

SIGNED.



Dated: January 26, 2010

*James M. Marlar*  
JAMES M. MARLAR  
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

<p>10 In re:</p> <p>11 GLOBAL AIRCRAFT SOLUTIONS, INC., et al.,</p> <p>12 _____ Debtors.</p> <p>13 THIS FILING APPLIES TO:</p> <p>14 [ ] ALL DEBTORS</p> <p>15 [ X ] SPECIFIED DEBTORS</p> <p>16 [ ] GLOBAL AIRCRAFT SOLUTIONS, INC.</p> <p>17 [ X ] HAMILTON AEROSPACE TECHNOLOGIES, INC.</p> <p>18 [ ] WORLD JET CORPORATION</p> <p>19 [ ] HAMILTON AEROSPACE MEXICO S.A. de C.V.</p> <p>20 _____</p> <p>21 HAMILTON AEROSPACE TECHNOLOGIES, INC.,</p> <p>22 _____</p> <p>23 Plaintiff,</p> <p>vs.</p> <p>THE LEADING EDGE GROUP LLC,</p> <p>_____</p> <p>Defendant</p>	<p>) Chapter 11</p> <p>) No. 4-09-bk-01655-JMM</p> <p>) (Jointly Administered)</p> <p>) Adversary No. 4:09-ap-00609-JMM</p> <p>) <b>MEMORANDUM DECISION</b></p>
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**INTRODUCTION**

This is a state law contract action for payment of storage fees. The disputes between the parties boil down to the following issues:

- 1 1. Was there ever a contract for the storage of an airplane?
- 2 2. Did The Leading Edge Group LLC ("LEG") grant a security interest in
- 3 a navigation unit, to partially secure the storage obligation?
- 4 3. Was a foreclosure sale properly conducted?
- 5 4. Is the prevailing party entitled to attorneys' fees?

6  
7 The parties presented evidence and argument on January 15, 2010. After a short period under  
8 advisement, the court now rules.

9  
10 **FACTS**

11  
12 **A. Storage Fees and Garageman's Lien Sale**

13  
14 Prior to June 1, 2006, a 727 airframe had been stored, by prior owners, at Hamilton  
15 Aerospace Technologies, Inc. ("HAT") in Tucson, Arizona. At approximately that date, LEG  
16 became the owner of the airframe. (Ex. 2, 3, 4, 5.)

17 In its initial communications with LEG, HAT stated that its storage charges for the  
18 airframe were \$4,500 per month (Ex. 3), and HAT attempted to secure a written contract  
19 acknowledging this charge, and sent LEG a contract to that effect (Ex. 3). However, LEG never  
20 executed the document. Nonetheless, LEG did not take steps to remove the airframe from HAT's  
21 yard, nor did it object to the \$4,500 monthly charge. (See, e.g., Ex. 7, 8, 9.)

22 HAT began accounting for the storage charges on June 1, 2006 (Ex. 6). Eventually,  
23 the airframe was sold at a garageman's lien sale on August 6, 2009. Between June 1, 2006 and  
24 August 6, 2009, LEG made payments totaling \$26,900. At the August, 2009 sale, HAT's trustee bid  
25 \$85,000 and credited that figure against the storage debt (Ex. 15).

1 Therefore, as of August 6, 2009, the accounting is:

2  
3 Storage (June 1, 2006 - July 31, 2009)

4 June 1, 2006 - May 31, 2007 \$54,000

5 June 1, 2007 - May 31, 2008 54,000

6 June 1, 2008 - May 31, 2009 54,000

7 June 1, 2009 - July 31, 2009 9,000

8 **\$171,000**

9 Less: Payments (26,900)

10 Less: Auction Credit Bid (85,000)

11 **Balance \$59,100**

12 (See Ex. 6, 15.)

13 As of August 6, 2009, LEG owed HAT \$59,100 for the lengthy storage of its property.

14 LEG maintains that it never had a contract or agreement for the storage of the  
15 airframe. Therefore, it contends, it owes nothing for storage. It also has pled that the garageman's  
16 lien sale should be rescinded, or that LEG should be awarded damages for the wrongful sale of its  
17 property.

