

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	Chapter 11
)	
In re:)	Case No. 09-10899 (CSS)
)	
THE FAIRCHILD CORPORATION, <u>et al.</u> ,)	Jointly Administered
)	
Debtors.)	
)	
)	
THE FAIRCHILD LIQUIDATING TRUST,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Proceeding No. _____
)	
STATE OF NEW YORK and the NEW YORK)	
STATE DEPARTMENT OF TRANSPORTATION,)	
)	
Defendants.)	
)	

COMPLAINT

For its Complaint, The Fairchild Liquidating Trust (the “Trust”) alleges as follows:

Parties

1. The Fairchild Corporation (“Fairchild”) is a corporation duly organized under the laws of the State of Delaware. On or about March 18, 2009, Fairchild and sixty (60) of its affiliates (“Fairchild Debtors”) commenced voluntary Chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. Among the Fairchild affiliates that commenced such cases were Republic Thunderbolt, L.L.C. (“Republic”) and Banner Aerospace, Inc. (“Banner”) (collectively with Fairchild, the “Fairchild Parties”).

2. On or about December 17, 2009, this Court entered an Order confirming the Plan of Liquidation (“Plan”) for the Fairchild Debtors. The Plan, among other things, provided for the substantive consolidation of the assets and liabilities of all of the Fairchild Debtors and the transfer of all of those assets to the Trust. The Plan became effective on January 7, 2010.

3. The New York State Department of Transportation (“NYSDOT”) is an agency of the State of New York.

Jurisdiction and Venue

4. The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b).

5. This a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

Factual Background

6. Certain of the Fairchild Debtors previously owned a 56 acre tract of improved land that is located on the east side of Route 110 in the Town of Babylon, Suffolk County, New York.

7. The subject 56 acre tract of land is adjacent to Republic Airport (“Airport”).

8. The State of New York and/or the NYSDOT own the Airport.

9. In 2000, the NYSDOT made the determination that there was a safety hazard at the Airport and directed that a Runway Protection Zone (“RPZ”) be established adjacent to the Airport’s Runway 19.¹ The NYSDOT took this action pursuant to Federal Aviation Administration Advisory Circular 150/5300-13.

10. Approximately three acres of the 56 acre tract fall within the proposed RPZ (the “Property”).

¹ Runway Protection Zones are trapezoidal-shaped areas located at the end of runways. Such zones provide a buffer space meant to enhance the protection of people and property near the area in question in the event an aircraft lands or crashes beyond the end of the runway, or veers off the course of the runway.

11. Although the NYSDOT could have established the RPZ by simply acquiring the Property outright through the initiation of a condemnation proceeding, it instead chose to establish the RPZ through a series of contracts with the Fairchild Parties. A true and correct copy of the contracts, which include an Agreement in Lieu of Condemnation, two Agreements of Adjustment, and two Supplements to the Agreements of Adjustment (collectively, the “Taking Agreements”), which were executed between 2004 and 2007, is attached hereto as Group Exhibit A.

12. Pursuant to the Taking Agreements, among other things, the Fairchild Parties agreed to modify the Property to make it suitable for use as a RPZ and the NYSDOT agreed to pay the Fairchild Parties \$4.5 million (the “Taking Proceeds”)².

13. To date, the Fairchild Parties have duly and timely performed the obligations that they have been legally able to perform under the Taking Agreements, spending approximately \$3,000,000 between 2004 and the present in connection with the performance of their duties thereunder.

14. The Fairchild Parties have however been stymied in their efforts to complete their performance and to receive the Taking Proceeds.

15. The Taking Agreements require the NYSDOT to record certain maps of the Parcels in question (each a “Taking Map” and collectively, the “Taking Maps”) with the local recorder of deeds, in this case the Suffolk County Clerk. The NYSDOT’s recording of the Taking Maps will, per the terms of the Taking Agreements, vest title to the land with the NYDOT.

² In 2005, Fairchild sold the subject 56 acres but specifically retained the rights to the Taking Proceeds.

16. Only after the NYSDOT records the Taking Maps can the Fairchild Parties undertake additional construction work on the Property to fulfill their remaining obligations under the Taking Agreements by making the Property fully ready for use as a RPZ.

17. The Trust is ready, willing and able to perform its remaining obligations under the Taking Agreements. Prior to the filing of the bankruptcy cases, the Fairchild Parties issued specifications for the next round of construction work and took bids from several contractors for the work. Under the terms of the Taking Agreements, however, the Fairchild Parties and their successor, the Trust, cannot begin construction until the NYSDOT first records the Taking Maps.

