

FILED

APR 16 2004

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

1
2
3 In re:) Chapter 11
4 RADD AVIATION, L.L.C.,)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
Debtor.)

MEMORANDUM DECISION

7 On April 15, 2004, the court simultaneously considered three motions, and discussed with
8 counsel their interaction and interrelation. Thereafter, the court took the matter under advisement, and
9 reviewed the administrative file in its entirety. The motions before the court were:

- 10 1. Debtor's Motion to Approve Lease;
- 11 2. Preliminary Hearing on Motion for Relief From Stay;
- 12 3. Emergency Application for Authority to Incur Post-Petition Financing, and to Grant
13 Super-Priority to Such Loan.

14 The debtor filed its chapter 11 petition on January 23, 2004. Its Schedules and Statement of
15 Affairs were filed on February 13, 2004. They reveal that the debtor has no cash, no bank accounts, no
16 employees, no equipment or inventory, no books, bookkeepers or accountants, has issued no financial
17 statements in two years, has made no payments to creditors in the year preceding bankruptcy, and has no
18 income from the operation of any business. In fact, the debtor answered "none" to every one of the 24
19 questions on the Statement of Affairs.

20 Incredibly, though, with this scant history, the debtor owns a Twin Commander 690 B
21 aircraft, which it values at \$900,000. However, there is at least one lien thereon, to National Bank, which
22 the debtor lists with a secured note balance of \$918,106.62.¹

23 Unexplained in the Schedules and Statement of Affairs is the symbiotic relationship between
24

25 ¹ In its stay relief motion, National Bank lists the debt against the aircraft, as of March 12, 2004,
26 as \$962,072.17. Other liens against the aircraft appear to be \$98,000 owed to Global Aircraft Sales,
and \$6,650 owed to the Arizona Department of Transportation.

1 the debtor and a “co-debtor” entity known as Sunwest Aviation.² Sunwest is listed as a “co-debtor” for
2 virtually all of the debtor’s unsecured debt. The unsecured indebtedness is listed as \$177,469.69
3 (Schedule F). How this debt is that of this debtor, which was not active in business, is unexplained.

4 To date, the debtor has not filed either a Plan of Reorganization or a Disclosure Statement.

5 The debtor now seeks to lease its sole asset to an entity known as Velocity Air, Inc. The
6 debtor justifies the lease by attempting to explain that if its unverified projections play out, it can
7 (provided the National Bank debt is crammed down to a lower interest rate of 5%), pay off the Bank over
8 a period of 20 years. What the debtor fails to explain is whether Velocity Air or the aircraft will be viable
9 or useable, respectively, over the next 20 years. The debtor has also failed to include any helpful
10 information as to Velocity Air’s bona fides, including details of its past operating history or its current
11 financial condition.

12 What is evident from the one-page projection of revenue is that, with an ongoing interest
13 burden to National Bank, it is doubtful whether the principal could be reduced much, if anything, over
14 the projected period.

15 The court is unconvinced that the proposed lease to Velocity Air will benefit the estate, or
16 even what appears to be the estate’s only significant true creditor, National Bank of Commerce.

17 Essentially, the proposed lease to Velocity appears to be the only means which the debtor has
18 of effecting reorganization. As such, the effort is entirely speculative, and therefore presents what would
19 be an unconfirmable plan. *In re Pizza of Hawaii*, 761 F.2d 1374 (9th Cir.1985). This court cannot
20 confirm speculative plans. See, also, *United Savings Ass’n. v. Timbers of Inwood Forest*, 484 U.S. 365,
21 376, 108 S.Ct. 626, 630, 98 L.Ed.2d 740(1988).

22 With the debtor’s lack of operating history, there is no basis upon which to give the debtor’s
23 hopes much, if any, chance of success. The current chapter 11 proposals are nothing more than a shifting
24 of all of the risk of loss to the secured creditor. This the court cannot do.

26 ² Sunwest Aviation’s address is listed as 1002 E. Valencia Road, Tucson, AZ 85706.


1 The debtor has no equity in the secured property, and the debtor cannot effectively reorganize
2 under the facts and circumstances of this case. Therefore, the court will lift the automatic stay in favor
3 of all of the secured creditors on the aircraft. 11 U.S.C. § 362(d)(2).

4 Because of the dissolution of the automatic stay, the motions for financing and for lease
5 approval are rendered moot, and are therefore denied on that basis.

6 A separate Order will be entered simultaneously with the entry of this Memorandum
7 Decision.

8 Dated this 16th day of April, 2004.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

Copy of the foregoing mailed this
16th day of April, 2004, to:

Rob Charles, Esq.
LEWIS and ROCA, LLP
One S. Church, Suite 700
Tucson, AZ 85701-1611
Attorney for National Bank

Michael Baldwin, Esq.
177 N. Church, Suite 913
Tucson, AZ 85701-1120
Attorney for the debtor

Deborah Bryant, Esq.
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007
Attorney for ADOT

Walter Wood, Esq.
110 S. Church, Suite 4398
Tucson, AZ 85701-1624
Attorney for Halls

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Trudy A. Nowak, Esq.
Office of the U.S. Trustee
P.O. Box 36170
Phoenix, AZ 85067-6170

By *J. Hallock*
Judicial Assistant