

NOTICE OF FILING

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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD714/2020
File Title: WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) & ANOR v VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 7/09/2020 5:20:58 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

Affidavit

Federal Court of Australia
 District Registry: New South Wales
 Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

**WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE)
 AND ANOTHER NAMED IN SCHEDULE 1**

Applicants

**VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 AND OTHERS
 NAMED IN SCHEDULE 2**

Respondents

Affidavit of: Salvatore Algeri
 Address: 447 Collins Street, Melbourne, Victoria 3000
 Occupation: Registered Liquidator and Chartered Accountant
 Date: 7 September 2020

No	Document	Paragraph	Pages
1.	Affidavit of Salvatore Algeri sworn on 7 September 2020	All	1–11
2.	Annexure A	7	12–13
3.	Annexure B	10	14–17

I, Salvatore Algeri, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), of 447 Collins Street, Melbourne, Victoria 3000, Registered Liquidator and Chartered Accountant, say on oath:

- I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I practise as

Filed on behalf of (name & role of party) The Applicants
 Prepared by (name of person/lawyer) Timothy James Sackar
 Law firm (if applicable) Clayton Utz
 Tel +61 2 9353 4000 Fax +61 2 8220 6700
 Email kaadams@claytonutz.com
Address for service Level 15, 1 Bligh Street, Sydney NSW 2000
 (include state and postcode)

[Version 3 form approved 02/05/2019]

an accountant specialising in corporate restructuring and insolvency-related matters, with key experience in the consumer business, retail and transport sectors.

2. I am one of the four joint and several voluntary administrators of the First, Second and Fourth Respondents and the other 38 companies set out in schedule 3 to this affidavit (collectively, the **Virgin Companies**), together with Mr Vaughan Strawbridge, Mr John Greig and Mr Richard Hughes (together, the **Administrators** and each an **Administrator**). Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. The Administrators are the Third Respondents in the proceeding.
3. I am authorised by Mr Strawbridge, Mr Greig and Mr Hughes to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the views which I and each of Mr Strawbridge, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information that staff members at Deloitte and I have obtained in connection with my role as an Administrator of the First, Second and Fourth Respondents and the other Virgin Companies, which I believe to be true.
5. This is the fourth affidavit I have made in these proceedings. In this affidavit, I refer to:
 - (a) the affidavit of Darren Dunbier affirmed 17 July 2020 (**First Dunbier Affidavit**);
 - (b) my affidavit sworn 5 August 2020 (**Second Affidavit**);
 - (c) the affidavit of Darren Dunbier affirmed 5 August 2020 (**Second Dunbier Affidavit**) (I adopt the definition of **Willis Property** used in that affidavit); and
 - (d) the affidavit of Darren Dunbier affirmed 14 August 2020 (**Third Dunbier Affidavit**),each filed in these proceedings.
6. On 3 September 2020, the Court gave its reasons for judgment in these proceedings (**Judgment**). I have instructed the Respondents' solicitors, Clayton Utz, to file an appeal from the Judgment (**Appeal**) and to seek to have the Appeal heard on an expedited timetable. The notice of appeal and application for expedition are being prepared and I am informed by Orfhlaith Maria McCoy, a partner of Clayton Utz with carriage of this matter, that they should be filed and served either this evening or early tomorrow. I make this affidavit in support of the Respondents' application for a stay on enforcement of orders 5, 6, 8 and 12 of the orders made in these proceedings on 3 September 2020 (**Orders**), pending the resolution of the Appeal.

7. The Applicants have indicated that they consent to the expedition of the Appeal but oppose a stay of the Orders. A copy of the Applicants' solicitor's email to my solicitors communicating that opposition is annexed to this affidavit and marked Annexure "A".

