

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: DELTA AIR LINES, INC., et al.,

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AIR LINE PILOTS ASSOCIATION :  
INTERNATIONAL, FIDUCIARY COUNSELORS, :  
INC., DP3, INC., d/b/a DELTA PILOTS' PENSION :  
PRESERVATION ORGANIZATION, INC., JAMES H. :  
GRAY, JAMES HAIGH, REUBEN BLACK, :  
WILLIAM WIRTH, JAMES BOMAR, RONALD :  
STOWE, RICHARD COLBY, DONALD MAIROSE, :  
: :  
Appellants, :  
: :  
v. :  
: :  
DELTA AIR LINES, INC., :  
: :  
Debtor-Appellee, :  
: :  
and :  
: :  
OFFICIAL COMMITTEE OF UNSECURED :  
CREDITORS OF DELTA AIR LINES, INC., et al., :  
: :  
Appellee. :  
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<b>USDC SDNY</b> <b>DOCUMENT</b> <b>ELECTRONICALLY FILED</b> DOC #: <b>DATE FILED: 5-1-06</b>
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**ORDER**

05 CV 10303 (LBS)  
05 CV 10600 (LBS)  
05 CV 10601 (LBS)

SAND, J.

On September 23, 2005, Appellant Delta Pilots' Pension Preservation Organization, Inc., ("DP3") filed in the Bankruptcy Court for the Southern District of New York a motion to compel Debtor-Appellee Delta Air Lines, Inc. ("Delta") to make contributions to certain pension plans. Subsequently, Appellant Fiduciary Counselors, Inc. and Appellant Air Line Pilots Association, Int'l each filed responses in support of certain portions of DP3's motion. On October 12, 2005, the parties entered into a stipulation of uncontested facts, agreeing that "the dispute pending before the Court—whether § 1113(f) of the Bankruptcy Code (and other sections of the Code read in conjunction therewith) obligates Delta to pay all of the Contested Pension Payments unless and until § 1113 relief has been granted—is a pure issue of law." (Joint Statement of Stipulated Facts ¶ 4, 05-17923, Docket No. 711.) The Bankruptcy Court denied DP3's motion,

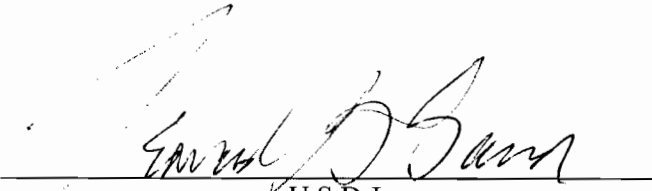
ruling that no party other than the debtor in possession may move for relief under 11 U.S.C. § 1113. (Order Denying Motion of DP3 Pursuant to Bankruptcy Code § 1113, 05-17923, Docket No. 970.)

Section 1113 of the Bankruptcy Code prohibits debtor-employers from terminating, rejecting, modifying, or otherwise changing obligations arising from collective bargaining agreements, unless the employer first satisfies certain procedural and substantive requirements. See 11 U.S.C. § 1113 (2006). In this way, it is true that the section imposes requirements only on the debtor or trustee. However, courts have implicitly recognized that a motion to compel is a procedurally proper means for a non-debtor party in interest to compel the debtor to comply with § 1113. See, e.g., In re 1655 Broadway Restaurant Corp., No. 96 Civ. 9116 (RPP), 1997 WL 104961, at \*2 (S.D.N.Y. Mar. 7, 1997) (reversing denial of motion to compel debtor to make pension contributions per the collective bargaining agreement (CBA) because debtor's failure to make such payments constituted "a unilateral modification of the CBA not permitted under 11 U.S.C. § 1113(f)") (footnote omitted). Indeed, even Appellee Official Committee of Unsecured Creditors of Delta Air Lines, Inc. ("Committee") "agrees with Appellants that a motion to compel is a procedurally proper means of seeking the relief requested." (Br. of Appellee Committee 5 n.2.)

This Court thus concludes that the Bankruptcy Court was in error in denying the motion to compel on that procedural basis. The Court reverses and remands for the Bankruptcy Court to consider the motion on the merits.

SO ORDERED.

Dated: New York, NY  
May 1, 2006

  
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U.S.D.J.