

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA

IN RE:	.	Case No. 07-6352
	.	
RELIABLE AIR, INC.,	.	
	.	75 Spring Street
Plaintiff,	.	Atlanta, Georgia
	.	
v.	.	
	.	
DANIEL L. JAPE, et al.,	.	
	.	
Defendant.	.	September 7, 2007
. . . . .	.	10:09 a.m.

TRANSCRIPT OF HEARING  
BEFORE HONORABLE JAMES E. MASSEY  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Reliable Air:	Scroggins & Williamson
	By: ASHLEY REYNOLDS RAY, ESQ.
	J. ROBERT WILLIAMSON, ESQ.
	127 Peachtree Street N.E.
	Atlanta, GA 30303
	Freisem, Macon, Swann & Malone
	By: C. CYRUS MALONE, ESQ.
	2905 Piedmont Road N.E.
	Atlanta, GA 30305
For the Defendant:	By: LOU McBRYAN, ESQ.
	SUSAN HOWICK, ESQ.

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service

---

J&J COURT TRANSCRIBERS, INC.  
268 Evergreen Avenue  
Hamilton, New Jersey 08619  
E-mail: [jjcourt@optonline.net](mailto:jjcourt@optonline.net)

(609) 586-2311 Fax No. (609) 587-3599

1 THE COURT: Good morning. This is Judge Massey's ten  
2 o'clock calendar, Reliable Air, Inc. versus Jape, et al. It's  
3 a hearing to consider further evidence.

4 MR. McBRYAN: Lou McBryan for Dan Jape and Kim Ruse.

5 MR. MALONE: Cyrus Malone for the plaintiff, Reliable  
6 Air, Inc.

7 THE COURT: All right. There may or may not be a  
8 need for any further evidence, but I wanted to set it up for  
9 the possibility that there would be. And what I want to try to  
10 find out is that there's agreement on exactly what the sequence  
11 of ownership of this business was.

12 I had come away from the hearing the last time with  
13 the impression that -- and I want each of you to tell me  
14 whether I'm right or wrong about this -- not -- you know, my  
15 impression's my impression. I can tell you that my impression  
16 is right that it's an impression. But, I want to know whether  
17 you disagree with the factual analysis as I understood it, that  
18 is that the business that ultimately became Reliable Heating  
19 and Air, Inc. had been commenced by Mr. Jape as a sole  
20 proprietorship, and that he and Mrs. Jape married in the early  
21 80s, and she, at that time or shortly before, was involved in  
22 the business. That at some time in the mid-80s, a company  
23 called Jape Air, Inc. was created. Mrs. Jape was the majority  
24 shareholder of that business, and it was dissolved in March of  
25 1990.

1 I was left with the impression that it just went back  
2 to a sole proprietorship or a proprietorship. And I understood  
3 the contention today that immediately prior to the formation of  
4 Reliable Air, Inc., that there was a proprietorship, that Mr.  
5 Jape owned the proprietorship, and that right at the time, or  
6 very shortly thereafter, Reliable Air, Inc. was formed, that  
7 the business continued under that name, employees were paid by  
8 the corporation, not by a proprietorship. And the assets that  
9 were used by the proprietorship were used by the corporation.  
10 The corporation paid the debts of the proprietorship and the  
11 corporation was owned 50/50 between Mrs. Jape and Mr. Jape.  
12 That there were no formal transfer documents where, for  
13 example, the proprietorship said that the following assets are  
14 hereby transferred to the corporation. But, there's no  
15 question that the corporation used all of those assets.

16 At the hearing there was mention of personal  
17 bankruptcies in the 1990s. And being a curious person a  
18 curious person, I went and got the files out of storage. And  
19 what I found was that the petition and related documents in  
20 1990 said that the Jape Air, Inc. had been dissolved.

21 And if you have the set of documents that we prepared  
22 for you for -- about halfway through, maybe a little more than  
23 halfway through, there's something called the Chapter 13  
24 Statement which asks, "Has debtor or either spouse filing the  
25 petition operated a business and partnership or otherwise in

1 the past three years," and the answer is, "Joint. Incorporated  
2 as Jape Air, Inc. July 1987, corporate dissolution completed  
3 March 1990. The corporation was operated DDA Reliable Heating  
4 and Air. The business now owned and operated by Betty Jape,"  
5 which I gather is Mr. Jape's mother.

6 A petition was filed on March the 5th. The secretary  
7 of state's office indicates that Jape Air, Inc. was not  
8 dissolved until some time later in the month, I think -- March  
9 the 12th, 1990. That doesn't really make any difference. I  
10 mean, if the business ceased to operate under the corporate  
11 name and dissolution papers were put in, you know, then that's  
12 what happened. And I would, based on what happened,  
13 apparently, in 1999, I would assume that the assets of the  
14 corporation, Jape Air, Inc., were -- is, by agreement, now  
15 owned by Betty Jape. I don't know whether there was any --  
16 maybe there was a transfer document.

17 But, apparently at the time all this was happening --  
18 and I'm not really -- frankly, I'm not really sure when Jape  
19 Air, Inc. ceased doing business. I mean, it could've been  
20 dissolved in March of 1990 and could've ceased doing business  
21 in 1989 or 1988. But, I was unaware of a contention that Betty  
22 Jape owned the business.

23 And I was just interested in knowing whether the  
24 parties agree on exactly what happened about the business from  
25 the time it ceased to be operated by Jape Air, Inc. and the

1 time that the first bankruptcy case was filed on March 5, 1990.  
2 So, I'd be glad to hear from Mrs. Jape, Mr. Jape, as to what  
3 their best recollection is of what happened. I don't even know  
4 that it has to be under oath if both parties agree, but I'd  
5 just like to know what their position is.

6 MR. MALONE: May it please the Court. I have not --  
7 I was not aware until I picked up in chambers these documents  
8 that the allegation was made in a Chapter 13 statement in the  
9 1990 case, that the business was being operated by Reliable  
10 Services, which was owned by Betty Jape. I have not discussed  
11 this with Mr. McBryan prior to coming here today. I don't know  
12 what --

13 THE COURT: Would you all like to discuss it? Talk  
14 to your clients about what their position is and -- I mean,  
15 it's going to come out sooner or later.

16 MR. MALONE: I have -- we have no opposition to that,  
17 Your Honor. I'm just explaining to the Court we have not had a  
18 chance to further discuss this.

19 THE COURT: No, I understand that. And I don't want  
20 to waste everybody's time by putting witnesses on and going  
21 through the morning if the thing can be resolved by agreement,  
22 otherwise. In other words, if there's no factual disagreement,  
23 there's no point in doing any of this.

24 It's clear from -- I shouldn't say it's clear, but I  
25 would also want you to confirm the exhibits that were delivered

1 just a few minutes ago to chambers by the defendant -- or  
2 defendants -- that show tax returns filed in 1998, and a tax  
3 return for the corporation for the last half of 1999, but on a  
4 1998 form, for the debtor. And that appears to show that the  
5 business was operated as a proprietorship owned by Mr. Jape  
6 immediately prior to the commencement of the business by  
7 Reliable Air, Inc.

8           And if the petitions -- and I think the 1994 petition  
9 is pretty much the same as the 1990 if I'm reading it  
10 correctly, if the parties agree that Betty Jape operated the  
11 business or owned the business, at least as of 1994, then there  
12 must've come a time, if the tax returns are accurate, that Mrs.  
13 Betty Jape said sign it and you can have it back.

14           Of course what this does to a bankruptcy judge is  
15 create conundrums in a way because if this business was worth  
16 anything and it got transferred to Betty Jape, you know, the  
17 creditors back then didn't have an asset that might --  
18 should've been on the petition. No indication of a -- no way  
19 to know, I guess, from the petition exactly, you know, what  
20 happened.

