

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

MID-CONTINENT STOLCRAFT, LTD.,

DEBTOR

RALLYE AIRCRAFT CORPORATION,

Plaintiff

vs.

MID-CONTINENT STOLCRAFT, LTD.,

Defendant

CASE NO. BK81-682

MEMORANDUM

This matter is before me upon Application filed by Rallye Aircraft Corporation for Appointment of Trustee or in the Alternative, Conversion of this case to Chapter 7. The order on pretrial conference provides the following uncontroverted facts:

1. By written agreement entitled "Rallye Dealer Agreement," dated August 29, 1979 (Plaintiff's Ex. 1) Rallye Aircraft Corporation, hereinafter referred to as "Rallye", designated Mid-Continent Stolcraft, Ltd., hereinafter referred to as "Mid-Continent," as a dealer for its aircraft within certain portions of the States of Nebraska, Iowa and South Dakota.

2. Pursuant to the terms of the Rallye Dealer Agreement (Plaintiff's Ex. 1), and as shown by documents entitled "Aircraft Purchase Order," Mid-Continent agreed to purchase from Rallye three (3) airplanes, to wit: a 235GT, Serial No. 13115, Reg. No. N346RA (Plaintiff's Ex. 5) for a purchase price of \$45,369.70 (Plaintiff's Ex. 6); a Rallye 150ST, Serial No. 3070, Reg. No. N327RA (Plaintiff's Ex. 8) for a purchase price of \$27,749.80 (Plaintiff's Ex. 9); and a Rallye 235C, Serial No. 13082, Reg. No. N352RA (Plaintiff's Ex. 11) for a purchase price of \$38,236.50. All three (3) of the aforesaid airplanes were delivered by Rallye to Mid-Continent at Morrisville, North Carolina. (Plaintiff's Exs. 7, 10 and 13) (See also Plaintiff's Ex. 20). With respect

to the foregoing purchase orders, Mid-Continent paid Rallye the sum of \$11,119.97.

3. Mid-Continent's purchase of the aforesaid three (3) airplanes from Rallye was financed through American Acceptance Corporation, a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania. In the course of such financing, Mid-Continent executed and delivered to American Acceptance Corporation the following documents: Security Agreement, dated August 21, 1979 (Plaintiff's Ex. 2); Power of Attorney, dated August 21, 1979 (Plaintiff's Ex. 3); and Certificate of Corporate Resolution, dated August 21, 1979 (Plaintiff's Ex. 4). Trust Receipts for each airplane financed (Plaintiff's Exs. 14, 15 and 16), were duly recorded with the Federal Aviation Administration in Oklahoma City, Oklahoma, on October 9, 1979 and November 20, 1979. A Financing Statement was filed in the Office of County Clerk, Douglas County, Nebraska on August 27, 1979 (Plaintiff's Ex. 17).

4. On March 17, 1980 Mid-Continent was indebted to Rallye through American Acceptance Corporation in the principal amount of \$100,236.03. American Acceptance Corporation claimed that as of March 17, 1980 Mid-Continent was delinquent in payment of accrued interest in the amount of \$4,373.50. Mid-Continent does not agree as to the amount of interest owed in connection with its purchase and financing of the three (3) aircraft in question. (Plaintiff's Exs. 20 and 21)

5. On or about March 18, 1980 American Acceptance Corporation assigned to Rallye all of American Acceptance Corporation's right, title and interest in and to the indebtedness owed by Mid-Continent and the security granted by Mid-Continent as collateral therefore. (Plaintiff's Exs. 18, 20 and 21)

6. On March 20, 1980 Rallye filed suit against Mid-Continent in the United States District Court for the Eastern District of North Carolina, Civil No. 80-217-CIV. 5, praying for judgment in the amount of \$104,609.53, and for possession of the three (3) aircraft for the purpose of Rallye's exercise of replevin rights in and against its secured property. (Plaintiff's Ex. 19). Thereafter, Mid-Continent filed its Amended Answer and Counterclaim praying for damages against Rallye alleging improper termination of its distributorship and misrepresentation as to model year of said aircraft, (Defendant's Ex. 3).

7. Subject to these defenses and Counterclaim, which Rallye disputes, Mid-Continent is indebted to Rallye for the principal amount of \$100,236.03 with respect to the purchase of the aforesaid three (3) airplanes. (Plaintiff's Ex. 33).

8. During the pendency of the action described in paragraph 6 above, Mid-Continent sold without Rallye's knowledge all three (3) aircraft between the period of September 1, 1980 and December 31, 1980. (Plaintiff's Exs. 23, 24, 25, 27 and 28). Because there was a question of whether Mid-Continent was able to give clear title to the three (3) aircraft, a portion of the purchase price was placed in escrow by Mid-Continent and the purchaser with the Mississippi State Bank, Jackson, Mississippi. (Plaintiff's Exs. 22, 23, 24, 25, 26, 27 and 28).