18  
19 **B. Settlement**

20  
21 In an effort to resolve whatever difficulties existed between HAT and LEG, the  
22 principals met on December 14, 2007 to discuss resolution. In that meeting, the parties agreed that  
23 the \$4,500 per month storage fee would be discounted, for the period up to and through  
24 December 31, 2008, to \$53,095. That sum was to be paid in two installments:

25  
26 December 28, 2007 \$25,000

27 January 31, 2008 \$28,095

1 After January 1, 2008, the storage rate would again increase to \$4,500 per month (Ex. 9). However,  
2 the agreement also bore two additional covenants:

- 3 1. If default occurred on either payment, then the discount could not be  
4 taken and the full \$4,500 per month (less payments made) would be  
5 due; and
- 6 2. LEG delivered a navigation unit to HAT, as collateral for the storage  
7 debt.  
8

9 (Ex. 9.) LEG responded to the HAT confirmation letter on December 21, 2007, wherein it disagreed  
10 with a few "minor" points (Ex. 10). Now, LEG maintains that no settlement occurred. However,  
11 LEG partially performed the settlement agreement by paying the first \$25,000 payment-which was  
12 accepted and applied by HAT--on January 3, 2008 (Ex. 6). Also, LEG acknowledged the settlement  
13 further, by noting that it would be attempting to make the final \$28,095 payment by February 21,  
14 2008 (Ex. 11). Had that final payment been made as promised, there is no evidence that HAT would  
15 not have accepted it, nor would it have declared the settlement breached. However, LEG never  
16 made that \$28,095 payment.

17 Regarding the issue of the security interest in the navigation unit, LEG noted that,  
18 once the last \$28,095 payment had been remitted, it "will plan to pickup [the unit] after you receive  
19 payment." Had LEG made the final payment, the conditions for the discount and the collateral  
20 security status of the navigation unit would have been completely satisfied. (See Ex. 9, 10, 11.)

21 After LEG did not make the final \$28,095 payment, or any further payments, HAT  
22 gave notice and sold both the airframe and navigation units pursuant to the Arizona garageman's lien  
23 statutes. (Ex. 12, 13, 14, 15.) (ARIZ. REV. STAT. §§ 33-1022, 1023.)

### 24 25 **C. Security Interest-Navigation Unit**

26  
27 LEG granted a security interest in the navigation unit, to secure payment of the storage  
28 invoice. *See* ARIZ. REV. STAT. § 47-9102 (72) ("Security Agreement means an agreement that

1 creates or provides for a security interest."); § 47-9203 (attachment and enforceability of security  
2 interest). The agreement was confirmed in writing. (Ex. 9, 10.) LEG's contention that title  
3 remained in it until sold is not inconsistent with the grant of a security interest (ARIZ. REV. STAT.  
4 § 47-9202), because title and ownership in the party granting the lien never transfers until a  
5 foreclosure sale is completed (ARIZ. REV. STAT. § 47-9610). Finally, because HAT was given  
6 possession of the navigation unit, it perfected its lien thereon (ARIZ. REV. STAT. § 47-9313(A)).

7           Therefore, the court finds and concludes that LEG granted a security interest in the  
8 navigation unit, in favor of HAT as the secured party, in order to partially secure the debt for the 727  
9 airframe storage fees. The security agreement attached upon delivery into HAT's possession, and  
10 at all relevant times LEG had ownership rights in the collateral, until that ownership was  
11 extinguished at the garageman's lien sale, which was simultaneously conducted in a commercially  
12 reasonable manner.

#### 13 14                                   **D. The Garageman's Lien**

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16           In regard to the airframe, the court further determines that HAT had a statutory lien  
17 for the agreed-upon storage charges. The Bankruptcy Code defines a statutory lien as a "lien arising  
18 solely by force of a statute on specified circumstances or conditions . . ." 11 U.S.C. § 101(53). The  
19 Arizona statutes grant a lien in favor of a garageman (which includes aircraft storage) who is not  
20 paid for its storage charges (ARIZ. REV. STAT. §§ 33-1022(A), 1023).

21           Although LEG disputes the propriety of that sale, its evidence pointed to no defect  
22 therein. Thus, the court finds that the preponderance of the evidence supports the legal validity of  
23 that statutory sale. In addition, the sale of the navigation unit was accomplished in a commercially  
24 reasonable manner. (ARIZ. REV. STAT. § 47-9610.)

1 **WAS THERE A CONTRACT FOR STORAGE FEES?**

2  
3 In Arizona,<sup>1</sup> a contract is an agreement between parties that creates an obligation.  
4 *Malcoff v. Coyier*, 14 Ariz. App. 524, 526, 484 P.2d 1053, 1055 (App. 1971). "The essential  
5 elements of a valid contract are an offer, acceptance, consideration, a sufficiently specific statement  
6 of the parties' obligations, and mutual assent." *Muchesko v. Muchesko*, 191 Ariz. 265, 268, 955 P.2d  
7 21, 24 (App.1997).