21           It certainly undercuts the idea that the trade name,  
22 Reliable Heating and Air's worth millions of dollars. And this  
23 has been an unsuccessful business for years and years and years  
24 it seems to me. And the plan is, it's presently proposed by  
25 the debtor. It doesn't really offer much of anything to the

1 creditors. You know, the parties have had a couple of years to  
2 get their divorce case over with and I just -- I've expressed  
3 before a great deal of frustration about this Court being used  
4 as a methodology to determine the ownership of a business where  
5 nobody on the creditor's side gets much out of it.

6 I'm equally concerned with the idea that creditors  
7 could lend money to a business and then find out that the asset  
8 that one of the owners of the business says is worth millions  
9 of dollars can't go to the creditors. And when you look at  
10 that registration statement that was filed in 1999, it  
11 basically says that Mr. Jape, and maybe Mrs. Jape, are actually  
12 running a business, because they weren't at the time. The  
13 business had been transferred to Reliable Air, Inc.

14 That registration statement, by the way, doesn't  
15 prove ownership at all. It's got nothing to do with ownership.  
16 It's just a way of telling the public who's operating a  
17 business under a trade name. And the Japes weren't operating a  
18 business under that trade name after Reliable Air, Inc. was  
19 formed, as I understand it.

20 So, the creditors -- and maybe they knew, maybe they  
21 didn't -- but, you know, what's being left out of this equation  
22 are the creditors. And while this is viewed, I'm sure, by Mr.  
23 Jape and Mrs. Jape as a battle between them, the debtor in  
24 possession is the trustee, for all practical purposes.

25 And what I'm concerned about is not the Japes, first

1 of all. This company's insolvent. I'm concerned about the  
2 creditors. And I've expressed before at a hearing on the  
3 disclosure statement that I was concerned about the plan. And  
4 I remain concerned about the plan which hasn't been amended.  
5 I'm concerned about Mrs. Jape having an increase in salary, and  
6 apparently no board meeting as if that were a methodology for  
7 creating some value to be able to buy the company.

8           You people are going about this all wrong. And I  
9 really believe the way this thing is going, you all are both  
10 going to end up with nothing. So, what I want to know is  
11 whether you can agree on the sequence of events from the time  
12 the business ceased to be operated by Jape Air, Inc. to the  
13 time it -- which I take it was in June based on the tax return,  
14 June 1 or thereabouts of 1999 that the business began to be  
15 operated under the auspices of the debtor, Reliable Air, Inc.  
16 What happened in between? Who owned the business? What was  
17 paid for the business back and forth? Were there any  
18 documents? What's really going on here?

19           You know, it kind of looks like a shell game to keep  
20 an asset away from creditors. That's what it looks like. The  
21 asset being the trade name, Reliable Heating and Air. And I'm  
22 not going to be used for that kind of purpose. So, I want to  
23 know -- my -- the specific purpose of calling this hearing  
24 today was to clarify what role, if any, Betty Jape had with  
25 regard to this business from the time the business ceased to be

1 business as Jape Air, Inc. to the time in July or August of  
2 1999 when it began to do business under the umbrella of  
3 Reliable Air, Inc. If you gentlemen agree on those facts and  
4 you tell me what they are, we're done for today.

5 MR. McBRYAN: Your Honor, Lou McBryan for the  
6 defendants. We'd appreciate a few minutes to talk to Mr.  
7 Malone.

8 THE COURT: Okay.

9 (Recess)

10 THE COURT: I'm drawing question that I had regarding  
11 the Chapter 13 petitions filed in the early 90s. It has an  
12 explanation that the parties agree on.

13 MR. McBRYAN: That's correct, Your Honor. Lou  
14 McBryan for the defendants. Mr. Malone and I have conferred,  
15 and we both agree that notwithstanding the statement in the  
16 1990 bankruptcy case, Betty Jape was never the owner of the  
17 business known as Reliable Heating and Air. That there were  
18 some tax issues and that was the (indiscernible) factor for our  
19 filing the bankruptcy with some liens, and steps were taken to  
20 keep the business going.

