



AlaFile E-Notice

01-CV-2016-904241.00

Judge: CAROLE C. SMITHERMAN

To: NESMITH KIP ALLEN
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

AAL USA, INC. V. PAUL DAIGLE ET AL
01-CV-2016-904241.00

The following matter was FILED on 12/22/2016 10:46:43 AM

C001 AAL USA, INC.
MOTION FOR PRELIMINARY INJUNCTION
[Filer: CHOY MICHAEL KUO KUANG]

Notice Date: 12/22/2016 10:46:43 AM

ANNE-MARIE ADAMS
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
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BIRMINGHAM, AL, 35203

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01-CV-2016-904241.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

STATE OF ALABAMA

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Unified Judicial System

01-JEFFERSON

 District Court
 Circuit Court

CV2

CIVIL MOTION COVER SHEET

AAL USA, INC. V. PAUL DAIGLE ET AL

Name of Filing Party: C001 - AAL USA, INC.

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

Michael Kuo Kuang Choy
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Attorney Bar No.: CHO001

 Oral Arguments Requested
TYPE OF MOTION**Motions Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other

pursuant to Rule

(Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees)

Date:

12/22/2016 10:45:00 AM

Signature of Attorney or Party
/s/ Michael Kuo Kuang Choy

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

AAL USA, INC.)
)
Plaintiff,)
)
v.)
)
BLACK HALL, LLC; CORVIS ARROW, LLC;)
COLD HARBOR CERTIFICATIONS, INC.;)
HINDSIGHT COFFEE, LLC; PAUL DAIGLE;)
KEITH WOOLFORD; IBERIABANK)
CORPORATION; IBERIABANK;)
SERVISFIRST BANK; and FICTITIOUS)
DEFENDANTS A-N.)
)
Defendants.)
)

Case No. CV 2016-904241

**AAL USA, INC.'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
REQUIRING DEFENDANTS TO CEASE USING THE JET**

AAL USA, INC. ("Plaintiff" or "AAL") moves the Court to enter a temporary restraining order ("TRO") and, upon expiration of the TRO, preliminary injunction against Paul Daigle ("Daigle"), Keith Woolford ("Woolford"), Corvis Arrow, LLC ("Corvis Arrow"), and Cold Harbor Certifications, Inc. ("Cold Harbor") (collectively "Respondents") prohibiting them, and anyone working in concert with them, from moving, flying, leasing, selling, transferring, or otherwise using Cessna 525 FAA Registration Number N294CW (the "Jet"). AAL USA relies on its Verified Complaint, as amended, and the exhibits to this motion, and states the following:

INTRODUCTION

Daigle and Woolford, using two companies that they own and control, used over \$1 million of AAL's money to buy a Cessna Citation Jet for their own uses. They, then the CEO and CFO of AAL, entered into a purchase agreement for the Jet in AAL's name

and then assigned the purchase agreement (and thus the Jet) to Corvis Arrow, an LLC whose sole member is Cold Harbor, a company owned by Daigle and Woolford. They still have the Jet today. The Jet was used by Daigle and Woolford for their private trips and vacations as well as their own personal business interests, and AAL USA covered all the cost associated with the operations, maintenance, and insurance of the Jet. To add insult to injury, the Respondents charged AAL for use of the Jet.

The Jet is just one part of Daigle's and Woolford's scheme to drain assets from AAL for their own personal use. AAL, as a part of the investigation in which it learned of the Respondents' fraudulent self-dealing scheme involving the Jet, also learned that the Respondents misappropriated AAL's money to buy houses, misappropriated AAL's money to give themselves and their co-conspirators unauthorized bonuses, and ultimately executed a takeover scheme designed to abscond with all of AAL's assets.

Unfortunately, there is great danger that the Respondents will continue to dissipate and secret AAL's assets, including the Jet. Given the Respondents' past fraudulent behavior, there is a severe and imminent danger that the Respondents will transfer, damage, or otherwise misappropriate the Jet if they are allowed to continue to use this fraudulently-obtained million-dollar asset. For that reason, AAL moves the Court to ground the Jet and to prevent the Respondents from using it in any way.