Orders 5, 6, 8 and 12 should be stayed pending the Appeal

8. Orders 5, 6 and 8 of the Orders require the Respondents to deliver the Willis Property to the Applicants as soon as possible but by no later than 15 October 2020 in accordance with the detailed regime set out in schedule 3 to the Orders (**Redelivery Regime**). Order 12 of the Orders requires the Respondents to pay the Applicants' costs of the first instance hearing.
9. I respectfully request that Orders 5, 6, 8 and 12 of the Orders be stayed pending the Appeal for the following reasons:
 - (a) the Respondents are challenging the Court's decision that the Respondents are required by the Cape Town Convention to redeliver the Willis Property to the Applicants broadly in accordance with the terms of the applicable leases in the Appeal. If the Respondents are required to redeliver the Willis Property in the meantime, there is a risk that the Appeal will be frustrated on the key issue, as the very obligation in issue on the Appeal will already have been performed;
 - (b) the frustration of the Appeal by reason of the redelivery of the Willis Property cannot, in my view, be avoided by requiring the Applicants to reimburse the Respondents for the full costs expended in carrying out the redelivery. This is because the Applicants are based in the United States of America and, to the best of my knowledge, neither has any or any significant assets in Australia, other than the Willis Property. If the stay is not granted, but the Appeal is successful, the Respondents may have to take steps in in the United States of America or another foreign jurisdiction to enforce their rights to recover the costs of redelivery of the Willis Property and the costs of the first instance proceedings. That may not be practically possible given the administration of the Virgin Companies, which is an interim regime, only. In those circumstances, there is a significant measure of uncertainty associated with the Respondents' ability to recover the costs of redelivery and the costs of the first instance proceedings;
 - (c) even if costs expended on carrying out the Redelivery Regime and the costs of the first instance hearing are ultimately able to be recovered from the Applicants should the Appeal succeed, I expect there will be a substantial delay in recovering such costs by reason of the enforcement steps required. A delay in receiving reimbursement from the Applicants if the Appeal is successful will, in my view, make

the distribution of such funds to creditors of the Respondent companies challenging, in circumstances where the administration of those companies may be complete by the time those costs are recovered. Such a delay would therefore cause detriment in excess of \$1 million to the Respondents;

- (d) further, once again assuming that costs expended in carrying out the Redelivery Regime are, in theory, able to be recovered from the Applicants in circumstances where the Appeal is successful, there is a real risk of further disputation between the parties as to what costs expended on the Redelivery Regime are properly recoverable should the Appeal succeed given that the Applicants and Respondents have filed competing evidence in respect of what they each consider to be the most cost-effective and expeditious means of redelivering the Willis Property. That dispute may give rise to satellite litigation and further costs for both the Applicants and the Respondents, as well as delays in the final resolution of these proceedings, which would be avoided should the orders be stayed;
- (e) as set out in the First Dunbier Affidavit at paragraph 16 and paragraph 54 of my First Affidavit, redelivery of the Willis Property is likely to cost in the order of AU\$1 million (and may potentially be higher now, in circumstances where the COVID-19 pandemic continues to affect the cost of air-freight), which will ultimately be borne by unsecured creditors of the Respondent companies. In circumstances where the Administrators are presently forecasting a return of 9c to 13c on the dollar for ordinary unsecured creditors under the deed of company arrangement proposals put forward by Bain Capital which were approved by creditors on 4 September, I am concerned as to the appropriateness of incurring such substantial costs given that an Appeal is pending, and, if the Appeal is successful, those costs would not have to be incurred at all;
- (f) order 12 of the Orders requires the Respondents to pay the Applicants' costs of the first instance proceedings, but if it is set aside on appeal, the Applicants will likely be required to repay those costs. To avoid complexities associated with repayment, in circumstances where the Respondent companies are in administration, it is preferable to preserve the status quo on costs pending the resolution of the Appeal;
- (g) the Appeal is being sought on an expedited basis, which, if such expedition is granted, will minimise the duration of the stay sought by the Respondents, and thereby minimise any detriment to the Applicants associated with a stay;
- (h) there is unlikely to be significant detriment to the Applicants caused by a stay given that the Respondents will continue to preserve the Willis Property as required by order 7 of the Orders for the duration of any stay ordered by the Court and the First,

Second and Fourth Respondents will, if the appeal is unsuccessful, have sufficient funds to complete redelivery to the Applicants.

