorganized.” *In re Fitzgerald Grp.*, 38 B.R. 16, 18 (Bankr. S.D.N.Y. 1983).

13. Macquarie respectfully submits that dismissal of the Macquarie Trusts’ Owner Trust Debtors’ Chapter 11 Cases, as Debtors in these Chapter 11 Cases, is warranted pursuant to section 1112 and, in the alternative, section 305 upon occurrence of the Closing Date under the Macquarie Purchase Agreement . Upon consummation of the Macquarie Sale Transactions, the ownership of the Macquarie Trusts were transferred to Macquarie, with the administrative costs of the Macquarie Trusts having been funded and/or are to be satisfied through and in accordance with the terms of the Macquarie Purchase Agreement and the Macquarie Sale Order. Moreover, Macquarie is not seeking to impair any third-party claims against the Macquarie Trusts in connection with the Macquarie Sale Transactions as such claims are contemplated to be addressed under the Macquarie Purchase Agreement and the Macquarie Sale Order as approved by this Court. Accordingly, third-party creditors would not be affected by the dismissal of the Macquarie Trusts’ Owner Trust Debtors’ chapter 11 cases.

14. The relief requested in this Motion is substantially similar to the relief sought by the secured lenders who effected credit bids with respect to the equity interests that such secured lenders purchased.

15. Accordingly, following consummation of the Macquarie Sale Transactions, there is no further need for the Chapter 11 Cases to effectuate a reorganization in respect of the Macquarie Trusts. Macquarie therefore respectfully requests that the Owner Trust Debtors' Chapter 11 Cases of the Macquarie Trusts be dismissed effective as of the Closing Date under the Macquarie Purchase Agreement.

REQUEST FOR SHORTENED NOTICE

16. Contemporaneously with the filing of this Motion, Macquarie has filed the Declaration of Michael J. Edelman ("**Edelman Declaration**") in Support of an Order to Show Cause (the "**Order to Show Cause**") Scheduling a Hearing on Shortened Notice to Consider the Motion. For the reasons set forth in the Edelman Declaration, Macquarie respectfully requests, pursuant to Bankruptcy Rules 2002 and 9006 and Local Rules 9006-1 and 9077-1, that the hearing to consider this Motion be scheduled on the next hearing date, which is scheduled for March 28, 2019, or as soon thereafter as is practicable. Pursuant to Bankruptcy Rule 2002(a)(4), notice of this Motion has been or will be provided in accordance with the Order to Show Cause to the Debtors, the Office of the United States Trustee and all other persons and entities identified on the Master Service List as of the date hereof, including the Rule 2002 Parties, entitled to notice pursuant to the Final Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures [Docket No. 155]. Macquarie submits such notice is sufficient and that no other or further notice should be required.

Conclusion

WHEREFORE, Macquarie respectfully requests that the Court enter an order substantially in the form annexed hereto as Exhibit A (i) dismissing the Owner Trust Debtors' Chapter 11 Cases as set forth herein effective as of the Closing Date under the Macquarie Purchase Agreement and (ii) granting to Macquarie such other and further relief to which it may be justly entitled.

Dated: February 5, 2019
New York New York

VEDDER PRICE P.C.

/s/ Michael J. Edelman

Michael J. Edelman, Esq.
1633 Broadway, 31st Floor
New York, NY 10019
Telephone: (212) 407-7700
Facsimile: (212) 407-7799
Email: mjedelman@vedderprice.com

*Counsel to Macquarie Rotorcraft Leasing Holdings
Limited*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,
Debtors.

Chapter 11

**Case No. 18-13648 (SMB)
(Jointly Administered)**

**ORDER DISMISSING THE CHAPTER 11 CASES FOR (A)
MSN 4466 TRUST: CASE NO. 18-13718, AND (B)) MSN 1251
TRUST: CASE NO. 18-13751, EFFECTIVE AS OF CLOSING
DATE UNDER THE MACQUARIE PURCHASE AGREEMENT**

Upon the motion (the “**Motion**”) of Macquarie Rotorcraft Leasing Holdings Limited (“**Macquarie**”)¹, pursuant to Bankruptcy Code sections 105, 305, 349 and 1112, Bankruptcy Rules 1017, 2002, 9006 and 9014 and Local Rules 9006-1 and 9077-1 for entry of an order dismissing the chapter 11 cases of MSN 4466 Trust and MSN 1251 Trust (the “**Macquarie Trusts**”)² effective as of the Closing Date under the Macquarie Purchase Agreement; and the Court having jurisdiction to consider the Motion pursuant to section 1334 of title 28 of the United States Code and the Amended Standing Order of Reference dated January 31, 2012, General Order M-431 (Preska, C.J.); consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157 of title 28 of the United States Code; venue being proper before the Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; due and proper notice of the Motion having been given as provided in the Motion and the Order to Show Cause Scheduling a Hearing on Shortened Notice to Consider the Motion [Docket No. [●]]; such notice having been adequate and appropriate under the circumstances and it appearing that no other or

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

² The Macquarie Trusts, as debtors in these jointly administered chapter 11 cases, are: (a) MSN 4466 Trust: Case No. 18-13718, and (b) MSN 1251 Trust (which MSN 1251 Trust is now known as MSN 20184 Trust): Case No. 18-13751 (collectively, the “**Owner Trust Debtors**”).

further notice need be given; the Court having held a hearing on March [●], 2019 (the “**Hearing**”) to consider the Motion and the relief requested therein; all objections to the Motion, if any, having been settled, withdrawn or overruled on the merits; the Court having reviewed the Motion and all proceedings heretofore had before the Court; the Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that, (i) the administration of the Chapter 11 Cases of the Macquarie Trusts shall be severed from the joint administration of the above-captioned Chapter 11 Cases and the Clerk of the Court shall make an appropriate docket entry and (ii) the Chapter 11 Cases of the Macquarie Trusts shall be dismissed effective as of the Closing Date under the Macquarie Purchase Agreement; and it is further

ORDERED that, pursuant to section 349 of the Bankruptcy Code, all orders entered by the Court on or prior to the date hereof in these Chapter 11 Cases with respect to or relating to the Owner Trust Debtors shall remain binding and continue in full force and effect notwithstanding the entry of this Order; and it is further

ORDERED that notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or any other applicable provisions of the Bankruptcy Code, Bankruptcy Rules or Local Rules, this Order shall not be stayed after the entry hereof and shall be effective and enforceable immediately upon entry; and it is further

ORDERED that Macquarie is hereby authorized to take such actions as may be necessary to implement and effectuate the relief granted in this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation or enforcement of this Order.

ORDERED that within 14 days of the date of this Order, the Owner Trust Debtors shall file a list of disbursements from the commencement of their cases to the date of this Order and either (a) Macquarie or (b) if required under the Macquarie Purchase Agreement, the Debtors will pay to the U.S. Trustee all fees pursuant to 28 U.S.C. § 1930, together with interest, if any, pursuant to 31 U.S.C. § 3717.

Dated: March ___, 2019
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE