

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In Re:

SILVER AIRWAYS LLC, *et al.*,¹
Debtors.

Chapter 11

Case No. 24-23623-PDR
(Jointly Administered)

Related to Docket Nos. 15 & 24

LIMITED OBJECTION OF THE CITY OF TALLAHASSEE, FLORIDA TO (1) DEBTORS' EMERGENCY MOTION FOR ORDER AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL AND PROVIDE ADEQUATE PROTECTION (#24)² AND (2) DEBTORS' MOTION FOR ORDER AUTHORIZING THE CONTINUED USE OF EXISTING BANK ACCOUNTS (#15)³

AND NOW COMES the City of Tallahassee, Florida, as owner/operator of Tallahassee International Airport⁴ (the "Airport"), by and through its undersigned counsel, by way of this limited objection (the "Limited Objection") to each of the Cash Collateral Motion and the Bank Account Motion (together, the "Motions"), and respectfully states as follows:

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Silver Airways LLC (6766) and Seaborne Virgin Islands, Inc. (1130). The mailing address and principal place of business of Silver Airways LLC is 2850 Greene Street, Hollywood, FL 33020. The mailing address and principal place of business of Seaborne is 2850 Greene Street, Hollywood, FL 33020.

² Hereinafter the "Cash Collateral Motion."

³ In full, the Motion for Order (I) Authorizing Maintenance of Cash Management Systems, Including the Continued Use of Existing Bank Accounts and Prepaid Commercial Card Account, (II) Authorizing Continued Use of Business Forms, (III) Authorizing Intercompany Transactions and Affording Administrative Expense Status to Intercompany Claims, and (IV) Granting Related Relief (hereinafter the "Bank Account Motion").

⁴ The undersigned counsel represents several airport owners and operators that are served by Debtor Silver Airways LLC and/or Debtor Seaborne Virgin Islands, Inc. Substantively identical limited objections have been filed on behalf of those airports.

BACKGROUND

1. The Airport is served by Debtor Silver Airways LLC (“Silver”). In connection with its use of the Airport’s facilities, Silver is subject to certain agreements between the Airport and Silver. Silver pays for use of the Airport’s facilities and is subject to the requirement to pay for things such as use of the runways and terminal facilities.

2. Silver is also obligated to collect certain fees from its passengers and remit those fees to the Airport. Among those fees are Passenger Facility Charges (“PFCs”) which are fees authorized by federal statute and by the regulations of the U.S. Department of Transportation. *See* 49 U.S.C. § 40117 (PFC statute); 14 C.F.R. part 158 (PFC regulations). This Limited Objection concerns Silver’s handling and remittance of PFCs in accordance with federal law.

3. On December 30, 2024 (the “Petition Date”), the Debtors commenced the above-captioned voluntary bankruptcy case under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

4. On December 31, 2024, as part of its “first day” filings, the Debtors filed the Bank Account Motion.

5. The Bank Account Motion requests that this Court authorize the Debtors to continue to employ certain financial procedures, policies, practices, and accounts as they existed before the Petition Date.

6. Thereafter, on January 2, 2025, Silver filed the Cash Collateral Motion.

7. The Cash Collateral Motion requests that this Court authorize the Debtors to continue to use their cash during the pendency of the Chapter 11 Case.

8. On January 3, 2025, the Debtors filed a Declaration of Steven A. Rossum (Docket #35) (the “Rossum Declaration”), supporting, *inter alia*, the Motions.

9. Interim orders have been entered on both the Cash Collateral Motion and the Bank Account Motion. Docket numbers 53, 87, and 135 (interim orders granting Cash Collateral Motion); docket numbers 49 and 136 (interim orders granting Bank Account Motion).

10. Prior to filing this Limited Objection, the undersigned counsel twice contacted counsel for the Debtors to ensure Silver's compliance with applicable federal law regarding PFCs. However, the undersigned counsel has not received a substantive response from Debtors' counsel, making this Limited Objection necessary.

11. The Airport requests that the final orders with respect to the Motions be modified from the respective interim orders to fully protect the interests of the Airport.

LIMITED OBJECTION

1. Generally, the Airport does not object to the central purposes of the Cash Collateral Motion or Bank Account Motion.

2. Indeed, the members of the Airport fully support the Debtors making continued payments to airports and maintaining the necessary security for performance that existed upon the Petition Date and is required to be maintained going forward.

