

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. 21-cv-60462-BLOOM/Valle

CCUR AVIATION FINANCE, LLC, and
CCUR HOLDINGS, INC.,

Plaintiffs,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

**MOTION TO INTERVENE OF WBIP AVIATION ONE LLC AND
WBIP AVIATION TWO LLC, AND MEMORANDUM OF LAW IN SUPPORT**

WBIP Aviation One LLC (“WBIP One”) and WBIP Aviation Two LLC (“WBIP Two”) (together, “Proposed Intervenors”) respectfully move to intervene as plaintiffs in this action, pursuant to Federal Rule of Civil Procedure 24(b)(1). Intervention is warranted because WBIP One and WBIP Two have claims against South Aviation, Inc. (“South Aviation”) and Federico A. Machado (“Machado”) (together, “Defendants”) that not only “share[] with the main action a common question of law or fact,” Fed R. Civ. P. 24(b)(1)(B), but present virtually *identical* questions of law and fact as do the claims brought by the existing plaintiffs, CCUR Aviation Finance, LLC, and CCUR Holdings, Inc. (together, the “CCUR Plaintiffs”).

Proposed Intervenors’ claims are detailed in the proposed Complaint appended hereto as Exhibit 1. Like the CCUR Plaintiffs, WBIP One and WBIP Two entered into escrow-backed aircraft financing agreements with Defendants and Wright Brothers Aircraft Title, Inc. (the “Escrow Agent”). In Proposed Intervenors’ case, they each paid deposits of \$3,500,000 (a combined \$7,000,000) as down payments toward the purchase by Unique Jet, Inc. from South

Aviation of two Bombardier Model 6000 aircraft for \$32,000,000 each. (Compl. ¶¶ 27, 30). These agreements provided for a closing date of January 15, 2021, by which date the deposited funds were due to be returned to Proposed Intervenors. (Compl. ¶¶ 28, 31). January 15, 2021 came and went without repayment. (*Id.*).

On February 26, 2021, the United States District Court for the Eastern District of Texas unsealed a Third Superseding Indictment against the principals of the Escrow Agent and Machado, revealing Defendants' involvement in a massive Ponzi scheme causing hundreds of millions of dollars of depositor losses. (ECF No. 13). Machado has admitted his fraud in writing (ECF No. 13-1 at p. 7) and appears to be a fugitive, and no person or entity has taken control of the assets or books and records of South Aviation.

Proposed Intervenors now move this Court to intervene. The Court may grant a Rule 24(b) motion for permissive intervention in its sound discretion, if the movant's (1) application to intervene is timely and (2) claim or defense and the main action have a question of law or fact in common. *Baker v. Warner/Chappell Music, Inc.*, No. 14-22403-CIV-GOODMAN [CONSENT], 2017 U.S. Dist. LEXIS 169204, at *18 (S.D. Fla. Oct. 12, 2017) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)). The claim-or-defense requirement "has been construed liberally," and a district court "can consider almost any factor rationally relevant but enjoys very broad discretion" to decide the motion. *In re Hornbeam Corp.*, No. 14-24887-MC, 2019 U.S. Dist. LEXIS 58225, at *13 (S.D. Fla. Apr. 4, 2019).

Proposed Intervenors' claims are timely. Their claims for fraud and breach of contract accrued no sooner than January 15, 2021, the date upon which their escrow deposits were due for refund and were not returned. Thereafter, they made diligent efforts to contact Defendants and the Escrow Agent, before learning of the federal criminal indictment against Machado, the

Escrow Agent, and others that was publicly disclosed on February 26, 2021. Moreover, their claims against South Aviation and Machado are nearly identical to the claims brought by the CCUR Plaintiffs and which are the basis of the CCUR Plaintiffs' receivership motion (ECF No. 13). Finally, allowing WBIP One and WBIP Two to intervene under Rule 24(b)(1) presents no undue prejudice to the existing parties. *See Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.*, 425 F.3d 1308, 1312 (11th Cir. 2005).

For the foregoing reasons, WBIP One and WBIP Two respectfully request that the Court grant their Motion to Intervene.