Difficulties with the Redelivery Regime

10. In an email from Mikhail Glavac of Clayton Utz sent on 24 August 2020 and annexed to this affidavit and marked Annexure "B", my solicitors notified the Court that the Redelivery Regime was no longer feasible. In the following paragraphs, I explain why that is so. It follows that, if orders 5, 6, 8 and 12 are not stayed, an application pursuant to Order 11 of the Orders or an agreement with the Applicants to vary the terms of Schedule 3 to the Orders will be necessary.
11. As a consequence of the external administrations of the Virgin Companies, the Virgin Companies (including the First, Second and Fourth Respondents) are currently undergoing a very significant operational restructure as part of the transaction concluded with Bain Capital, the purchaser of the business and assets of the Virgin Companies.
12. As noted at paragraphs 13 to 14 of my Second Affidavit and paragraph 22 of the Second Dunbier Affidavit, Bain Capital has determined that the Respondent companies will operate only one type of aircraft as part of its restructured and streamlined operations following its exit from external administration (**Fleet Restructure**). The consequences of that determination are that all aircraft and aircraft objects other than the aircraft property subject to the leases which Bain Capital intends the Respondents to continue following external administration, are in the process of being readied for repossession by the owners and lessors of that property and a number of notices pursuant to section 443B of the Corporations Act have been issued and will be issued by the Administrators. The Fleet Restructure process involves the regulatory, technical and engineering preparation for collection and transit of 62 aircraft and up to 15 engines and other aircraft property. As at the date of this affidavit, 48 aircraft and up to 15 engines (excluding the Willis Property) remain to be readied for the purpose of being repossessed in the next 3 weeks.
13. Since being appointed as administrator of the Virgin Companies I have come to learn that, in the aviation industry, aircraft, engines and other aircraft property are regularly interchanged for maintenance, for technical reasons and for reasons of administrative convenience. This means that any one airframe could have attached to it the leased property of multiple other aircraft object lessors, and the corresponding engines and aircraft property of the airframe lessor could be attached to several other airframes. That practice was adopted by the Respondent companies such that making all leased property which is surplus to the requirements of the Respondent companies available to the lessors of that surplus property involves the Administrators and the Virgin teams

addressing enormous practical complexities and challenges. This includes multiple requests for the repositioning, realignment and return of a very large quantity of aircraft property (in addition to the Willis Property), requiring the consent of the relevant lessors, often in circumstances where the consent of multiple lessors is required in respect of one aircraft, and where such agreements are reached, identifying and allocating the necessary Virgin resources to facilitate the exercise, all in a very short space of time.

14. The Respondent companies' resources and facilities are not set up for an immediate and large scale aircraft property return exercise. Meanwhile, resources and facilities must be used to preserve existing day-to-day operations and readying the remaining fleet of approximately 60 aircraft for operations following external administration. The operational maintenance of the entire fleet is onerous, given the complexity of aircraft property and its stringent regulatory and safety requirements.
15. For a number of weeks, daily calls have been held with up to 35 key members of the relevant teams, including representatives of Bain Capital, to plan the logistics of the Fleet Restructure exercise and report on progress. Any decision taken in respect of any single aircraft can have a flow on effect on planning and resourcing and the ability to meet other deadlines and commitments to other lessors. The scale of the task facing the Virgin regulatory, technical, engineering and leasing teams, and the Administrators in relation to the Fleet Restructure is unprecedented. It is made more difficult by reason of the fact that it is being undertaken during the COVID-19 pandemic and the insolvency of Virgin.
16. While the Redelivery Proposal set out in paragraph 5 of the Second Dunbier Affidavit (the contents of which is not substantively different from the contents of the Redelivery Regime) was the most cost-effective and efficient method of effecting redelivery of the Willis Property as at the date of that affidavit (5 August 2020 or 29 days ago), it is no longer feasible. This is because:
 - (a) (by agreement with the Applicants) Engine 894902 has already been flown from Adelaide to Melbourne;
 - (b) (by agreement with the Applicants) borescope checks have been conducted on each of the engines in Melbourne by Virgin Tech, meaning that the inspections at Delta contemplated in Schedule 3 of the Redelivery Regime would be duplicative;
 - (c) due to the passage of time and uncertainty as to outcome between the date of the Redelivery Proposal and the date of judgment, the Respondents have not reached agreement with third parties, such as Delta, for assistance and services as contemplated in the Redelivery Regime, which may not now be available; and

(d) due to the immediate and practical challenges that now face the Respondents' resources and facilities in connection with the Fleet Restructure, it is now unlikely that there will be any airframe that is available to undertake both of the ferry flights contemplated in paragraph 5 of the Second Dunbier Affidavit and alternative arrangements such as air freight would need to be planned and implemented.

