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5 Attorney for James F. Lisowski, Sr.

6 IN THE UNITED STATES BANKRUPTCY COURT  
7 DISTRICT OF NEVADA

8 In re:  
9 SILVER STATE HELICOPTERS, LLC,  
10 Debtor.

Case No. BK-S-08-10936-MKN  
Chapter 7

(Jointly Administered with  
BK-S-08-10935-MKN)

11 In re:  
12 SILVER STATE SERVICES CORPORATION,  
13 Debtor.

14 JAMES F. LISOWSKI, SR., CHAPTER 7  
15 TRUSTEE,  
16 Plaintiff,

Adv. No.

17 v.  
18 JERRY AIROLA, STEVE PICKETT, FIRST  
AMERICAN EQUITY, LLC and STARS &  
19 STRIPES HELIPLEX, LLC,  
20 Defendant.

**COMPLAINT FOR**  
**1. RECOVERY OF PREFERENCE**  
**2. AVOIDANCE OF FRAUDULENT**  
**TRANSFER**  
**3. VALUE OF FRAUDULENT**  
**TRANSFER**  
**4. BREACH OF FIDUCIARY DUTY**  
**5. UNJUST ENRICHMENT**  
**6. CONVERSION**

Date of Hearing: N/A  
Time of Hearing: N/A

21  
22  
23  
24 James F. Lisowski, Sr., Chapter 7 Trustee, ("Trustee"), for his complaint alleges:

25 I. JURISDICTION

- 26 1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §  
27 1334(b) as it is a civil proceeding arising under title 11, or in or related to a case under title 11.  
28 2. Venue is appropriate in this District pursuant to 28 U.S.C. § 1409(a) and (c).

1 3. This adversary proceeding is a core proceeding pursuant to the terms of 28 U.S.C. §  
2 157(b)(2)(E) and (H).

3 **II. STATUTORY PREDICATES**

4 4. The Trustee brings this adversary proceeding pursuant to 11 U.S.C. § 547 to recover a  
5 preference.

6 5. The Trustee brings this adversary proceeding pursuant to 11 U.S.C. § 548 to avoid a  
7 fraudulent transfer or recover damages.

8 6. The Trustee brings this adversary proceeding pursuant to 11 U.S.C. § 544 to avoid a  
9 fraudulent transfer or recover damages under applicable state law.

10 7. The Trustee brings this adversary proceeding otherwise to recover damages under  
11 applicable state law.

12 **III. PARTIES**

13 8. Silver State Helicopters, LLC (“Helicopters”) is a Nevada limited liability company.

14 9. On information and belief, the Trustee alleges that the members of Helicopters are  
15 Airola, Pickett and Silver State Services Corporation; and its managing member is Silver State  
16 Services Corporation.

17 10. Helicopters filed a petition for relief under Chapter 7 of the bankruptcy code on  
18 February 4, 2008 (the “bankruptcy case”).

19 11. The Trustee is duly appointed as the Chapter 7 Trustee in the bankruptcy case and has  
20 acted in that capacity ever since his appointment.

21 12. Jerry Airola (“Airola”) is a natural person residing in Clark County, Nevada or in the  
22 State of Texas; he is a member of Helicopters.

23 13. Steve Picket (“Pickett”) is a natural person residing in Clark County, Nevada; he is a  
24 member of Helicopters.

25 14. First American Equity LLC (“First American”) is a Nevada limited-liability company  
26 formed on June 6, 2007.

27 15. The members of First American are Pickett and Airola.  
28

1 16. Stars & Stripes Heliplex LLC (“Heliplex”) is a Nevada limited-liability company  
2 formed on May 9, 2008.

3 17. The members of Heliplex are Pickett and Steve Trenk.

4 **IV. GENERAL ALLEGATIONS**

5 **A. Air Excel Transactions**

6 18. Air Excel, Inc. (“Air Excel”) is a Nevada corporation formed in June 1995.

7 19. Airola served as Air Excel’s President, Secretary and Treasurer.

8 20. Air Excel’s corporate standing appears to have been revoked.

9 21. As of April 2007, Helicopters owned and controlled 100% of the issued and  
10 outstanding stock of Air Excel.

11 22. As of April 2007, Air Excel was the Tenant of a lease with the City of Boulder (the  
12 “Boulder City Lease”).

13 23. The Boulder City Lease contained a twenty-two year term, with renewal options and  
14 allowed Air Excel to conduct Helicopters and related operations in Boulder City.

15 24. Between April and June 2007 Helicopters transferred all of the assets of Air Excel to  
16 Stars and Stripes Air Tours LLC (“SSAT”) for a stated purchase price of \$2,400,000.

17 25. SSAT paid the purchase price with \$1,200,000 in cash, paying off a mortgage on a  
18 hangar at the Boulder City airport, and issuing a \$700,000 promissory note to Helicopters (the  
19 “SSAT Note”).

20 **B. First American Transactions**

21 26. On June 6, 2007 Airola and Pickett formed First American.

22 27. As of July 2007, Helicopters owned real property, located at 500 E. Cheyenne Ave,  
23 North Las Vegas, Nevada (the “Cheyenne Property”).

24 28. On August 13, 2007 Helicopters transferred to First American

25 a. \$1,200,000 in cash.

26 b. The SSAT Note.

27 c. All issued and outstanding shares of Air Excel.

28 d. The Cheyenne Property.

- 1 29. First American paid no consideration to Helicopters for the transfers of  
2 a. \$1,200,000 in cash.  
3 b. The SSAT Note.  
4 c. All issued and outstanding shares of Air Excel.  
5 d. The Cheyenne Property.

6 30. On February 4, 2008 Helicopters filed its voluntary bankruptcy petition.

7 31. On information and belief, the Trustee alleges that the Cheyenne Property contains a  
8 heliport and may be otherwise used as a private airport, which is FAA authorized.

9 32. On information and belief, the Trustee alleges that as a private airport, it is one of the  
10 few facilities approved as such in Greater Las Vegas.

11 33. On information and belief, the Trustee alleges that governing authorities in Clark  
12 County, Nevada imposed a moratorium on approving private airport facilities; and that helicopter  
13 operations at McCarran Airport will be curtailed.

14 **C. The Heliplex Transactions**

15 34. On May 9, 2008 Pickett and Steve Trenk formed Heliplex.

16 35. On June 2, 2008, First American transferred the Cheyenne property to Heliplex.

17 **D. Impact of Air Excel, First American and Heliplex transactions**

18 36. During the period from April 2007 through August 2007, Airola and Pickett caused  
19 Helicopters to divest substantial assets.

20 37. By this series of transactions, Airola, Pickett and First American stripped Helicopters  
21 of assets, for their personal benefit, worth at least \$7,000,000, in the 10 months immediately  
22 preceding the filing of the bankruptcy.

23 **D. Credit Transactions**

24 38. During the period from April 2007 through August 2007, Airola and Pickett caused  
25 Helicopters to enter into a Recapitalization Agreement.

26 39. Pursuant to the Recapitalization Agreement, Airola was paid in excess of  
27 \$10,000,000.

28

1 40. During the period from April 2007 through August 2007, Airola and Pickett caused  
2 Helicopters to enter into a revolving \$40,000,000 credit line with Orix Commercial Finance LLC  
3 (“Orix”).

4 41. By February 2008, Helicopters owed Orix a principal balance in excess of  
5 \$31,000,000.

6 42. During the period from April 2007 through August 2007, Airola and Pickett caused  
7 Helicopters to continue its course of offering training to student pilots; courses that Helicopters did  
8 not have the resources to service and complete.

9 43. By this series of credit transaction, Airola and Pickett left Helicopters a candidate for  
10 bankruptcy in six months.

11 **V. FIRST CLAIM FOR RELIEF**  
12 **Recovery of Preference under 11 U.S.C. § 547**  
13 **(Against Airola, Pickett and First American)**

14 44. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
15 Complaint into the First Claim for Relief.

16 45. Helicopters transferred, to Airola, Pickett and First American, its interests in

- 17 a. \$1,200,000 in cash.
- 18 b. The SSAT Note.
- 19 c. All issued and outstanding shares of Air Excel.
- 20 d. The Cheyenne Property.

21 46. On information and belief, the Trustee alleges that Airola, Pickett and First American  
22 Helicopters were creditors of Helicopters to whom Helicopters owed an antecedent debt before the  
23 transfer was made.

24 47. Helicopters was insolvent when the transfers set forth in Paragraph 43 of this  
25 Adversary Complaint were made.

26 48. Helicopters made the transfer of the Cheyenne Property between ninety days and one  
27 year before the date of the filing of the petition.

28 49. On information and belief, the Trustee alleges that Airola is an insider as that term is  
defined in 11 U.S.C. § 101(31).

1 50. On information and belief, the Trustee alleges that Pickett is an insider as that term is  
2 defined in 11 U.S.C. § 101(31).

3 51. On information and belief, the Trustee alleges that First American is an insider as  
4 that term is defined in 11 U.S.C. § 101(31).

