IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TECT AEROSPACE GROUP HOLDINGS, INC., et. al., Debtors.[1]	Chapter 11 Case No.: 21-10670 KBO Adv. Proc. No. 21-51411-KBO **Ref. Adv. Docket Nos. 1, 2**
EQUITY BANK, Plaintiff, v. TECT AEROSPACE GROUP HOLDINGS, INC., et al., THE BOEING COMPANY, CENTRAL KANSAS AEROSPACE MANUFACTURING, LLC, and HALL INDUSTRIAL SERVICES, INC., Defendants.	

THE BOEING COMPANY AND CENTRAL KANSAS AEROSPACE MANUFACTURING, LLC'S OPPOSITION TO MOTION OF EQUITY BANK FOR ENTRY OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR IMMEDIATE RELIEF FROM THE AUTOMATIC STAY

The Boeing Company, in its capacity as Prepetition Lender and DIP Agent under the *Final Order Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy*

[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 Conway MacKenzie, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.

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Rule 4001, and Local Rule 4001-2, (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Granting Related Relief, Docket No. 174[2] (the "***DIP Order***"), and Central Kansas Aerospace Manufacturing, LLC ("***CKAM***" and, with The Boeing Company, collectively "***Boeing***"), as Purchaser under the *Order (I) Approving the Sale of the Debtors' Kansas Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief*, Docket No. 372 (the "***Kansas Sale Order***"), hereby object (this "***Objection***") to the *Motion of Equity Bank for Entry of a Temporary Restraining Order and Preliminary Injunction or, Alternatively, for Immediate Relief from the Automatic Stay,* Adv. Docket No. 2 (the "***TRO Motion***"). This Objection is based on the following points and authorities, the files and records in the related bankruptcy cases, and the supporting declaration of Edward Neveril ("***Neveril Decl.***") filed concurrently herewith.

I. SUMMARY

Equity Bank's TRO Motion has one overriding objective: to inhibit CKAM from effectively marketing TECT's former Park City assets to any buyer who does not also wish to purchase the equipment at issue in the bank's TRO Motion ("the ***Equipment***") from Equity Bank. CKAM recognizes that some prospective buyers may want to purchase the Equipment, but others do not, so CKAM has contracted with a rigger (Defendant Hall Industrial Services ("***Hall***")) to decommission and move the Equipment—which is not in use—from one portion of the Park City facility to another part of the facility where it will be out of the way so as better to display the

[2] References to "Docket No." are to pleadings filed in the main case. References to "Adv. Docket No." are to pleadings in this adversary proceeding.

space to all prospective buyers. Equity Bank does not want this to happen because assignment of the Debtors' lease in the Park City premises to a buyer who does not want the Equipment would confront Equity Bank with the end of the ongoing involuntary bailment at the Park City facility. The bank would have to repossess the Equipment physically, remove it from the property, and market it independently to a different buyer, and the bank would apparently prefer to avoid undertaking any of that activity. But Equity Bank's desire to unburden itself of the Equipment by effectively grafting it onto any sale transaction involving the Park City leasehold is not a legal interest entitled to any solicitude in this Court.

As an initial matter, Equity Bank's complaint and TRO Motion do not warrant the exercise of this Court's jurisdiction, essentially for the very reasons advanced by Equity Bank itself in its opposition to the Debtors' earlier motion to abandon the Equipment (the "***Abandonment Motion***"). *See* Docket No. 639, ¶ 22.[3] This is fundamentally a dispute under Kansas law where the bank is attempting to transform its title to the Equipment into an easement to the exact space where the Equipment has been placed and restrain CKAM from moving the Equipment from one portion to another portion of the leased premises. Equity Bank's claims lack merit, but, at the threshold, they do not even concern "property of the estate" so as to render this a "core" bankruptcy matter under 28 U.S.C. § 157(b). CKAM has the right to occupy the premises and the Debtors are not involved in the relocation of the Equipment within the premises. (*See* Neveril Dec. ¶ 2). CKAM does not

[3] Indeed, given its vigorous support of abstention over the Abandonment Motion, the bank's decision to file its pleadings in this Court rather than Kansas is somewhat puzzling. To the extent, however, that the bank insinuates that CKAM's efforts to relocate the Equipment within the Park City premises represent some form of disrespect to this Court in light of Debtors' earlier Abandonment Motion (TRO Motion, ¶ 20), that insinuation is wholly unwarranted. Debtors' Abandonment Motion sought broad relief, including a comfort order permitting Debtors, Boeing, and CKAM to dispose of the Equipment without liability unless physically repossessed by the bank. (Dkt. 632). The activity at issue in this motion is far more limited – simply moving unused industrial equipment *within* premises rightfully occupied by CKAM. (Neveril Dec. ¶ 2). This is plainly appropriate under Kansas law, so CKAM sought no specific order permitting it; it is the bank who has undertaken to interfere with CKAM's right to quiet enjoyment of the real property.