BACKGROUND

1. In January 2016, Daigle and Woolford used AAL's money to buy the Jet. *See* Closing Statement attached as Ex. 1; *see also* Verified Complaint, as amended, p. 5. The cost of the Jet was \$1,050,635.00. *Id.*

2. Daigle and Woolford initially entered into an Aircraft Purchase and Sale Agreement in the name of AAL with Pride Air, Inc. *See* Assignment of Aircraft Purchase

and Sale Agreement, attached as Ex. 2. They then caused AAL to assign the Purchase Agreement to Corvis Arrow. *Id.* Amazingly, **Woolford signed the Assignment for AAL (as CFO), and Daigle (the CEO of AAL) signed for Corvis Arrow as its manager.** *Id.*

3. Contemporaneously, Daigle and Woolford filed a registration of the Jet called a "Statement in Support of Registration of a United States Civil Aircraft in the Name of a Limited Liability Company." See Registration Materials, attached as Ex. 3. In the Registration Materials, Daigle and Woolford stated that Corvis Arrow is a Delaware LLC whose sole member is Cold Harbor. *Id.* Daigle and Woolford further stated that they were the managers of Corvis Arrow. *Id.* In an addendum to the registration statement, Daigle and Woolford stated:

Corvis Arrow, LLC, a Delaware limited liability company, **is a wholly-owned subsidiary of Cold Harbor Certifications**, Inc., a New Hampshire corporation. **All of the issued and outstanding stock of Cold Harbor Certifications**, Inc. **is owned by Keith Woolford and Paul Daigle**, both of whom are U.S. citizens. **Keith Woolford and Paul Daigle are the only Managers of Corvis Arrow**, LLC, **and the only officers and members of the Board of Directors of Cold Harbor Certifications**, Inc.

Id. (emphasis added).

4. The Jet was used by Daigle and Woolford for their private trips and vacations as well as their own personal business interests, and AAL USA covered all the cost associated with the operations, maintenance, and insurance of the Jet. See Verified Complaint, as amended, p. 5.

5. Daigle misrepresented to AAL's owner Oleg Sirbu ("Sirbu") that the origin of the Jet, which Daigle and Woolford bought using AAL USA and transferred to their own sham company, belonged to a contractor customer that hired AAL for modification

work. *See* Verified Complaint, as amended, pp. 19-20. Daigle misrepresented that the customer would allow AAL to use the plane while being modified as long as it would pay for the use. *Id.* Daigle and Woolford also suppressed that payments were being made to a company that they owned (Corvis Arrow), not a customer. *Id.* Daigle suppressed that he owned the airplane through Corvis Arrow. *Id.* Based on these misrepresentations, AAL USA paid hundreds of thousands of dollars to Corvis Arrow. *Id.*

ARGUMENT

For the court to enter a TRO, a plaintiff must show: "(1) that without the [TRO] the plaintiff would suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the defendant by the [TRO] would not unreasonably outweigh the benefit accruing to the plaintiff." *Lott v. E. Shore Christian Ctr.*, 908 So. 2d 922, 927 (Ala. 2005). The requirements for a preliminary injunction are the same. *Water Works & Sewer Bd. of the City of Birmingham v. Inland Lake Investments, LLC*, 31 So. 3d 686, 690 (Ala. 2009). Here, AAL is entitled to a TRO and a preliminary injunction because the Respondents have already irreparably injured AAL and will continue to do so absent entry of an injunction.

While it does not appear that any Alabama court has issued a published opinion concerning an injunctive order limiting use of an airplane, courts in other jurisdictions have recognized that doing so is both justified and necessary under the circumstances. *See, e.g., T & T Air Charter, Inc. v. Duncan Aircraft Sales*, 566 So. 2d 361, 362 (Fla. Dist. Ct. App. 1990) ("After appellant refused to release the airplane, appellee filed a complaint seeking replevin and an injunction. The trial judge enjoined any transfer of the airplane and set a \$2,000 injunction bond."); *Westside Airways, Inc. v. JR Aircraft*

Corp., 694 S.W.2d 100, 103 (Tex. App. 1985) (discussing airplane and noting that "[w]e do not believe that the possibility of an ineffective but available remedy is the same as an adequate remedy at law.").

