

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: SILVER STATE HELICOPTERS,
LLC.

WESTERN AIRCRAFT, INC.,
Petitioner,

v.

JAMES F. LISOWSKI, SR.,
Trustee-Respondent.

No. 08-80165

D.C. No.

08-cv-1397-RLH

B. Ct. No.

08-10936-MKN

ORDER

On Petition for Permission to Appeal
Pursuant to 28 U.S.C. § 158(d)(2)

Submitted February 23, 2009

Filed May 28, 2009

Before: Alex Kozinski, Chief Judge, and
Michael Daly Hawkins, Circuit Judge.

COUNSEL

Matthew C. Zirzow and Gerald M. Gordon, Gordon & Silver Ltd., Las Vegas, Nevada; Jerry Hall, Jr. and Patrick Potter, Pillsbury Wintrop Shaw Pitman LLP, Washington, D.C., for the petitioner.

Victoria Nelson and Ogonna M. Atamoh, Santoro Driggs Walch Kearney Johnson & Thompson, Las Vegas, Nevada, for the trustee-respondent.

ORDER

In the instant case, Western Aircraft (“Western”) leased commercial real estate to Silver State Helicopters (“Silver State”). Silver State later filed for Chapter 7 bankruptcy relief. After the trustee was appointed, Western demanded that the trustee pay the rent that had accrued under the lease for the first 60 days following Silver State’s filing of the bankruptcy petition. The trustee failed to pay the rent. Western moved the bankruptcy court for an order requiring the rental payment. *See* 11 U.S.C. § 365(d)(3). The bankruptcy court denied Western’s motion, reasoning that the timing of performance under section 365(d)(3) is within the discretion of the bankruptcy court.

The bankruptcy court has certified for appeal the question whether section 365(d)(3) requires the immediate payment of accrued rent.

Because we conclude the order at issue is fully within the discretion of the bankruptcy court, and resolution of the underlying issue (whether section 365(d)(3) requires the immediate payment of accrued rent) is unlikely to have a substantial impact on the ongoing proceedings, the petition for permission to appeal pursuant to 28 U.S.C. § 158(d)(2) is denied.

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