dispute (and as far as CKAM is aware, the Debtors likewise do not dispute), that Equity Bank has title to the Equipment (as the bank argued vigorously in favor of abstention regarding the Abandonment Motion). Indeed, CKAM would welcome Equity Bank promptly to take possession of the Equipment and remove it from the Park City premises. So there is every reason for this Court to abstain from adjudicating whether Equity Bank's title to the personal property (the Equipment) overrides CKAM's right to quiet enjoyment of the real property under Kansas law.

If the Court does not abstain, however, and reaches the merits of the TRO Motion, Equity Bank cannot satisfy any of the requirements for injunctive relief. It will not suffer irreparable harm, as CKAM *has not* disposed of the Equipment. Instead, CKAM is merely decommissioning and relocating the Equipment to a different part of the Park City facility. Neveril Decl., ¶ 2. Equity Bank makes no effort even to plead that parties other than the Debtors are not answerable in damages, but the Debtors are not involved at all in the decommissioning and relocation activity, which CKAM contracted to Hall. *Id.* CKAM is exercising due care in supervising Hall's professional decommissioning and relocation experts at Park City and there is no reason to believe the Equipment will be damaged as part of this process. *Id.*, ¶ 4. And there is no reason to believe that the relevant Defendants are not answerable in damages if they do unexpectedly harm the Equipment. In sum, this case is fundamentally about money, there is no ground to believe that a damages remedy—if applicable—would not be sufficient, and, therefore, equitable relief is unwarranted.

Equity Bank also cannot satisfy any of the additional standards for equitable relief. It is unlikely to succeed on the merits of its Complaint, as CKAM has the right to quiet enjoyment of the premises, and Equity Bank has no right to subject CKAM to an involuntary bailment at all, much less prevent CKAM from simply relocating the Equipment within the Park City premises.

And the balance of hardships tilts sharply toward Defendants and the public because effectively marketing the Park City facilities to a wider group of potential buyers improves the chances of a greater recovery for the estate and a more effective use of its assets.

Equity Bank's TRO Motion should be denied.

II. BACKGROUND

On April 5, 2021 (the "***Petition Date***"), TECT Aerospace Group Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") commenced with this Court (the "***Bankruptcy Court***") jointly administered voluntary cases (the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases. On April 20, 2021, the Office of the United States Trustee for the District of Delaware (the "***U.S. Trustee***") appointed an official committee of unsecured creditors (the "***Committee***"). *See* Docket No. 76.

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 businesses (located in Wellington and Park City, Kansas) in accordance with certain requested bidding procedures. The Court approved the bidding procedures for those assets and the Debtors subsequently conducted an auction. *See* Docket No. 256 (bidding procedures order); Docket No. 329 (notice of auction conclusion). At the conclusion of the auction, the Debtors, in consultation with the Committee, declared Boeing and CKAM as the winning bidders. *See* Docket No. 329 (notice of successful bidder).

On July 13, 2021, the Court entered an order [Docket No. 372] (the "***Sale Order***") approving, among other things, the sale of the Debtors' Kansas assets to Boeing and CKAM, pursuant to the asset purchase agreement (the "***Asset Purchase Agreement***") attached as Exhibit 1 to the Sale Order. The sale of the Debtors' Kansas assets closed on August 6, 2021 (the "***Closing Date***"). *See* Docket No. 418.

Since the Closing Date, Boeing and CKAM have occupied the Wellington and Park City, Kansas manufacturing facilities and operated the Debtors' Kansas business in accordance with the Sale Order and the Asset Purchase Agreement, including pursuant to contract designation rights that it acquired pursuant to such agreement. On July 31, 2021, the Debtors filed a motion [Docket No. 406] (the "***Rejection Motion***") seeking to reject two unexpired leases for equipment (the "***Equipment***") located at their Kansas facilities. Such leases included that certain lease for the Equipment between Debtor TECT Hypervelocity, Inc., as lessee, and non-Debtor affiliate SPEF Monolithic, LLC, as lessor ("***SPEF Monolithic***"). 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. The Rejection Order specifically authorized Debtors "to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order." *Id.*, ¶ 7.