Dated: March 12, 2021

SHUTTS & BOWEN LLP

/s/ Peter H. Levitt

Peter H. Levitt
200 South Biscayne Boulevard, Suite 4100
Miami, FL 33131
Direct: (305) 415-9447
Fax: (305) 415-9847
plevitt@shutts.com

-and-

Gabriel Hertzberg (*pro hac vice* motion pending)
CURTIS, MALLETT-PREVOST,
COLT & MOSLE LLP
101 Park Avenue
New York, NY 10178
Telephone: 212-696-6000
Facsimile: 212-697-1559
ghertzberg@curtis.com

*Counsel for WBIP Aviation One LLC and WBIP
Aviation Two LLC*

LOCAL RULE 7.1(a)(3) CERTIFICATION

I HEREBY CERTIFY that, prior to filing this motion, I attempted several times by telephone and email to contact Defendants who, to my knowledge, are not represented by counsel, to determine whether Defendants oppose this motion. Defendants' telephone numbers appear to have been disconnected and I received no response to emails. I conferred with Plaintiff's counsel who advised me that Plaintiff does not oppose the motion to intervene.

/s/ Gabriel Hertzberg
Gabriel Hertzberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 12, 2021, I electronically filed the foregoing Motion to Intervene with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Peter H. Levitt

Peter H. Levitt

39848039

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. 21-cv-60462-BLOOM/Valle

CCUR AVIATION FINANCE, LLC, and
CCUR HOLDINGS, INC.,

Plaintiffs,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

_____/
WBIP AVIATION ONE, LLC, and
WBIP AVIATION TWO, LLC,

Proposed Intervenor Plaintiffs,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

_____ /

[PROPOSED] COMPLAINT OF INTERVENOR PLAINTIFFS

Plaintiffs WBIP Aviation One, LLC (“WBIP One”) and WBIP Aviation Two, LLC (“WBIP Two,” and together with WBIP One, “WBIP” or “Plaintiffs”), by and through their undersigned counsel, file this Complaint against Defendants South Aviation, Inc. (“South Aviation”) and Federico A. Machado (“Machado”) (together, “Defendants”) and state as follows:

OVERVIEW OF DEFENDANTS’ FRAUDULENT SCHEME

1. These claims arise from Defendants’ scheme to defraud Plaintiffs, and others, by inducing Plaintiffs to enter into escrow deposit agreements and funding deposits for the alleged

purchases of certain aircraft. Machado has confessed to this scheme in writing. (ECF No. 13-1 at p. 7).

2. Based on Defendants' false representations and agreements executed under false pretenses, Plaintiffs provided millions of dollars of financing to South Aviation and Machado in the manner described in this Complaint. Defendants, however, were not engaged in legitimate purchases of aircraft or legitimate escrow arrangements. Instead, Defendants were engaged in a Ponzi scheme by which Defendants enriched themselves through the escrow deposits made by Plaintiffs and others, and used Plaintiffs' escrow deposits to funnel funds to themselves and their related businesses or to refund escrow deposits to prior depositors.

3. Defendants told WBIP that South Aviation would locate aircraft and enter into purchase agreements with third party sellers for the aircraft under various asset purchase agreements. In order to secure these contracts, South Aviation was allegedly required to make substantial deposits into escrow, typically 10% to 20% of the total purchase price of the aircraft. In turn, South Aviation would look to Plaintiffs, and other financing sources, to fund the escrow deposits. Further, the escrow deposits, when funded, were deposited into an escrow account (the "Escrow Account") with an Oklahoma-based escrow agent, Wright Brothers Aircraft Title, Inc. (the "Escrow Agent").

4. Under the operative agreements, Plaintiffs would fund the refundable deposits into the escrow account of the Escrow Agent, and on or before the dates of the respective aircraft purchase transactions reaching an advanced stage of diligence, the agreements provided for South Aviation to refund, or cause the Escrow Agent to refund, by wire transfer to Plaintiffs the refundable deposits, plus the financing fees that Plaintiffs earned for providing this interim financing.

5. Further, under the operative agreements, South Aviation and its principal, Machado, were obligated to indemnify Plaintiffs for any claims, losses, or damages arising out of the operative agreements or the use of the refundable deposits. South Aviation and Machado further agreed to pay all costs and attorneys' fees, including any costs of collection, incurred by Plaintiffs due to any breach of the operative agreements.

6. On February 26, 2021, the United States District Court for the Eastern District of Texas unsealed a Third Superseding Indictment against Machado, the principal of the Escrow Agent, and others (*US v. Mercer-Erwin, et al.*, 4:20-CR-212 (E.D. Tex.)). The indictment charges Machado and the principals of the Escrow Agent with numerous felony counts, including engaging in a Ponzi scheme that defrauded depositors like WBIP of between \$350 million and \$560 million. According to the indictment, the aircraft purchase transactions that were represented to WBIP and others as legitimate in fact involved fictitious aircraft, fictitious sellers, and fictitious agreements.