- 17. In light of the Fleet Restructure, it is also extremely difficult to determine the most cost effective and expeditious means of delivering the Willis Property to the Applicants or to estimate how long the redelivery process may take. That is because the expense and time required will turn on the precise stage of the Fleet Restructure at the time redelivery occurs, including the availability and capacity of staff and facilities and the location and configuration of aircraft property, which is changing on a daily basis. Any redelivery proposal is also subject to the actions of third parties, including critical creditors of the Respondent companies, whose support is required in order to effect redelivery.
- 18. Accordingly, if the stay is refused, the Respondents will seek to agree a new redelivery proposal with the Applicants or, failing agreement, will exercise of their liberty to apply pursuant to order 11 of the Orders.

Swearing of this affidavit

- 19. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
- 20. I have been informed by Orfhlaith Maria McCoy, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.
- 21. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent)
 at Melbourne)
 in Victoria)
 on 7 September 2020)
 Before me:)

.....
 Signature of Salvatore Algeri

.....
 Signature of witness
 Orfhlaith Maria McCoy, solicitor.

SCHEDULE 1

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

Applicants

First Applicant: Wells Fargo Trust Company, National Association (as owner trustee)

Second Applicant: Willis Lease Finance Corporation

SCHEDULE 2

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS**Respondents**

First Respondent: VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741

Second Respondent: Virgin Australia Airlines Pty Ltd (Administrators Appointed)
ACN 090 670 965

Third Respondent Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the First and Second Respondents

Fourth Respondent Tiger Airways Australia Pty Limited (Administrators Appointed)
ACN 124 369 008

SCHEDULE 3

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS**Virgin entities in administration**

1. Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
2. Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
3. Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
4. Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
5. Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
6. Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
7. VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
8. Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
9. Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
10. VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059
11. VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
12. Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
13. Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
14. Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
15. Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
16. Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
17. VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
18. A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
19. Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
20. Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159

21. VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
22. Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
23. VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
24. VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
25. VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
26. Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
27. 737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859
28. 737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
29. Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
30. Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
31. Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
32. Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
33. VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
34. VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
35. VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
36. VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
37. VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
38. VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
39. Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944
40. VAH Newco No. 2 Pty Ltd (In Liquidation) (Administrators Appointed) ACN 160 881 354
41. VB Investco Pty Ltd (In Liquidation) (Administrators Appointed) ACN 101 961 095

Gardner, Tom

From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Monday, 7 September 2020 7:59 AM
To: Glavac, Mikhail
Cc: Lee, Veronica; Khan, Safiyya; Zhu, Julie; McCoy, Orla; Project Volar; Gardner, Tom
Subject: Re: VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) [CU-Legal.FID3017446]

Dear Mikhail

We are instructed to consent to the expedition of any appeal and to oppose any application for stay of the orders made on 3 September 2020.

This and the following page are Annexure A referred to in the affidavit of Salvatore Algeri

Kind regards

Noel McCoy | Partner
 Norton Rose Fulbright Australia

[Level 5, 60 Martin Place, Sydney, Australia](#)

Tel [+61 2 9330 8133](#) | Mob [+61 414 764 525](#) | Fax [+61 2 9330 8111](#)

noel.mccoy@nortonrosefulbright.com

Sworn on _____

Before me _____

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On 4 Sep 2020, at 8:05 am, Glavac, Mikhail <mglavac@claytonutz.com> wrote:

Dear Noel

VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) (Proceeding)

We refer to the judgment issued in the Proceeding yesterday (**Judgment**). We have instructions to appeal to the Court from the Judgment and will seek to have the appeal expedited and heard as soon as possible.

Can you please confirm at your earliest convenience and in any case by no later than **10am Monday (7 September 2020)** whether your clients agree that the appeal should be expedited? If your clients are agreeable to that course (which would appear to us to be in the parties' common interest and consistent with the urgency your clients expressed at the case management hearing on 30 June 2020), we will approach the registry on Monday, providing you with the opportunity to review any written correspondence with the registry before it is sent.