5 52. On information and belief, the Trustee alleges the transfers enabled Airola to receive  
6 more than he would receive if (A) the case were a case under chapter 7, (B) the transfer had not been  
7 made; and he had received payment of the alleged to the extent provided by the bankruptcy code.

8 53. On information and belief, the Trustee alleges the transfers enabled Pickett to receive  
9 more than he would receive if (A) the case were a case under chapter 7, (B) the transfer had not been  
10 made; and he had received payment of the alleged to the extent provided by the bankruptcy code.

11 54. On information and belief, the Trustee alleges the transfers enabled First American to  
12 receive more than it would receive if (A) the case were a case under chapter 7, (B) the transfer had  
13 not been made; and it had received payment of the alleged to the extent provided by the bankruptcy  
14 code.

15 **VI. SECOND CLAIM FOR RELIEF**  
16 **Avoidance of Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(b)**  
17 **(Against Airola, Pickett and First American)**

18 55. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
19 Complaint into the Second Claim for Relief.

20 56. Helicopters transferred, to Airola, Pickett and First American, its interests in

- 21 a. \$1,200,000 in cash.
- 22 b. The SSAT Note.
- 23 c. All issued and outstanding shares of Air Excel.
- 24 d. The Cheyenne Property.

25 57. Helicopters made the transfer within two (2) years before the date of the filing of his  
26 petition for relief.

27 58. Helicopters made the transfer with the actual intent to hinder, delay or defraud his  
28 creditors.

1 **VII. THIRD CLAIM FOR RELIEF**  
2 **Avoidance of Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(b)**  
3 **and 11 U.S.C. § 550**  
4 **(Against First American and Heliplex)**

5 59. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
6 Complaint into the Third Claim for Relief.

7 60. The Trustee incorporates and realleges paragraphs 54 through 56 of the Adversary  
8 Complaint into the Third Claim for Relief.

9 61. On information and belief, the Trustee alleges that First American is an insider as that  
10 term is defined in 11 U.S.C. § 101(31).

11 62. On information and belief, the Trustee alleges that Heliplex is an insider as that term  
12 is defined in 11 U.S.C. § 101(31).

13 63. First American is either the initial, immediate or mediate transferee for purposes of 11  
14 U.S.C. § 550(a).

15 64. Heliplex is either the initial, immediate or mediate transferee for purposes of 11  
16 U.S.C. § 550(a).

17 **VIII. FOURTH CLAIM FOR RELIEF**  
18 **Avoidance of Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)**  
19 **(Against Airola, Pickett and First American)**

20 65. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
21 Complaint into the Fourth Claim for Relief.

22 66. Helicopters transferred, to Airola, Pickett and First American, its interests in

- 23 a. \$1,200,000 in cash.
- 24 b. The SSAT Note.
- 25 c. All issued and outstanding shares of Air Excel.
- 26 d. The Cheyenne Property.

27 67. Helicopters made the transfer within two (2) years before the date of the filing of his  
28 petition for relief.

68. Helicopters received less than a reasonably equivalent value in exchange the transfer.

1 69. Helicopters was insolvent on the date the transfer was made or became insolvent as a  
2 result of the transfer.

3 70. As an alternative to Paragraph 61, Helicopters was engaged in business or a  
4 transaction, or was about to engage in business or a transaction, for which any of his remaining  
5 property was an unreasonably small capital.

6 71. As an alternative to Paragraphs 61 and 62, Helicopters intended to incur, or believed  
7 that it would incur, debts that would be beyond his ability to pay as such debts matured.

8 72. On information and belief, the Trustee alleges that Airola is an insider as that term is  
9 defined in 11 U.S.C. § 101(31).

10 73. On information and belief, the Trustee alleges that Pickett is an insider as that term is  
11 defined in 11 U.S.C. § 101(31).

12 74. On information and belief, the Trustee alleges that First American is an insider as that  
13 term is defined in 11 U.S.C. § 101(31).

14 75. As an alternative to Paragraphs 61, 62 and 63, Helicopters made the transfers set forth  
15 in Paragraph 58 to or for the benefit of an insider.

16 **IX. FIFTH CLAIM FOR RELIEF**  
17 **Avoidance of Fraudulent Transfer under 11 U.S.C. § 548**  
18 **(Against First American and Heliplex)**

19 76. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
20 Complaint into the Fifth Claim for Relief.

21 77. The Trustee incorporates and realleges paragraphs 64 through 69 and 73, of the  
22 Adversary Complaint into the Fifth Claim for Relief.

23 78. On information and belief, the Trustee alleges that First American is an insider as that  
24 term is defined in 11 U.S.C. § 101(31).

25 79. On information and belief, the Trustee alleges that Heliplex is an insider as that term  
26 is defined in 11 U.S.C. § 101(31).

27 80. First American is either the initial, immediate or mediate transferee for purposes of 11  
28 U.S.C. § 550(a).



1 81. Heliplex is either the initial, immediate or mediate transferee for purposes of 11  
2 U.S.C. § 550(a).

3 **X. SIXTH CLAIM FOR RELIEF**  
4 **Avoidance of Fraudulent Transfer under NRS § 112.180(1)(a)**  
5 **(Against Airola, Pickett and First American)**

6 82. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
7 Complaint into the Sixth Claim for Relief.

8 83. Helicopters transferred, to Airola, Pickett and First American, its interests in

- 9 a. \$1,200,000 in cash.
- 10 b. The SSAT Note.
- 11 c. All issued and outstanding shares of Air Excel.
- 12 d. The Cheyenne Property.

13 84. Helicopters made the transfer with the actual intent to hinder, delay or defraud its  
14 creditors.

15 85. On information and belief, the Trustee alleges that

- 16 a. Helicopters made the transfer or obligation to an insider.
- 17 b. The transfer of the Hayward Property constituted a transfer of substantially all  
18 the Helicopters' assets.
- 19 c. Helicopters was insolvent or became insolvent shortly after the transfer was  
20 made or the obligation was incurred.

21 **XI. SEVENTH CLAIM FOR RELIEF**  
22 **Avoidance of Fraudulent Transfer under NRS § 112.180(1)(b)**  
23 **(Against Airola, Pickett and First American)**

24 86. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
25 Complaint into the Seventh Claim for Relief.

26 87. Helicopters transferred, to Airola, Pickett and First American, its interests in

- 27 a. \$1,200,000 in cash.
- 28 b. The SSAT Note.
- c. All issued and outstanding shares of Air Excel.
- d. The Cheyenne Property.

1 88. Helicopters received less than a reasonably equivalent value in exchange the transfer.

2 89. Helicopters was insolvent on the date the transfer was made or became insolvent as a  
3 result of the transfer.

4 90. As an alternative to Paragraph 87, Helicopters was engaged in business or a  
5 transaction, or was about to engage in business or a transaction, for which any of his remaining  
6 property was an unreasonably small capital.

7 91. As an alternative to Paragraphs 87 and 88, Helicopters intended to incur, or  
8 reasonably should have believed that he would incur, debts beyond his ability to pay as such debts  
9 became due.

10 **XII. EIGHTH CLAIM FOR RELIEF**  
11 **Avoidance of Fraudulent Transfer under NRS § 112.180(1)(b) and NRS § 112.220**  
12 **(Against First American and Heliplex)**

13 92. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
14 Complaint into the Eighth Claim for Relief.

15 93. The Trustee incorporates and realleges paragraphs 85 through 89 of the Adversary  
16 Complaint into the Eighth Claim for Relief.

17 94. First American is either the first or a subsequent transferee for purposes of NRS §  
18 112.220.

19 95. Heliplex is either the initial, immediate or mediate transferee for purposes of NRS §  
20 112.220.

21 **XIII. NINTH CLAIM FOR RELIEF**  
22 **Breach of Fiduciary Duty under State Law**  
23 **(Against Airola and Pickett)**

24 96. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
25 Complaint into the Ninth Claim for Relief.

26 97. Airola owed a fiduciary duty to Helicopters, including duties of loyalty and care.

27 98. Pickett owed a fiduciary duty to Helicopters including duties of loyalty and care.

28 99. Airola breached his fiduciary duty, by causing Helicopters to transfer, for no  
consideration, to First American, an entity of which he is a member

- 1 a. \$1,200,000 in cash.
- 2 b. The SSAT Note.
- 3 c. All issued and outstanding shares of Air Excel.
- 4 d. The Cheyenne Property.

5 100. Pickett breached his fiduciary duty by causing Helicopters to transfer, for no  
6 consideration, to First American, an entity of which he is a member

- 7 a. \$1,200,000 in cash.
- 8 b. The SSAT Note.
- 9 c. All issued and outstanding shares of Air Excel.
- 10 d. The Cheyenne Property.

11 101. Helicopters sustained damages as a direct and proximate of Airola's breach.

12 102. Helicopters sustained damages as a direct and proximate of Pickett's breach.

13 **XIV. TENTH CLAIM FOR RELIEF**  
14 **Unjust enrichment under State Law**  
**(Against Airola and Pickett and First American)**

15 103. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
16 Complaint into the Tenth Claim for Relief.

