Docket #0002 Date Filed: 12/16/2021

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

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| In re:<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 21-10670 (KBO)<br><br>(Jointly Administered) |
| EQUITY BANK,<br><br>Plaintiff,<br><br>vs.<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al., THE BOEING COMPANY, CENTRAL KANSAS AEROSPACE MANUFACTURING, LLC and HALL INDUSTRIAL SERVICES, INC.,<br><br>Defendants. | Adv. Pro. No. 21- 51411 (KBO) |

**MOTION OF EQUITY BANK FOR ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION OR ALTERNATIVELY, FOR IMMEDIATE RELIEF FROM THE AUTOMATIC STAY**

Equity Bank, a Kansas state bank ("Equity Bank"), hereby seeks entry of a temporary restraining order and preliminary injunction to preclude The Boeing Company and Central Kansas Aerospace Manufacturing, LLC (collectively, the "Purchaser"), the above-captioned debtors (the "Debtors"), and Hall Industrial Services, Inc. ("Hall," and together with the Purchaser and the Debtors, the "Defendants") from removal, disassembly or otherwise disposal of certain equipment

[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.



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owned by Equity Bank (the "Equipment") located at the Debtors' Park City, Kansas manufacturing facility (the "Park City Facility"), and in support of its request, Equity Bank states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider the relief sought in this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order of Reference dated as of February 29, 2012 from the United States District Court for the District of Delaware

2. 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 Federal Bankruptcy Rule 7012(b) and Rule 7012-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Equity Bank does not consent to the entry of a final order by the Court in connection with the relief sought by the Debtor's Motion to Abandon, as defined herein).

3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

4. 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.

5. On April 5, 2021 (the "Petition Date"), the Debtors commenced the above-captioned 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 the Equipment between Debtor TECT Hypervelocity, Inc., as lessee, and non-Debtor affiliate SPEF Monolithic, LLC, as lessor ("SPEF Monolithic").

6. 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.

7. On May 21, 2021, the Debtors filed a motion [Docket No. 192] seeking authority 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 Purchaser pursuant to an 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.

8. 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.

[2] 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. 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 has 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).

9. On November 23, 2021, the Debtors filed a motion to abandon the Equipment [Docket No. 634] (the "Motion to Abandon").[3] The title of "motion to abandon" was a misnomer. 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.

10. 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.

11. On December 7, 2021, Equity Bank filed an 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

[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 Purchaser's 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.

scheduled for December 14, 2021, and the Motion to Abandon would be continued until the next omnibus hearing (which is currently scheduled for January 25, 2022).

12. On December 8, 2021, Equity Bank sent a letter to the Debtors and the Purchaser, a copy of which is attached hereto as **Exhibit A**, 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.

13. 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.

14. Attached hereto as **Exhibit B** is the declaration of David King (the "King Declaration"). 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.

15. 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 a Hall Industrial Services, Inc. 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.

16. 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 that consists of S/N 137 and S/N 148.

17. 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.

18. Substantially contemporaneous with the filing of this Motion, Equity Bank has commenced an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure for an injunctive relief.

## RELIEF SOUGHT

19. By and through this motion, Equity Bank seeks entry of a Temporary Restraining Order, subject to further injunctive relief, precluding the Defendants from removal, disassembly or otherwise disposal of the Equipment. Alternatively, Equity Bank seeks relief from the automatic stay to be able to seek injunctive relief and such other relief as is appropriate under the circumstances, in Kansas state court.

## BASIS FOR RELIEF SOUGHT

### I. The Court Should Enjoin the Defendants from Removal, Disassembling or Otherwise Disposing of the Equipment.

20. As set forth hereinabove, the Debtors filed the Motion to Abandon, by and through which they sought to remove, disassemble, or otherwise dispose of the Equipment. After Equity Bank filed its objection, the Debtors continued the Motion to Abandon until January 25, 2022. Despite that the pending Motion to Abandon sought authority for specific relief, the Purchaser did whatever it wanted to do anyway without approval of the Court. This Court should not countenance the actions of the Debtors, the Purchaser, or their employees or agents, and should enjoin the defendants from removal, disassembling or otherwise disposing of the Equipment pursuant to 11 U.S.C. § 105(a) and Rule 65 of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 7065.

