

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

)	
Application and Notice of)	
)	
CORVUS AIRLINES, INC.)	Docket DOT-OST-2020-0134
)	
for a waiver of the 45-day advance filing)	
requirements of 14 C.F.R. § 204.7 and Notice of)	
intent to resume interstate scheduled air)	
transportation)	
)	
)	
Essential Air Service at)	
)	Docket DOT-OST-2019-0038
St. Paul Island, Alaska)	
)	
Under 49 U.S.C. § 41731 <i>et seq.</i>)	
)	

**JOINT MOTION AND SUR-REPLY OF FLOAT ALASKA, LLC AND CORVUS AIRLINES, INC.
TO THE SUR-REPLY OF ALASKA CENTRAL EXPRESS, INC.**

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September 2, 2020

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**JOINT MOTION AND SUR-REPLY OF FLOAT ALASKA, LLC AND CORVUS AIRLINES, INC.
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Alaska Central Express, Inc. (“ACE”) continues its efforts to delay the resumption of scheduled air service by Corvus Airlines, Inc. (“Corvus”) to isolated communities throughout Alaska, including St. Paul Island (“STP”), by filing yet another opposition pleading (its third), this time an unauthorized Sur-reply, dated September 1, 2020 (“ACE Sur-reply”).¹

ACE continues to miss the mark with its mischaracterization of the Corvus Asset Purchase Agreement and the corresponding Bankruptcy Court order.² ACE repeats its

¹ This narrowly-tailored Joint Sur-reply addresses ACE’s latest mischaracterizations and inaccuracies so that the Department will have a more accurate and complete record upon which to base its consideration of Corvus’s Application/Notice and next steps for EAS at STP. Accordingly, to the extent the Department considers the ACE Sur-reply and leave to file this Joint Sur-reply is necessary, good cause exists for the Department to consider this Joint Sur-reply.

² The Asset Purchase Agreement is contained in Attachment 1 to ACE’s August 19th Opposition to FLOAT Alaska’s Statement of Position, and the Bankruptcy Court Order is Attachment 2 thereto.

meritless claim that Corvus is not a successor in any respect to the Corvus that filed for bankruptcy and previously provided air transportation to numerous communities throughout Alaska. See ACE Sur-reply at 2 – 3. Although FLOAT Alaska did not acquire Corvus's liabilities, it did acquire the Corvus legal entity and its principal assets, including key operational assets, and thus, for purposes of essential air service ("EAS") at STP and its Notice of intent to resume operations, Corvus is the successor of the Corvus d/b/a Ravn Alaska that was selected by the Department to provide subsidized EAS at STP in DOT Order 2019-10-2.

By enacting Section 363 of Title 11 of the United States Code (the "Bankruptcy Code"), Congress expressly authorized a trustee or debtor in possession in bankruptcy to sell assets "free and clear" of third-party interests (including claims, liens, and other encumbrances).³ Such sales have long been viewed as essential to the bankruptcy process.⁴ This provision of the Bankruptcy Code makes it possible for a debtor, in an effort to maximize payment to creditors, to sell assets, even an entire business, to a buyer, who would not purchase those assets together with their associated liabilities. This is a fundamental concept that makes the American system of bankruptcy work.

In the case of Corvus Airlines, Inc., the United States of America and other parties in interest (e.g., Unsecured Creditors' Committee, Senior Secured Lenders, and Alaska Airlines)

³ See, e.g., *In re Trans World Airlines, Inc.*, 322 F.3d 283, 292–93 (3d Cir. 2003) (affirming airline debtor's sale of assets free and clear of workers' employment claims). See also 11 U.S.C. § 106(a) (expressly abrogating sovereign immunity as to a governmental unit with respect to Section 363 of the Bankruptcy Code); *In re Magwood*, 785 F.2d 1077, 1080 (D.C. Cir. 1986) (holding that sale order could not be reversed on appeal in light of good faith finding under Section 363(m) of the Bankruptcy Code, in the absence of a stay pending appeal).

⁴ See, e.g., *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583–84 (1935) ("Bankruptcy acts had, either expressly, or by implication... authorized the court to direct, in the interest of other creditors, that all liens upon property forming a part of the bankrupt's estate be marshaled; that the property be sold free of encumbrances; and that the rights of all lienholders be transferred to the proceeds of the sale—a power which [] had long been exercised by federal courts sitting in equity when ordering sales by receivers or on foreclosure.[]") (internal citations omitted).

expressly approved the form of the Bankruptcy Sale Order (“Sale Order”). The Sale Order was entered by the Bankruptcy Court on August 5, 2020, and became a final order that is no longer appealable on August 20, 2020. See 28 U.S.C. § 158 and Fed. R. Bankr. P. 8002. No party appealed the Sale Order or sought a stay pending appeal. The Sale Order expressly finds that the new owner of Corvus is a good-faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code.

As explained in substantial detail in the FLOAT Alaska/Corvus Joint Motion and Reply, dated August 25, 2020, at 2 – 3, it is beyond doubt that FLOAT Alaska “acquired” Corvus Airlines, Inc. and its principal assets, including key operational assets. The Asset Purchase Agreement (“APA”) approved by the Bankruptcy Court makes this fact clear in its description of “Acquired Assets”: All of the capital stock, books, and records of Corvus Airlines, Inc., Dash-8 aircraft, ground equipment, Certificate of Public Convenience and Necessity (subject to Department approval) and the Air Carrier Certificate/Operations Specifications (subject to FAA approval), the Seller’s rights to subsidies or other benefits under the EAS program (subject to any required governmental consent), intellectual property including trademarks for Ravn Alaska and related domains, and Assumed Contracts, among other assets. See APA § 1.1.

The import of this description of the Acquired Assets is that FLOAT Alaska purchased, and the Debtors sold, Corvus and its assets as a going concern. It is correct that the liabilities of the Debtors did not come along with the sale, as expressly authorized by the Bankruptcy Court under the Bankruptcy Code. But, ACE’s attempt to take out of context two paragraphs from a 96-page Order does not change the reality, which is that FLOAT Alaska acquired Corvus as a going concern: the stock, the intellectual property, IATA code, PSS agreements, the books and records, the Anchorage hangar, corporate offices, training facility, and other

real estate, its most important aircraft, and all of Corvus's rights to subsidies or other benefits under the EAS program.

In sum, Corvus is the successor of the Corvus d/b/a Ravn Alaska that was selected to provide subsidized EAS at STP in 2019 for purposes of that subsidized EAS and Corvus's Notice of intent to resume operations. The Department should reject ACE's continued attempt to improperly collaterally attack the final and non-appealable Order of the Bankruptcy Court, for which ACE lacks standing and any legal or factual basis.

As for the EAS at STP and the community's views on the most appropriate carrier for that service, the City of St. Paul's recent submission (which Corvus quoted extensively in its Joint Motion and Reply) speaks for itself.

The Department should not countenance ACE's ongoing efforts to delay the Department's consideration of Corvus's Application/Notice to resume service to remote Alaskan communities, including St. Paul Island, as soon as possible. Delay is not in the best interests of Alaskans, Alaskan businesses, these remote Alaskan communities, and Corvus's employees.

The Department should reject ACE's efforts to delay Corvus's resumption of service. Corvus looks forward to resuming service as soon as the requisite DOT and FAA approvals are received.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion and Sur-reply of FLOAT Alaska, LLC and Corvus Airlines, Inc. has been served this September 2, 2020, upon each of the following addressees:

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