

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE	*	
	*	CASE NO. 05-85627-JEM
RELIABLE AIR, INC, d/b/a	*	
RELIABLE HEATING AND AIR,	*	CHAPTER 11
	*	
Debtor	*	JUDGE MASSEY
	*	

**DANIEL L. JAPE’S OBJECTION TO DEBTOR’S
FIRST AMENDED PLAN OF REORGANIZATION**

COMES NOW, Daniel L. Jape, (hereinafter “Jape”). by and through his undersigned attorneys and files this Objection to the Debtor’s First Amended Plan of Reorganization (the “First Amended Plan”) and shows the Court as follows:

1.

11 U.S.C §1129 provides that the Court shall confirm a plan only if certain requirements are met.

2.

Jape objects to the Debtor’s First Amended Plan as it fails to meet the requirements of 11 U.S.C. § 1129, specifically:

(a) The First Amended plan is not proposed in good faith and is in violation of Georgia statute.

(b) The First Amended Plan does not disclose the affiliations of the senior management proposed to serve after confirmation of the First Amended Plan and which will own shares in the Debtor corporation.

(c) The First Amended Plan is not supported by the Board of Directors nor has it even been presented to the Board. This Plan is merely President Barbara Jape's means to continue the unlawful ouster of Dan Jape from the Debtor's corporate governance.

(d) The First Amended Plan is not feasible because, inter alia:

(i) The First Amended Plan is to be funded by the proceeds from the sale of the reorganized Debtor's commercial real property; the future earnings of the Debtor, whose income in 12 of the last 19 months has been negative; the capital contributions of the Debtor's senior management, which are minimal; and from Barbara Jape in the form of stock purchases based upon an unauthorized salary increase;

(ii) The First Amended Plan does not provide proof that the Debtor's senior management has the financial capability to invest \$25,000.00 in the reorganized Debtor nor that the earnings of the Debtor will support and fund the plan;

(iii) The administrative expenses now exceed \$200,000.00;

(iv) The Debtor's management is weak and ineffective;

(v) The First Amended Plan provides that priority tax claims are to be paid from the operating revenues over a period of five years but the Debtor has been operating at a loss;

(vi) Various employees, including the Debtor's senior manager and Vice President of Sales left the company in 2007.

(e) The Second Amended Disclosure Statement and First Amended Plan do not state the consequences if the company is unable to make a distribution after one deferral of the distribution to unsecured creditors or if there is a limit to the number of deferrals that the company can take;

(f) Section 5.2 of the First Amended Plan provides for the issuance of New Stock in the reorganized Debtor to be pledged to a Collateral Agent but such Collateral Agent has no authority under the plan or the Trust documents to disburse stock to creditors if the Debtor defaults. In other words, the Debtor's principal retains control of the Debtor whether she complies with the plan or not;

(g) The First Amended Plan allows the Debtor's principal to vote the stock as the designated agent as long as the Debtor is not in "material default" under the Plan. The plan fails to define material default or the consequences of such material default;

(h) Debtor's president unilaterally and wrongfully increased her salary post petition from \$96,000.00 to \$156,000.00 annually. The Board of Directors of the Debtor did not authorize such increase;

(i) The First Amended Plan violates the absolute priority rule because Ms. Jape is not investing substantial new capital into the reorganized Debtor;

(j) The First Amended Plan should require the Debtor to pay \$235,000.00 to unsecured creditors even if the percentage to such unsecured creditors exceeds twenty-five percent (25%);

(k) Confirmation of the Plan is likely to be followed by liquidation.

2.

The First Amended Plan will pay creditors less than they would receive if the Debtor were liquidated under Chapter 7.

3.

Jape hereby offers and has offered to purchase the name "Reliable Heating and Air" from the Debtor corporation for \$250,000.00. The sale of the name would increase funds available to

pay unsecured creditors and would allow the Debtor to continue in business.

WHEREFORE, Daniel L. Jape requests that the Court deny confirmation of the First Amended Plan and such other and further relief as is just.

Respectfully submitted,

On this 3rd day of October, 2007.