21. 11 U.S.C. § 105(a) provides that "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude

the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

22. Section 105 injunctions are governed by the well-known four-factor inquiry governing the entry of an injunction under Rule 65 of the Federal Rules of Civil Procedure:

> When issuing a preliminary injunction pursuant to its powers set forth in section 105(a), a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to Federal Rule of Civil Procedure 65. The four factors which must be considered are (1) the likelihood of the plaintiffs success on the merits, (2) whether plaintiff will suffer irreparable injury without the injunction, (3) the harm to others which will occur if the injunction is granted, and (4) whether the injunction would serve the public interest.

Am. Imaging Servs., Inc. v. Eagle-Picher Indus., Inc. (In re Eagles-Picher Indus.), 963 F.2d 855, 858 (6th Cir. 1992) (citation omitted); see also Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Osorio-Martinez v. Attorney Gen. United States of Am., 893 F.3d 153, 178 (3d Cir. 2018); Issa v. Sch. Dist. of Lancaster, 847 F.3d 121, 131 (3d Cir. 2017); Am. Film Techs., Inc. v. Taritero (In re Am. Film Techs.), 175 B.R. 847, 849 (Bankr. D. Del. 1994)

23. In Reilly v. City of Harrisburg, 858 F.3d 173 (3d Cir. 2017), as amended (June 26, 2017), the Third Circuit held that a party seeking preliminary equitable relief "must meet the threshold for the first two 'most critical' factors: it must demonstrate that it can win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not) and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief." Id. at 179. "If these gateway factors are met, a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." Id.

24. While Equity Bank readily satisfies this standard for injunctive relief, in the context of a bankruptcy proceeding, courts have modified the test by concluding that the four elements are

factors to be balanced rather than prerequisites to be satisfied. See, e.g., In re Phar-Mor, Inc. Sec. Litig., 166 B.R. 57, 61 (W.D. Pa. 1994) (listing four factors for 105(a) relief and considering "a weighing of these factors"); In re Eagles-Picher Indus., 963 F.2d at 859 (6th Cir. 1992) (holding that "the four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied."); Baldwin-United Corp. v. Paine Webber Group, Inc. (In re Baldwin-United Corp.), 57 B.R. 759, 766 (S.D. Ohio 1985) (of the four factors, no single factor is "determinative as to the appropriateness of equitable relief"). Each of the four factors is analyzed in turn below.

25. Likelihood of Success on the Merits. To establish a likelihood of success on the merits, "[i]t is not necessary that the moving party's right to a final decision after trial be wholly without doubt; rather the burden is on the party seeking relief to make a prima facie case showing a reasonable probability that it will prevail on the merits." Punnett v. Carter, 621 F.2d 578, 583 (3d Cir. 1980) (quoting Oburn v. Sharp, 521 F.2d 142, 148 (3d Cir. 1975)). In addition, under Reilly, the Third Circuit "do[es] not require at the preliminary stage a more-likely-than-not showing of success … because a '"likelihood" of success … does not mean more likely than not.'" Reilly, 858 F.3d at 179 n.3 (alterations omitted) (quoting Singer Mgmt. Consultants, Inc. v. Milgram, 650 F.3d 223, 229 (3d Cir. 2011) (en banc)). Equity Bank satisfies this standard.

26. There is no legal basis under applicable nonbankruptcy law for the Debtors or any other party to dismantle or remove the Equipment from the Park City Facility without Equity Bank's permission or a Court order. The Debtors (or the Purchaser) may have property rights under the Lease, but that does not give them a right to remove the Equipment to a self-help remedy, particularly where as here, they are dismantling complicated and precise equipment worth tens of millions of dollars. If the Debtors (or the Purchaser) want the relief that they are ultimately

seeking, they need the approval of a Court of competent jurisdiction, and until one has been entered, the Defendants should be enjoined from taking further action.

