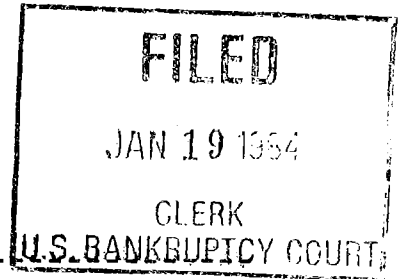


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ARCTIC AIR TRANSPORT  
OF MN, INC.

EF11-82-01113

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDER DISMISSING CASE

The United States of America, by Assistant United States Attorney Sheree L. Gowey, having filed a Motion to Dismiss or Convert the above captioned matter under 11 U.S.C. sec. 1112(b) (1982); and a hearing having been held; and the debtor-in-possession, Arctic Air of MN, Inc., appearing by its attorney, Peter F. Herrell of Jordan, Herrell & Thiel; and the United States appearing by its attorney; and Allstate Leasing Corporation, a creditor, appearing by its attorney, Timothy J. Adler of Adler and LaFave; and the Court having heard the testimony and the arguments of counsel, considered the submitted memorandum, statement and letter briefs, and reviewed the complete record and file, and being fully advised in the premises, FINDS:

1. That the debtor-in-possession, Arctic Air of MN, Inc. (Arctic), filed for relief under Chapter 11 of the Bankruptcy Code on June 25, 1982.

2. That, on September 24, 1982, Arctic requested a 90 day extension of the statutory period in which it had the exclusive right to file a plan.

3. That, on November 1, 1982, a 90 day extension was granted.

4. That, on April 27, 1983, more than 150 days after the 90 day extension had been granted, creditor IMI Partnership I moved for dismissal of Arctic's petition on the basis of Arctic's failure to file a plan.

5. That, on May 10, 1983, Arctic filed a Disclosure Statement and Plan.

6. That, on June 27, 1983, a hearing on said statement and plan was adjourned to allow Arctic to file an Amended Disclosure Statement.

7. That Arctic has filed no Amended Disclosure Statement.

8. That Arctic has filed no financial reports since August 15, 1983; and that the report filed on that date was for May, 1983.

9. That the statement filed in this matter <sup>by Arctic</sup> shows Federal

withholding tax arrearages (including interest and penalties) well in excess of \$130,000 as of December 3, 1983.

10. That approximately \$30,000 of said arrearages accrued prior to the filing of the bankruptcy petition.

11. That Arctic states that "the FICA and Federal withholding taxes. . . were used to finance the operations of the company."

12. That the Arctic statement suggests that Arctic incurs tax liability at a rate exceeding \$6,000 a month.

13. That Arctic has submitted a "Projected Operations" schedule (set out in the Appendix to this Opinion) which calls for payment of post-petition taxes at a rate of \$1,400 a week (approximately \$6,066 a month) in the winter and \$2,000 a week (approximately \$8,066 a month) during the rest of the year.

14. That said projected operations schedule provides for payment of \$325 a week (approximately \$1,408 a month) to "creditors" other than the IRS.

15. That the proposed plan, filed by Arctic in May of 1983, provides for payment of \$1,300 a month to Allstate Leasing and additional, unstated amounts to other creditors.

16. That the United States has filed a Motion to Dismiss or Convert the above captioned matter under 11 U.S.C. sec. 1112(b) (1982).

17. That unreasonable debtor delay that is prejudicial to creditors is a ground for relief. 11 U.S.C. sec. 1112(b)(3)(1982).

18. That Arctic has unreasonably delayed, findings of fact 2 - 7, to the prejudice of creditors, e.g. finding of fact 11.

19. That failing to file required reports is a ground for relief. In re Modern Office Supply, Inc. 28 B.R. 943, 945 (Bankr. W. D. Okla. 1983).

20. That Arctic has failed to file required reports (at least for June and July, 1983, compare former Bankruptcy Rule 11-30 with Bankruptcy Rule 2015(a)(3) ).

21. That a debtor-in-possession's breach of fiduciary duty to the debtor estate creditors is a ground for relief. In re E. Paul Kovacs and Co., Inc., 16 B.R. 203, 205 (Bankr. D. Conn. 1981).

22. That Arctic has breached its fiduciary duty to the debtor estate creditors. E.g. finding of fact 11.

23. That an inability to effectuate a plan is a ground for relief. 11 U.S.C. sec. 1112(b)(2)(1982).

24. That the United States argues that all post-petition employment taxes and penalties must be paid before a plan can be confirmed and effectuated. See 3 Collier on Bankruptcy

paragraph 503.04 [b] (15th Ed. 1983). Contra In re Friendship College, Inc., 34 B.R. 126 (Bankr. W.D.N.C. 1983).

25. That, relying on the Arctic projected operations schedule, it will take Arctic over five years to pay off currently accrued employment withholding taxes. Findings of fact 9, 10, 12 & 13.

26. That a plan must be feasible to be confirmed and effectuated. 11 U.S.C. sec. 1129(a)(11)(1982).

27. That the plan proposed in May of 1983 is not feasible and can not be effectuated in light of the projected operations schedule. Compare finding of fact 14 with finding of fact 15.

28. That lack of good faith is a ground for relief. Weathersfield Farms v. First Inter-State Bank, 15 B.R. 282, 283 (D.Vt. 1981).

29. That Arctic has proceeded with a lack of good faith. Findings of fact 6 - 8, 11 - 13, 14 & 15.

#### CONCLUSIONS OF LAW

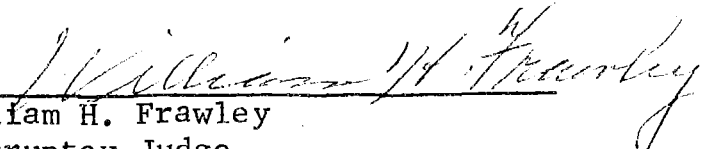
1. That there is cause to dismiss the above captioned matter.
2. That the above captioned matter be dismissed.

ORDER

NOW, THEREFORE, IT IS ORDERED that said matter be, and the same is, hereby dismissed without costs.

Dated: January 19, 1984.

BY THE COURT:

  
William H. Frawley  
Bankruptcy Judge

APPENDIX

ARCTIC AIR TRANSPORT OF MN., INC.  
PROJECTED OPERATIONS

<u>DESCRIPTION</u>	<u>APRIL 1 - DECEMBER 14</u>	<u>DECEMBER 15 - MARCH 31</u>
Revenue from Tractors and Trailers	<u>\$ 21,800</u>	<u>\$ 18,000</u>
Expenses		
Owner/Operator Expenses	\$ 17,215	\$ 14,290
Insurance	\$ 360	\$ 360
Office Supplies	100	100
Advertising	25	25
Rent	-0-	-0-
Telephone	875	600
Professional Fees	100	100
Expenses of Estate		
IRS Pre-Petition	200	200
IRS Post-Petition	2,000	1,400
Creditors	325	325
Administrative Expenses	<u>600</u>	<u>600</u>
 TOTAL EXPENSES	 <u>\$ 21,800</u>	 <u>\$ 18,000</u>

This was prepared by the company personnel and is reproduced here for clarity.  
We express no level of assurance on this projected operations statement.