7. Consequently, hundreds of millions of dollars that should otherwise have been kept in the Escrow Agent's escrow account (and been available to return to the Plaintiffs and similar financing parties) have been transferred to other depositors through a Ponzi scheme, as well as to South Aviation, Machado, and/or Machado's affiliated entities. Moreover, the indictment makes clear that Defendants have been engaged in this Ponzi scheme since at least 2016.

PARTIES, JURISDICTION AND VENUE

8. Each of the WBIP entities is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 1335 Trafalgar Street, Teaneck, New Jersey. WBIP's members are natural persons domiciled in New Jersey.

9. South Aviation, Inc. is a corporation organized and existing under the laws of the state of Florida, and is headquartered in Fort Lauderdale, Florida.

10. Federico A. Machado is an individual domiciled in the state of Florida, and is therefore a citizen of Florida.

11. As none of Plaintiffs are citizens of the same states as any of Defendants, complete diversity exists between the parties. *See* 28 U.S.C. § 1332(a).

12. The amount in controversy in this matter, excluding interest and costs, exceeds the sum of \$75,000.

13. As the Parties are citizens of different states and the amount in controversy exceeds \$75,000.00, this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §§ 1332.

14. Because South Aviation is incorporated in Florida, and because Machado is a Florida resident, the Court has general personal jurisdiction over both of them.

15. Venue is proper in this Court as defendants reside in this district. *See* 28 U.S.C. § 1391(b)(1) (a civil action may be brought in “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.”).

GENERAL ALLEGATIONS

16. The members of WBIP One and WBIP Two established the entities specifically for the purpose of financing aircraft deposits.

17. Beginning in as early as 2018, Machado represented to WBIP’s members that it was a buyer in the aircraft marketplace that frequently purchases aircraft on behalf of foreign (*i.e.*, non-U.S. based) parties.

18. In furtherance of the scheme to induce Plaintiffs into the refundable escrow deposit transactions described herein, South Aviation, by and through Machado, presented

aircraft purchase agreements and/or letters of intent for the purchase of aircraft (collectively, the “Aircraft Purchase Contracts”) to Plaintiffs.

19. Based on these Aircraft Purchase Contracts, Defendants represented that the aircraft sellers required South Aviation to make substantial deposits into escrow, typically ten to twenty percent of the total purchase price of each aircraft.

20. Plaintiffs, for a financing fee paid up front by Defendants, would provide the funding for such deposits.

21. The mechanics of the transaction are as follows. The depositing Plaintiff would deposit the required down payment, as set forth in the Aircraft Purchase Contracts, into the agreed escrow account with the Escrow Agent (a “Refundable Deposit”). According to the terms of the operative agreements, South Aviation and Machado were required to return or cause the return of each Refundable Deposit to the depositing Plaintiff in full upon a “Termination Date” which was purported to be the date upon which the buyer and seller would close pursuant to an Aircraft Purchase Contract. The depositing Plaintiff was to receive back the entire Refundable Deposit on or before the Termination Date unless an extension was properly noticed and an extension payment paid to the depositing Plaintiff.

22. In reliance on the above representations and promises by Defendants, WBIP agreed to finance the Refundable Deposits to the Escrow Agent in connection with two different aircraft transactions presented by Defendants.

23. Each of the Refundable Deposit transactions between the Plaintiffs and Defendants is documented in: (i) an Option Agreement between and among each depositing Plaintiff, South Aviation, and Machado; and (ii) an Escrow Agreement between each depositing Plaintiff and the Escrow Agent.

24. As a material inducement for Plaintiffs' entry into the refundable escrow deposit transactions described above, pursuant to Sections 10 and 16.5 of the respective Option Agreements, Defendant South Aviation and Machado each agreed to fully indemnify Plaintiffs against all damages and losses arising from any breach of the Option Agreements or the Escrow Agreements, including, without limitation, the failure to return the Refundable Deposits to Plaintiffs.

A. WBIP One Transaction

25. In the days or weeks preceding September 15, 2020, South Aviation approached WBIP's members about securing escrow deposit assistance in connection with South Aviation's purported acquisition of two Bombardier Model 6000 aircraft. One of the two ("Aircraft No. 1") was identified as having Registration No. T7-SSB; the other ("Aircraft No. 2") was identified as having Registration No. T7-AIG.

26. On or about September 15, 2020, South Aviation, by and through Machado, presented WBIP One with an executed Aircraft Purchase Agreement ("APA No. 1") between South Aviation, as purchaser, and Unique Jet, Inc., as seller, for Aircraft No. 1 with a purchase price of \$32,000,000. APA No. 1 required an escrow deposit of \$3,500,000 to the Escrow Agent.