27. Plaintiff will suffer irreparable injury without the proposed injunction. "A party seeking a preliminary injunction must establish that it is likely to suffer irreparable harm if the preliminary injunction is not granted and there is a causal nexus between the alleged infringement and the alleged harm." Waters Corp. v. Agilent Technologies Inc., 410 F. Supp. 3d 702, 707 (D. Del. 2019), 410 F. Supp. 3d at 713 (quoting Metalcraft of Mayville, Inc. v. The Toro Co., 848 F.3d 1358, 1368 (Fed. Cir. 2017)). The facts warrant a showing of irreparable harm.

28. The Equipment is state-of-the-art equipment that has been specifically tooled to manufacture parts and assembly for the Boeing 737 Max. More specifically, it consists of seventeen machines and five pallet systems arranged in five separate cells. Although the size and value does not do justice to the complexity of the machines, a rough estimate of the Equipment is that each of the machines has a twenty by twenty-five foot footprint and stands approximately twelve feet tall, and taken together, they predominantly fill a 150,000 square foot building that is dedicated to the Equipment. Accordingly, it is not small, simple, or easily moved. A rough estimate of the value of the Equipment may be as high as $35 million. Equity Bank conservatively estimates that disassembly and removal from the Park City Facility would significantly exceed $2 million, assuming that the removal and storage of the Equipment is conducted properly.[4] Any failure to remove or store the Equipment may increase the costs to Equity Bank exponentially.

29. Equity Bank acknowledges that monetary damages do not constitute "irreparable harm," where adequate monetary damages are available, however there is a corollary to the rule:

[4] It is unclear whether, due to its size, the removal of the Equipment will cause damage to the Park City Facility.

a court may enjoin a party from taking action that would cause damage that cannot be paid. See, e.g., Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc., 222 F.3d 132 (3d Cir. 2000) (reversing the District Court which had not granted an injection to prevent depletion of a trust, where the Court of Appeals concluded that such depletion would cause irreparable harm where payment was not readily forthcoming or available). See also Adelphia Comms Corp. v. The America Channel, LLC (In re: Adelphia Comms Corp.) 2006 WL 1529357 (Bankr. S.D.N.Y. 2006) (enjoining the prosecution of an antitrust action which would delay a sale of the debtors' assets after finding "[t]here is nothing in the record now, if there ever will be, to lead me to believe that [the defendant] could answer for such an astronomical loss in damages."); Danielson v. Local 275, Laborers Union, 479 F.2d 1033, 1037 (2d Cir. 1973) ("Irreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate.")

30. Here, there is no way that the Debtors could pay the damages. Based upon the Debtors' monthly operating reports, the Debtors had less than $650,000 in cash on hand on October 3, 2021. See Docket Nos. 607, 608 and 610-614. And TECT Hypervelocity, Inc., in particular, had no money on hand as of October 3, 2021. Accordingly, the Debtors do not have sufficient funds to pay an administrative expense of more than $2 million.

31. Equity Bank would be further harmed if the Defendants' value-destructive behavior prohibits interested parties in acquiring the Equipment in the Park City Facility. Currently, absent assumption only approximately forty-five days remains on the term of the Lease until the Lease is automatically terminated pursuant to Section 365 of the Bankruptcy Code. The Park City Facility is more valuable with the Equipment intact. Equity Bank holds a mortgage on the Park City Facility and the specific performance and increased value provided by Equity Bank's interest in the real property with the corresponding Equipment intact cannot be cured by money damages.