An injunction is particularly justified here because the Respondents used artifice and fraud to obtain the Jet, even going so far as to use AAL's money to buy the Jet. If they are allowed to continue to use the Jet, there is a substantial risk that (1) the Jet will be flown out of the jurisdiction of the Court and left in another jurisdiction; (2) the Respondents will become insolvent, leaving AAL with no way to collect and recoup its million-dollar loss on the Jet; (3) the Jet will be damaged; (4) a passenger on the Jet will be injured and seek to recover from AAL; (5) the Jet will be sold, leased, or transferred; and/or (6) the Respondents will use the Jet to conduct illegal activities or activities designed to further siphon off or hide AAL's assets. The Court should not permit this risk.

A. Absent entry of a TRO and preliminary injunction, AAL would suffer immediate and irreparable injury.

"Irreparable injury' is an injury that is not redressable in a court of law through an award of money damages." *Perley for Benefit of Tapscan, Inc. v. Tapscan, Inc.*, 646 So. 2d 585, 587 (Ala. 1994). There are several different forms of irreparable injury that are risked if the Respondents are allowed to continue to use the Jet.

First, the Respondents have demonstrated that they are a danger to dissipate and hide AAL's assets, and for that reason allowing them to continue to use the Jet risks imminent irreparable injury. The Respondents already made millions of dollars in unauthorized transfers to accounts they control, misappropriated AAL's funds to buy themselves houses, and misappropriated AAL's funds in a number of other ways. *See*,

e.g., First Amended Verified Complaint, § I (p. 5) & ¶¶ 36-37, 61, 63. Given that risk, and given the value of the Jet, there is a danger that the Respondents, if allowed to continue to use the Jet, will transfer it out of the reach of the Court and AAL and/or will use the Jet to continue their attack on AAL. This demonstrates the danger or irreparable injury.

The Third Circuit held:

That irreparable harm would occur absent an asset freeze is even more apparent where the very assets subject to a potential judgment will likely be dissipated without entry of the order. Thus, consistent with *Hoxworth*, we hold that a court may find that a party seeking an asset freeze to preserve a money judgment may show irreparable injury by showing that the freeze is necessary to prevent the consumption, dissipation or fraudulent conveyance of the assets that the party pursuing the asset freeze seeks to recover in the underlying litigation.

Elliott v. Kiesewetter, 98 F.3d 47, 58 (3d Cir. 1996); *see also Micro Signal Research, Inc. v. Otus*, 417 F.3d 28, 31 (1st Cir. 2005) ("The defendants also deny that irreparable injury has been established. The possibility that a defendant may not have assets on the day of judgment may not automatically make out a showing of irreparable injury...but the story is quite different where there is a strong indication that the defendant may dissipate or conceal assets....Otus's probable fraud, his prevarications about repayment, and the switch of the business from Realm to AMA are ample indication of the need for relief against Otus."); *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 881 (9th Cir. 2003) ("Haya also claims that plaintiffs did not bear their burden of establishing the possibility of irreparable injury or that the balance of hardships tipped in their favor. The district court, however, expressly found that it was not only possible, but probable that Haya would engage in misconduct to conceal or dissipate assets."). Given the Respondents' history of fraudulent acts, grounding the Jet is necessary to prevent irreparable injury.

