

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

Venice Jet Center, LLC

Complainant,

v.

FAA Docket No. 16-09-05

City of Venice, Florida

Respondent.

**COMPLAINANT VENICE JET CENTER, LLC'S RESPONSE TO CITY OF
VENICE'S MOTION TO DISMISS**

Complainant Venice Jet Center, LLC (“the VJC”), by and through the undersigned counsel, hereby files its Response pursuant to Title 14, Code of Federal Regulations, Part 16.19(c) to the Respondent City of Venice’s (“the City” or “Respondent”) Motion to Dismiss (“Motion to Dismiss”) dated February 18, 2010. In support thereof, VJC states as follows:

I. Introduction

On September 2, 2009, the City moved to dismiss this proceeding, contending the dispute was unripe, that the VJC lacked standing, and that the claims were insufficiently pled. The City now requests the FAA disregard that motion and, instead, dismiss this proceeding on “grounds of mootness” on the basis that the federal Receiver appointed over the VJC sold its assets and assigned its airport lease agreements to Tristate Aviation Group of Florida, LLC (“Tristate”). These new arguments devised by the City (and the arguments raised against Tristate as an intervenor) merely represent additional efforts to avoid its federal obligations as an airport sponsor. The motion of the City not only has no merit but is

additional evidence of the City's hardened determination to avoid its responsibility for its past and continuing willful conduct and future obligations. The City continues to engage in a pattern of discriminatory and anti-competitive conduct to restrict aeronautical services at the airport and the VJC continues to be directly and substantially affected by the City's current non-compliance. Contrary to the City's contentions, the VJC has interests and rights in this proceeding and its claims are not moot. The City's claim that the VJC no longer has a legal interest in the outcome of this proceeding is patently false and, more importantly, inconsistent with its representations to the Court presiding over the federal receivership.

II. The VJC Has A Legal Interest In The Outcome Of This Proceeding And Its Claims Are Not Moot

The City argues that the VJC's claims are moot because it sold its assets and transferred its airport lease agreements to Tristate. Initially, whether the VJC sold its assets to Tristate has no bearing on the pendency of this proceeding. The sale of assets was merely that, an asset sale. It did not result in the liquidation, dissolution, or closing of the VJC; the entity remains active and its rights as a company remain intact.

Further, the City's assertion that the assignment of the airport lease agreement divested VJC of its legal interests in this matter is inconsistent with its own argument that the VJC remains liable under the lease. Specifically, the City asserts in its supporting memorandum filed in this proceeding that the assignment of the VJC's lease to Tristate "shall not release or relieve [VJC] from any duty, obligation or liability under the terms and conditions of the [VJC] lease." Likewise, in its Response to the Receiver's Motion for Approval of the Sale of the VJC's Assets, filed in the federal Receivership action, the City argued the VJC should remain liable for its obligations under the lease:

“Under Florida law, a lessee’s assignment of a lease to a third party does not relieve the lessee from its financial or other obligations to the lessor. *Kornblum v. Henry E. Mangels Co.*, 167 So.2d 16 (Fla.3d DCA 1964). As such, VJC should remain liable for its obligations under the Lease, notwithstanding the assignment to Tristate.” (City of Venice’s Response to Receiver’s Motion for Approval of Sale of the Assets of VJC, ¶ 25).

The City’s disingenuous and nonsensical position that VJC is liable under the lease yet has no interest in the lease or the outcome of this proceeding is further evidence of its unrelenting willful determination to ignore its airport tenant’s property rights and to avoid its own responsibilities under the lease and pursuant to federal obligations.

Further, there is a debt owed by the purchaser of the VJC’s assets and payment of that debt will depend on profitability of the purchaser’s operations and, in part, on its ability to construct the hangars. Accordingly, the VJC does have a legal interest in the outcome of this proceeding, apart from its continuing obligations under the airport lease. In sum, the VJC still has standing to pursue this action because it remains an entity that is directly and substantially affected by an airport sponsor’s alleged noncompliance. 14 C.F.R. § 16.23.

The City deliberately ignores the contentious dispute that continues between it, the VJC and Tristate, and instead contends neither VJC nor Tristate have a ripe claim. As always, the City’s true desire is transparent. Tristate has repeatedly advised the City of its ongoing intention to complete the VJC’s development plan. The City would like nothing more than to avoid its day of reckoning and continue its obstructionist conduct against Tristate. If the City is successful in this motion it will continue to violate its federal obligations. The City has made every effort to obtain a dismissal in order to avoid a ruling on the merits of the Part 16 Complaint, to avoid accountability for its actions, and to prevent the hangars project from going forward. Such a result would clearly allow the City to

flagrantly undermine the FAA's governmental mandate and should not be condoned or permitted by the FAA. For the foregoing reasons, the City's most recent Motion to Dismiss should also be denied.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the following persons at the following address by overnight mail on February 24, 2010:

Office of the Chief Counsel
Attn: FAA Part 16 Airport Proceedings
Docket, AGC-610
Room 925
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, DC 20591
**Original and 3 copies by overnight
delivery**

Jonathan Cross
Manager
Airports and Environmental Law division
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, DC 20591
Facsimile (202) 267-5769
1 Copy

I hereby certify that I have served the foregoing on the following persons at the following addresses by E-mail on February 24, 2010:

Raymond Veatch, Esq.
Airport and Environmental Law Division
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Avenue, SW
Room 900-E
Washington, D.C. 20591
(202) 267-3199 (office)
(202) 267-9676 (direct)
(202) 267-5769 (fax)
raymond.veatch@faa.gov

Richard L. Richards, Esq.
RICHARDS & ASSOCIATES
232 Andalusia Avenue, Suite 202
Coral Gables, Florida 33134
Telephone: (305) 448-2228
Facsimile: (305) 448-2229

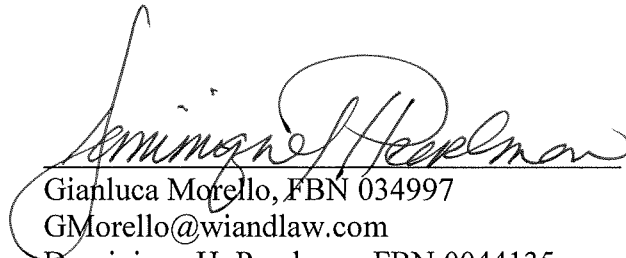
Email: r-richards@richpa.net

I hereby further certify that I have served the foregoing on the following persons at the following address by overnight mail and electronic mail on February 24, 2010:

Thomas R. Devine
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave. NW, Ste. 800
Washington, DC 20036
Telephone: (202) 955-5600
Email: tdevine@kaplankirsch.com

I hereby further certify that I have served the foregoing on the following persons at the following address by United States mail on February 24, 2010:

Robert C. Anderson
Hall & Anderson, P.A
1314 East Venice Avenue, Suite E
Venice, Florida 34285



Gianluca Morello, FBN 034997
GMorello@wiandlaw.com

Dominique H. Pearlman, FBN 0044135
DPearlman@wiandlaw.com
WIAND GUERRA KING P.L.
3000 Bayport Drive, Ste. 600
Tampa, FL 33607
Phone (813) 347-5109
Fax (813) 347-5159

Attorneys for the Complainant, Venice Jet
Center, LLC