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JAN 19 2007

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

_____| |
IN RE: CASE NO. 05-85627
Reliable Air, Inc.,
Debtor. CHAPTER 11
JUDGE MASSEY

_____| |
Daniel L. Jape,
Movant,
v. CONTESTED MATTER
Reliable Air, Inc.,
Respondent.

ORDER LIMITING ISSUES TO BE TRIED ON JANUARY 29, 2007

This Chapter 11 case was filed on November 22, 2005. On October 12, 2006, Daniel J. Jape, who is a shareholder of Debtor Reliable Air, Inc. and contends that he is an officer and director, moved to dismiss this case on the ground that the Court lacks subject matter jurisdiction because the Board of Directors of Reliable Air, Inc. did not properly authorize the filing. The parties are engaged in discovery disputes with respect to this issue, resulting in a motion to compel filed by Debtor and a motion to quash a subpoena filed by Mr. Japes.

The Court believes this dispute involves two possible issues. One is whether the Board properly authorized the filing of the petition. The other is whether Mr. Japes ratified the filing. *See, e.g., Hager v. Gibson*, 108 F.3d 35, 40 (4th Cir. 1997)(Under Virginia law, “the unauthorized

filing of a voluntary petition in bankruptcy in behalf of a corporation might be ratified in appropriate circumstances by ensuing conduct of persons with power to have authorized it originally.”). The discovery disputes seem to be centered around the first issue. The ratification issue would remain, even if the Board did not properly authorize the filing, but if Mr. Japes ratified the filing, it would not be necessary to address the authorization issue. Consequently, it makes more sense to deal with the ratification issue first. For this reason, the Court directs that the deposition of Robert N. Leitch be postponed and that the parties address on January 29 only the issue of whether Mr. Jape by his conduct during the pendency of this case, such as his failure to raise the issue in a motion to dismiss for almost one year after the petition was filed, ratified the filing of the petition.

IT IS SO ORDERED.

Dated: January 19, 2007.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE