

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**ICE BLUE AIR LIMITED,
a British Corporation,**

Plaintiff,

vs.

NO. _____

**ECLIPSE AVIATION CORPORATION
a Delaware Corporation,**

Defendant.

**COMPLAINT FOR BREACH OF CONTRACT,
UNJUST ENRICHMENT, AND CONVERSION**

For its complaint Plaintiff, Ice Blue Air Limited, states as follows:

I. THE PARTIES AND JURISDICTION

1. Plaintiff, Ice Blue Air Limited, (“IBAL”), is a limited company, organized under British law, having its principal place of business in Guernsey, British Isles.

2. Defendant, Eclipse Aviation Corporation (“Eclipse”) is corporation, organized under Delaware law, having its principal place of business in Albuquerque, New Mexico.

3. Eclipse may be served with process by serving its registered agent: Mr. Bruce Castle, 2503 Clark Carr Loop, SE, Albuquerque, NM 87106.

4. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332, because the plaintiff is a resident of a foreign country, and the defendant is a corporation incorporated under the laws of the State of Delaware, with its principal place of business

in the State of New Mexico. The amount in controversy, without interest, costs or attorneys' fees, exceeds the amount specified by 28 U.S.C. § 1332.

II. FACTS

5. On or about July 26, 2006, IBAL and Eclipse entered into a Eclipse 500 Aircraft Deposit Agreement (the "Deposit Agreement") relating to the sale and delivery, on one hand, and the purchase, on the other hand, of an Eclipse 500 model aircraft, for the Standard Aircraft Price amount of \$1,520,000, exclusive of optional equipment, and as adjusted pursuant to an economic escalation formula.

6. As relevant to the matters contained in this complaint, the Deposit Agreement provides that IBAL, as the buyer, would make an initial deposit of \$25,000, followed by a series of pre-delivery payments and additional deposits, as follows: (1) \$75,000 six (6) months after execution of the Deposit Agreement; and (2) \$80,000 twelve (12) months after execution of the Deposit Agreement; and (3) up to sixty percent (60%) of the total amount six (6) months prior to scheduled delivery of the aircraft; and (4) unpaid balance, due at delivery.

7. The Deposit Agreement provides that the pre-delivery payments and deposits are refundable following the occurrence of a "Refund Event," defined in the agreement to include, among other things, an increase in the Standard Aircraft Price for reasons other than the economic escalation formula.

8. The Deposit Agreement provides that if IBAL as the buyer, requests a refund following the occurrence of a Refund Event, Eclipse shall refund all pre-delivery payments deposits previously received from IBAL within thirty days of receiving notice of the refund request.

9. IBAL made pre-delivery payments and deposits in the amount of \$180,000 in accordance with the terms of the Deposit Agreement.

10. By letter dated June 6, 2008, Eclipse informed IBAL that it was unilaterally increasing the Standard Aircraft Price in an amount of almost \$500,000. Eclipse attached a "Selection Form" to its June 6 letter, requesting IBAL to elect one of three options in response to Eclipse's increase in the Standard Aircraft Price. IBAL chose the option to terminate the Deposit Agreement and have all its deposits refunded.

11. Beginning on June 13, 2008, and continuing thereafter, IBAL communicated its decision to terminate the Dealer Agreement and have all its deposits refunded by Eclipse. Eclipse acknowledged receipt of IBAL's Selection Form and agreed to refund IBAL's pre-delivery payments and deposits.

12 Pursuant to the terms of the Deposit Agreement, Eclipse was required to refund IBAL's pre-delivery payments and deposits within thirty days of receipt of the refund request, on or before August 1, 2008, at the latest. Eclipse did not refund IBAL's pre-delivery payments and deposits on or before August 1, and has not done so to date.

13. The Deposit Agreement further provides that for litigation commenced in connection with the Deposit Agreement, the prevailing party shall be entitled to reimbursement of its attorneys' fees, expenses and costs.

III. CLAIMS FOR RELIEF

1. Breach of Contract

14. IBAL hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 13.

15. Eclipse has failed to refund to IBAL any of its pre-delivery payments and deposits pursuant to the terms of the Deposit Agreement, and thus breached that agreement.

16. IBAL has suffered damages as a result of Eclipse's breach of the Deposit Agreement.

WHEREFORE, IBAL demands judgment against Eclipse in an amount to be proven at trial, and such other and further relief as may be just, proper and allowable, including its attorneys' fees, pre-judgment and post-judgment interest and the costs of this suit.

2. Unjust Enrichment

17. IBAL hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 16.

18. IBAL is entitled to a full refund of all its pre-delivery payments and deposits.

19. Eclipse has failed to remit to IBAL its pre-delivery payments and deposits, and retained those payments and deposits for itself.

20. As a result, Eclipse has been unjustly enriched and has benefited at the direct expense of IBAL.

WHEREFORE, IBAL demands judgment against Eclipse in an amount to be proven at trial, and such other and further relief as may be just, proper and allowable, including pre-judgment and post-judgment interest and the costs of this suit.

3. Conversion

21. IBAL hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 20.

22. Eclipse is in possession of property belonging to IBAL, and despite repeated demands, will not return that property.

23. IBAL has suffered damages as a result of Eclipse's conversion of IBAL's property.

WHEREFORE, IBAL demands judgment against Eclipse in an amount to be proven at trial, and such other and further relief as may be just, proper and allowable, including pre-judgment and post-judgment interest and the costs of this suit.

Respectfully submitted,

HOLLAND & HART, LLP

/s/ Robert J. Sutphin, Jr.

Michael Campbell
Robert J. Sutphin Jr.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
(505) 983-6043 (facsimile)

ATTORNEYS FOR ICE BLUE AIR LTD.