

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
) Chapter 15
)
AIR BERLIN PLC & CO. LUFTVERKEHRS KG,)
) Case No. 17-12282 (MEW)
)
Debtor in a Foreign Proceeding.)
)

**TEMPORARY RESTRAINING ORDER GRANTING PROVISIONAL
RELIEF IN CONNECTION WITH PETITION FOR RECOGNITION**

Upon the Application for provisional and injunctive relief (the “Application”) filed by the Foreign Representatives as foreign representatives of the above-captioned Debtor (collectively, the “Debtor”) in the Debtor’s reorganization proceedings under German law currently pending before the Local District Court of Berlin-Charlottenburg, Insolvency Court (the “Foreign Main Proceeding”); and upon this Court’s review and consideration of the Application and the Declaration of Frank Kebekus and the other submissions of the Foreign Representatives, and the arguments of counsel in open court on this same day; and this Court having jurisdiction to consider the Application and the relief requested in it under 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 109 and 1501; and consideration of the Application and the relief requested in it being a core proceeding under 28 U.S.C. § 157(b)(2)(P); and it appearing that venue is proper before this Court under 28 U.S.C. § 1410(1) and (3); and the Court having determined that the relief set forth herein is necessary and appropriate,

IT IS HEREBY FOUND AND DETERMINED THAT¹:

A. The Foreign Representatives are likely to demonstrate that they are “foreign representatives” within the meaning of Section 101(24) of the Bankruptcy Code and that the

¹ The findings and conclusions set forth herein constitute this Court’s findings of facts and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Fed. R. Bankr. P. 7052 and 9014. To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such.

Foreign Main Proceeding constitutes a “foreign main proceeding” as defined in Section 1502(4) of the Bankruptcy Code.

B. Unless provisional relief is granted, there is a material risk that creditors or other parties in interest in the United States, or parties to contracts with the Debtor, could use the pending proceedings in Germany as a pretext to exercise remedies or to enforce claims against the Debtor’s assets that would interfere with efforts to maximize the value of the Debtor’s assets and with the even-handed treatment of creditors in the pending proceedings. Accordingly, there is a material risk that the Debtor may suffer immediate and irreparable injury in the absence of the relief set forth herein.

C. The relief set forth herein will not cause an undue hardship to other parties in interest, and any hardship to parties is outweighed by the benefits of the relief requested.

D. Good cause has been shown for the issuance of this temporary restraining order without prior notice. The purpose of the requested relief is to prevent actions by creditors that might be difficult or impossible to undo. Prior notice would only have increased the risk that such actions might be taken before appropriate relief could be granted.

E. The interest of the public will be served by this Court’s entry of this Order.

Based on the foregoing,

IT IS HEREBY ORDERED:

1. Beginning upon the entry of this Order and continuing through and including August 28, 2017, and except as may otherwise be ordered by further order of this Court:

- (a) the Foreign Representatives are entrusted with the administration or realization of all of the Debtor’s assets in the United States;
- (b) all persons and entities are temporarily restrained from seizing, attaching and/or enforcing or executing liens, judgments, assessments or awards against the Debtor’s property in the United States and from commencing, continuing or

issuing or employing process in connection with, any judicial, administrative or other action or proceeding against the Debtor or its assets in the United States;

- (c) all persons and entities who are within the territorial jurisdiction of the United States are temporarily restrained from terminating any contractual or other rights with respect to the Debtor's assets or agreements; and
- (d) section 365(e) of the Bankruptcy Code shall apply with respect to the executory contracts and unexpired leases of the Debtors within the jurisdiction of the United States.

Nothing in the foregoing shall stay the exercise of rights that are not subject to stay by virtue of the terms of sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 362(o) and 1519(f) of the Bankruptcy Code.

2. A hearing will be held before this Court on **August 28, 2017 at 3:00 p.m.** to consider whether to grant a preliminary injunction that provides relief that is the same as or similar to the relief set forth in paragraph 1 pending the entry of an order ruling upon the Petition for recognition. Any written objection to the entry of such a preliminary injunction must be filed with the Court and served upon the Foreign Representatives' counsel so as to be received no later than 4:00 p.m. (prevailing New York time) on August 25, 2017. Objections are not required to be in writing, and oral objections may be made at the August 28 hearing.

3. Under Rule 7065, the security provisions of Rule 65(c) are waived.

4. The banks and financial institutions with which the Debtor maintains bank accounts are authorized to continue to service and administer the Debtor's bank accounts upon instructions by the Foreign Representatives to the extent consistent with the requirements and restrictions imposed under German law as a result of the pending proceedings in Germany.

5. This Order, together with the application for entry of this Order and for entry of a preliminary injunction, shall be served no later than August 19, 2017 on: (a) the United States

Trustee – Region 2; (b) the Federal Aviation Administration; (c) the Federal Transit Administration; (d) all parties to litigation currently pending in the United States in which the Debtor is a party; (e) the United States Department of Justice; (f) all airport authorities at which the Debtor has operations; (g) all known U.S. creditors; (h) all other parties against whom the Debtor is seeking preliminary relief pursuant to Section 1519 of the Bankruptcy Code; and (i) all parties that file notices of appearance in the Chapter 15 Case in accordance with Bankruptcy Rule 2002. Service may be combined with service of notice of the Recognition Hearing pursuant to a separate Order being entered this same day.

6. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes.

7. This Order shall be immediately effective upon its entry and shall not be subject to any stay in its effectiveness.

8. This relief is without prejudice to any party's ability to request that the hearing on Debtor's requested preliminary injunction take place before August 28, 2017.

9. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief and any request by an entity for relief from the provisions of this Order.

Dated: New York, New York
August 18, 2017 at 6:40 p.m.

/s/ Michael E. Wiles
Honorable Michael E. Wiles
United States Bankruptcy Judge