3. However, a review of the Cash Collateral Motion, Bank Account Motion, and Rossum Declaration does not show any acknowledgement of Silver's obligation to handle PFCs in accordance with federal law. Therefore, to avoid uncertainty and to mitigate the risk of future disputes between the Debtors and the Airport, the Airport believes that it is in the interests of all parties, including the Debtor, to file the instant Limited Objection.

4. The Airport is concerned that the Motions do not make it sufficiently clear that PFCs and similar payments made to airport operators are funds held in trust for the benefit of the airport operators, and that PFCs are not property of the Debtors.

5. In fact, PFCs are established by airport operators, including the Airport, pursuant to federal law; are paid by Silver’s passengers and collected by Silver for the sole benefit of each airport operator for whom the PFCs are collected; and are expressly recognized by federal law as the property of the respective airport operators for whom Silver collected the PFCs.

6. As detailed below, the Airport believes that modest changes to the interim and ultimately, final orders with respect to the Motions can address the Airport’s concerns without altering the substance of the relief that the Debtors seek.

PFCs Are Not Property of the Debtors’ Estates

7. Passenger Facility Charges are statutorily defined fees that an airport operator may, with federal approval, establish, and charge to the airline passengers who use the operator’s airport(s), to fund certain airport capital and operating costs. 49 U.S.C. §§ 40117(b), (c). Crucially, while air carriers are required to collect federally authorized PFCs on behalf of airport operators, 14 C.F.R. §§ 158.45, 158.47, the collecting air carriers have neither a legal nor a beneficial interest in the PFCs and collect them solely in trust for the airport operators, 49 U.S.C. § 40117(g)(4).

8. Congress established the PFC program to enable public agencies that operate public airports to levy certain charges on travel through those airports. *See* Notice of Proposed Rulemaking, *Update and Clarification of the Passenger Facility Charge Regulations*, 88 Fed. Reg. 66,319, 66,320 (Sept. 27, 2023). The PFC program is authorized by 49 U.S.C. § 40117 (the “PFC Statute”).

9. The PFC Statute allows a public agency to charge each eligible airport passenger at that agency’s commercial airport(s) up to \$4.50. 49 U.S.C. § 40117(b)(1). Airport operators may use these charges to fund federally approved projects that enhance safety, security, or capacity; reduce noise; or increase air-carrier competition. *Id.* § 40117(d)(2).

10. The Federal Aviation Administration has promulgated regulations to govern the PFC program. Those regulations govern, *inter alia*, how PFCs are to be collected, accounted for, and remitted to airport operators by the airlines that collect PFCs on each airport operator's behalf. Those regulations are found at 14 C.F.R. part 158 (the "PFC Regulations").

11. While the Airport and other federally authorized airport operators levy PFCs, airlines collect the PFCs on the airport operators' behalf. Every month, each airline that collects PFCs must remit such funds to the appropriate airport operators. 14 C.F.R. § 158.51.

12. Both the PFC Statute and the PFC Regulations make it clear that PFC funds are *not* the property of any airline, but are instead held in trust for each airport operator that levies the PFC. Indeed, 49 U.S.C. § 40117(g)(4) expressly states, in full:

Passenger facility revenues that are held by an air carrier or an agent of the carrier after collection of a passenger facility charge constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the charge. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling fee or retention of interest collected on unremitted proceeds as may be allowed by the Secretary [of Transportation].⁵

⁵ Emphasis added.

13. Likewise, 14 C.F.R. § 158.49(b) states, in relevant part:

PFC revenues held by an air carrier or an agent of the air carrier after collection are held in trust for the beneficial interest of the public agency imposing the PFC. Such air carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or interest collected on unremitted proceeds as authorized in [14 C.F.R.] § 158.53.⁶

14. Further, upon filing for protection under the Bankruptcy Code, an airline is forbidden from comingling PFCs with its other cash. Rather, the PFC Regulations require that such a “covered air carrier” open a new account and separately account for PFCs following the Petition Date, sweep previously collected PFCs into that account, and thereafter deposit all PFCs into such account. 14 C.F.R. § 158.49(c)(1).

The Bank Account Motion and Related Proposed Order Do Not Specifically Direct the Debtors to Create and Maintain a PFC Account

15. The Bank Account Motion requests that the Court allow the Debtors to maintain their existing cash management system. Bank Account Motion at 16 (requesting authority to “maintain [Debtors’] cash management systems” and “continue to utilize the existing Accounts”).