32. No harm will occur to others if the injunction is granted**.** Equity Bank understands that the Equipment has laid fallow at the Park City Facility since the Purchaser closed on the sale, and there are no current operations at the Park City Facility. At the same time, the Purchaser (and by extension, the Debtors) have approximately forty-five (45) days to decided whether they are going to assume the Lease.[5] Given the short duration of time until the Debtors and Purchaser need to decide what to do with the Park City Facility, any harm in enjoining the destruction of value is minimal in the first instance. Further, to the extent that there is any harm from the use of the Park City Facility to maintain the Equipment until a decision has been made, Equity Bank will pay the reasonable rent for the percentage of space that the Equipment occupies at the facility. Based upon the foregoing, Equity Bank respectfully submits that this factor favors enjoining the Defendants from dismantling and removing the Equipment.

33. The injunction would serve the public interest. There are at least three separate bases that an injunction would serve the public interest.

34. First, "the public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors[.]" Apple Inc. v. Samsung Elecs. Co., 809 F.3d 633, 647 (Fed. Cir. 2015). Equity Bank is the owner of the Equipment and none of the Defendants have any interest in the Equipment. Equity Bank has not consented the removal, disassembly or disposal of the Equipment. Nor have the Defendants received authorization from a court of competent jurisdiction for the removal, disassembly or disposal of the Equipment. The Defendants' actions of dismantling and removing the Equipment have caused damage to Equity Bank's property

[5] The balance of the term of the Lease is only three and a half years, and Equity Bank understands that the landlord does not intend to extend the term of the Lease. Given the short duration remaining on the Lease, and the fact that there are no operations at the Park City Facility, there are significant questions as to the likelihood that the Purchaser or any other party will assume the Lease.

interest, and the Defendants' actions are an infringement upon Equity Bank's property rights in the Equipment.

35. Second, there is a public interest in preventing abuse of the judicial process. What the Debtors and the Purchasers have done here is nothing short of an abuse of the judicial process. The Debtors filed the Motion to Abandon and then, while the Motion to Abandon and Equity Bank's Objection were pending, the Purchaser did whatever it wanted to do anyway. This is no different than leaving a note asking to borrow the car, and then before waiting for an answer, taking the keys and driving away. Allowing the Purchaser to dismantle and remove the Equipment would implicitly endorse and encourage parties in cases before this Court to follow the same playbook. The lesson being it is better to ask the Court for forgiveness than to ask permission.[6]

36. Last but not least: there is a public policy against waste. See e.g., Norris Square Civil Assoc. v. St. Mary Hospital (In Re St. Mary Hospital), 86 B.R. 393 (Bankr. E.D. Pa. 1988) (granting injunction to prevent closure of a hospital where the court found a possibility exists that the hospital might receive financial assistance necessary keep the hospital operating, and thereby preserving the value of the debtor). The dismantling of the Equipment is no less than that, particularly as the Debtors and Purchaser have apparently not decided what they intend to do with respect to the Lease of the Park City Facility. If the Debtors do not assume and assign the Lease to the Purchaser or its designee, the Lease will revert to the Landlord. Equity Bank understands that, in the event that Lease is rejected, the landlord and other parties are interested in leasing or purchasing the Equipment. In the meantime, the dismantling and removal of the Equipment may

[6] While this lesson could be considered in a number of instances, a common and analogous example is the destruction of books and records. Debtors could file a motion for authority to destroy their books and records, and start shredding such documents while the motion is pending.

lead to millions of dollars of claims against the Debtors' estates, and claims may be entitled to administrative priority, thereby rendering the bankruptcy estates administratively insolvent.

37. Accordingly, the public interest is best served by granting the injunction.

38. Based upon the foregoing facts, Equity Bank respectfully submits that the Defendants be immediately enjoined from removal, disassembly or otherwise disposal of the Equipment pending a further hearing

**II. Alternatively, Relief from the Automatic Stay is Appropriate**

39. Courts may grant relief from the automatic stay in appropriate circumstances. See Wedgewood Inv. Fund, Ltd. v. Wedgewood Reality Grp., Ltd. (In re Wedgewood), 878 F.2d 693, 697 (3rd Cir. 1989). Specifically, Bankruptcy Code Section 362(d)(1) provides, in relevant part, as follows:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or condition such stay –
>
> (1) For cause . . . .