**HOWICK, WESTFALL, McBRYAN,
& KAPLAN, LLP**

/s/

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Virginia B. Bogue, Georgia Bar No. 065695
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Atlanta, Georgia 30339
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE

*

RELIABLE AIR, INC.,

*

CASE NO. 05-85627-JEM

*

Debtor

*

CHAPTER 11

*

*

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Daniel L. Jape's Objection to Debtor's First Amended Plan of Reorganization by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

Ashley Reynolds Ray, Esq.
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30305

John Sanders, IV, Esq.
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30305

and all interested parties named on the Creditor Matrix, attached as Exhibit "A".

On this 3rd day October, 2007.

/s/

Louis G. McBryan, Georgia Bar No. 480993

EXHIBIT "A"

Apex Supply Company, Inc.
 c/o Eric N. Van De Water
 Pursley, Lowery Meeks, LLP
 260 Peachtree Street
 Suite 200
 Atlanta, Georgia 30303-1239

Flag Bank
 P.O. Box 156
 Vienna, Georgia 31092-0156

Freisem, Macon, Swann &
 Malone
 2905 Piedmont Road, N.E.
 Atlanta, Georgia 30305

Office of the U.S. Trustee
 Suite 362
 75 Spring Street, SW
 Atlanta, Georgia 30303

Reliable Air, Inc.
 15021 Highway 92
 Woodstock, Georgia 30188-
 7114

Atlanta Division
 1340 Russell Federal Building
 75 Spring Street, SW
 Atlanta, Georgia 30303-3315

@ROAD
 Mobile Resource Management
 47071 Bayside Parkway
 Fremont, CA 94538-6517

ADP
 P.O. Box 9001006
 Louisville, KY 40290-1006

APEX Supply Co., Inc.
 d/b/a Home Depot Supply
 3300 Breckenridge Blvd.,
 Suite 100
 Duluth, Georgia 30096

AT&T
 P.O. Box 9001309
 Louisville, KY 40290-1309

All Fleet and Auto Service
 9880 Main Street
 Woodstock, Georgia 30188-
 6616

All Star Auto Glass
 10219 Highway 58
 Ooltewah, TN 37363-9652

American General Finance
 Georgetown Square
 4490 Chamblee-Dunwoody
 Road
 Atlanta, Georgia 30338-6237

American Standard
 c/o Wagner, Falconer & Judd,
 LLC
 1700 IDS Center
 80 South 8th Street
 Minneapolis, MN 55402-2100

Atlanta Supply Co.
 1333 Logan Circle, NW
 Atlanta, Georgia 30318-2858

Austin's Used Truck Parts
 2545 Cochran Industrial Blvd.
 Douglasville, GA 30134-1316

BDR
 19604 International Blvd.
 Seatac, WA 98188-5454

Barnett
 P.O. Box 404295
 Atlanta, GA 30384-4295

Bell South Advertising &
 Publishing Corp.
 P.O. Box 105024
 Atlanta, Georgia 30348-5024

Bellsouth
 P.O. Box 105262
 Atlanta, GA 30348-5262

Bellsouth
 Telecommunications, Inc.
 29EF1-301 West Bay Street
 Jacksonville, Florida 32202

Bellsouth Advertising &
 Publishing Corp.
 P.O. Box 95354
 Atlanta, GA 30347-0364

Bennett Thrasher
 One Overton Park
 Atlanta, GA 30339

Benson Printing, Inc.
 220 Turner Blvd.
 Ballground, Georgia 30107-
 6507

Bill Heard Chevrolet
950 Barrett Parkway
Kennesaw, Georgia 30144-4530

Blue Iris Consulting, LLC
4140 Blue Iris Hollow
Norcross, Georgia 30092-5117

Buckhead Yellow Pages
2889 Knob Hill Dr.
Atlanta, Georgia 30339-4902

CC Dickson
Escrow Acct. of Joe Perry Redd
1959-G Parker Court
Stone Mountain, GA 30087-3449

CC Dickson Co.
c/o Joe Perry Redd, Esq.
1959-G Parker Ct.
Stone Mountain, GA 30087-3449

