

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
<https://www.flsb.uscourts.gov/>

In re: Case No. 24-23623-PDR
Silver Airways, LLC, *et al.*¹, Chapter 11
Debtor. Jointly Administered
_____ /

UNITED STATES TRUSTEE’S MOTION TO DISMISS CASE

Mary Ida Townson, the United States trustee for Region 21 (the “UST”), requests dismissal of the jointly-administered bankruptcy cases filed by Silver Airways, LLC (“Silver Airways”), and Seaborne Virgin Islands, Inc. (“Seaborne”), under § 1112(b)(4)(A) because there is a substantial and continuing loss to the estate shown by the Debtors’ net negative profits and negative cash flow, and an absence of a reasonable likelihood of rehabilitation evidenced by the Debtors’ inability to secure debtor in possession financing and fanciful projections that fail to take reality into consideration. In support, the UST states:

BACKGROUND

1. Silver Airways and Seaborne (collectively, the “Debtors”) voluntarily petitioned for relief under chapter 11 of the Bankruptcy Code (the “Code”) on December 30, 2024.
2. The Debtors have remained debtors in possession, and there has been no request for the removal of the Debtors as debtors in possession or for the appointment of a trustee.
3. The Debtors’ fleet on the petition date totaled 16 aircrafts comprised of 14 ATR-600 series aircrafts and 2 DeHavilland Twin Otter Seaplanes. [ECF No. 33 p. 2-3].

¹ This case is jointly administered with the bankruptcy case of Seaborne Virgin Islands, Inc., which was assigned case no. 24-23624-PDR.



4. Although the value of the Debtors' property on their bankruptcy schedules totaled \$89,975,057 [ECF Nos. 130 p. 14 & 131 p. 7], the Debtors' property is completely encumbered by the liens of their secured creditors, Brigade Capital Management, Argent Funding, LLC, and Volant SVI Funding, LLC, as agents, totaling \$400,000,000. [See ECF No. 24].

5. The Debtors' owed 8,000,000² to various taxing authorities and \$27,700,000 to general unsecured creditors on the petition date. [ECF Nos. 33 p. 6 ¶ 8, 107 p. 390 & 108 p. 21].

6. From the petition date through February 2025, the Debtors' total receipts were \$19,180,000 and total disbursements were \$17,721,000. [ECF Nos. 262 p. 2 & 263 p. 2].

7. From March 1, 2025, to March 14, 2025, the Debtors' total receipts were \$3,393,000 and total disbursements were \$4,614,000. [ECF No. 245 p. 4].

8. Thus, from the petition date through March 14, 2025, the Debtors' total receipts were \$22,573,000 and total disbursements were \$22,335,000, which results in a net difference of \$238,000.

9. However, notably, the Debtors suffered net losses of \$467,000 in February 2025 and \$1,221,000 in the first 2 weeks of March 2025.

10. The Debtors' projections in their 7th interim budget for the latter half of March 2025 only projected further net losses of \$1,243,000. [*Id.*]

11. The Debtors stated in their February 2025 operating reports that the Debtors' losses since the petition date total \$32,037,908; it appears neither Silver Airways nor Seaborne have been profitable since the petition date. [ECF Nos. 262 p. 2 & 263 p. 2].

12. On February 27, 2025, the Debtors advised the Court that no agreement was

² All amounts referenced in this motion are derived from documents filed by the Debtors and are approximated.

reached with respect to several lessors under § 1110, and that the Debtors did not intend to cure and perform as required by the statute in the absence of an agreement.

13. The Debtors, did, however, file emergency motions to approve certain § 1110 agreements reached with several lessors, which resulted in Debtors continuing leasing arrangements for 7 aircrafts. [ECF Nos. 181-183 & 213].

14. The Debtors project, in their 9th interim budget, that the Debtors will have receipts of \$2,309,000 for the period of April 14, 2025, to April 18, 2025. [ECF No. 314 p. 4].

15. The Debtors have attempted since the petition date to obtain post-petition financing but have yet to file any motion or document related to approval of such financing.

ARGUMENT

16. A chapter 11 case must be dismissed or converted under § 1112(b)(1), whichever is in the best interest of creditors, for “cause” unless the exception under § 1112(b)(2) applies. *See* 11 U.S.C. § 1112(b).

17. Section 1112(b)(4) contains a list of non-exhaustive factors that constitute “cause” for conversion or dismissal. *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984).

18. The bankruptcy court may consider additional factors to establish “cause”, including bad faith, and the determination of whether “cause” exists is subject to judicial discretion based upon the circumstances of the case. *Id.*; *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1394 (11th Cir. 1988).

19. In this case, “cause” is established under § 1112(b)(4)(A), which provides “cause” includes a “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation”. 11 U.S.C. § 1112(b)(4)(A).

20. “[T]he inquiry here [under § 1112(b)(4)(A)] is twofold. First, the Court must look

at the track record of the Debtor to determine if it is suffering losses or making gains. Second, the Court must determine whether rehabilitation is likely given the evidence presented at hearing.” *Nester v. Gateway Access Sols., Inc. (In re Gateway Access Sols., Inc.)*, 374 B.R. 556, 562 (Bankr. M.D. Pa. 2007).

