Docket #1487 Date Filed: 9/20/2024

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: WESCO AIRCRAFT HOLDINGS INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 23-90611 (MI) (Jointly Administered)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Plaintiffs, v. SSD INVESTMENTS LTD, *et al.*, Defendants.	Adv. Pro. No. 23-03091 (MI)
SSD INVESTMENTS, LTD., *et al.*, Counterclaim Plaintiffs, v. WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Counterclaim Defendants.	
LANGUR MAIZE, L.L.C., Crossclaim Plaintiff, v. PLATINUM EQUITY ADVISORS, LLC, *et al.*, Crossclaim Defendants.	

[1] The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at http://www.kccllc.net/Incora/. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137

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LANGUR MAIZE, L.L.C., Third-Party Plaintiff, v. UNNAMED PLATINUM FUNDS c/o PLATINUM EQUITY ADVISORS, LLC, *et al.*, Third-Party Defendants.
LANGUR MAIZE, L.L.C., Counterclaim Plaintiff, v. WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Counterclaim Defendants.

PLATINUM, CARLYLE, AND SENATOR'S REPLY IN SUPPORT OF THEIR SUPPLEMENTAL POST-TRIAL BRIEF AND OPPOSITION TO LANGUR MAIZE'S MOTION TO STRIKE

TABLE OF CONENTS

Langur Maize leads its Response not by citing evidence supporting its claims, but with a complaint about the purported unfairness of having to prove them at all, and a vague promise to unveil its evidence at closing argument. Langur Maize had 30 trial days to adduce evidence necessary to carry its burden. It failed to do so and judgment must be entered against it.

I. Langur Maize's Motion to Strike Should Be Denied

Langur Maize's motion to strike portions of the Participating Unsecured Noteholders' Supplemental Post-Trial Brief, ECF No. 1480 ("Suppl. Br."), should be denied. None of the Participating Unsecured Noteholders' arguments is improper in light of the Court's Phase One Ruling, given that the Court declared that the additional 2026 Notes did not issue and made factual findings that are directly relevant to Langur Maize's remaining claims—which the Supplemental Brief analyzes at length.[2] And, the Phase One Ruling held open the question of whether Langur Maize was entitled to any remedy because of a breach of Section 3.02—a question to which the entire Supplemental Brief is directed. The motion should be denied.

II. Langur Maize Lacks Standing

Langur Maize still cannot find a case in which a court has permitted a party to bring the types of claims it seeks to bring here, and fails to grapple with the absurdity of inheriting—and taking from unknown predecessors—tort claims against third parties in direct contravention of New York law. Yet Langur Maize nevertheless persists in claiming that it needs no written assignment to pursue such claims and to divest prior unknown holders of them.

To do so, Langur Maize misreads the Indenture, the Global Note, and the Preliminary Offering Memorandum (POM). It contends that because these documents identify DTC as the

[2] Furthermore, before the August 13 status conference with the Court, Platinum's counsel conferred with Langur Maize's counsel and disclosed the arguments it intended to make. Rather than lodge any procedural objections at that time or at the status conference, Langur Maize tactically saved them for its Response, ECF No. 1484 ("Resp.").

"Holder" of the Global Note with "rights under the Indenture," DTC is vested with noteholders' third-party tort claims that are not "rights under the Indenture."[3] Nothing about the purposes of the intermediated holding system should yield such a conclusion. The system was created so that the DTC could "hold" securities without disrupting the ownership rights of entitlement holders,[4] and Langur Maize cites zero accompanying history to support a *sub silentio* change to the law governing assignment of tort claims.[5] If the Indenture were intended to effectuate such a change, it surely would have said more than simply that DTC is a "Holder" with "rights under the Indenture"—which, on its face, refers to rights under the contract, not torts.[6] The Court was correct the first time when it concluded that the DTC had no claims to assign.