11 U.S.C. § 362(d)(1).

40. The party seeking relief from the automatic stay has the burden of establishing a *prima facie* case that cause exists to grant such relief. See Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.), 193 B.R. 713, 718 (Bankr. D. Del. 1996) (citing Izzarelli v. Rexene Prods. Co. (In re Rexene Prods. Co.), 141 B.R. 574, 576-77 (Bankr. D. Del. 1992)); *cf.* 11 U.S.C. § 362(g). However, once the movant establishes a *prima facie* case of cause, the debtor has the burden of establishing that the stay should not be lifted. See Pursuit Athletic Footwear, 193 B.R. at 718; In re Scarborough-St. James Corp., 535 B.R. 60, 68 (Bankr. D. Del. 2015).

41. The Bankruptcy Code does not define the term "cause," but it is a flexible concept that depends on the totality of the circumstances in each particular case. See, e.g., Baldino v. Wilson (In re Wilson), 116 F.3d 87, 90 (3rd Cir. 1997) ("Section 362(d)(1) does not define 'cause,' leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case."); In re SCO Grp., Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing In re Wilson).

38. Courts in this district apply a three-pronged balancing test to determine whether "cause" exists for granting relief from the stay to continue litigation:

(1) Whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit;
(2) the hardship arising from denial of stay relief to the party seeking it considerably outweighs the hardship to the debtor; and
(3) Whether the creditor has a probability of prevailing on the merits.

In re Rexene Prods. Co., 141 B.R. at 576 (citations omitted). See also In re Abeinsa Holding, Inc., No. 16-10790 (KJC), 2016 WL 5867039, at *2-5 (Bankr. D. Del. Oct. 6, 2016) (applying the Rexene factors and granting relief from the automatic stay).

39. According to the legislative history of Bankruptcy Code Section 362, cause may be established by a single factor, such as "a desire to permit an action to proceed . . . in another tribunal." In re Rexene Prods. Co., 141 B.R. at 576 (citing H.R. Rep. No. 95-595, 95th Cong. 1st Sess., (1977)).

40. Further, this Court has also considered general policies underlying the automatic stay when deciding whether to grant stay relief including: (i) whether relief would result in a partial or complete resolution of the issues; (ii) lack of any connection with or interference with the bankruptcy case; (iii) whether the other proceeding involves the debtor as a fiduciary; (iv) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;

(v) whether the debtor's insurer has assumed full responsibility for defending it; (vi) whether the action primarily involves third parties; (vi) whether litigation in another forum would prejudice the interest of other creditors; (viii) whether the judgment claims arising from the other action is subject to equitable subordination; (ix) whether the moving party's success in the other proceeding would result in a judicial lien avoidable by the debtor; (x) the interest of judicial economy and the expeditious and economical resolution of litigation; (xi) whether the parties are ready for trial in the other proceeding; and (xii) impact of the stay on the parties and the balance of harm. In re The SCO Group, Inc., 395 B.R. 852, 857 (Bankr. D. Del. 2007) (citing In re Sonnax Indus., Inc. v. Tri Component Prods. Corp., 907 F.2d 1280, 1287 (2d Cir. 1990)).

41. Numerous courts, including this Court, have found cause for relief from stay to permit litigation to commence or continue in a non-bankruptcy forum. See, e.g., In re Ice Cream Liquidation, Inc., 281 B.R. 154, 165-67 (Bankr. D. Conn. 2002) (granting stay relief based on analysis of multiple factors to allow pretrial and trial proceedings to occur in New York state court on sexual harassment claims against the debtor); In re Pursuit Athletic Footwear, Inc., 193 B.R. at 719 (same); see also In re Tribune Co., 418 B.R. 116, 126-30 (Bankr. D. Del. 2009) (granting stay relief to permit prosecution of litigation against debtor in non-bankruptcy forum based on application of the Rexene factors) This is consistent with the legislative history behind Section 362(d)(1), which recognizes that "it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere." S.Rep. No. 95-989 at 50 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836.

