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10  
11 **IN THE UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

13 **IN RE:** )  
14 ZETTA JET USA, INC., a California )  
corporation )  
15 Debtor. )

Lead Case No.: 2:17-bk-21386-SK  
Chapter 7  
Jointly Administered With:  
Case No.: 2:17-bk-21387-SK

16 \_\_\_\_\_ )  
17 **IN RE:** )  
18 ZETTA JET PTE Ltd., a Singaporean )  
corporation )  
19 Debtor. )

Adv. Proc. No. 2:19-ap-01147-SK

20 \_\_\_\_\_ )  
21 JONATHAN D. KING, solely in his capacity )  
as Chapter 7 Trustee of Zetta Jet USA, Inc. )  
22 and Zetta Jet PTE, Ltd., )  
23 Plaintiff, )  
v. )

**BOMBARDIER AEROSPACE  
CORPORATION'S RESPONSE TO  
TRUSTEE'S MOTION TO AMEND  
ADVERSARY COMPLAINT**

Hearing:  
Date: June 30, 2021  
Time: 9:00 a.m. (PST)  
Place: Courtroom 1575  
255 East Temple Street  
Los Angeles, CA 90012  
Hon. Sandra R. Klein

24 CAVIC AVIATION LEASING (IRELAND) )  
25 22 CO. DESIGNATED ACTIVITY )  
COMPANY AND BOMBARDIER )  
26 AEROSPACE CORPORATION, )  
27 Defendants. )

28

**RESPONSE**

Bombardier Aerospace Corporation (“BAC”) (BAC, collectively with Bombardier Inc. and its affiliated entities are referred to as “Bombardier”) hereby submits this Response to the Trustee’s Motion for Leave to Amend Adversary Complaint (the “Proposed Amended Complaint”) (the “Motion,” Dkt. No. 242) filed by the chapter 7 trustee (the “Trustee”) of Zetta Jet USA, Inc. and Zetta Jet PTE, Ltd. (collectively, the “Debtors”) and the Plaintiff in the above-captioned adversary proceeding (the “CAVIC Adversary Proceeding”).<sup>1</sup>

As the Court is aware, the CAVIC Adversary Proceeding (originally in a 34-page complaint) was generally directed to the purchase, financing, and leasing of four Bombardier Global 6000 Aircraft, referred to by the Trustee as Planes 2 through 5. Dkt. No. 157-1 at 1. Although the majority of claims – focused on the recharacterization of leases as structured financings – were asserted against CAVIC, the Trustee asserted two causes of action against BAC: Count II (Declaratory Judgment that the (Plane 5) Aircraft Purchase Agreement (“APA”) Is Terminated) and Count VI (the Refund (of \$30M) Is Property of the Estate), the objective of which was to seek recovery for pre-delivery payments (“PDPs”) of \$30 million for Plane 5, an undelivered aircraft.

On October 7, 2020, the Court issued its Memorandum and Decision on BAC’s Motion to Dismiss Counts II and VI of the Trustee’s Adversary Complaint (Dkt. Nos. 156, 167, 171) and its Memorandum and Decision on CAVIC’s Motion to Dismiss Counts I, III, IV, V, VI and VII of the Trustee’s Adversary Complaint (Dkt. Nos. 157, 168, 170) (collectively, the “10/7/20 Orders”). In the 10/7/20 Orders, the Court granted both motions and dismissed the Trustee’s Adversary Complaint in its entirety. Specifically, the Court dismissed Count I, concluding that the Trustee could not recharacterize the leases as disguised financings. Dkt. No. 157 at 14-15. The Court further dismissed Counts III-VI “[b]ecause the Complaint does not sufficiently plead that the APA Assignment was for security rather than an absolute assignment, it is not avoidable as an unperfected security interest under

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<sup>1</sup> All capitalized terms are as defined in the Motion, except as otherwise noted. All emphasis has been added, unless otherwise noted. All references to the docket in this Adversary Proceeding are cited herein as “Dkt. No. \_\_\_.”