21. “Negative cash flow and an inability to pay current expenses as they come due can satisfy the continuing loss to or diminution of the estate standard for purposes of § 1112(b).” *In re 412 Boardwalk, Inc.*, 520 B.R. 126, 135 (Bankr. M.D. Fla. 2014) (citing *In re Gateway Access Sols., Inc.*, 374 B.R. at 564).

22. In this case, the Debtors’ operating reports evidence that the Debtors have suffered substantial losses since February 2025, and the Debtors’ financials show continuing losses since at least February 1, 2025. *In re Schriock Constr. Inc.*, 167 B.R. 569, 575 (Bankr. D. N.D. 1994) (stating the first element of § 1112(b)(4)(A) can be satisfied by demonstrating the debtor incurred continuing losses or maintained a negative cash flow position after the entry of the order for relief).

23. Specifically, the Debtors’ operating reports reflect total losses of \$32,037,908 since the petition date, showing that the Debtors have suffered substantial losses since the petition date.

24. Furthermore, the Debtors’ February 2025 operating report and budget-to-actual reconciliation for the period of March 1, 2025, to March 14, 2025, show that the Debtors have had a negative cash flow since February 2025. *In re Galvin*, 49 B.R. 665, 669 (Bankr. D. N.D. 1985) (post-petition negative cash flow is considered evidence of continuing losses).

25. Moreover, claims for post-petition administrative expenses filed by creditors, such as the claims of World Fuel Services, Inc., totaling \$639,600 [*see* ECF Nos. 214 & 215] and Monroe County, totaling \$83,758 [*see* ECF No. 323], indicate that there are additional

administrative expenses beyond what the Debtors have projected, and that these jointly administered estates may already be administratively insolvent.

26. Notably, no applications for compensation have been filed, which will add an additional layer of administrative expenses in unknown amounts.

27. The Debtors' substantial and continuing losses, shown by the Debtors' total losses exceeding \$32,000,000 and negative cash flow since February 1, 2025, satisfy the first element under § 1112(b)(4)(A).

28. The second element of § 1112(b)(4)(A) is whether there is an absence of a reasonable likelihood of rehabilitation. *See* 11 U.S.C. § 1112(b)(4)(A).

29. “[R]ehabilitation means that the ‘debtor will be reestablished on a secured financial basis, which implies establishing a cash flow from which its current obligations can be met.’” *In re Motel Props., Inc.*, 314 B.R. 889, 895 (Bankr. S.D. Ga. 2004) (quoting *In re AdBrite Corp.*, 290 B.R. 209, 216 (Bankr. S.D. N.Y. 2003)).

30. Here, the Debtors have attempted but been unable to secure debtor in possession financing that would dovetail into a sale of the Debtors' assets. Though there is no doubt concerning the Debtors' efforts to obtain such financing, the lack of any motions or documents filed proving that financing is on the horizon clouds any prospect of a reasonable likelihood of rehabilitation. Without any concrete evidence that there will be financing in the immediate future, there is no reasonable likelihood that the Debtors will be able to successfully rehabilitate.

31. Further, the Debtors' recent projections belie realism. While the Debtors may have been able to project and earn weekly receipts exceeding \$2,000,000 for prior periods, the Debtors do not appear to consider that their fleet size is significantly reduced by half, and that such reduction will similarly reduce, if not hamstring, the Debtors' already-negative cash flow,

furthering proving the lack of a reasonable likelihood of rehabilitation.

32. In addition, the Debtors' projected receipts from April 14, 2025, to April 18, 2025, are \$900,000 more than the Debtors initially projected for such period in their 7th interim budget [ECF No. 245 p. 3] and are equal to 28.2% of the Debtors total receipts for February 2025. The Debtors' projections, while rosy, seem unrealistic and designed to avoid ending any week a negative cash balance.

33. Despite the Debtors' optimistic projections for April 2025, it is more than likely the Debtors future receipts will substantially decrease because of the reduction in the Debtors' fleet, which further demonstrates to a showing that there is an absence of a reasonable likelihood of rehabilitation.

34. As the Debtors have suffered substantial and continuing losses, and there is an absence of a reasonable likelihood of rehabilitation, "cause" under § 1112(b)(4)(A) exists to dismiss or convert the Debtors' cases.

35. Under these facts, the UST submits that dismissal is in the best interest of creditors as the Debtors' assets are fully encumbered by liens and any unsecured deficiency claim of the Debtors' secured creditors would dwarf other unsecured claims in the Debtors' estates.

36. Additionally, based on the motions for administrative claims already filed or the requests for compensation that will definitely be filed, it is likely these cases are administratively insolvent and that administration of the estates in a chapter 7 would only serve to benefit administrative claimants.

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WHEREFORE, the UST respectfully requests dismissal of the Debtors' bankruptcy cases,
and for any further relief the deemed just, equitable, and proper.

Mary Ida Townson
United States trustee for Region 21

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing document with the court's electronic document filing system on April 10, 2025, which will cause a copy to be sent to the following parties registered to receive electronic service in this case:

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