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Judge Ousts Seaborne Airlines Executives, Orders Trustee to Oversee Troubled Chapter 11 Sale

CEO Steven Rossum and CFO Pedro Motta were removed from control of Seaborne's Chapter 11 case after failing to prove that stalking horse bidder STK I US LLC could afford the sale, prompting a judge to label the proceedings "bordering on inept."

Travel / **Published On June 25, 2025 05:47 AM /**

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Seaborne Airlines leased seaplane.

A trustee will now oversee the sale of Seaborne Airlines, after a Florida bankruptcy judge said the company's senior management could not be trusted to competently handle the process.

In a Tuesday hearing before Judge Peter Russin to discuss and finalize bid procedures [ahead of a proposed auction](#) on July 1, the court was not pleased with the failure of Seaborne representatives

to provide evidence demonstrating whether the current stalking horse bidder – STK I US LLC – is actually able to afford the purchase.

During the course of the hearing, the court was informed that Nella Airlines, the parent company of the stalking horse bidder, is not currently operational. “Saying it's an affiliate of Nella Airlines is a little bit like saying it's an affiliate of the wizard in the Wizard of Oz,” said Barbra Parlin, counsel for Kenn Borek, the company from whom Seaborne leases its only plane. Nella Airlines currently “doesn't exist,” said Ms. Parlin.

Counsel for Nella Airlines was not able to provide much assistance. The attorney had only just been hired, the court learned, and did not have any documentation on hand to prove her client's bona fides.

In an effort to ensure that STK I US LLC is a legitimate buyer, the judge then turned to Seaborne CEO Steven Rossum to provide answers and evidence. Although Mr. Rossum said that he had met the Nella CEO several times, he told the court that he was not the principal actor in the negotiations. It was Pedro Motta, Seaborne's chief financial officer, who had played a principal role in the discussion, according to Mr. Rossum.

Judge Russin was then dumbfounded to learn that Mr. Motta had not shown up to the hearing. In his absence, none of the parties could provide any documentation of “adequate assurance of the ability to close,” or answer questions germane to the due diligence process. Neither Mr. Rossum nor Seaborne's attorneys could even say definitively whether any due diligence documentation was even received. “I mean, really?” Judge Rossum exclaimed. “Honestly, this is bordering on inept,” he declared, before ordering a short recess.

When the hearing resumed, Brian Hall, counsel for Seaborne, admitted to the court his own frustration with his client. “Oftentimes you're put in an impossible position,” he said. He told the judge that he and his co-counsel have been “absolutely trying to come with the goods and are advising our clients of what the goods are at all times and at all points, and what the rules of operation are at all times.” He intimated, however, that the lawyers’ advice is sometimes not being followed by Seaborne representatives. As an example, he noted that Mr. Motta was advised of the importance of his attendance at court as recently as Monday evening.

With that disclosed, the judge had evidently reached his limit. “Why should I leave Mr. Rossum in place,” Mr. Russin asked, “given what we have seen throughout this case and very particularly today?” The fact that the individual most involved in the negotiations – Mr. Motta – chose to absent himself from court “in and of itself is a reason not to keep management in place, isn't it?” the judge mused.

Adding another wrinkle to the proceedings, Tuesday's hearing was attended by the attorney for a potential bidder who said that despite his client's expressed interest in buying Seaborne, demonstrated by an offer that was higher than the stalking horse bid, airline officials had been completely unresponsive. According to Nathan Wheat, representing Belair Aviation Holdings LLC, they had been negotiating directly with Seaborne in the past months. “A proof of funds was requested by Mr. Rossum and Mr. Motta, that was provided, and then basically, my client heard nothing,” Mr. Wheat said, telling Judge Russin that the sale hearing was “a big surprise.” Mr. Wheat disclosed that Seaborne officials had asked his client to increase the amount on offer, but went silent when Belair asked for additional information.

Mr. Wheat asked the court to delay the auction by a week to give his client sufficient time to review the stalking horse bid and decide on a way forward, but Seaborne representatives cautioned

that the airline was rapidly running out of cash and may not survive such a delay. “Management's view is that they can't get to July 8 without a transaction closing,” Mr. Hall told the court.

Additionally, the lessor of Seaborne's lone operating plane indicated to the judge that no prospective buyer had as yet reached out to them to discuss assuming the lease for the aircraft post-sale. “The current lease for our client's plane is going to expire in October,” said Barbara Parlin, attorney for Kenn Borek. “Our client will take its plane back, no interest in continuing any lease.” She noted that the proposed sale agreement contemplates assigning the airplane lease to the buyer but under different terms and conditions for which her client was never consulted. Without an aircraft lease, Ms. Parlin pointed out, “I don't think there really is a business.” Judge Russin said that he found the lack of contact “shocking” and “absurd.”

Ultimately, Judge Russin made the decision to continue the Chapter 11 process but without Steve Rossum or Pedro Motta at the helm. Instead, he ordered that a trustee be appointed to manage the affairs of Seaborne and defunct sister airline Silver Airways. He noted that despite the [winding up of Silver Airways](#), there is still litigation that needs to be settled. “Without a trustee, these potential estate claims would be left to the discretion of individuals whose conduct throughout this case raises serious concerns that is not in the best interest of creditors,” he said. He also noted that Seaborne's inability to prove to the court that the current Seaborne stalking horse candidate is a qualified bidder was something only revealed “through direct court inquiry, not voluntary disclosure.”

Given current circumstances, Judge Russin declared that “both cases are at an inflection point. Silver has ceased operations and closed its sale, but critical estate rights remain at risk. Seaborne faces imminent administrative collapse and the proposed sale process is unravelling.” The appointment of a Chapter 11 trustee, he said, would hopefully determine whether it would be worthwhile to proceed with a Seaborne sale. A status conference has been scheduled for this Thursday, during which the appointed trustee will report his or her findings to the court. In the meantime, all prospective bidders must prepare themselves for the auction which is still – as of now – scheduled for July 1.