42. Relief from stay is appropriate here. As stated in Equity Bank's Objection to the Motion to Abandon, the relief underlying the Motion to Abandon is not a core matter, as the motion to abandon is, at best "related to" the Debtors' bankruptcy case. See, e.g., Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999), and accordingly, this Court's authority to enter final orders on state law claims is limited, absent parties' consent.

43. Even beyond that jurisdictional limitation, having the state law claims between non-debtor parties will not prejudice either the Debtors or the bankruptcy estates, particularly since the Debtors are not the true parties in interest.

44. Further, continuing to allow the Debtors to have this Court, rather than a Court in Kansas where all the parties are doing business, adjudicate claims is likely to cause a considerable hardship to the Equity Bank, whereas there should be no hardship to the Debtors since they have negligible interest in the leasehold and none in the Equipment.

45. Finally, Equity Bank is likely to prevailing on the merits of the underlying claim. Specifically, there is absolutely no basis for the Debtors, the Purchaser, or Hall dismantle Equity Bank's property without authority of a court of competent jurisdiction.

## CONCLUSION

For the foregoing reasons, Equity Bank respectfully requests (i) entry of a temporary restraining order, subject to further injunctive relief, precluding the Defendants from removal, disassembly or otherwise disposal of the Equipment, or alternatively granting relief from the automatic stay to permit the issue of the parties' property rights to be adjudicated by a Kansas state

court, and (ii) granting to Equity Bank such other and further relief as is just and proper.

December 16, 2021

MORRIS JAMES LLP

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**EXHIBIT A**

STINSON

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December 8, 2021

**Via Electronic Mail**

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Re: Equity Bank / Central Kansas Aerospace Manufacturing, LLC

Gentlemen:

This firm represents Equity Bank ("Equity") in connection with equipment it owns in facilities in Wellington and Park City that are subleased to Central Kansas Aerospace Manufacturing, LLC ("Central"). Central is well aware of the equipment at issue, however, a partial list of the equipment is attached to this letter to avoid any possible confusion. Late last week an Equity loan officer received a text from Patrick Leffel advising that Central intended to commence the dismantling of Equity's equipment today. Please be advised that Central has no legal basis or authority to take any action with Equity's property, and Equity requests immediate confirmation that no such action has or will be taken. In the event Central does anything with Equity's equipment, Equity will pursue legal action for damages and all other available remedies.

Central's subleases on the Wellington and Park City locations are also terminating in late January 2022. No legitimate basis exists for Central to claim that Equity's equipment should be dismantled or otherwise removed from the facilities given the impending lease terminations. Also, Central's landlords, Utica Wellington and Utica Park, have explicitly given Equity access to

the facilities for purposes of securing its equipment, which it will exercise if necessary to prevent Central from damaging Equity's property.

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.

Sincerely,

**Stinson LLP**

*/s/ Lynn D. Preheim*

Lynn D. Preheim

LDP:kla

Enclosures

cc: Paul Noble Heath / heath@rlf.com
Amanda R. Steele / steele@rlf.com
Gianfranco Finizio / gfinizio@kilpatricktownsend.com
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Park City Equipment

