



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD714/2020

**WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE)** and another named in the schedule  
Applicant

**VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741** and others named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE MIDDLETON

**DATE OF ORDER:** 03 September 2020

**WHERE MADE:** Melbourne

#### THE COURT DECLARES THAT:

1. The First Applicant holds (for the benefit of the Second Applicant) an “international interest” in the “aircraft objects” identified in Schedule 2 of these Orders pursuant to Articles 2 and 7 of the Convention on International Interests in Mobile Equipment done at Cape Town on 16 November 2001 (the ‘**Cape Town Convention**’).
2. The Notice dated 16 June 2020 given by the Third Respondent to the Second Applicant did not discharge the First or Third Respondent’s obligation, under Art XI of the Protocol to the Cape Town Convention on matters specific to Aircraft Equipment, to “give possession” of the “aircraft objects” identified in Schedule 2 of these Orders.
3. The Notice dated 16 June 2020 given by the Third Respondent to the Second Applicant did not satisfy the requirements of section 443B(3) of the *Corporations Act 2001* (Cth) (the ‘**Corporations Act**’), and did not (pursuant to section 443B(4)) have the effect of relieving the Third Respondent of their obligations under section 443B(2) of the *Corporations Act* in respect of the property identified in Schedule 2 of these Orders.



4. Any expenses incurred by the Respondents or Virgin Tech Pty Limited (Administrators Appointed) (**‘Virgin Tech’**) in complying with Orders 5 to 8 of these Orders are:
  - (a) expenses properly incurred by the Third Respondent in carrying on the businesses of the First, Second and Fourth Respondents and Virgin Tech within the meaning of section 556(1)(a) of the Corporations Act;
  - (b) debts or liabilities for which section 443D(aa) entitles the Third Respondent to be indemnified within the meaning of section 556(1)(c) of the Corporations Act from the assets of the First, Second and Fourth Respondents and Virgin Tech; and
  - (c) debts or liabilities for which s 443D(aa) entitles the Third Respondent to be similarly indemnified within the meaning of s 556(1)(c) of the Corporations Act.

**THE COURT ORDERS THAT:**

5. The Respondents or any of them “give possession” of the “aircraft objects” identified in Schedule 2 of these Orders, by delivering up, or causing to be delivered up, the “aircraft objects” to the Applicants in the manner set out in Schedule 3 of these Orders, at 4700 Lyons Technology Parkway, Coconut Creek, Florida, 33073, United States of America.
6. Subject to any further order, the time by which the Respondents are to carry out the steps required by Order 5 of these Orders to deliver up the “aircraft objects” is, using their best endeavours, as soon as possible but on or before 15 October 2020. The Applicants will provide such assistance as is reasonably necessary in relation to the Respondents’ obligations under these Orders, including taking any step that is reasonably required to give effect to those obligations of the Respondents.
7. Unless and until the Respondents, or any of them, “give possession” in accordance with Order 5, or until further order of the Court, the Respondents are to preserve the aircraft objects in Schedule 2 of these Orders by:
  - (a) maintaining the Engines identified in Schedule 2 of these Orders;
  - (b) maintaining insurance cover over the aircraft objects identified in Schedule 2 of these Orders;



to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators.

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.
9. Pursuant to section 443B(8) and section 447A(1) of the Corporations Act, the Third Respondent be excused and relieved of personal liability to pay rent or other amounts payable under any agreement in respect of the Applicants' aircraft objects that would otherwise have been payable by the Third Respondent pursuant to section 443B(2) from the period commencing 16 June 2020 up to and including the date in Order 6 of these Orders.
10. To the extent that the Applicants require leave of the Court pursuant to section 440D or section 440B(2) of the Corporations Act to begin and proceed with the Originating Application filed on 30 June 2020 against the First and Second Respondents and as amended by the Amended Originating Process on 28 July 2020 against the Fourth Respondent, leave is granted *nunc pro tunc* from those dates.
11. Liberty to the parties to apply to Justice Middleton in respect of these Orders, including but not limited to liberty to make an application for extensions of time, alteration to the manner and extent of delivery up as required by Order 5 of these Orders, and for any other variation amendment or addition to these Orders that may be required before, during or after the process of delivery up.
12. The First, Second and Fourth Respondents to pay the Applicants' costs as agreed or assessed as costs in the administrations of the First, Second and Fourth Respondents.