On September 8, 2021, the Debtors sent a letter to counsel for SPEF Monolithic requesting that SPEF Monolithic remove the Equipment from the Park City Facility. By letter from counsel dated September 10, 2021, SPEF Monolithic indicated that it *would not* agree to remove the

Equipment. Neither SPEF Monolithic nor Equity Bank has removed the Equipment from the Park City Facility despite requests to do so.[4]

While CKAM has been operating the Debtors' former Kansas business since the Closing Date, CKAM has also explored various transaction permutations that would permit potentially interested parties to assume all or a portion of the Debtors' former Kansas business, including the rights of the Debtors under the Park City Facility lease. CKAM and the Debtors believe that a transaction for the Kansas business—even one limited to a third party's assumption of the Park City Facility lease—would likely benefit the Debtors' estates, including by affording the Debtors the opportunity to maximize value of certain retained inventory and reducing claims that may arise from the rejection of contracts and leases.

For several months, CKAM has been working hard to market its rights in the Park City facility and lease. Under the circumstances present here, such a sale can take two basic forms: a bare assumption and assignment of the lease, without anything more, or an assumption and assignment of the lease coupled with a sale of some or all of the Equipment. Neveril Decl., ¶ 5. Each would benefit both the estates and CKAM. CKAM has been encouraging Equity Bank for months to cooperate with potential buyers, but to date no deals have been reached, in large part because CKAM believes Equity Bank has an unrealistic view of the value of the Equipment. *Id*. CKAM believes instead that Equity Bank is attempting to store its Equipment free of charge in the facility, and eliminate the possibility that CKAM can market the lease without the Equipment. After all, no rational lessee who is not buying the Equipment would accept the premises filled with someone else's property, and it is more appealing to market the real property to potential asset

[4] SPEF Monolithic apparently purchased the Equipment using funds loaned from Equity Bank and granted Equity Bank a security interest in the Equipment. SPEF Monolithic later surrendered and assigned the Equipment to Equity Bank. TRO Motion, ¶ 8.

purchasers without the Equipment "predominantly fill[ing] a 150,000 square foot building" as Equity Bank concedes. *See* TRO Motion, ¶ 28. By maintaining the Equipment in place and seeking to preclude CKAM from relocating it, even within the premises in question, Equity bank is inhibiting a sale of the leasehold by CKAM without a sale of the Equipment owned by Equity Bank. In effect, Equity Bank is attempting to dictate how CKAM should operate its business and engage in the sale process. Only by decommissioning and relocating the Equipment within the facility can CKAM maximize the chances of a transaction favorable to Boeing and to the TECT estates.[5] Neveril Decl.,¶ 6.

III. ARGUMENT

A. The Court Should Abstain from Hearing the TRO Motion.

The Court should decline to hear the TRO Motion and should instead abstain under 28 U.S.C. § 1334(c)(1). Attached as **Exhibit A** for the Court's convenience is a copy of Equity Bank's opposition to the Abandonment Motion, Docket No. 639. In that opposition, pages 7-9, Equity Bank argued at length that the matters at issue in that motion would have "minimal, if any, effect upon the estate;" "the issues are all state law issues;" and "the proceeding is not a core proceeding." Those are the three most important abstention factors. *Id.*, ¶ 21, citing *In re Fruit of the Loom, Inc.*, 407 B.R. 593, 600 (Bankr. D. Del. 2009), and *In re DBSI, Inc.*, 409 B.R. 720, 729 (Bankr. D. Del. 2009). The Abandonment Motion was broader than the instant dispute; it involved a request by a bankruptcy debtor for a comfort order allowing Debtors, Boeing and CKAM to dispose of the Equipment failing physical repossession and removal by the bank. That

[5] Equity Bank makes much of the fact that the Debtors' right to assume and assign the lease, and Boeing's right to control that process through its designation rights, will expire at the end of January. That is precisely the point: these are complex machines, they cannot be moved without a significant decommissioning effort, and it is a multi-week process to be able to move the machines, allowing for marketing of the lease, without harming the machines. The process must start now, as it has, if it is to be of any meaning.

may well be an appropriate vehicle for the court to exercise jurisdiction, but the Court need not address that issue in the context of the TRO Motion. The instant dispute does not involve the Debtor. It lies between Equity Bank and CKAM under Kansas law.

As stated above, the bank is attempting to transform its title to the Equipment into an easement to the exact space where the Equipment has been placed and restrain CKAM from moving the Equipment from one portion to another portion of the leased premises. Besides lacking merit, Equity Bank's claims do not even concern "property of the estate" so as to render this a "core" bankruptcy matter under 28 U.S.C. § 157(b). CKAM has the right to occupy the premises and the Debtors are not involved in the relocation of the Equipment within the premises. CKAM does not dispute that Equity Bank has title to the Equipment. Indeed CKAM would welcome Equity Bank promptly to take possession of the Equipment and remove it from the Park City premises. So there is every reason for this Court to abstain from adjudicating whether Equity Bank's title to the personal property (the Equipment) overrides CKAM's right to quiet enjoyment of the real property under Kansas law.