Second, there is the danger that the Respondents will become insolvent, leaving AAL without any actual remedy. In such cases, preservation of the property at issue in the litigation is justified to prevent irreparable harm. *See, e.g., USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 97 (6th Cir. 1982) ("The power of the district court to preserve a fund or property which may be the subject of a final decree is well established."); *Textron Fin. Corp. v. Unique Marine, Inc.*, No. 08-10082-CIV-MOORE, 2008 WL 4716965, at *8 (S.D. Fla. Oct. 22, 2008) ("There is a significant risk that Unique Marine will continue to liquidate the assets that constitute the Collateral owed to Textron and, for all practical purposes, frustrate Textron's rights to collect the Collateral under the terms of the Credit Agreement."). Indeed, the Fifth Circuit held that freezing assets is proper where there is a danger that the assets are in danger of being dissipated or destroyed:

...case law provides several examples of courts properly freezing assets prior to a final determination on the merits. When dissipation of the funds to numerous recipients would effectively have destroyed the pending cause of action in *Foltz v. U.S. News & World Report*, 760 F.2d 1300 (D.C.Cir.1985), plaintiffs suing an employee benefits plan successfully enjoined the plan from paying out its assets to numerous possible recipients. The court found that if they had to chase the assets disbursed to these people, the plaintiffs might never recover. The Eighth Circuit addressed a similar problem in *Lynch Corp. v. Omaha National Bank*, 666 F.2d 1208 (1981): Should Lynch succeed in [its] litigation, it would be forced to pursue the numerous transferees who received escrow money from ONB. Lynch's injury is irreparable and there is no adequate remedy at law because a multiplicity of suits would be required to gain relief... [I]rreparable harm is established when the distribution of assets of a liquidated company before an adjudication of rescission claims would defeat and delay satisfaction of those claims if they were ultimately sustained. *Id.* at 1212 (citations and footnote omitted). Similarly, once the defendants in this case are allowed to dissipate their assets, FSLIC may lose its opportunity to recover the alleged improper or illegal payments to the defendants in the event of final judgment.

Fed. Sav. & Loan Ins. Corp. v. Dixon, 835 F.2d 554, 561 (5th Cir. 1987); *see also Deckert v. Indep. Shares Corp.*, 311 U.S. 282, 290 (1940) (finding trial court's grant of TRO proper); *Weinstein v. Aisenberg*, 758 So. 2d 705, 710 (Fla. Dist. Ct. App.), *dismissed*, 767 So. 2d 453 (Fla. 2000) ("As to the irreparable harm/inadequate remedy aspects of the showing necessary for a preliminary injunction, Professor Wasserman concludes that "in cases in which the plaintiff sues to collect money damages and can demonstrate that the defendant is about to dissipate her assets to frustrate the potential money judgment," the plaintiff's harm should be considered irreparable."). The danger that AAL could be left with no way to actually recover from the Respondents for its loss of the Jet makes the threatened injury irreparable.

Further, the Respondents' continued use of the Jet in and of itself constitutes a danger or irreparable harm. If the Jet is damaged, destroyed, mortgaged, or assigned to a third-party, AAL could be irreparably damaged. Alabama courts have recognized, in certain contexts, that a rare or unique asset should be preserved during litigation. *See, e.g., Ex parte Chandler*, 477 So. 2d 360, 362 (Ala. 1985) ("Chandler lacks an adequate remedy at law due to the unique nature of the collateral and would suffer an irreparable injury from a foreclosure sale"). Other jurisdictions have similarly found that irreparable injury could be found where there was danger to a unique or rare asset. *See, e.g., In re Cong. 819, LLC*, No. 12-00300, 2013 WL 1333465, at *9 (Bankr. D.D.C. Mar. 29, 2013) ("The court recognizes that real property is a unique asset that cannot be replaced, and the unique character of real property is a factor courts consider in a preliminary injunction analysis under nonbankruptcy law when evaluating the risk of irreparable harm to a debtor who seeks to halt a foreclosure sale."). The Jet is a rare and unique asset which, like a piece of real property, should be preserved by court order.

Finally, there is a danger that the Jet could be used to conduct illegal or improper activities such as transporting marijuana or other drugs or hiding AAL's assets. There is substantial evidence in the record already that Daigle and Woolford have hidden and misappropriated assets - the purchase of the Jet itself is an example - and the Respondents should not be left with the opportunity to continue their bad deeds at the expense of AAL and using the very Jet AAL paid to purchase.

For all of these reasons, there is substantial evidence of imminent irreparable injury, and AAL likewise would have no adequate remedy at law.