Further, as your clients are aware, our clients intend to seek a stay on enforcement of orders 5, 6, 8 and 12 of the orders made today in the Proceeding (**Stay Application**), to preserve the status quo pending resolution of the appeal. Complying with orders 5, 6 and 8 (which mandate redelivery to your clients in accordance with the regime set out in Schedules 2 and 3) would render the appeal nugatory, given that the question of what is required by our clients to "*give possession*" of your clients' aircraft objects is the key issue to be determined on appeal. The payment of the costs of the first instance proceeding (order 12) should also be stayed pending resolution of the appeal, given that they will need to be repaid if our clients are successful on appeal. In our clients' view, your clients will not suffer any significant detriment from a stay, given that our clients will continue to insure and maintain your clients property in accordance with order 7 (which will not be subject to the stay). In our clients' view, the circumstances decisively favour the granting of the Stay Application (see, for example, the principles summarised in *Penrith Whitewater Stadium Ltd v Lesvos Pty Ltd* [2007] NSWCA 103 at [18] to [20]).

Noting that our clients' evidence and submissions in support of the Stay Application are due to be filed by 4pm on Monday, 7 September 2020, can you please also confirm by **10am Monday** whether your clients intend to oppose the Stay Application? We would also suggest that the Stay Application may be a factor for your clients' consideration of

whether the appeal should be expedited, given that the stay (if granted) will expire at the time judgment is handed down on the appeal.

Kind regards,

Mikhail Glavac, Senior Associate

Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

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Gardner, Tom

From: Glavac, Mikhail
Sent: Monday, 24 August 2020 3:52 PM
To: 'McCoy, Noel'; 'Associate MiddletonJ'; 'Lee, Veronica'; 'Zhu, Julie'; McCoy, Orla; Project Volar; 'Khan, Safiyya'; Gardner, Tom
Cc: 'EA - Middleton J'
Subject: RE: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

This and the following 3 pages are
 Annexure B referred to in the affidavit of
 Salvatore Algeri

Dear Associate

We are instructed as follows in relation to items 1, 3 and 4 (adopting the subheadings in Mr McCoy's email below).

Sworn on Before me

1. Transcript page 9.25 (re wording of item 7)

The Respondents' are content with the Applicants' proposed wording _____

3. Transcript page 16.15 (re timetable)

We are instructed as follows (by reference to schedule 3 to the Applicants' short minutes of order (**Schedule 3**) and paragraph 5 of the affidavit of Mr Dunbier dated 5 August 2020 (**Second Dunbier Affidavit**)):

- a) the ferry flight of Engine 894902 from Adelaide to Melbourne on airframe VH-VUT has taken place, such that all four of the Applicants' Engines are presently attached to airframes at Melbourne Airport (Schedule 3 at [1(b)] and Second Dunbier Affidavit at [5(a)]);
- b) none of the Applicants' Engines is now affected by any claimed lien (Second Dunbier Affidavit at [7(b)]); and
- c) the "c-checks" have been undertaken by the Respondents for each of the Engines (Second Dunbier Affidavit at [5(a)]).

We are further instructed that the Redelivery Proposal set out in Schedule 3 and the Second Dunbier Affidavit may need to be amended due to the practical challenges presently facing the Virgin Tech and engineering teams. Specifically, it no longer appears feasible to transport all four engines to the Delta Facility by ferry flights. It may ultimately be necessary to transport at least two of the engines by air freight.

We note our clients' instructions with respect to the Redelivery Proposal to keep the Court informed, only. We do not seek to reopen the issue or to seek liberty to apply to put forward an alternative redelivery proposal at this time. As foreshadowed at the hearing, once the Court delivers its reasons and makes orders in this matter, the Respondents intend to apply for a stay of the Court's orders pending the determination of the Respondents' foreshadowed appeal, so as to preserve the status quo. If the Respondents' application for a stay succeeds, the redelivery proposal will not be progressed until the determination of the Respondents' foreshadowed appeal. If that application fails, the parties can exercise their liberty to apply in respect of the redelivery proposal (or, alternatively, an amendment can be agreed in writing pursuant to the mechanism in item 4 below).

4. Transcript page 7.31 (re additional wording for Schedule 3, order 1)

The Respondents agree that Schedule 3, paragraph 1 ought to be prefaced with the words "*Unless the parties otherwise agree in writing*".