8 Manifestation of assent can either be express or implied. However, "[t]here can be  
9 no implied contract where there is an express contract between the parties in reference to the same  
10 subject matter." *Chanay v. Chittenden*, 115 Ariz. 32, 35, 563 P.2d 287, 290 (1977) .

11  
12 **A. Implied Contract**

13  
14 A contract may be inferred from the statements and conduct of the parties. *See*  
15 *Wagenseller v. Scottsdale Mem. Hosp.*, 147 Ariz. 370, 381, 710 P.2d 1025, 1036 (1985); *Beaudry*  
16 *v. Ins. Co. of the West*, 203 Ariz. 86, 89, 50 P.3d 836, 839 (App. 2002) (same); RESTATEMENT  
17 (SECOND) CONTRACTS §§ 6, 19. The existence of an implied-in-fact contract is be determined on  
18 the evidence presented and the surrounding circumstances. *Id.* Moreover, the "determination of the  
19 parties' intent must be based on objective evidence, not the hidden intent of the parties." *See Tabler*  
20 *v. Indus. Com'n of Ariz.*, 202 Ariz. 518, 521, 47 P.3d 1156, 1159 (App. 2002) .

21  
22  
23 <sup>1</sup> In the absence of a choice of law by the parties, Arizona's choice of law rules  
24 apply. *Beckler v. State Farm Mut. Auto. Ins. Co.*, 195 Ariz. 282, 285, 987 P.2d 768, 771 (App.  
25 1999). Arizona follows the Restatement for its choice of law. *Id.* The Restatement (Second) of  
26 Conflicts § 188 (1971), instructs that the following contacts should be evaluated:

- 27 (a) the place of contracting,
- 28 (b) the place of negotiation of the contract,
- (c) the place of performance,
- (d) the location of the subject matter of the contract, and
- (e) the domicile, residence, nationality, place of incorporation and place of  
business of the parties.

*Id.*, § 188(2). In this case, most, if not all of the significant contacts were in Arizona, and  
therefore Arizona contract law governs.

1           The court finds and concludes that there was an implied contract for payment of  
2 \$4,500 in monthly storage fees. This is because, although LEG was advised early, and often, of  
3 HAT's charges in such amount, it neither objected, nor caused its airframe to be moved to an  
4 alternate location. LEG's conduct in leaving the airframe on HAT's property, after it knew of what  
5 HAT charged, was an implied agreement to accept and to pay those charges. See RESTATEMENT  
6 (SECOND) OF CONTRACTS § 69 (1981) (even silence and inaction can operate as acceptance); *Coyier*,  
7 14 Ariz. App. at 525, 484 P.2d at 1054 (plaintiff's performance coupled with defendants' actions  
8 supported the essentials of an enforceable contract). LEG is equitably estopped by its own inaction  
9 to change the *status quo*, nor to assert lack of liability for HAT's charges.

10           LEG had it within its total control to cause the removal of the airframe unit from  
11 HAT's storage yard at any time, yet it did nothing. Its inaction created an implied agreement to pay  
12 for the known storage fees.

#### 13 14           **B. Express Contract**

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16           An express contract is another mode of manifesting assent. See RESTATEMENT  
17 (SECOND) CONTRACTS § 4 (1981). "An express contract is ordinarily thought of as an actual  
18 agreement reached by parties who have openly uttered or declared the terms thereof at the time of  
19 making it, either orally or in writing. The fundamental requisites of such a contract are an offer, an  
20 acceptance, a meeting of the minds, and a quid pro quo." *Alexander v. O'Neil*, 77 Ariz. 91, 97, 267  
21 P.2d 730, 734 (1954).

22           The court has found that there was a settlement agreement between the parties in  
23 December, 2007, which sets forth both the \$4,500 rate and an acknowledgment thereof. "[A]n oral  
24 settlement agreement may bind the parties in contract, even though their written agreement is not  
25 formally executed, as long as it is clear that the parties intended to be so bound." *Tabler*, 202 Ariz.  
26 at 521, 47 P.3d at 1159 (citing RESTATEMENT. (SECOND) OF CONTRACTS § 27 (1981)).

1                         Therefore, alternatively, the court finds and concludes that an express contract to pay  
2 \$4,500 per month in storage fees also existed between the parties, and was proven by HAT (Ex. 9,  
3 10.)