27. Pursuant to that certain option agreement dated September 15, 2020, between and among WBIP One, South Aviation, and Machado for Aircraft No. 1 (the "WBIP One Option Agreement"), and that certain Escrow Agreement between WBIP One and the Escrow Agent for Aircraft No. 1, dated September 15, 2020 (the "WBIP One Escrow Agreement"), WBIP One agreed to, and did, deposit \$3,500,000 with the Escrow Agent as a fully refundable deposit in connection with South Aviation's purchase of Aircraft No. 1 (the "WBIP One Refundable Deposit").

28. The WBIP One Refundable Deposit was due to be returned to WBIP One by the Escrow Agent on or before January 15, 2021. It has not been returned. According to the indictment, it has been defalcated by Defendants from the Escrow Account.

B. WBIP Two Transaction

29. Also on or about September 15, 2020, South Aviation, by and through Machado, presented WBIP Two with an executed Aircraft Purchase Agreement (“APA No. 2”) between South Aviation, as purchaser, and Unique Jet, Inc., as seller, for Aircraft No. 2. The purchase price of \$32,000,000. APA No. 2 required an escrow deposit of \$3,500,000 to the Escrow Agent.

30. Pursuant to that certain option agreement, dated September 15, 2020, between and among WBIP Two, South Aviation, and Machado for Aircraft No. 2 (the “WBIP Two Option Agreement”), and that certain Escrow Agreement between WBIP One and the Escrow Agent for Aircraft No. 2, dated September 15, 2020 (the “WBIP Two Escrow Agreement”), WBIP Two agreed to, and did, deposit \$3,500,000 with the Escrow Agent as a fully refundable deposit in connection with South Aviation’s purchase of Aircraft No. 2 (the “WBIP Two Refundable Deposit”).

31. The WBIP Two Refundable Deposit was due to be returned to WBIP Two by the Escrow Agent on or before January 15, 2021. It has not been returned, and according to the indictment, has been defalcated by Defendants from the Escrow Account.

COUNT I
FRAUD AGAINST SOUTH AVIATION AND MACHADO

32. WBIP realleges and reaffirms paragraphs 1 through 31 as if fully set forth herein.

33. In the weeks leading up to September 15, 2020, as a material inducement for WBIP entering into the Refundable Deposit financing of Aircraft No. 1 and Aircraft No. 2

described herein, South Aviation, by and through its President, Defendant Machado, affirmatively represented to Plaintiffs that: (i) South Aviation was engaged in legitimate aircraft purchase agreements that required the requested escrow deposits for Aircraft No. 1 and Aircraft No. 2; (ii) that APA No. 1 and APA No. 2 represented legitimate transactions between legitimate buyers and sellers; (iii) that the WBIP Refundable Deposits would remain in the escrow account of the Escrow Agent and would not be used for any other purpose; (iv) the WBIP Refundable Deposits would be repaid to WBIP on or before the January 15, 2021 date set forth in WBIP One Option Agreement and WBIP Two Option Agreement, without qualification or reservation; and (v) South Aviation and Machado would jointly indemnify Plaintiffs for any and all damages or losses incurred as a result of any failure to return the Refundable Deposits.

34. These representations were false when made and were made knowingly by South Aviation and Machado or were made recklessly as to their truth or falsity.

35. All of these false representations were material to Plaintiffs, as Plaintiffs would not have deposited their funds with the Escrow Agent had they known the true facts.

36. WBIP One justifiably and reasonably relied upon these representations by South Aviation and Machado and, in reliance thereon, paid the WBIP One Refundable Deposits in the amount of \$3,500,000 to the Escrow Agent in furtherance of South Aviation's purported purchase of Aircraft No. 1.

37. WBIP Two justifiably and reasonably relied upon these representations by South Aviation and Machado and, in reliance thereon, paid the WBIP Two Refundable Deposit in the amount of \$3,500,000 to the Escrow Agent in furtherance of South Aviation's purported purchase of Aircraft No. 2.

38. Neither South Aviation nor Machado had any intention of refunding the WBIP Refundable Deposits.

39. Instead, at all relevant times, South Aviation and/or Machado intended to use the funds for their own benefit, convert them to their own use, or use the funds to refund deposits made by other depositors.

