



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**In re: Swift Air, LLC:**  
**MorrisAnderson & Associates, LTD v. Redeye II, LLC et al.**  
Adversary No. 2:14-ap-00534-DPC  
U.S. Bankruptcy Court for the District of Arizona  
(Order Certifying Question)

**PARTIES:**

*Debtor:* Swift Air, LLC

*Plaintiff:* MorrisAnderson & Associates, LTD., Litigation Trustee for the Debtor

*Defendants:* Redeye II, LLC; Braid Development West, LLC; Jerry Moyes and Vickie Moyes; Jerry and Vickie Moyes Family Trust; Swift Aircraft Management, LLC; Interstate Equipment Leasing, LLC; SME Steel Contractors, Inc.; Swift Aviation Group, Inc.; Swift Aviation Management Inc.; Swift Aviation Sales, Inc.; Transport Risk Management, Transpay Inc.; Opulent Enterprises, Inc.; Opulent Air LLC; Transjet Inc.; Transjet I, LLC; Transjet 2, LLC; Transjet 3, LLC; Teamjet, LLC; Teamjet Holdings, LLC; Teamjet Enterprises, Inc.; Sports Jet, LLC; Luxury Air, LLC; Luxury Enterprises, Inc.; and Kevin Burdette and Jane Doe Burdette.

**FACTS:**

The Debtor, an Arizona limited liability company or “LLC”, filed its Chapter 11 petition in June 2012. It listed general unsecured claims totaling over \$19 million. The Debtor had been in the business of maintaining and operating airplanes that it would charter to sports teams and other companies. Some of the airplanes were owned by companies owned and controlled by J. and V. Moyes and their family trust (collectively, “**Defendants**”). The Moyes family also owned the companies that owned the Debtor until they sold their interest in the Debtor before the bankruptcy filing.

The Debtor filed a Plan of Reorganization (“**Plan**”) in August 2013, and the bankruptcy court confirmed the Plan in October 2013. As a part of the Plan, MorrissAnderson & Associates was appointed Trustee (“**Trustee**”). Under the Plan, the Trustee retained the Debtor’s claims and causes of action to pay creditors’ claims.

The Trustee sued Defendants. As relevant here, it claimed the Defendants breached their fiduciary duties to the Debtor by failing to collect receivables owed by the Defendants to the Debtor and running up millions of dollars in debt. The Trustee also claimed that the Defendants breached their fiduciary duties to the Debtor by entering into a series of agreements that resulted in certain debts to the Debtor being settled, to the detriment of the Debtor’s other creditors. It also claimed they sold their interest in the Debtor to an unrelated third party for a nominal amount of money, which left the Debtor with much debt and few assets. As relevant here, the Defendants

argued they owed no fiduciary duties to the Debtor under the Arizona Limited Liability Act.

Judge Daniel P. Collins of the U.S. Bankruptcy Court for the District of Arizona entered an Order Certifying a Question to the Supreme Court of Arizona.

**CERTIFIED QUESTIONS:**

1. Whether managers and/or members of an Arizona LLC owe fiduciary duties to the LLC?
2. Whether the terms of an Arizona LLC's operating agreement may lawfully limit or eliminate those fiduciary duties?

**DEFINITIONS:**

**Fiduciary Duty:** A fiduciary duty is a duty one party has to another party, sometimes arising out of an agreement or under a statute. Generally, corporate officers owe fiduciary duties to a corporation and business partners owe each other a fiduciary duty.

**Arizona Limited Liability Act:** Arizona Revised Statutes ([A.R.S. §§ 29-601 to 29-858](#)).

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