4  
5   **ATTORNEYS' FEES**  
6

7                         Both sides have requested attorneys' fees (complaint, answer, motion to set aside sale,  
8 response). The Arizona Revised Statutes authorize a court to award fees to the prevailing party, in  
9 a reasonable amount (ARIZ. REV. STAT. § 12-341.01). As this action has been prosecuted by the  
10 Plaintiff/Trustee solely under Arizona contract law theories (11 U.S.C. § 544) and not under any  
11 theory existing under federal law, fees shall be awarded to the Plaintiff herein, upon application  
12 made and supported within 21 days after entry of this Memorandum Decision. A bill of costs should  
13 also be presented simultaneously. Only taxable costs authorized by law shall be awarded.  
14 Appropriate authority should support each cost claim. Any response in opposition should be filed  
15 within 21 days thereafter.

16  
17                         **QUESTIONS POSED BY THE PARTIES IN THEIR JOINT PRETRIAL STATEMENT**  
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19                         The court will, in this section, answer the parties' factual and legal questions:  
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21                         **Plaintiff's Questions**

- 22                         1.     What amount is owed by LEG to HAT?                         \$59,100  
23                         2.     Did LEG agree to the parking fee charged by HAT?                         Yes  
24                         3.     Did HAT properly conduct a foreclosure sale of the                         Yes  
25   Airframe and Universal UNS-1C Navigation Unit?  
26                         4.     Did LEG's failure to object to the parking fee constitute                         Yes  
27   acceptance of the fee?  
28



- 1 5. Did the settlement between HAT and LEG constitute Yes  
2 acceptance of the parking fee?  
3 6. Was Plaintiff entitled to a lien for unpaid parking fees Yes  
4 pursuant to ARIZ. REV. STAT. § 33-1022?  
5 7. May HAT execute a lien on the Airframe and the Yes  
6 Universal UNS-1C Navigation Unit?

7 **Defendant's Questions**

- 8 1. What amount, if any, is owed by LEG to HAT for \$59,100  
9 parking?  
10 2. Did LEG agree to the parking fee charged by HAT? Yes  
11 3. Did HAT properly conduct a foreclosure sale of the Yes  
12 Airframe and Universal UNS-1C Navigation Unit?  
13 4. What amount is owed to LEG by HAT for the improper Nothing, as the  
14 sale of the Airframe? sale was legally  
15 conducted.  
16 5. Was there a settlement between HAT and LEG? Yes  
17 6. Was Plaintiff entitled to a lien for unpaid parking fees Yes  
18 pursuant to A.R.S. § 33-1022?  
19 7. May HAT execute [enforce] a lien on the Airframe and Yes  
20 the Universal UNS-1C Navigation Unit?

21 **RULING**

- 22  
23 1. Plaintiff shall have judgment for \$59,100, together with statutory  
24 interest thereon from August 7, 2009 until paid, at the rate of 10% per  
25 annum. (ARIZ. REV. STAT. § 44-1201(A)).  
26 2. Plaintiff shall be awarded its reasonable attorneys' fees and costs, upon  
27 submission of an appropriate application. (ARIZ. REV. STAT.  
28 § 12-341.01).

- 1           3.     The storage lien foreclosure procedures are hereby declared valid.  
2                     (ARIZ. REV. STAT. § 33-1023).  
3           4.     The Uniform Commercial Code lien upon the navigation unit is  
4                     declared valid, and the foreclosure of LEG's property under the UCC  
5                     is similarly declared valid. (ARIZ. REV. STAT. § 47-9610).  
6           5.     Plaintiff should present its attorneys' fees and costs application  
7                     within 21 days after entry of this Memorandum Decision on the docket.  
8                     Defendant shall have 21 days thereafter to file any rebuttal thereto. The  
9                     court will then rule on the papers, after which it will issue its judgment.  
10          6.     Any party aggrieved by the court's decision should file its appeal  
11                     within 14 days after entry of the judgment (not this Memorandum  
12                     Decision) on the docket. FED. R. BANKR. P. 8002.

13  
14                     DATED AND SIGNED ABOVE.

15  
16   Copies to be sent by the Bankruptcy Notification  
17   Center ("BNC") to the following:  
18   Anthony Austin, Attorney for Plaintiff  
19   Rob Charles, Attorney for Plaintiff  
20   C. Randall Stone, Attorney for Defendant  
21   Office of the U.S. Trustee  
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