9. On December 22, 1980 United States District Judge F. T. Dupree, Jr., in the action described above in paragraph 6, issued a Temporary Restraining Order providing, inter alia:

That the defendant [Mid-Continent], its officers, agents, employees and attorneys and all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be and they are hereby enjoined from secreting, transferring or otherwise disposing of any of the proceeds of the sales of the three airplanes described in plaintiff's [Rallye] First Claim of Relief, that is, a Rallye 235GT aircraft, Serial No. 13115, Registration No. N346RA; a Rallye 150ST aircraft, Serial No. 3070, Registration No. N327RA; and a Rallye 235C aircraft, Serial No. 13082, Registration No. N352RA, pending the further orders of this court. . .

(Plaintiff's Ex. 29).

10. On January 8, 1981 United States District Judge W. Earl Britt, in the action described above in paragraph 6, issued a Preliminary Injunction providing, inter alia:

That the defendant [mid-Continent], its officers, agents, employees and attorneys and all other persons in active concert or participation with them who receive actual notice of this order by personal service

or otherwise be and they are hereby enjoined from secreting, transferring or otherwise disposing of any of the proceeds of the sales of the three airplanes described in plaintiff's [Rallye] First Claim of Relief, that is, a Rallye 235GT aircraft, Serial No. 13115, Registration No. N346RA; a Rallye 150ST aircraft, Serial No. 3070, Registration No. N327RA; and a Rallye 235C aircraft, Serial No. 13082, Registration No. N352RA. . .

(Plaintiff's Ex. 30)

11. On March 30, 1981 Mid-Continent filed a Chapter 11 petition in the United States Bankruptcy Court for the District of Nebraska, which case is pending and has been docketed before said court as Case No. BK81-682. (Plaintiff's Ex. 31).

12. On January 12, 1982 Rallye filed in the above-referenced Chapter 11 proceeding an Application for Appointment of Trustee or in the Alternative, Conversion of Case to Chapter 7.

13. On or about January 17 or 18, 1982, the sum of \$17,000 was transferred by wire from the escrow account at Mississippi State Bank, Jackson, Mississippi to the account of Mid-Continent at Douglas County Bank & Trust Co., Omaha, Nebraska Account No. 61-1590. On January 19, 1982, Mid-Continent drew four checks from this account totalling \$17,000, which checks were delivered and paid to Leo Galanis, Jr. in the amount \$2,100; to Leo Galanis, Jr. in the amount of \$5,000; to Galsun, Ltd. in the amount of 47,155.45; and to Galsun, Ltd. in the amount of \$2,744.55.

11 U.S.C. §1112(b) provides that upon request of a "party in interest", the Court may convert a case or dismiss a case "for cause". The statute provides nine non-exclusive categories constituting cause. However, the ultimate test is what is "in the best interests of creditors and the estate."

A special question is whether Rallye Aircraft Corporation ("Rallye") is authorized to bring this application. The debtor would take the position that Rallye has no standing because it is not a creditor, the debtor alleging causes of action against Rallye sufficient to offset any claim Rallye may have against the debtor. However, the statute provides that a "party in interest" and not only a "creditor" may bring the request.

Clearly, Rallye alleges claims against the debtor and, as such, is a party in interest within the meaning of the statute. This is true, if for no other reason than at the petition date Rallye claimed to be a secured creditor, claiming assets in the possession or under the control of the debtor.

The evidence before me discloses that since the filing of this Chapter 11 petition on March 30, 1981, the debtor has expended corporate funds for prepetition loans to the principal operating officer of the debtor and has paid interest on a note which was the personal obligation of a Dr. Sundell.

In addition, the debtor has transferred corporation assets to Galsun, Ltd., an entity which exists separate and apart from the debtor corporation. Similarly, the debtor has allowed Galsun, Ltd., to take income which would otherwise have flowed to the debtor. The specific example presented by the evidence before me is the rental of an aircraft to the FBI by Galsun, Ltd., done at the instigation of corporate officers and directors when the income would normally have flowed to the benefit of the debtor.

Significantly, the debtor has used some \$17,000 of cash collateral as that term is defined in 11 U.S.C. §363(a), which cash collateral is claimed as secured by Rallye. The use of that cash collateral appears to have been done in direct violation of 11 U.S.C. §363(c)(2) and in direct violation of the order of the United States District Court for the Eastern District of North Carolina, more specifically set out in the uncontroverted facts previously set forth.

The evidence further discloses an unsecured loan by the debtor to Galsun, Ltd., post-petition which enabled Galsun, Ltd., to begin operation.

Taken as a whole, the evidence before me discloses that Mid-Continent Stolcraft, the debtor in this action, has been reduced to a corporate shell from which assets and business opportunities have been transferred at will by its officers and directors. In substance, the integrity of this economic unit has been violated by acts of its officers which seem completely at odds with the goal of reorganization and rehabilitation of this corporate entity. In terms of 11 U.S.C. §1112(b), there is "continuing loss to" and "diminution of the estate". Further, given the debtor's disregard of the concept of maintenance of a viable business entity, there seems an absence of a reasonable likelihood of rehabilitation. All in all, I conclude that cause has been shown and that the best interests of creditors and the estate require conversion of this Chapter 11 to a Chapter 7 proceeding.

A separate order is entered in accordance with the foregoing.

DATED: August 20, 1982.

BY THE COURT