CC Dickson Co.
P.O. Box 13501
Rock Hill, SC 29731-3501

Carl Black Truck Center
1240 Auto Park Dr.
Kennesaw, Ga. 30144-7030

Champion Lawn Care
3000 Old Alabama Road
Alpharetta, Georgia 30022-5860

Chastain Chem-Dry
P.O. Box 421971
Atlanta, Georgia 30342-8971

Cherokee County Tax Commissioner
100 North St., Suite 150
P.O. Box 449
Canton, Georgia 30169-0449

Cherokee County Tax Commissioner
100 North Street
Suite 131
Canton, GA 30114-2779

Cherokee County Water Authority
P.O. Box 5000
Canton, Georgia 30114-5000

Cherokee Ledger-News
Lakeside Publishing, Inc.
P.O. Box 2369
Woodstock, Georgia 30188-1211

Cherokee Ledger-News
P.O. Box 2369
Woodstock, GA 30188-1211

Cingular Wireless
P.O. Box 30523
Tampa, FL 33630-6403

Cintas Corporation
3600 Kennesaw 75 Pkwy.
Kennesaw, GA 30144-6403

Coastline Distribution, LLC
317 S. North Lake Blvd.
Suite 1024
Altamonte Springs, FL 32701-5263

Cobb EMC
P.O. Box 369
Marietta, GA 30061-0369

Columbia Insurance Co.
P.O. Box 6032
Columbia, MO 65205-6032

Companion
P.O. Box 100359
Columbia, SC 29202-3259

Covenant Management, Inc.
J. Marc Replogle, Esq.
1820 The Exchange, Suite 150
Atlanta, Georgia 30339-2096

Covenant Management, Inc.
P.O. Box 105189
Atlanta, GA 30348-5189

Culet Communications
180 Allen Road
Atlanta, GA 30328-4862

Daniel Ace Hardware
115 Colony Center Drive
Woodstock, GA 30188-4633

Daniel L. Jape
110 Wiley Bridge Court
Woodstock, GA 30188-4750

Dealers Supply Co., Inc.
82 Kennedy Dr.
P.O. Box 1708
Forest Park, GA 30298-1708

Dealers Supply Company, Inc.
c/o McCullough Payne &
Haan
171 17th Street, NW
Suite 975
Atlanta, Georgia 30363-1029

Internal Revenue Service
Centralized Insolvency Unit
Operations
P.O. Box 21126
Philadelphia, PA 19114-0326

Diamond Metal
322 Northpoint Pkwy.
Acworth, GA 30102-3162

Dixie Duct and Fabrication,
Inc.
122 Oak Street
Roswell, Georgia 30075-4567

Dixie Filters, Inc.
7055-D Amwiler Industrial
Drive
Atlanta, Georgia 30360-2834

Edelman, Dean
2469 Silver Blossom Lane
Henderson, NV 89052-2902

Evergreen Grounds, Inc.
P.O. Box 664
Woodstock, GA 30188-0664

Falcon Transportation
289 Church Street
Marietta, GA 30060-1603

Ferguson Enterprises, Inc.
P.O. Box 100286
Atlanta, Georgia 30384-0286

Firestone Tire & Service
Centers
4676 Sandy Plains Road
Roswell, GA 30075-1943

First Capital Bank Loan
Operations
3320 Holcomb Bridge Road,
NW
Norcross, Georgia 30092-
3240

Flag Bank
c/o Quirk & Quirk, LLC
Suite 325
6000 Lake Forest Drive
Atlanta, GA 30328-3877

Freisem, Macon, Swann &
Malone, LLP
Monteith Commons
2905 Piedmont Rd., N.E.
Suite C
Atlanta, GA 30305

Georgia Department of Labor
148 International Blvd.
Suite 826
Atlanta, GA 30303-1732

Georgia Department of
Revenue
J. Robert Williamson
Scroggins & Williamson
127 Peachtree Street, N.E.
Atlanta, GA 30303-1810