40. As a result of South Aviation's and Machado's misrepresentations, WBIP has been damaged in an amount not less than the amounts of its fully refundable escrow deposits relating to Aircraft No. 1 and Aircraft No. 2 in the aggregate amount of \$7,000,000 and have suffered further damages in an amount to be determined as a foreseeable and proximate consequence of Defendants' fraudulent misrepresentations alleged herein.

41. As a result of Defendants' fraud as alleged herein, WBIP will at the appropriate time seek exemplary damages in the maximum amount allowed by applicable law.

COUNT II
BREACH OF CONTRACT AGAINST SOUTH AVIATION AND MACHADO
(WBIP ONE OPTION AGREEMENT)

42. WBIP One realleges and reaffirms paragraphs 1 through 31 as if fully set forth herein.

43. The WBIP One Option Agreement is a valid, binding, and enforceable contract, and WBIP One, South Aviation, and Machado fully accepted all provisions therein.

44. As described in more detail herein, WBIP One deposited \$3,500,000 to the Escrow Agent in connection with South Aviation's purported purchase of Aircraft No. 1.

45. Pursuant to the WBIP One Option Agreement, South Aviation and Machado were obligated to refund or secure the refund of the full amounts of the WBIP One Refundable Deposit on or before January 15, 2021.

46. To date, no portion of the WBIP One Refundable Deposit has been refunded.

47. South Aviation and Machado, therefore, have materially breached the WBIP One Option Agreement.

48. Moreover, South Aviation and Machado have materially breached the WBIP One Option Agreement by failing to comply with the terms of its indemnity provisions.

49. Defendants' breach of the WBIP One Option Agreement has caused damages to WBIP One in an amount not less than \$3,500,000, plus applicable interest.

50. Furthermore, WBIP One is entitled to recover its attorney's fees and costs, including any costs of collection, pursuant to the WBIP One Option Agreement.

COUNT III
BREACH OF CONTRACT AGAINST SOUTH AVIATION AND MACHADO
(WBIP TWO OPTION AGREEMENT)

51. WBIP Two realleges and reaffirms paragraphs 1 through 31 as if fully set forth herein.

52. The WBIP Two Option Agreement is a valid, binding, and enforceable contract, and WBIP Two, South Aviation, and Machado fully accepted all provisions therein.

53. As described in more detail herein, WBIP Two deposited \$3,500,000 to the Escrow Agent in connection with South Aviation's purported purchase of Aircraft No. 2.

54. Pursuant to the WBIP One Option Agreement, South Aviation and Machado were obligated to refund or secure the refund of the full amounts of the above WBIP Two Refundable Deposit on or before January 15, 2021.

55. To date, no portion of the WBIP Two Refundable Deposit has been refunded.

56. South Aviation and Machado, therefore, have materially breached the WBIP Two Option Agreement.

57. Moreover, South Aviation and Machado have materially breached the WBIP Two Option Agreement by failing to comply with the terms of its indemnity provisions.

58. Defendants' breach of the WBIP Two Option Agreement has caused damages to WBIP One in an amount not less than \$3,500,000, plus applicable interest.

59. Furthermore, WBIP Two is entitled to recover its attorney's fees and costs, including any costs of collection, pursuant to the WBIP Two Option Agreement.

PRAYER

WHEREFORE, Plaintiffs pray that Defendants be cited to appear and answer herein and following a trial on the merits or other disposition, Plaintiffs have and recover judgment, jointly and severally, from Defendants South Aviation, Inc. and Federico A. Machado in the following amounts:

1. As to Plaintiff WBIP One, judgment in an amount not less than \$3,500,000, comprised of the WBIP One Refundable Deposit; and
2. As to Plaintiff WBIP Two, judgment in an amount not less than \$3,500,000, comprised of the WBIP Two Refundable Deposit,

together with prejudgment interest thereon, exemplary damages in the greatest amount allowed by applicable law for Defendants' fraud and misrepresentations as set forth herein, and all costs, attorneys' fees, and costs of collection pursuant to the operative agreements, and any and all such other and further relief as the Court deems just and proper:

Dated: March 12, 2021

SHUTTS & BOWEN LLP

/s/ Peter H. Levitt

Peter H. Levitt
200 South Biscayne Boulevard, Suite 4100
Miami, FL 33131
Direct: (305) 415-9447
Fax: (305) 415-9847
plevitt@shutts.com

-and-

Gabriel Hertzberg (*pro hac vice* motion pending)
CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP
101 Park Avenue
New York, NY 10178
Telephone: 212-696-6000
Facsimile: 212-697-1559
ghertzberg@curtis.com

*Counsel for WBIP Aviation One LLC and WBIP
Aviation Two LLC*

39847774