The court should abstain from hearing this case. If Equity Bank wants a court to address these issues of Kansas state law, it should approach a Kansas state court.[6]

B. If the Court Reaches the Merits, the TRO Motion Should be Denied.

Should the Court reach the merits of the TRO Motion, it should be denied. CKAM should be permitted to decommission, store and relocate such Equipment in order to maximize the value of any sale transaction for their benefit, and for the benefit of the Debtors' estates. Preliminary injunctive relief "is an extraordinary remedy, which should be granted only in limited

[6] Boeing has no objection to the Court entering an order granting relief from stay, but there is no need for that relief - the Debtors are not necessary parties in the dispute now before the Court.

circumstances." *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 586 (3d Cir. 2002) (internal quotation omitted). The procedures for granting a temporary restraining order ("***TRO***") or preliminary injunction are set forth in Rule 65 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rule 7065 of the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Civ. P. 65(b); Fed. R. Bankr. P. 7065; *Simon & Schuster, Inc. v. Advanced Mktg. Servs.* (*In re Advanced Mktg. Servs.*), 360 B.R. 421, 426 (Bankr. D. Del. 2007) (Sontchi, J.) (noting that the same standard is applied to both TROs and preliminary injunctions).

The four-factor test used by the courts in determining whether preliminary injunctive relief should issue under Rule 65 is well-settled. The Court "'must be convinced that the following factors favor granting preliminary relief: (1) the likelihood that the moving party will succeed on the merits; (2) the extent to which the moving party will suffer irreparable harm without injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the injunction is issued; and (4) the public interest.'" *Simon & Schuster*, 360 B.R. at 426 (quoting *Novartis*, 290 F.3d at 586). Because the Plaintiff cannot establish any of these four factors, this Court should deny the TRO Motion.

1. Plaintiff cannot establish irreparable harm.

In order to obtain a preliminary injunction, Equity Bank must show that it will be irreparably harmed absent Court intervention to halt CKAM's efforts to decommission and simply relocate the rejected Equipment within the Park City Facilities. Absent a risk of irreparable harm, the other preliminary injunction factors do not need to be addressed. *See Beberman v. United States Department of State*, 675 Fed. Appx. 131, 135 (3d. Cir. 2017) (stating that "[b]ecause [plaintiff] has not established a risk of irreparable harm, the District Court did not act outside of

its discretion in denying her motion for a preliminary injunction."); *Am. Express Travel Related Servs., Inc. v. Sidamon–Eristoff*, 669 F.3d 359, 374 (3d Cir. 2012) (declining to address the remaining preliminary injunction factors when the plaintiff failed to meet one factor).

Damages are plainly an adequate remedy to any harm Equity Bank may assert, so equitable relief is unwarranted. *See Bennington Foods LLC v. St. Croix Renaissance, Grp., LLP*, 528 F.3d 176, 179 (3d Cir. 2008) (citation omitted). Indeed, Equity Bank makes no effort even to plead that parties other than the Debtor are not answerable in damages, but the Debtor is not involved at all in the decommissioning and relocation activity, which CKAM contracted to Hall. *See* TRO Motion, ¶¶ 29-30. The bank's interest in the Equipment is exclusively financial, and the relevant Defendants can compensate the bank in damages if they were to behave wrongfully (which they are not and do not intend to) or or if they unexpectedly damage the Equipment. There is no call for equitable relief in these circumstances..

2. Plaintiff is unlikely to succeed on the merits of the Complaint.

"[T]o obtain injunctive relief, the movant must demonstrate a 'strong probability of success on the merits of the litigation.'" *Simon & Schuster*, 360 B.R. at 426 (quoting *Phillips Petroleum Co. v. U.S. Steel Corp.*, 616 F. Supp. 335, 337 (D. Del. 1985)). In effect, the movant "must establish on undisputed facts that they are entitled to judgment as a matter of law on the merits of their claim" and "the Court must evaluate the merits of the claim as if the [applicant] seeks summary judgment." *Brown v. Houston Ventures & Hughlett*, C.A. No. 2046-S, 2000 Del. Ch. LEXIS 94, *2 (Del. Ch. May 10, 2000).

Plaintiff cannot demonstrate a strong possibility of success on the merits. When the Court issued the Rejection Order, it specifically authorized Debtors "to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order." *Id.*, ¶ 7.