Georgia, Department of
Revenue
P.O. Box 161108
Atlanta, GA 30321-1108

HLB Gross Collins, P.C.
2625 Cumberland Parkway
Atlanta, GA 30339-3943

High-Tech Transmission
Service
7207 Buford Highway
Doraville, GA 30340-1457

Hometurf Lawn & Landscape
Ser.
306 Wood Knoll Court
Woodstock, GA 30189-6600

Hughes Supplies, Inc.
P.O. Box 105837
Atlanta, GA 30348-5837

Humana, Inc.
P.O. Box 14209
Lexington, KY 40512-4209

International Service
Leadership
6 Cadillac Drive
Brentwood, TN 37027-5080

J.W. Broadcasting, Inc.
1100 Spring Street
Atlanta, Georgia 30309-2846

Barbara Jape
400 Huntington Estates Manor
Woodstock, GA 30188-4784

Johnstone Supply
825 Progress Center
Lawrenceville, GA 30043

LeasePlan Advantage
P.O. Box 930927
Atlanta, GA 31193-0927

Leavitt Group of Atlanta
P.O. Box 2123
Norcross, GA 30091-2123

Lennox Industries, Inc.
c/o Michael Kaplan
P.O. Box 471
Columbus, GA 31902-0471

Manufactured Duct & Supply,
Inc.
6945 Business Court
Doraville, GA 30340-1446

Market Date Systems, Inc.
2451 Cumberland Pkwy.
Suite 3517
Atlanta, GA 30339-6136

Mayer Electric Supply Co.,
Inc.
Attn: Rita Segers
6500 Peachtree Industrial
Blvd.
Norcross, GA 30071-1245

Metro Directories
P.O. Box 941009
Atlanta, Georgia 31141-0009

Mingledorff's
6675 Jones Mill Court
Norcross, GA 30092-4394

Mingledorff's Inc. or Carrier
Complete Syst.
P.O. Box 934142
Atlanta, GA 31193-4142

Mingledorffs, Inc.
c/o William Woods White
Suite 2100
2100 Riveredge Parkway
Atlanta, GA 30328-4693

News Shopper, Inc.
P.O. Box 1111
Woodstock, GA 30188-1111

Nuvox Communications
P.O. Box 580451
Charlotte, NC 28258-0451

Office Depot
Dept. 56
P.O. Box 689020
Des Moines, IA 50368-9020

Perfect Performance, Inc.
1089 Frazier Street
Roswell, GA 30075-3831

SECURIAN Retirement
Services
P.O. Box 64787
St. Paul, MN 55164-0787

Salem Media of Georgia
2970 Peachtree Road, NE
Suite 700
Atlanta, GA 30305-4919

SecurityOne & Associates
P.O. Box 80062
Roswell, GA 30075

Smith Welding Products, Inc.
109 Rickman Industrial Dr.
Holly Springs, GA 30142

Smith Welding Products, Inc.
Caller Service 105100
Tucker, GA 30085-5100

Sprint
6391 Sprint Parkway
Overland Park, KS 66251-
6100

Sprint
P.O. Box 740602
Cincinnati, OH 45274-0602

The Best Little Flower Shop
10800 Alpharetta Street
Roswell, GA 30076-1490

Tom Jumper Chevrolet
7200 Roswell Road, N.E.
Atlanta, GA 30328-1499

Transform Technologies, LLC
980 Lakes Parkway
Lawrenceville, GA 30043-
8920

U.S. Communications, Inc.
6835 Meadowridge Court
Alpharetta, GA 30005-2202

Vickers, Owen & Blazina Ins.
Services
P.O. Box 2123
Norcross, GA 30091

W.W. Grainger, Inc.
6655 Crescent Drive
Norcross, GA 30071-2934

W.W. Grainger, Inc.
Dept. 048-844795393
Palatine, IL 60038-0001

Waste Management
Waste Management RMC
2421 W. Peoria Ave.
Phoenix, AZ 85029-4944

Zions Bank
60 East South Temple
Salt Lake City, UT 84111-
1004

Zions First National Bank
c/o Eric Anderson
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