| Location | Machine | S/N and Year Installed | Purchase Order |
|---|---|---|---|
| | **Prior to 2016** | | |
| Park City | Ingersoll PM H Series | S/N 2N00034 2006 | n/a |
| Park City | Ingersoll PM H Series | S/N 2N00035 2007 | n/a |
| Park City | Ingersoll PM H Series | S/N 2N00036 2007 | n/a |
| Park City | 24 Pallet Cell Controller -Ingersoll | attached | n/a |
| Park City | Chip System - Ingersoll | attached | n/a |
| | **INGERSOLL LINE** | | |
| Park City | Mag.3ex | S/N 134 2013 | 25090 |
| Park City | Mag.3ex with 12 pallet system | S/N 147 2014 | 32504 |
| Park City | Mag.3ex | S/N 164 2015 | 38921 |
| Park City | Mag.3ex | S/N 165 2015 | 38921 |
| Park City | Hopper | attached | 33431 |
| Park City | 12 pallet expansion system for Mag.3ex | attached | 38922 |
| Park City | Chip Conveying System | attached | 47255 |
| Park City | **1st MAG 3 Line** | | |
| | **Machines installed in 2016 ***** | | |
| Park City | Mag.3W | S/N 199 2016 | 46733 |
| Park City | Mag.3W | S/N 200 2016 | 258206 |
| Park City | Mag.3W | S/N 204 | 269166 |
| Park City | 12 pallet expansion system for Mag.3ex | attached | 269166 |
| Park City | Hopper | attached | 37545 |
| Park City | Chip Conveying System | attached | 39210 |
| | **3rd MAG 3 Line** | | |

Wellington Equipment

| Location | Machine | S/N and Year Installed | Purchase Order | Sale Price |
|---|---|---|---|---|
| | **Prior to 2016** | | | |
| Wellington | Makino T1 | S/N 23 | WEL 262070 | 1,659,200 |
| Wellington | Makino T1 | S/N 26 | WEL 262070 | 1,659,200 |
| Wellington | Disc Conveyor System | attached | WEL 263294 | 153,605 |
| | **Carriage Assembly Line** | | | 3,472,005 |

**EXHIIBIT B**

King Declaration

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

| | |
|---|---|
| In re:<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 21-10670 (KBO)<br><br>(Jointly Administered) |
| EQUITY BANK,<br><br>Plaintiff,<br><br>vs.<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al., THE BOEING COMPANY, CENTRAL KANSAS AEROSPACE MANUFACTURING, LLC and HALL INDUSTRIAL SERVICES, INC.,<br><br>Defendants. | Adv. Pro. No. 21-51411 (KBO) |

**DECLARATION OF DAVID KING IN SUPPORT OF COMPLAINT AND MOTION OF EQUITY BANK FOR ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION OR ALTERNATIVELY, FOR IMMEDIATE RELIEF FROM THE AUTOMATIC STAY**

I, David King, declare as follows:

1. I am over 18 years of age and am presently employed as the Wichita Area President for Equity Bank. The headquarters of Equity Bank is Wichita, Kansas. I have been employed by Equity Bank during all relevant times relating hereto and have personal knowledge of the facts stated herein and could and would testify thereto if called as a witness.

[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.

2. I am the Chief Lender for Equity Bank concerning the loans to SPEF Monolithic LLC and SPEF Carriage Assembly LLC.

3. Around 7:45 am (CT) on December 15, 2021, I was alerted by Brett Reber, General Counsel of Equity Bank, that someone was beginning to dismantle the Equity Bank equipment located in the former space of TECT Aerospace in Park City. I was asked to inspect Equity Bank's collateral as soon as possible to confirm if dismantling was occurring.

4. Equity Bank had previously obtained title to the equipment under a Surrender of Collateral Agreement from the bank's borrower, a non-debtor affiliate of TECT Aerospace. Equity Bank's borrower was SPEF Monolithic LLC.

5. The Equipment is state-of-the-art equipment that has been specifically tooled to manufacture parts and assembly for the Boeing 737 Max. More specifically, it consists of seventeen machines and five pallet systems arranged in five separate cells. Although the size and value does not do justice to the complexity of the machines, a rough estimate of the Equipment is that each of the machines has a twenty by twenty-five foot footprint and stands approximately twelve feet tall, and taken together, they predominantly fill a 150,000 square foot building that is dedicated to the Equipment.

6. The Equipment is not small, simple, or easily moved. A rough estimate of the value of the Equipment may be as high as $35 million. Equity Bank conservatively estimates that disassembly and removal from the Park City Facility would significantly exceed $2 million, assuming that the removal and storage of the Equipment is conducted properly.

7. I arrived at the Park City location around 8:15 am (CT) and identified a Hall Industrial Services, Inc. truck, trailer and other equipment located outside the 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.