CKAM has made clear for over *four months* now that it has no use for the Equipment. It requested that the owners of the Equipment make arrangements to retrieve the Equipment as soon as practicable to avoid further interruption to its ongoing business operations. Its requests have been ignored. Apparently, the owners believe they can store their Equipment, free of charge, and dictate how CKAM should make use of its facilities. The law does not afford Equity Bank an involuntary bailment for its Equipment at the Park City facility. Still less does mere title to personal property like the Equipment afford an easement in the real property occupied by the Equipment so as to preclude the rightful occupant of the premises—CKAM—from following standard procedure to move unused industrial equipment to a different part of the same premises. *See, e.g., Global Tank Trailer Sales v. Textilana-Nease, Inc.*, 209 Kan. 314, 317 (1972) (held that "[t]he mere fact that a bailee is in possession of personal property belonging to the bailor does not transfer responsibility for its safety to the bailee" and "[a] bailee is not an insurer of the safety of the property of the bailor, regardless of the nature of the bailment."). And Bankruptcy courts are well-within their authority to order non-debtor parties to rejected leases to retrieve leased property or otherwise face forfeiture of their rights to recover such property. *See*, e.g., *In re Aleris Intern., Inc.*, No. 09-10478, 2010 WL 3492664 at *37 (Bankr. D. Del. May 13, 2010) (order approving confirmation of plan required parties to a rejected contract to retrieve any property the party leased or otherwise furnished to the debtors under the rejected contract or otherwise face forfeiture of their right to recover such property).

CKAM is merely decommissioning and relocating Equipment that has already been dealt with under this Court's Rejection Order. It is well within its rights to quiet enjoyment of the premises and Equity Bank has no right to subject CKAM to an involuntary bailment at all, much less prevent CKAM from simply relocating the Equipment within the Park City premises. *See,*

e.g., Thurman v. Trim, 199 Kan. 679, 682 (1967) ("In the absence of an express covenant to the contrary, a lease of realty carries with it an implied covenant that the lessee shall have quiet and peaceable enjoyment of the leased promises as against the lessor *or those lawfully claiming under him*.") (emphasis added).

3. The balance of hardships favors Defendants.

Plaintiff likewise cannot establish that the balance of hardship favors Plaintiff. Boeing and CKAM have established rights to quiet enjoyment and use of the businesses they acquired from the Debtors for substantial consideration. Plaintiff and its predecessor have had months to retrieve the Equipment, but elected not to do so. Plaintiff has title to the Equipment, but CKAM is not disposing of the Equipment. CKAM is merely relocating it to a portion of the facility where it will not interfere with or obstruct access to their ongoing business operations and will not impete the marketing of the leased premises to third parties. In the process, Boeing is protecting the Equipment. Accordingly, the balance of hardships favors Defendants because allowing the Equipment to remain on the premises, rent-free, would continue to be disruptive and put Boeing and the Debtors' estates at risk.

As for Equity Bank's waste argument, allowing Equipment that has been deemed rejected to remain on the premises for over four months while preventing Boeing from marketing its interests and rights is the only thing that remotely resembles a waste claim. Ultimately, the only parties subject to genuinely irreparable harm are Defendants and the stakeholders of the estates, who, if CKAM is restrained from decommissioning and relocating the Equipment on premises, will lose the opportunity to market the real property effectively before the January 30, 2022 deadline for assumption or rejection of the lease. Equity Bank is welcome to remove its Equipment from the facility, but it is not entitled to a continuing bailment, much less an easement over specific portions of the facility, that would preclude internal relocation of the Equipment to promote Equity

Bank's goal of driving any potentail sale only to a buyer who will also purchase the Equipment from Equity Bank.

IV. CONCLUSION

For the foregoing reasons, Boeing respectfully requests that this Court deny the TRO Motion.

Dated: December 17, 2021
Wilmington, Delaware

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EXHIBIT A

EQUITY BANK OPPOSITION TO ABANDONMENT MOTION

Docket No. 639

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	
	:	Chapter 11
TECT AEROSPACE GROUP HOLDINGS, INC., et al.,	:	Case No. 21-10670 (KBO)
	:	(Jointly Administered)
Debtors.	:	
	:	**Re: D.I. 634**

RESPONSE OF EQUITY BANK IN OPPOSITION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING (I) ABANDONMENT OF CERTAIN PROPERTY AND (II) GRANTING RELATED RELIEF

Equity Bank, a Kansas state bank, ("Equity Bank") hereby responds to the motion (the "Motion to Abandon") of the above-captioned debtors (the "Debtors") for authority to abandon any and all interests in certain formerly leased equipment (the "Equipment") located at the Debtors' Park City, Kansas manufacturing facility (the "Park City Facility"), and in support of its response, Equity Bank states as follows:

INTRODUCTION

The Debtors' "motion to abandon" is a misnomer, at best. Whether deliberately misleading or otherwise, the Debtors are seeking relief that is inapplicable. Specifically, they are seeking, 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. Equity Bank has no objection to the Debtors' request for "abandonment" of the Equipment, as such relief is moot.

But abandonment is not what the Abandonment Motion is really about. By and through the Abandonment Motion, the Debtors seek to remove, disassemble or otherwise dispose of the Equipment without any factual or legal predicate for such a request. But more than that, by the proposed order attached to the Abandonment Motion, the Debtors seek relief that the

Abandonment Motion didn't seek 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 seek authority to remove, disassemble or destroy the rights of a third party without being financially responsible for any damage caused.

Beyond that, however, since the Abandonment Motion addresses only issues with respect to leased personal property that they rejected and real property that has been designated to the Purchaser under the Asset Purchase Agreement, the relief sought should be denied, or alternatively, the Court should either (i) abstain from consideration of the Abandonment Motion pursuant to 28 U.S.C. § 1334(c)(1), and the Debtors should proceed with any relief that they believe applicable in an appropriate state court or (ii) require that the Debtors seek relief through the commencement of an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(7), both subject to Equity Bank's rights and defenses.

BACKGROUND

1. 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,

2. On April 5, 2021 (the "Petition Date"), the Debtors commenced the above-captioned bankruptcy cases.

3. 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").

4. 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.

5. 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 Boeing Company and Central Kansas Aerospace Manufacturing, LLC (collectively, the "Purchaser"), pursuant to the asset purchase agreement (the "Asset Purchase Agreement")[1] [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.

6. 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]

[1] 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 the end of January 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.

[2] Neither the Abandonment Motion nor the Rejection Motion describes the Equipment. The Equipment consists of numerous pieces of manufacturing equipment, specifically tooled to manufacture parts and assembly for

A. There is nothing for the Debtor' bankruptcy estates to abandon.

7. Once a lease has been rejected pursuant to 11 U.S.C. § 365(d)(1), and for that reason alone it has been "abandoned and [is] no longer property of the estate." In re Biggs, 271 F. App'x 286 (3d Cir. 2008) (citing In re Stoltz, 315 F.3d 80, 85 n. 1 (2d Cir. 2002)). Accordingly, once the lease was rejected, the estates no longer had any interest in the Equipment. Accordingly, there is nothing for the Debtors' estates to abandon.

8. Accordingly, the Abandonment Motion should be denied as moot.

B. There is no legal basis under the Bankruptcy Code for the granting remaining relief sought by the Abandonment Motion.

9. By the Abandonment Motion, the Debtors "request authorization to abandon any remaining interests in the Equipment and effect the removal, disassembly or other disposal of the Equipment, as it is still located at the Park City Facility." Abandonment Motion, ¶ 14. In support of their request, they cite two provisions of the Bankruptcy Code: Sections 554(a) and 105(a). As noted above, Section 554(a) is inapplicable, as the Debtors no longer have any interest in the Equipment. Accordingly, the remaining relief sought by the Abandonment Motion hinges upon Section 105(a), which provides, in relevant part, that "[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

10. Section 105(a) does not permit a bankruptcy court to become a roving commission to do equity. See, e.g., Dept. of Treasury Puerto Rico v. Pagan, 279 B.R. 43, 46 (D.P.R. 2002)

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the Boeing 737 Max. The Equipment predominantly fills a 150,000 square foot building that is dedicated to the Equipment. Equity Bank conservatively estimates that disassembly and removal from the Park City Facility would significantly exceed $2 million. It is unclear whether, due to its size, the removal of the Equipment will cause damage to the structure.

(citing Matter of Southmark Corp., 49 F.3d 1111, 1116 (5th Cir.1995) (quoting In re Haber Oil Co., 12 F.3d 426, 442-43 (5th Cir.1994)). Further, and as has been noted by the Supreme Court on numerous occasions, Section 105(a) does not provide bankruptcy courts limitless authority. For example, in Norwest Bank Worthington v. Ahlers, the United States Supreme Court stated "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." 485 U.S. 197, 206-07. (1988). See also Raleigh v. Illinois Dept. of Revenue, 530 U. S. 15, 24–25 (2000); United States v. Noland, 517 U. S. 535, 543 (1996).

11. Based upon the foregoing, the Debtors have provided no legal basis for the relief sought, and accordingly, the Abandonment Motion should be denied.