21 Right or wrong, whatever happened, happened. There  
22 was some IRS issues. The bankruptcy case was allowed to be  
23 dismissed. We understand because they thought they'd reached  
24 an agreement with the IRS and all the creditors have been paid  
25 in full in the '94 bankruptcy case. And we understand that the

1 IRS re-levied again. The testimony would be that renegeing on  
2 an agreement, but in '97 they obtained our -- (indiscernible)  
3 to '95 and '97, obtained good tax counsel, a gentleman named  
4 Jim Shirley with the account firm HLB Gross Collins, and they  
5 resolved the tax issues.

6 But, the Court's understanding or recollection of its  
7 facts were, I think, we would agree to, that is, it was  
8 basically a proprietorship. It was proprietorship Jape Air,  
9 Inc. and then back to a proprietorship up until the time of  
10 incorporation in 1999.

11 THE COURT: Okay.

12 MR. MALONE: And that is my understanding of the  
13 facts, Your Honor.

14 THE COURT: All right. Then I don't think we need to  
15 reopen the evidence any further except for the clarification  
16 that you have just given me. I've told you all before that I  
17 remain very concerned about this case. You know, when debtors  
18 file petitions, they're responsible for what goes on them. And  
19 in this instance, Mr. and Mrs. Jape signed petitions that  
20 represented to the Court that their business was owned by Mrs.  
21 Jape. I don't like that. I think this case needs a trustee.

22 MR. McBRYAN: Your Honor, Mr. Jape would agree with  
23 that.

24 MR. MALONE: Your Honor, I apologize to the Court. I  
25 am employed for (inaudible) purposes trade name, and I --

1 THE COURT: No, I understand that. I'm not asking  
2 you, and I'm just telling you that I'm inclined to do it on my  
3 own motion. If there is another motion filed shortly, then  
4 I'll deal through that methodology. So, that's bad news for  
5 the debtor. The bad news for Mr. Jape is, I've come to the  
6 conclusion that the trade name is owned by the debtor. And I  
7 would enter a preliminary injunction. And I can do that right  
8 now -- what's going on in this case.

9 I'm putting some pressure on you people to resolve  
10 this dispute. I believe that the preliminary injunction would  
11 stand up. I believe that even if it were a jury trial, based  
12 on the evidence presented the other day, the jury would come to  
13 the same conclusion. I'm not convinced that the debtor, with  
14 or without that result, is capable of reorganizing.

15 I'm concerned, as I said before, that I don't think  
16 the creditors are getting -- they're not getting anything out  
17 of this. This just -- I've never wanted to characterize this,  
18 really, and I have characterized it and didn't like having to  
19 characterize it as a domestic dispute, but it's got to stop.  
20 It's just got to stop. And we've got to get on with the  
21 financial part of it which is reorganizing this debtor.

22 The best thing probably would happen in this case is  
23 that it'd be just an auction and let somebody bid for the  
24 assets of the company and let the chips fall where they may.  
25 It may be that to the extent there remains a -- the adversary

1 goes forward and there remains a dispute, that it would take  
2 some time for that to produce any value in the event of appeals  
3 and all that sort of thing. But, if the preliminary  
4 injunction's upheld, it might put Mr. Jape out of business.  
5 And -- but that might not save the debtor's business.

6           This is just money. You all have let this destroy  
7 your family. You really have. And over a business that over  
8 the long haul has never really been all that successful. And I  
9 just find that shocking. It's -- I thought that I heard the  
10 other day that there was some effort in April to do some sort  
11 of reconciliation. This is not a divorce court.

12           My best guess is that the marriage is never to be put  
13 back together again. The parties are probably better off  
14 getting a divorce, almost certainly. But, there's a business  
15 here, and now, apparently, two businesses. And is there a way  
16 to combine those businesses in a fashion that allows one party  
17 or the other to get some return from it over time, and the  
18 other party to go their separate way. Or is the thing to do,  
19 just to auction the whole thing off?

20           The plan that provides that a bunch of stock's going  
21 to be put in trust and that Mrs. Jape's going to own the  
22 company, but is going to pay for it later is a violation of the  
23 absolutely priority rule. That's just sweat equity. And when  
24 you turn around and raise the salary, which would seem to be a  
25 methodology for raising the money, where is it coming? It's

1 coming out of sweat equity, assuming it's earned anyway. You  
2 can't do that.