The other language Langur Maize points to likewise does not move the needle. For example, the fact that the DTC Rules describe the DTC as holding "the entire interest" in a security when it has been purchased simply begs the question of what that interest is, and whether it would include a right of redress for third-party torts. It is not consistent with a plain language reading of the phrase "interest in" a thing, like a security, to presume that the interest extends to ownership of other assets, like tort claims. Proof that the Participating Unsecured Noteholders are correct on this point can be found in the very case Langur Maize cites in support of its argument. In *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, the Second Circuit certified to the New York Court of Appeals the question whether common law fraud claims transferred to a successor noteholder

[3] Langur Maize also continues to insist that the no-action clause in Section 6.06, which sets forth the conditions precedent to pursuing remedies for default, somehow affirmatively confers to DTC ownership of all entitlement holders' third-party tort claims. It does not. *See* Suppl. Br. at 4–5.

[4] *See* DTCC, *About DTCC: The Depository Trust Company (DTC)*, https://www.dtcc.com/about/businesses-and-subsidiaries/dtc (last accessed Sept. 19, 2024); The Depository Trust Company, *Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures* (2023), https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf.

[5] Indeed, in some states, prejudgment tort claims may not be assigned at all. Langur Maize's argument would result in strange conflicts with individual state tort laws. *See, e.g.*, *Cherilus v. Fed. Express*, 435 N.J. Super. 172, 178 (App. Div. 2014); *In re: Griffin Servs., Inc.*, 2005 WL 1287920, at *8 (Bankr. M.D.N.C. Mar. 2, 2005).

[6] *See, e.g.*, *Diverse Partners, LP v. AgriBank, FCB*, 2017 WL 4119649, at *5 (S.D.N.Y. 2017).

who claimed to have received tort claims from its predecessor who "was unable, and could not have intended, to retain any interest in the notes, including a right to sue." 772 F.3d 111, 117 (2d Cir. 2014). New York's highest court answered no: absent an express assignment, finding that transfer of such claims would be "contrary to the law in New York." *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 25 N.Y.3d 543, 551 (2015).

Langur Maize concludes by arguing that requiring a purchaser to obtain an express assignment of a seller's third-party tort claims is too "disruptive" to be the law. This is *ipse dixit* based on the premise that someone, somewhere, has expressed a policy preference for automatic assignment of tort claims attendant to securities. No one has. Indeed, the only policy New York law has ever expressed is to facilitate the transfer of *contractual* rights that New York considers part of the security, *see* N.Y. Gen. Obl. L. § 13-107. And it cannot be "disruptive" to foreclose a claim that is itself unprecedented. Langur Maize's theory is the one that would upset the rights and expectations of buyers and sellers of notes in the bond markets and create oddities for tort law by giving claims to persons who were strangers to all manner of underlying relationships.

III. Langur Maize's Tortious Interference Claim Fails

The record is devoid of evidence that the Participating Unsecured Noteholders took any action to induce a breach by WSFS—since the evidence shows that the trustee acted at the direction of the Debtors, not any noteholders. *See* Suppl. Br. at 9–10. Langur Maize does not cite any; it points to a five-page span of its post-trial brief, and promises to reveal evidence at closing argument. *See* Resp. at 7 & n.18. The material Langur Maize references from its post-trial brief concerns the respective roles of the noteholders and the Debtors in negotiating the Unsecured Exchange.[7] Even if that could be viewed as "inducing" behavior, it cannot be inducement of a

[7] *See* Langur Maize Post-Trial Brief, ECF No. 1395, at 13–17.

breach by WSFS, because the transaction was negotiated with ***the Debtors, not WSFS***.

Langur Maize contends that the economic interest defense does not apply because the Participating Unsecured Noteholders "have no economic interest in WSFS." But the alleged tortfeasor need only have an economic interest in the breaching party's ***business***—and courts have found that interest in an asset held by a trustee satisfies that test. *See Bank of N.Y. Mellon v. Cart 1, Ltd.*, 2021 WL 2358695 (S.D.N.Y. 2021).[8] The policy underlying the economic interest defense—*i.e.*, that a party is privileged when it acts to protect its economic position, *see Felsen v. Sol Cafe Mfg. Corp.*, 24 N.Y.2d 682, 687 (1969)—applies fully in such a circumstance, even if the Court were to accept Langur Maize's argument that WSFS was the breaching party. Artful pleading cannot evade black letter New York law.