Date that entry is stamped: 3 September 2020

  
Registrar



**Schedule**

No: NSD714/2020

Federal Court of Australia

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Second Applicant	WILLIS LEASE FINANCE CORPORATION
Second Respondent	VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 090 670 965
Third Respondent	VAUGHAN NEIL STRAWBRIDGE, JOHN LETHBRIDGE GREIG, SALVATORE ALGERI & RICHARD JOHN HUGHES (IN THEIR CAPACITY AS VOLUNTARY ADMINISTRATORS OF THE FIRST AND SECOND RESPONDENTS)
Fourth Respondent	TIGER AIRWAYS AUSTRALIA PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 124 369 008



## Schedule 2

**NOTE:** In this Schedule 2, Appendix A and Appendix B are references to Appendix A in the Court Book at pages 15 to 39 (inclusive) and to Appendix B in the Court Book at pages 40 to 99 (inclusive).

### Schedule of “aircraft objects”

#### **Engines**

- (1) CFM International Engine, Model CFM56-7B24 with engine serial number 888473.
- (2) CFM International Engine, Model CFM56-7B24 with engine serial number 897193.
- (3) CFM International Engine, Model CFM56-7B24 with engine serial number 896999.
- (4) CFM International Engine, Model CFM56-7B24 with engine serial number 894902.

#### **Accessories, parts, and equipment**

- (5) Engine stands:
  - (a) (for Engine 888473) with serial numbers:
    - (i) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-3;
    - (ii) Base: P/N D71TRO00005G03, S/N MCC150728-1-3;
  - (b) (for Engine 897193) with serial numbers:
    - (i) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-4;
    - (ii) Base: P/N D71TRO00005G03, S/N MCC150728-1-4;
  - (c) (for Engine 896999) with serial numbers:
    - (i) Cradle: P/N D71CRA00005G02, S/N MCC170335-1-1;
    - (ii) Base: P/N D71TRO00005G03, S/N MCC170335-1-1; and
  - (d) (for Engine 894902) with serial numbers:
    - (i) Cradle: P/N AM-2811-4800, S/N 769;
    - (ii) Base: P/N AM2563-200, S/N 1216.
- (6) Quick engine change (**QEC**) units and accessories:
  - (a) (for Engine 888473) – as specified in Appendix A;
  - (b) (for Engine 897193) – as specified in Appendix A;
  - (c) (for Engine 896999) – as specified in Appendix A; and



- (d) (for Engine 894902) – as specified in Appendix A.

**Data, manuals, and records**

- (7) The following records in respect of each of the Engines:

- (a) Historical Operator Records:

- (i) Authorized Release Certificates and Installation Work Orders for any engine parts which are replaced on or before the date that the Engines are removed and prepared for transportation by road in accordance with paragraph 4 of Schedule 3 (in the form required under clause 18.3(g) of the General Terms of Agreement applicable to any Engine Lease (**GTA**)); and
- (ii) Any records created, made or otherwise arising from the ferry flights or engine removal contemplated in Schedule 3 of these Orders (of the kind and in the form required under clause 7 of the **GTA**);

- (b) End of Lease Operator Records/Status Statements:

- (i) History Statement for each of the Engines in the form specified in Appendix B;
- (ii) Non-Incident Statement for each of the Engines in the form specified in Appendix B;
- (iii) In respect any ferry flight referred to in Schedule 3:
- (A) Non Incident Statement exclusive to that ferry flight that identifies the engine Time and Cycles at removal in the form required under Exhibit E of the **GTA**;
- (B) Aircraft journey logs that identify flight hours and cycles accumulated for that ferry flight in accordance with item F in Exhibit F of the **GTA** or in a form similar to Exhibit D of the **GTA** and amended to reflect the ferry flight;
- (iv) Combination Statement for each of the Engines in the form specified in Appendix B;
- (v) Life Limited Parts Status Statement for each of the Engines in the form specified in Appendix B;



- (vi) Airworthiness Directive Status Statement for each of the Engines in the form specified in Appendix B;
- (vii) Approved Maintenance Organization (AMO) Statement for each Engine in the form specified in Appendix B;
- (viii) Commercial Traceability Statement to be completed by head lessee in the form specified in Appendix B;
- (ix) Documentation pertaining to any engine removal carried out in accordance with Schedule 3 including but not limited to:
  - (A) Engine removal work Order in a form similar to item 9 of Exhibit D of the GTA; and
  - (B) Long term preservation work order and tag in accordance with items P and Q in Exhibit F of the GTA.
- (c) Lease Inspection Records:
  - (i) OEM EHM redelivery report as referred to in clause 6(b)(i) of the GTA;
  - (ii) Borescope Report as referred to in clauses 18.1(c) and 18.2(c) of the GTA;
  - (iii) Borescope Video as referred to in clauses 18.1(c) and 18.2(c) of the GTA;
  - (iv) C Check / MPD Tasks sign off as referred to in clauses 18.1(c) and 18.2(c) of the GTA;
  - (v) Preservation tag as referred to in Exhibit F, clause q of the GTA;
  - (vi) Dual Release Certificate being a United States Federal Aviation Administration (**FAA**) Form 337 and one of:
    - (A) a completed FAA Form 8130-3 (marked approved for Return to Service in accordance with part 43.9 of Title 14 of the US Code of Federal Regulations (**CFR**) and Release to Service in accordance with European Union Aviation Safety Agency (**EASA**) regulation Part 145.A.50); or



- (B) an EASA Form One (marked approved for Release to Service in accordance with EASA Part 145.A.50 and Return to Service in accordance with 14 CFR 43.9).