8. At 8:22 am (CT) I made contact with Christy Ballinger, who has been my primary contact on site for previous inspections, and she accompanied me in the facility.

9. My observations during the facility inspection confirmed that workers had begun dismantling the Makino MAG.3 cell at the far north end of the machining facility. This cell of equipment consists of serial numbers 137 and 148 and are Makino MAG.3 EX machines.

10. I witnessed several (at least 4) individuals dismantling various parts and components of these machines and the associated pallet system.

11. I 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.

12. I was 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.

13. I 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.

14. The Boeing/CKAM representative on site was Hal Pho. I informed Mr. Pho that I was from Equity Bank and he did not have our permission to touch or dismantle the Equipment and that Equity Bank had been clear in its communication on that topic. He told me they were going to continue doing what they are doing to the equipment. I again stated that Equity Bank had given no one permission to touch or dismantle our equipment and Mr. Pho again responded they were going to continue doing what they are doing with the equipment.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16th day of December, 2021, at Wichita, Kansas.

EQUITY BANK

*/s/ David King*
David King, Wichita Area President

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

| | |
|---|---|
| In re:<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 21-10670 (KBO)<br><br>(Jointly Administered) |
| EQUITY BANK,<br><br>Plaintiff,<br><br>vs.<br><br>TECT AEROSPACE GROUP HOLDINGS, INC., et al., THE BOEING COMPANY, CENTRAL KANSAS AEROSPACE MANUFACTURING, LLC and HALL INDUSTRIAL SERVICES, INC.,<br><br>Defendants. | Adv. Pro. No. 21- 51411 (KBO) |

**ORDER GRANTING MOTION OF EQUITY BANK**
**FOR ENTRY OF A TEMPORARY RESTRAINING ORDER**

Upon the motion (the "Motion") of Equity Bank for a Temporary Restraining Order and Preliminary Injunction Enforcing the Automatic Stay Pursuant to Sections 105(a) ) of title 11 of the United States Code (the "Bankruptcy Code") and/or Rule 7065 of the Federal Rules of Bankruptcy Procedure, staying, restraining, and enjoining the above-captioned defendants (the "Defendants") from the removal, disassembly or otherwise disposal of certain equipment owned by Equity Bank (the "Equipment") located at the Debtors' Park City, Kansas manufacturing

[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.

facility (the "Park City Facility"), the Court having jurisdiction to consider the relief requested, and this Court having found that good and sufficient cause exists for granting the Motion; it is hereby: FOUND AND DETERMINED THAT

1. The legal and factual bases set forth in the Adversary Complaint and the Motion establish just cause for the relief granted herein. Equity Bank demonstrated a reasonable likelihood of success on the merits of their claims against the Defendants.

2. Failure to enter this temporary restraining order ("TRO") would cause immediate and irreparable injury to Equity Bank.

3. The serious and irreparable harm to Equity Bank from failure to issue a TRO far outweighs any harm to the Defendants.

4. Issuance of this TRO preserves the status quo pending a preliminary injunction hearing, and the Defendants will not be harmed by the issuance of a TRO.

5. Issuance of this TRO serves the public interest.

IT IS THEREFORE:

ORDERED that, as of _____ .m (ET) on this date, the Motion is GRANTED as set forth herein; and it is further

ORDERED that, pending a hearing and a determination of Equity Bank's request for a preliminary injunction, the Defendants and their agents are temporarily stayed, restrained, and enjoined from the removal, disassembly or otherwise disposal of the Equipment located at the Park City Facility; and it is further

ORDERED that the Court will conduct a hearing in connection with Equity Bank's request for a preliminary injunction on _____, 2021 at _____.m. (ET); and it is further

ORDERED that objections to Equity Bank's request for a preliminary injunction, if any, shall be filed and served on counsel to Equity Bank by _____, 2021 at 4:00 p.m. (ET); and it is further

ORDERED that the Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provision of this order.