C. The Abandonment Motion is procedurally infirm and cannot be approved on that basis.

12. If there is nothing to abandon, why did the Debtors file a motion to abandon property in which they have no interest? The answer is to avoid the requirement that they commence an adversary proceeding, as required under Rule 7001(7) of the Federal Rules of Bankruptcy Procedure.

13. Rule 7001(7) requires commencement of an adversary proceeding. "to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief." Here, the Debtors are seeking just that, injunctive and/or equitable relief.

14. Ironically, the Purchaser (the true party to benefit from the relief sought by the Abandonment Motion) previously took an identical position in these cases that a motion with respect to removal of equipment required the commencement of an adversary proceeding. On October 4, 2021, Utica Equipment Finance, LLC and Utica Realty Wellington, LLC (collectively, "Utica") filed an emergency motion of to remove certain equipment from the Debtors' location

[Docket No. 518] (the "Equipment Removal Motion"). Substantially contemporaneously therewith, Utica filed a motion to shorten notice and expediting a hearing [Docket No. 527] (the "Motion to Shorten"). On October 5, 2021, the Purchaser filed an objection to the Motion to Shorten [Docket No. 529], in which they asserted, among other things, as follows:

> The Equipment Removal Motion] is procedurally improper. It requests injunctive relief, but it is in the form of a motion rather than an adversary procedure as required under Bankruptcy Rules 7001(1) and 7001(7), and although it clearly requests an injunction, there is no attempt to demonstrate the predicates for the Court to grant such equitable relief even if all the facts alleged by the [movants] were accurate, which they do not.

15. Ultimately, this Court did not need to consider the issue with respect to the procedural requirements, however, the same basis for denial of the Abandonment Motion holds true; the relief sought by the Debtors in the Abandonment Motion cannot be achieved by the filing of a motion, but can only be achieved through an adversary proceeding.[3] Accordingly, the Abandonment Motion should be denied.

D. This is not a core-matter, and the Court cannot enter a final order.

16. In the Abandonment Motion, the Debtors assert that "[t]his a core proceeding pursuant to 28 U.S.C. § 157(b). Abandonment Motion, ¶ 4. It is not. Core matters are defined by the list set forth at 28 U.S.C. § 157(b). The issue before the Court is one entirely of state law; namely whether the Debtors (or to be more exact, the Purchaser) has a right to remove or compel the removal of the Equipment from the Park City Facility. Simply stated, this is a run-of-the-mill equipment lease issue over which the Court has no jurisdiction.[4]

[3] In the event that the Debtors (or the Purchaser) commence an adversary proceeding, Equity Bank reserves all its defenses, including to have this Court abstain pursuant to 28 U.S.C. § 1334.

[4] Other than the purported request for abandonment (which again, is moot), the issues presented by the Abandonment Motion, all of the relief sought by the Debtors are non-core matters under 28 U.S.C. § 157(b)(2).

17. At best, the relief sought by the abandonment Motion is "related to" to the Debtors' bankruptcy case. See, e.g., Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999) ("Non-core proceedings include the broader universe of all proceedings that are not core proceedings but are nevertheless 'related to' a bankruptcy case."); In re Exide Techs., 544 F.3d 196, 206 (3d Cir. 2008) ("a claim will be deemed core 'if (1) it invokes a substantive right provided by title 11 or (2) if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case.'" (quoting Halper, 164 F.3d at 836)).

18. Article III limits the authority of an Article I court to enter final orders or judgments on state law claims without the parties' consent. See, e.g., Stern v. Marshall, 564 U.S. 462 (2011). The relief sought by the Debtors cannot be the subject of a final order by this Court, absent Equity Bank's consent, and Equity Bank does not consent to the entry of a final order by the Court in connection with the abandonment Motion.[5]

E. Abstention pursuant to 28 U.S.C. 1334(c)(1) is appropriate.

19. 28 U.S.C. § 1334, titled "Bankruptcy Cases and Proceedings," provides in relevant part, as follows:

> (c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

20. In determining whether abstention is appropriate under 28 U.S.C. § 1334, courts typically consider the following twelve factors

(1) The effect or lack thereof on the efficient administration of the estate;
(2) the extent to which state law issues predominate over bankruptcy issues;

[5] Further, Equity Bank expressly reserves and preserves its right to seek to request that the Court abstain from consideration of the relief sought by the Abandonment Motion pursuant to 28 U.S.C. § 1334(c)(1) ("Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11").