**Definition of Engine Lease**

- (8) In this Schedule 2, a reference to an Engine Lease is a reference to any or all of, as the case may be, the lease agreements between the First Applicant and the First Respondent, the engine lease support agreement between the Second Applicant and the First Respondent, and the sub-lease agreements between the First Respondent and the Second Respondent described in paragraph 5 of Schedule 3 of these Orders.





### Schedule 3

- (1) 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 on or before 15 October 2020:

#### **Ferry flight of Engine 894902 from Adelaide to Melbourne**

- (a) the Respondents to obtain from CASA the necessary regulatory approvals to carry out the terms of these Orders, including an extension of the Virgin Tech CASA approval to permit removal of the Engines at the facility operated by Delta Air Lines, Inc. (**Delta**) at Hartsfield-Jackson Atlanta International Airport at Atlanta, Georgia, United States (**Delta Facility**);
- (b) the Respondents to cause aircraft VH-VUT to which is attached Engine 894902 to be transported from Adelaide to the Respondents' and Virgin Tech's Melbourne airport facility;
- (c) the Respondents to cause to be created the End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)(iii) and to transmit them to the Applicants via email or via online data room;

#### **Ferry Flight of Engine 894902 and Engine 896999 from Melbourne to Atlanta, USA**

- (d) at the Respondents' and Virgin Tech's Melbourne airport facility, the Respondents to cause Engine 896999 currently attached to VH-VOT to be removed and placed on VH-VUT;
- (e) the Respondents to cause to be created the End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)(ix) in respect of Engine 896999 and to transmit them to the Applicants via email or via online data room; and
- (f) the Respondents to cause VH-VUT to be flown (with Engine 894902 and Engine 896999 installed) to the Delta Facility;
- (g) in the alternative to (d), (e) and (f) the Respondents to:



- (i) at the Respondents' and Virgin Tech's Melbourne airport facility:
  - (A) cause Engine 896999 currently attached to aircraft with registration VH-VOT to be removed and placed on the Engine Stand specified at paragraph 5(c) of Schedule 2;
  - (B) cause Engine 894902 currently attached to aircraft with registration VH-VUT to be removed and placed on the Engine Stand specified at paragraph 5(d) of Schedule 2;
  - (C) cause to be created the End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)(ix) in respect of Engine 896999 and Engine 894902 to transmit them to the Applicants via email or via online data room;
- (ii) cause Engine 896999 and Engine 894902 to be prepared for air freight transportation in accordance with paragraph 4 of this Schedule;
- (iii) consistent with the applicable engine manufacturer's procedures for air freight transportation and the terms of the Engine Leases, transport by air freight Engine 896999 and Engine 894902 to the Delta Facility.

**Inspection, removal and road transportation of Engine 894902 and Engine 896999 from Atlanta, USA to Florida, USA**

- (h) the Respondents to cause, while Engine 894902 and Engine 896999 remain installed on airframe with registration VH-VUT, the inspections, checks and other steps necessary to enable the Respondents or Delta, as the case may be, to create, prepare or complete:
  - (i) End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)
  - (ii) Lease Inspection Records described in Schedule 2, paragraph 7(c);
- (i) the Respondents to cause:
  - (i) Engine 894902 and Engine 896999 to be removed from airframe with registration VH-VUT by Delta at the Delta Facility;



- (ii) Engine 894902 and Engine 896999 to be placed into Engine Stands specified in paragraphs 5(a) and (b) of Schedule 2 currently located at the Delta Facility;
- (iii) the QECs described at Schedule 2, paragraphs 6(c) and (d) of these Orders to be removed from Engine 894902 and Engine 896999 respectively;
- (iv) Engine 894902 and Engine 896999 to be prepared in readiness for transportation in accordance with paragraph 4 of this Schedule 3;
- (v) all End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b) and Lease Inspection Records described in Schedule 2, paragraph 7(c) in respect of Engine 894902 and Engine 896999 to be transmitted the Applicants via email or via online data room; and
- (vi) Engine 894902 and Engine 896999 and the QECs described at Schedule 2, paragraphs 6(c) and (d) of these Orders to be transported by road using trucks equipped with air ride or air cushion tractors and trailers to the Applicants to their at facility at 4700 Lyons Technology Parkway, Coconut Creek, Florida, 33073, United States of America (**Coconut Creek Facility**).