1 § 544, and the \$30 Million PDP is not property of the estate.” Dkt. No. 157-1 at 52. Accordingly, with  
2 respect to the claims against BAC, the Court held that “[t]o the extent that Count II is derivative of  
3 Counts III, IV, V, or VI, which the Court dismissed for the reasons stated in the memorandum of  
4 decision regarding the CAVIC MTD, Count II must also be dismissed.” Dkt. No. 156-1 at 7. Similarly,  
5 the Court held that “Counts III-VI are inextricably intertwined, and because Counts III-V against  
6 CAVIC are dismissed, Count VI against Bombardier must also be dismissed.” *Id.* at 9. The Court,  
7 however, granted the Trustee leave to amend.<sup>2</sup>

8 Now, the Trustee has filed a 113-page Proposed Amended Complaint, with 2,436-pages of  
9 exhibits, and while not changing the original counts against BAC, he has now “imported” all of the  
10 allegations in the Jetcraft Adversary Proceeding (Dkt. No. 199) into the CAVIC Adversary  
11 Proceeding. Thus, BAC responds as follows:

12 CAVIC has opposed the Trustee’s Motion for Leave to Amend. Dkt. No. 264. Those  
13 objections are valid as they raise serious concerns regarding, *inter alia*, time-barred claims. Thus,  
14 leave to amend should be denied vis-à-vis CAVIC, and because any proposed amendment to the  
15 allegations against BAC remain derivative and dependent on the assertion of successful amendments  
16 against CAVIC, amendments related to BAC also should be dismissed as futile. BAC expressly  
17 incorporates and joins in the arguments set forth by CAVIC in its Opposition Brief. *Id.*

18 To the extent the Court allows amendment, BAC expressly reserves the right to move to  
19 dismiss the Proposed Amended Complaint pursuant to Rule 12(b)(6) as it wholly fails to address the  
20 legal deficiencies found in the original Complaint. The agreements cannot be recharacterized as a  
21 matter of law, and in the absence of that relief, the asserted claims against BAC will (again) fail.  
22  
23  
24  
25

26 <sup>2</sup> Before dismissing the original complaint in the CAVIC Proceeding, the Bankruptcy Court also  
27 denied the Trustee’s request for prejudgment security from Bombardier finding, among other things,  
28 that the Trustee had failed to prove a likelihood of success on the merits. Dkt. No. 131.

1           **WHEREFORE**, for the reasons set forth above, Bombardier respectfully requests that the  
2 Court deny the Trustee’s Motion for Leave to Amend Adversary Complaint.

3  
4 Dated: May 26, 2021

Respectfully submitted,

5  
6           **PILLSBURY WINTHROP SHAW  
PITTMAN LLP**

7           By: /s/ Matthew S. Walker  
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20           *Attorneys for Bombardier Aerospace  
21 Corporation*

**PROOF OF SERVICE OF DOCUMENT**  
**Adversary Procedure No. 2:19-ap-01147-SK**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **501 West Broadway, Suite 1100, San Diego, California 92101.**

A true and correct copy of the foregoing document entitled (*specify*): **BOMBARDIER AEROSPACE CORPORATION'S RESPONSE TO TRUSTEE'S MOTION TO AMEND ADVERSARY COMPLAINT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On May 26, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Kristina S Azlin kristina.azlin@hklaw.com, ericka.mendez@hklaw.com
- Robbin L. Itkin ritkin@sklarkirsh.com, cbullock@sklarkirsh.com
- John K Lyons john-lyons-7790@ecf.pacerpro.com
- David M Riley david.riley@morganlewis.com, davidriley@gmail.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Matthew S Walker matthew.walker@pillsburylaw.com,  
renee.evans@pillsburylaw.com, docket@pillsburylaw.com
- Alan J Watson alan.watson@hklaw.com, rosanna.perez@hklaw.com

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) May 26, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) May 26, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 26, 2021  
Date

Renee M. Evans  
Printed Name

/s/ Renee M. Evans  
Signature