

October 26, 1995

Benjamin (Ben) Harvey, Esq.  
Attorney at Law  
3500 N. 29th St.  
Waco, TX 76708

Dear Mr. Harvey:

**Aircraft N5313B; Forgery  
of Aircraft Lien Release**

Your letter of September 20, 1995 requested our advice regarding the disposition of the above referenced aircraft, currently in the possession of Scott Chandler, your client. Mr. Chandler is the former registered owner of the aircraft.

In your letter, you described a series of transactions affecting the aircraft which ultimately resulted in its transfer to Aerobanc of America, Inc. (Aerobanc), and its subsequent registration in Aerobanc's name. You have asked that the FAA Aircraft Registration Branch (Registry) disregard the transactions so that Mr. Chandler may enforce his security interest in the aircraft by repossessing it, and thereafter register it in his name.

Background. In June, 1993 Mr. Chandler sold the aircraft under a security agreement to Alan D. Stricklin. Mr. Chandler retained a security interest in the aircraft. Subsequently, Mr. Stricklin asked your client for a release of the security interest, so that he (Stricklin) could resell the aircraft. Mr. Chandler declined. Sometime in February, 1994, Stricklin forged your client's name on a lien release form, and sent it to the Registry, where it was recorded. Stricklin then sold the aircraft to Aerobanc, representing that it was free and clear of liens. Aerobanc registered the aircraft in its name, and entered into a lease-back arrangement with Stricklin. Stricklin failed to make his lease payments, and has not regained ownership of the aircraft.

Mr. Chandler learned of the change in registration when he received notice of his hull insurance cancellation. He regained physical possession of the aircraft. Sometime later, in July, 1994, Mr. Stricklin was charged with criminal conduct, as a result of his actions with the aircraft. He has given a statement to local police authorities admitting his forgery of your client's signature on the lien release document. In June, 1994, Mr. Stricklin brought suit in Tarrant County, Texas for declaratory judgment, among other things, that he has the right to sell the aircraft.

You have requested that the Federal Aviation Administration (FAA) consider the recordation of the forged release to be void, and recognize the validity of Mr. Chandler's security interest in the aircraft, so that he can repossess the aircraft, in order to register the aircraft in his name

once again. The Registry has advised you that a determination that Mr. Chandler is the owner of the aircraft, in the form of a Court order or judgment, will be required. You have rejected that position as inappropriate.

Issues. Your request raises the issue as to whether the FAA Registry may void the recordation of an instrument affecting an interest in an aircraft. It also raises an incidental, but more critical issue of whether a third party, which relies on the accuracy of instruments recorded by the Registry, should be adversely affected by a voiding or nullification of a recorded instrument.

Discussion. As you may be aware, the Registry was established by Section 503(a) of the Federal Aviation Act of 1958, as amended (Act), as a central clearing house for all documents affecting ownership of, or an interest in, civil aircraft registered in the United States (recently recodified at 49 U.S.C. § 44107(a)). The primary objective behind its establishment is that any person interested in knowing the ownership and security interests in an aircraft could review the relevant documents filed with the Registry.

There appears to be little doubt that Mr. Stricklin forged your client's name on an aircraft lien release form and then submitted to the Registry. However, upon the Registry's recordation of the release, it became incorporated into the FAA's central aircraft records system, and it was allegedly relied upon by Aerobanc as an indication that the aircraft was free and clear of outstanding liens.

The U.S. Supreme Court has affirmed the legislative purpose of the Registry and protected the interests of parties which have relied on information regarding aircraft interests which it has furnished. In a 1983 case involved a dispute over ownership and registration of an aircraft, the Court opined that the primary legislative intent for the enactment of Section 503(a) of the Act was to create a "central clearing house for recordation of titles so that a person, wherever he may be, will know where he can find ready access to the claims against, or liens, or other legal interests in an aircraft." (Philko Aviation, Inc. v. Shackel, 462 U.S. 406, 411 (1983)).

The Philko decision found that Philko Aviation, a bona fide purchaser of an aircraft, would not be affected by a bill of sale which is not recorded with the Registry. Applying the Philko rationale to your client's situation, it appears that Aerobanc noted the lien release during a review of the registration records of the aircraft, and, relying on the Registry's function as a clearing house for aircraft interests, concluded that the aircraft was free and clear of outstanding liens. Like Philko Aviation, Aerobanc reportedly checked with the Registry to ascertain what interests affected the aircraft, and noted the lien release (see Paragraph IV of "Defendant Aerobanc of America, Inc.'s Original Cross-Claim;" based on this information, it appears that Aerobanc was a bona fide purchaser). To retroactively void the recordation of the lien release after Aerobanc relied on it would contradict the legislative purpose, as discerned by the Supreme Court, which underlies the creation of the Registry.

For this reason, we are not in a position to void the recordation of the lien release, notwithstanding the apparent fraudulent actions behind its creation. It is more appropriate to permit the presiding Court to adjudicate the interests of the various involved parties, including Aerobanc (who appears to be a bona fide purchaser), in the aircraft. We support the position of the Registry to defer any action affecting the recordation of the release and the registration of the aircraft, until the Court has reached an appropriate decision on this matter.

Sincerely,

Joseph R. Standell  
Assistant Chief Counsel  
Aeronautical Center

By:

Alonso J. Rodriguez  
General Attorney