17 104. Airola unjustly retained (a) \$1,200,000 in cash, (b) the SSAT Note, (c) the issued and  
18 outstanding shares of Air Excel, and (d) the Cheyenne Property.

19 105. Airola's retention of the property set forth in Paragraph 102 violates fundamental  
20 principles of justice, equity and good conscience.

21 106. Pickett unjustly retained (a) \$1,200,000 in cash, (b) the SSAT Note, (c) the issued and  
22 outstanding shares of Air Excel, and (d) the Cheyenne Property.

23 107. Pickett's retention of the property set forth in Paragraph 104 violates fundamental  
24 principles of justice, equity and good conscience.

25 108. First American unjustly retained (a) \$1,200,000 in cash, (b) the SSAT Note, (c) the  
26 issued and outstanding shares of Air Excel, and (d) the Cheyenne Property.

27 109. First American's retention of the property set forth in Paragraph 106 violates  
28 fundamental principles of justice, equity and good conscience.

1 110. The property set forth in Paragraph 102, 104, and 106 in equity and good conscience  
2 belongs to Helicopters.

3 **XIV. ELEVENTH CLAIM FOR RELIEF**  
4 **Conversion under State Law**  
5 **(Against Airola and Pickett)**

6 111. The Trustee incorporates and realleges paragraphs 1 through 41 of the Adversary  
7 Complaint into the Eleventh Claim for Relief.

8 112. Airola committed a distinct act of dominion wrongfully exerted over (a) the SSAT  
9 Note and (b) the issued and outstanding shares of Air Excel.

10 113. Airola's act was in denial of, or inconsistent with, Helicopters' title or rights in (a) the  
11 SSAT Note and (b) the issued and outstanding shares of Air Excel.

12 114. As an alternative to Paragraph 111, Airola's act was in derogation, exclusion, or  
13 defiance of Helicopters' title or rights in (a) the SSAT Note and (b) the issued and outstanding  
14 shares of Air Excel.

15 115. Pickett committed a distinct act of dominion wrongfully exerted over (a) the SSAT  
16 Note and (b) the issued and outstanding shares of Air Excel.

17 116. Pickett's act was in denial of, or inconsistent with, Helicopters' title or rights in (a)  
18 the SSAT Note and (b) the issued and outstanding shares of Air Excel.

19 117. As an alternative to Paragraph 114, Pickett's act was in derogation, exclusion, or  
20 defiance of Helicopters' title or rights in (a) the SSAT Note and (b) the issued and outstanding  
21 shares of Air Excel.

22 118. First American committed a distinct act of dominion wrongfully exerted over (a) the  
23 SSAT Note and (b) the issued and outstanding shares of Air Excel.

24 119. First American's act was in denial of, or inconsistent with, Helicopters' title or rights  
25 in (a) the SSAT Note and (b) the issued and outstanding shares of Air Excel.

26 120. As an alternative to Paragraph 117, First American's act was in derogation, exclusion,  
27 or defiance of Helicopters' title or rights in (a) the SSAT Note and (b) the issued and outstanding  
28 shares of Air Excel.

1 WHEREFORE, the Trustee James F. Lisowski, Sr., Chapter 7 Trustee of the Estate of  
2 Helicopters, requests the following relief:

3 For a judgment avoiding Helicopters' transfer of the Cheyenne Property;

4 For a judgment avoiding Helicopters' transfer of the SSAT Note;

5 For a judgment avoiding Helicopters' transfer of the Air Excel Shares;

6 For a judgment for the fair market value of the Cheyenne Property at the time of the initial or  
7 first transfer to First American;

8 For a judgment for the fair market value of the SSAT Note at the time of the initial or first  
9 transfer to First American;

10 For a judgment for the fair market value of the Air Excel Shares at the time of the initial or  
11 first transfer to First American;

12 For a judgment of \$1,200,000 against Airola, Pickett, and First American, jointly and  
13 severally, plus interest at the lawful rate from and after August 13, 2007;

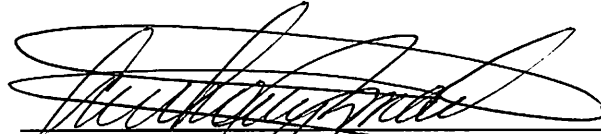
14 For damages in excess of \$7,000,000, against Airola, Pickett, and First American, jointly and  
15 severally, plus interest at the lawful rate;

16 For reasonable attorney's fees and costs incurred in prosecuting this Adversary Proceeding;

17 For a judgment for such other relief this Court may deem appropriate.

18 DATED this 14 day of September, 2009.

19 **ANTHONY A. ZMAILA LIMITED PLLC**

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