16. It appears that the Debtors are sweeping most funds that they collect into one main account, Truist Bank account x-6909. *See* Ex. 2 to Debtors’ proposed order granting the Bank Account Motion. Given the representations made in the Bank Account Motion, it appears likely that the Debtors are depositing the PFCs collected from passengers into that account. *See id.*

⁶ Emphasis added.

17. As indicated above, after the Petition Date, the Debtors are required to create and maintain a separate account for PFCs collected on airport operators' behalf. 14 C.F.R. § 158.49(c)(1) (“A covered air carrier must segregate PFC revenue in a designated separate PFC account.”).

18. Nowhere in the Bank Account Motion do the Debtors reference the existence of a PFC account that is required pursuant to 14 C.F.R. § 158.49(c)(1), nor do the Debtors specifically request approval to open and maintain such an account.

19. The Debtors' lack of acknowledgement of the requirement to segregate PFC funds concerns the Airport. Given the pledge of cash collateral to certain creditors, absent the establishment, maintenance, and proper funding of a segregated PFC account in accordance with 14 C.F.R. § 158.49(c)(1), substantial confusion could arise as to the nature of PFC revenues, their status as trust funds, and their inclusion in the pledged cash collateral.

20. Accordingly, in order to mitigate the risk of future disputes, the Airport asks the Court to modify the proposed order related to the Bank Account Motion to specifically provide that the Debtors must open a PFC account, authorize the Debtors to do so, and incorporate such provisions into the final DIP Financing Order.

21. Similarly, a review of the Cash Collateral Motion reveals that no acknowledgement of the existence of PFCs is made, nor is there any provision for withholding such PFCs from entities that claim a security interest in such funds.

22. Accordingly, to mitigate the risk of future disputes, the Airport asks the Court to modify the proposed order related to the Cash Collateral Motion to specifically provide that the Debtors must open a PFC account, that PFC funds are not subject to the security interests of others, and that such funds are held in trust for the airports for whom they were collected.

PROPOSED RELIEF

23. As indicated above, the Airport is generally supportive of the Debtors' efforts to reorganize and the relief sought in the Motions. However, given the magnitude of the PFCs collected on behalf of the Airport individually and of airports as a whole, and the risk of future disputes should there occur a default that implicates cash collateral, the Airport hereby requests that the two (2) proposed final orders with respect to the Motions be modified so as to:

- (a) specifically reference PFCs (via reference to both the PFC Statute and the PFC Regulations),
- (b) authorize and *direct* the Debtors to immediately establish, maintain, and fund a segregated PFC account,
- (c) direct the Debtors to create and provide to the Airport monthly reports showing deposits and payments into and out of such PFC account,
- (d) authorize the continued, uninterrupted payment of airport fees and charges (including, but not limited to, PFCs) to the Airport,
- (e) specifically exclude PFCs from the definition of "Cash Collateral" in paragraph 8 of the Cash Collateral Motion, and
- (f) prohibit any party, including but not limited to the Debtors or any actual or potential creditor, from including PFCs in the security interests to be taken by any future post-petition credit facilities that may be proposed.

24. The undersigned counsel made efforts to resolve this matter prior to filing the instant Limited Objection. First, on January 24, 2025, the undersigned counsel sent a letter to Debtors' counsel detailing the legal basis for the Airport's concerns with respect to PFCs; the undersigned counsel received no reply to that letter. Then, on February 10, 2025, as a final effort to resolve this matter on a consensual basis, the undersigned counsel sent a follow-up e-mail to Debtors' counsel. Debtors' counsel indicated that a response would be forthcoming, after counsel had consulted with the Debtors. No such response was ever received. Nonetheless, the undersigned counsel welcomes further discussions with the Debtors to attempt to resolve this Limited Objection in advance of the hearing presently scheduled for **February 27, 2025 at 2:00 p.m. EST.**

Respectfully submitted,

Dated: February 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2025, a true and correct copy of the foregoing Limited Objection of the City of Tallahassee, Florida to (1) Debtors' Emergency Motion for Order Authorizing the Debtors to Use Cash Collateral and Provide Adequate Protection (#24) and (2) Debtors' Motion for Order Authorizing the Continued Use of Existing Bank Accounts (#15) was served via the Court's CM/ECF system upon all parties authorized to receive notice via CM/ECF, and was served upon counsel for the Debtors via email.

/s/ Stephanie Griffin Mateo
Stephanie Griffin Mateo