(3) the difficulty or unsettled nature of the applicable state law;
(4) the presence of a related proceeding commenced in state court or other non-bankruptcy court;
(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
(7) the substance rather than the form of an asserted "core" proceeding;
(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
(9) the burden of the court's docket;
(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
(11) the existence of a right to a jury trial; and
(12) the presence in the proceeding of non-debtor parties.

Burtch v. Seaport Capital, LLC (In re Direct Response Media, Inc.), 466 B.R. 626, 659 (Bankr. D. Del. 2012) (citing In re LaRoche Industries, Inc., 312 B.R. 249 (Bankr. D. Del. 2004)). See also In re Integrated Health, 291 B.R. 615, 619 (Bankr. D. Del. 2003); Valley Media, Inc. v. Toys R Us, Inc. (In re Valley Media, Inc.), 289 B.R. 27, 29 (Bankr. D. Del. 2003); In re Continental Airlines, Inc., 156 B.R. 441, 443 (Bankr. D. Del. 1993); TTS, Inc. v. Stackfleth (In re Total Technical Services, Inc.), 142 B.R. 96, 100–01 (Bankr. D. Del. 1992).

21. The evaluation of these factors is not "merely a mathematical exercise." Trans World Airlines, Inc. v. Karabu Corp. (In re Trans World Airlines, Inc.), 196 B.R. 711, 715 (Bankr. D. Del. 1996). Courts place more weight on some of the factors than others; particularly important are factors (1) the effect on the administration of the estate, (2) whether the claim involves only state law issues, and (7) whether the proceeding is core or non-core. See, e.g., Fruit of the Loom, Inc. v. Magnetek, Inc. (In re Fruit of the Loom, Inc.), 407 B.R. 593, 600 (Bankr. D. Del. 2009); Republic Underwriters Ins. Co. v. DBSI Republic, LLC (In re DBSI, Inc.), 409 B.R. 720, 729 (Bankr. D. Del. 2009) Ultimately, the decision "is left up to the broad discretion of the bankruptcy court." DBSI, Inc., 409 B.R. at 729; In re RNI Wind Down Corp., 348 B.R. 286, 295 (Bankr. D.

Del. 2006) (quoting Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d 223, 232 (2d Cir. 2002)).

22. Here, substantially, all of the factors, including the three most heavily weighed factors, favor abstention by this Court. First, there will be minimal, if any, effect upon the estate if another court were to consider the issues. The Lease of the Equipment has already been abandoned, and the lease of the Park City Facility has already been designated for assignment to the Purchaser pursuant to the Asset Purchase Agreement. Second, the issues are all state law issues with respect to the Equipment. And third, the proceeding is not a core matter because it does not invoke a substantive right provided by title 11, and it is not a matter that could arise only in the context of a bankruptcy case. Halper, 164 F.3d at 836.

23. For the foregoing reasons, the Court should abstain from consideration of the Abandonment Motion pursuant to 28 U.S.C. § 1334.

F. The relief sought in the proposed order exceeds what is sought by the Abandonment Motion.

24. Finally, if this Court were to find (i) that there is a factual and legal basis for granting the relief and (ii) that the Abandonment Motion is not procedurally infirm, the Court should still deny, at least in part, the relief sought by the Debtors.

25. In the Abandonment Motion, the Debtors "request authorization to abandon any remaining interests in the Equipment and effect the removal, disassembly or other disposal of the Equipment, as it is still located at the Park City Facility." Abandonment Motion, ¶ 14. By their proposed order granting the Abandonment Motion, the Debtors seek relief significantly exceeding that relief. Specifically, the Debtors' seek "authorized to remove, disassemble or otherwise dispose of the Equipment without liability to any party, including SPEF Monolithic and Equity

Bank." Proposed Order, ¶ 3. The Debtors provide no basis for this additional (and unnoticed) relief, because there is no legal authority for such relief.

26. It is axiomatic that parties' property interests are created and defined by applicable nonbankruptcy law, and "[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." Butner v. United States, 440 U.S. 48, 55 (1979). See also Rodriguez v. FDIC, 140 S.Ct. 713, 718 (2020). The Debtors and the Purchaser can assert whatever property rights they believe they have in connection with the Park City Facility, but this Court has no authority to authorize the Debtors to damage any party's property without allowance of a claim, including an administrative expense for postpetition claims, to the extent appropriate.

27. Equity Bank respectfully submits that, to the extent that there is a legal and factual basis for granting the Abandonment Motion, any relief granted should be limited to abandonment of the Debtor's interest in the Equipment, to the extent not moot.

[*Remainder of page left intentionally blank*]

CONCLUSION

For the foregoing reasons, Equity Bank respectfully submits that the Motion to Abandon be denied.

Dated: December 7, 2021

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