3           So, we'll see where the case goes in the next week.  
4 I'm inclined, otherwise, except to require additional financial  
5 information or update financial information to prove the  
6 disclosure statement as it stands. But, you know, this case  
7 has been around for almost two years now. We're not any  
8 farther along then we were when we started. And in the  
9 meantime, everybody's at each other's throats. Nasty e-mails  
10 going to children. It's just disgusting. I'm going to get  
11 somebody else involved in this case one way or the other, a  
12 trustee.

13           And I've thought long and hard, let me tell you. I  
14 don't have a law clerk right now. My law clerk -- my new law  
15 clerk is gravely ill. But, I've done a lot of work on this  
16 case in the last few weeks, and I've got a pretty good idea of  
17 what the evidence shows and what the law is, and in a way, if  
18 I'm right, and I've been wrong before, but if I'm right, you  
19 know, that would be a legal solution to a small problem in this  
20 case. This might be -- it looks like a big problem right now.

21           But, it's not going to resolve this squabble. It's  
22 just going to be more lawyers, more attorneys' fees, and  
23 businesses are not earning very much money. Mr. Jape said the  
24 other day he's only taken a few thousand dollars out of his  
25 business. That's an indication that if he earned more and just

1 didn't pay himself, but it's sitting in the business, then his  
2 testimony left out something. But, if he's struggling along as  
3 this other business is struggling along, then it just backs up  
4 my view -- my suspicion, let's put it that way, that this  
5 business has always been in trouble, financially.

6           And we're not talking about something that's worth  
7 millions of dollars. We're talking about something that's  
8 worth a few hundred thousand dollars at best. And that's what  
9 the debt is, a few hundred thousand dollars. That's owed to  
10 the creditors.

11           I don't know. I mean, got to resolve this somehow or  
12 another. I'm going to give these exhibits back that were  
13 presented by the defendant. I hope you all can get together  
14 and talk about this from a business standpoint and not a  
15 personal standpoint and see what you can do. I really do.

16           UNIDENTIFIED SPEAKER: May I address the Court,  
17 respectfully, sir?

18           THE COURT: No. I don't want to hear from you all.  
19 I really don't, anymore. I'll wait and see -- I'm on the  
20 telephone with the United States Trustee and -- let the United  
21 States Trustee's office know what I've said today. If either  
22 one of you all want to be in on that conversation, or if the  
23 debtor's lawyers want to be in on that conversation, let me  
24 know by Monday.

25           Unfortunately, the United States Trustee's office is

1 understaffed and they're dealing with consumer bankruptcy  
2 issues that have put them in a position where they're not very  
3 active in Chapter 11s anymore, and that's unfortunate. But, we  
4 need to move this case off of dead center, and we need somebody  
5 that's independent to look at it. And that's why I think we  
6 need a trustee.

7           If there comes a time in the next week or two or  
8 three that I decide to enter the order granting the motion for  
9 preliminary injunction, I will call the attorneys a day in  
10 advance to let you know that so that you can react to it --  
11 have time to react to it. And I'm not going to enter it late  
12 Friday afternoon and not tell anybody, in other words, and then  
13 have problems resolved after that.

14           I will, of course, entertain -- I would have to  
15 entertain a motion to stay the order on appeal, but I wouldn't  
16 be inclined to do that.

17           MR. McBRYAN: Your Honor, Lou McBryan. One of the  
18 issues on a preliminary injunction is a bond -- setting of a  
19 bond -- and it's required under Rule 65.

20           THE COURT: Yes. I would leave that up to the  
21 district court. I would leave that up to the district court.  
22 So, I think you can get up there and get a hearing on all of  
23 that in time. I hope you all work something out. I really do.

24                           \* \* \* \* \*

25

C E R T I F I C A T I O N

I, KATHLEEN M. BETZ, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Kathleen M. Betz

DATE: September 19, 2007

KATHLEEN M. BETZ

J&J COURT TRANSCRIBERS, INC.

J&J COURT TRANSCRIBERS, INC.