B. AAL has no adequate remedy at law.

"An injunction is to be issued only to prevent substantial injury where no adequate remedy at law is available." *United Servs. Auto. Ass'n v. Allen*, 519 So. 2d 506, 508 (Ala. 1988). Here, there is no adequate remedy at law for all the same reasons that there is irreparable injury. The Jet could be flown out of the jurisdiction of the Court, or perhaps even the country, and left outside the reach of the Court. The Respondents could become insolvent as their breaches of fiduciary duty are revealed, leaving AAL with no way to collect and recoup its million-dollar loss on the Jet. The Jet could be damaged, sold, leased, mortgaged, or transferred. Finally, the Respondents could use the Jet to conduct illegal activities or activities designed to further siphon off or hide AAL's assets. AAL would lack an adequate remedy at law to compensate it for any of these dangers.

C. AAL has at least a reasonable chance of success on the merits of its case.

Alabama's requirement that a movant show only a "reasonable chance of success" is a low standard that is easily met. *Lott*, 908 So. 2d at 927. It does not require a

"strong" likelihood or even "reasonable likelihood." *See Joseph v. Sasafrasnet, LLC*, 689 F.3d 683, 689 (7th Cir. 2012); *see also Marini v. Atl. Richfield Co.*, 475 F. Supp. 142, 144 (D.N.J. 1979) ("Obviously this criteria differs from and is less stringent than the more familiar showing required by Fed.R.Civ.P. 65(b).").

Here, there is solid evidence supporting AAL's claims. There is hard, documented evidence that the Respondents used AAL's money to buy themselves the Jet and transferred it into companies that they owned and controlled. Further, there is other evidence that AAL will succeed on its claims against the Respondents for breach of fiduciary duty, conversion, fraud, suppression, etc. based on the evidence that Daigle and Woolford purchased and misappropriated the Jet as part of an overall scheme to buy themselves houses, give themselves hundreds of thousands of dollars in improper bonuses, and transfer millions of dollars without justification from AAL's accounts to Respondents' accounts. *See Verified Complaint*, as amended § I & ¶¶ 15-53 and exhibits thereto; *see also Exs. 1-3*.

Especially in light of the fact that Alabama law only requires a "reasonable chance of success," this element is easily met.

D. The balance of hardships favors entry of a TRO and a preliminary injunction.

The hardship imposed on the Respondents by an injunction would not unreasonably outweigh the benefit accruing to AAL. Under Alabama law, "the trial court, in its discretion and given the facts and circumstances of each case, may consider and weigh the relative hardships that each party may suffer against the benefits that may flow from the grant of the preliminary injunction." *Martin v. First Fed. Sav. & Loan Ass'n of Andalusia*, 559 So. 2d 1075, 1079 (Ala. 1990). Where the movant would

lose substantially without the injunction, and there is insubstantial evidence of harm to the non-movant, an injunction should issue. *Triple J Cattle, Inc. v. Chambers*, 551 So. 2d 280, 283 (Ala. 1989) (affirming the trial court).

Here, the hardship on the Respondents would not unreasonably outweigh the benefits accruing to AAL. AAL risks the loss, destruction, or other dissipation of a million-dollar asset it might never recover. In contrast, the Respondents would simply need to stop using a Jet which they were never entitled to in the first place. They are still permitted to fly commercial. Given the Respondents' fraudulent actions that led to this point, any hardship would not be unreasonable.

REQUESTED RELIEF

WHEREFORE, PREMISES CONSIDERED. AAL USA respectfully requests that the Court enter a temporary restraining order and preliminary injunction prohibiting the Respondents and anyone working in concert with them, from moving, flying, leasing, selling, transferring, or otherwise using Cessna 525 FAA Registration Number N294CW.

Dated: December 22, 2016

s/ Michael K. K. Choy _____

Michael K. K. Choy (CH0001)

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CERTIFICATE OF SERVICE

I do hereby certify on December 22, 2016, that a copy of the above and foregoing has been served upon the following via electronic filing or U.S. Mail:

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