IV. Langur Maize Has Not Proven Causation

The record also lacks any evidence of causation as to either of Langur Maize's two proffered theories of harm. Langur Maize contends that the non-*pro rata* uptier caused "manifest" harm by leaving certain 2027 Noteholders with unsecured notes that were less valuable because they now sat behind new debt. But the Indenture expressly permits non-*pro rata* uptiers, and Langur Maize adduced no evidence to show that even a *pro rata* transaction would not have resulted in exactly the same harm Langur Maize claims its unknown predecessors suffered here.

Likewise, as for its theory that its predecessors were wrongly deprived of 1.25L Notes, Langur Maize still cannot prove they would have participated in any exchange if offered the opportunity. Indeed, it is telling that ***none*** of those nonparticipating noteholders, *i.e.*, ***none*** of Langur Maize's potential predecessors, ever objected to the Unsecured Exchange. Langur Maize has no idea who its predecessors were and can never address any of the numerous causation

[8] Langur Maize argues that *Cart I* involved a "corpus of funds" instead of a security, but that is a distinction without a difference—in either case, the trustee held an asset for the benefit of the party invoking the economic interest defense.

questions attendant to an individual tort claim.

Langur Maize's argument that the causation defects in its claims are unfair "counterfactuals" is simply an effort to sidestep the consequences of the Court's determination that the additional 2026 Notes did not issue. Langur Maize has not proven that a breach of the Unsecured Indenture caused it any damages, because it can only speculate that the parties would have agreed to an unsecured transaction in the absence of the additional 2026 Notes, given that the 2022 Transaction was negotiated as a single transaction. In light of that ruling, there is no longer any logic to the argument that a breach of the Unsecured Indenture "caused" Langur Maize's predecessor not to receive 1.25L Notes; Langur Maize has not shown that the fruits of the Unsecured Exchange would have been available to *anyone*.

V. Section 3.02 of the Unsecured Indenture Was Not Breached

Langur Maize does not disagree that the Court's Phase One ruling on Section 3.02 is directly contrary to the Summary Judgment Ruling, or that Defendants were prejudiced.[9] Instead it contends parol evidence cannot be considered because Section 3.02 is not ambiguous. But this Court has issued decisions with conflicting readings of Section 3.02's language, reflecting an ambiguity. *See Hoover v. HSBC Mortg. Corp. (USA)*, 9 F. Supp. 3d 223, 243 (N.D.N.Y. 2014). The POM—which the Court has found probative of the parties' expectations[10]—supports the conclusion that Section 3.02's *pro rata* requirement does not apply to purchases. And Langur Maize has no answer to the changes from the prior draft indenture that Defendants would have proffered had they known the applicability of Section 3.02 to purchases was a live issue at trial.

[9] Though Langur Maize contends that the Fifth Circuit has not held that notice is required before a *sua sponte* summary judgment reversal, the Fifth Circuit has twice applied the same notice and opportunity and substantial prejudice inquiry as in *Leddy v. Standard Drywall, Inc.*, 875 F.2d 383, 386 (2d Cir. 1989). *See F.D.I.C. v. Massingill*, 24 F.3d 768, 774 (5th Cir. 1994); *Streber v. Hunter*, 221 F.3d 701, 737 (5th Cir. 2000).

[10] ECF 1452 (Closing Argument) 156:3–160:4. Additionally, the Indenture refers to the POM many times, and the record reflects that holders relied on the POM to interpret their rights. *See* ECF No. 1119 (Yu) at 145:21–146:2; ECF 706-23 at 49–54.

Dated: September 20, 2024

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CERTIFICATE OF SERVICE

I certify that, on September 20, 2024, a true and correct copy of the foregoing document was served through the Court's Electronic Case Filing System of the United States Bankruptcy Court of the Southern District of Texas, which will send a notification of such filing to all counsel of record.

Date: September 20, 2024

/s/ Joseph G. Catalanotto
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