Kind regards,

Mikhail Glavac, Senior Associate
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

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From: Glavac, Mikhail

Sent: Monday, 24 August 2020 12:12 PM

To: 'McCoy, Noel' <noel.mccoy@nortonrosefulbright.com>; Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>

Cc: EA - Middleton J <EA.MiddletonJ@fedcourt.gov.au>

Subject: RE: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

Dear Associate

In relation to item 2, please see **attached** the respondents' submissions as to the form of costs order which should be made by the Court. We will proceed to file the submissions now.

We are taking final instructions in relation to items 1, 3 and 4 and will respond as soon as possible. We had been working towards a general deadline of 24 August 2020 at 5pm (as indicated by our counsel at page 13.47 of the Transcript in relation to the submissions on costs) to provide that information to the Court, and expect to be able to adhere to that deadline.

Kind regards,

Mikhail Glavac, Senior Associate

Clayton Utz

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From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>

Sent: Monday, 24 August 2020 10:50 AM

To: Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>; Glavac, Mikhail <mglavac@claytonutz.com>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>

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Dear Associate

We respond to the matters raised by his Honour as follows. We note that the Respondents solicitors are copied into this email.

1. Transcript page 9.25 (re wording of item 7).

Paragraph 8 of the Applicants' short minutes of order requires the Administrators to "do all such things as are necessary and within [their] power" to cause the other respondents to transmit the records described at Schedule 2, paragraph 7 of the orders. Paragraph 11 provides for liberty to apply on 3 days' notice. It is submitted by the Applicants that this wording is sufficient to address any concerns or issues raised by the Respondents. As to the specific issue of the dual release certificates, the Court would take comfort from Mr Failler's evidence in his affidavit of 10 August 2020 at [4] that the Delta Facility has the capacity to issue the dual release certificates. That evidence is consistent with the evidence given by Mr Dunbier in his affidavit of 14 August 2020 at [18]. Nevertheless, the Applicants are content for the orders to be amended as follows:

- 8 The Third Respondent do all such things as are necessary and within its power, using best endeavours to cause the First, Second, and Fourth Respondent to carry out the Orders of this Court in respect of the completion and transmittal of the records described at Schedule 2, paragraph 7 of these Orders.

2. **Transcript page 14.39 (re costs).**

The Applicants' position is set out at Transcript pages 13.34-38 and 14.20-22. If the Respondents' file submissions on costs, the Applicants will review those submissions to determine whether a rejoinder is required.

3. **Transcript page 16.15 (re timetable).**

The Respondents indicated that they would report to the Court on the status of the lien asserted by Adelaide airport over aircraft with registration VH-VUT to which is attached Engine 894902 to be transported from Adelaide to Melbourne and the status of that proposed ferry flight.

4. **Transcript page 7.31 (re additional wording for Schedule 3, order 1)**

For completeness and the convenience of the Court, we note that during argument, the Applicants' counsel proposed at page 7.24 that Schedule 3, order 1 be prefaced with the words "unless the parties otherwise agree in writing." Counsel for the Respondents indicated that that suggestion was helpful (see transcript page 7.31, noting that although the transcription reads "that's all for", the Applicants understood Dr Higgins said "that's helpful"). The Applicants' proposed Schedule 3, order 1 will read as follows:

Unless the parties otherwise agree in writing, consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases, the Respondents and where required, using Virgin Tech, to cause the Engines, Engine Stands and QECs to be transported to the Applicants according to the following steps as soon as possible using best endeavours but by no later than 15 October 2020:

Kind regards

Noel McCoy | Partner
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From: Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>
Sent: Saturday, 22 August 2020 12:44 PM
To: Glavac, Mikhail <mglavac@claytonutz.com>; McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>
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UNCLASSIFIED

Dear Practitioners

His Honour brings to your attention three outstanding matters which the relevant parties indicated at the hearing on 17 August 2020 they would be in contact with Chambers about – see transcript pages 9.25 (re wording of item 7), 14.39 (re costs) and 16.15 (re timetable).

Could you please provide to Chambers all relevant materials in respect of the above matters as soon as possible.

Kind regards

Dilara Reznikas | Associate to the Honourable Justice Middleton

Federal Court of Australia | 305 William Street, Melbourne Victoria 3000

t (03) 8600 3631 | f (03) 8600 3632 | e associate.middletonj@fedcourt.gov.au

Please ensure that all official correspondence to Chambers is also sent to ea.middletonj@fedcourt.gov.au

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