18. According to Section 2 of each of the two Supplements to the Agreements of Adjustment, the NYSDOT is to record the Taking Map corresponding to each Supplement “as soon as possible after the final execution of the” Supplements by the Office of the State Comptroller. See Group Exhibit A, Supplements to Agreement of Adjustment at 2.

19. The State Comptroller executed the Supplements on June 19, 2007. See Group Exhibit A, Supplements to Agreement of Adjustment at 2.

20. To date – almost three years after the Supplements were executed – the NYSDOT has yet to record the Taking Maps despite numerous requests from the Fairchild Parties that it do so.

21. As recently as 2010, the Attorney General refused to record the Taking Maps until an order was entered by the Bankruptcy Court lifting the automatic stay to permit the Attorney General to do so, despite the fact that such order was unnecessary as the Trust was the beneficiary of the automatic stay and had agreed to waive it with respect to the long overdue Taking. In any event, had the Taking Maps been recorded in a timely manner, there never would

have been any issue with respect to the automatic stay, as the duty of NYSDOT to record preceded by years the Debtors' filings in this Court.

22. Nevertheless, the Trust, on behalf of the Fairchild Parties, promptly petitioned the United States Bankruptcy Court for the requested order.

23. On February 12, 2010, this Court entered an *Order Providing Limited Relief From the Automatic Stay to the State of New York*, thus "protecting" the NYSDOT from any claim that the recordation of the Taking Maps violates the automatic stay, a claim which the Debtors had agreed to waive.

24. Shortly after the Bankruptcy Court entered the Order, the Attorney General informed the Trust that the NYSDOT would record the Taking Maps "very soon," perhaps within a few days.

25. As of this writing, the NYSDOT has yet to record the Taking Maps.

26. The recordation of the Taking Maps, which consist of only seven pages, is a simple and inexpensive process.

27. Nothing in the Taking Agreements prevents the NYSDOT from recording the Taking Maps.

28. The NYSDOT's recording of the Taking Maps will not in any way alter the parties' rights under the Taking Agreements. Rather, recording will simply advance the transaction to its next phase of performance.

29. As stated above, the Taking Agreements obligate the Fairchild Parties to undertake construction work on the Property once the NYSDOT records the Taking Maps. The construction work, however, requires 30 to 60 days' lead time before the work can begin. The nature of the work is such that it cannot be performed during winter months.

30. The construction work will take three to four months to complete. As such, the Trust must begin the work immediately in order to finish that work before the onset of winter. If the Trust cannot do so, it will have to wait until at least Spring 2011 to initiate the work. During the ensuing period, the Trust will continue to have neither the beneficial use of the Property nor the Taking Proceeds. In addition the Trust will continue to bear the costs associated with a portion of the properties to be taken, including, without limitation, maintenance and taxes. Further, the Trust will have to secure for a third time, new bids for the work it must perform on the Property to obtain the Taking Proceeds, such bid packages and engineers' oversight each time costing \$25,000, not to mention leaving the Trust at risk of higher costs to complete such construction.

31. Under the circumstances, with neither the beneficial ownership of the Property, nor the Taking Proceeds, nor the present ability to sell the Property to a third party, the Property has been rendered virtually valueless.

32. Over 4,500 creditors have filed claims against the Trust for payment of outstanding Fairchild debts. A significant number of those creditors are former Fairchild employees with claims arising out of pension obligations, health insurance, and life insurance. The Taking Proceeds will provide important funds with which the Trust can pay its creditors.

33. Most seriously, NYSDOT's failure continues to delay completion of the RPZ, leaving the public, and potentially the Trust, at risk of the very conditions for which the FAA had granted NYSDOT the funds to complete the Taking.

COUNT I

34. For Paragraph 34 of its Complaint, the Trust incorporates by reference Paragraphs 1 through 33, as if such paragraphs were set forth fully herein.

35. The failure of the NYSDOT to record the Taking Maps is a breach of the Taking Agreements.

36. As a direct and proximate result of the aforesaid breach of contract by the NYSDOT, the Trust has suffered damages in an amount to be determined by the Court, but in no event less than \$5,000,000.

Relief Requested

WHEREFORE, the Trust respectfully requests that the Court enter a judgment in its favor and against the State of New York and the NYSDOT:

1. In an amount to be determined by the Court, but in no event less than \$5,000,000 for the damages the Trust has suffered by virtue of NYSDOT's failure and refusal to record the Taking Maps; and
2. For such further relief as the Court deems just and proper.

Dated: April 21, 2010
Wilmington, Delaware

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