**Ferry Flight of Engine 888473 and Engine 897193 from Melbourne to Atlanta, USA**

- (j) using the Respondents' and Virgin Tech's Melbourne airport facility, the Respondents to cause Engine 888473 (currently installed on airframe with registration VH-VOY) and Engine 897193 (currently installed on airframe with registration VH-VUA) to be removed from airframes on which they are respectively installed and installed on airframe with registration VH-VUT;
- (k) the Respondents to cause to be created the End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)(ix) in respect of Engine 888473 and Engine 897193 and to transmit them to the Applicants via email or via online data room;



- (l) the Respondents to cause VH-VUT to be flown (with Engine 888473 and Engine 897193 installed) to the Delta Facility;
- (m) in the alternative to (j), (k) and (l) the Respondents to:
  - (i) at the Respondents' and Virgin Tech's Melbourne airport facility:
    - (A) cause Engine 888473 currently attached to aircraft with registration VH-VOY to be removed and placed on an Engine Stand of the same make, model, condition and quality of the Initial Stands and which otherwise comply with the applicable engine manufacturer's procedures for storage and transport of the Engines (Temporary Transportation Engine Stand);
    - (B) cause Engine 897193 currently attached to aircraft with registration VH-VUA to be removed and placed on a Temporary Transportation Engine Stand;
    - (C) cause to be created the End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)(ix) in respect of Engine 888473 and Engine 897193 to transmit them to the Applicants via email or via online data room;
  - (ii) cause Engine 888473 and Engine 897193 to be prepared for air freight transportation in accordance with paragraph 4 of this Schedule;
  - (iii) consistent with the applicable engine manufacturer's procedures for air freight transportation and the terms of the Engine Leases, transport by air freight Engine 888473 and Engine 897193 to the Delta Facility.

**Inspection, removal and road transportation of Engine 888473 and Engine 897193 from Atlanta, USA to Florida, USA**

- (n) the Respondents to cause, while Engine 888473 and Engine 897193 remain installed on airframe with registration VH-VUT, the inspections, checks and other steps necessary to enable the Respondents or Delta, as the case may be, to create, prepare or complete:
  - (i) End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b)



- (ii) Lease Inspection Records described in Schedule 2, paragraph 7(c);
- (o) the Respondents to cause:
  - (i) Engine 888473 and Engine 897193 to be removed from airframe with registration VH-VUT by Delta at the Delta Facility;
  - (ii) Engine 888473 and Engine 897193 to be placed into Engine Stands specified in paragraphs 5(c) and (d) of Schedule 2 currently located at the Virgin Tech's Melbourne airport facility or alternatively:
    - (A) in lieu of using the Engine stands specified at paragraphs 5(c) and (d) of Schedule 2 (**Initial Stands**), the Respondents may substitute those stands with equivalent engine stands approved by the Applicants (acting reasonably) (**Replacement Stands**) after which time ownership and title to the Initial Stands will pass to Virgin and the Replacement Stands will pass to the Applicants;
    - (B) in respect of the preceding paragraph (A), the Applicants agree that they will not unreasonably withhold consent to the use substitute stands provided that those stands are of the same make, model, condition and quality of the Initial Stands and which otherwise comply with the applicable engine manufacturer's procedures for storage and transport of the Engines.
  - (iii) the QECs described at Schedule 2, paragraphs 6(a) and (b) of these Orders to be removed from Engine 888473 and Engine 897193 respectively;
  - (iv) Engine 888473 and Engine 897193 to be prepared in readiness for transportation in accordance with paragraph 4 of this Schedule 3;
  - (v) all End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b) and Lease Inspection Records described in Schedule 2, paragraph 7(c) in respect of Engine 888473 and Engine 897193 are to be transmitted to the Applicants via email or via online data room; and



- (vi) Engine 888473 and Engine 897193 and the QECs described at Schedule 2, paragraphs 6(a) and (b) to be transported by road using trucks equipped with air ride or air cushion tractors and trailers to the Applicants to their Coconut Creek Facility.

### **Applicants' participation**

- (2) The steps to be taken by the Respondents under the previous paragraph involving:
  - (a) removal of Engines or QECs;
  - (b) placing of Engines on Engine Stands;
  - (c) inspections, checks or other steps necessary to produce End of Lease Operator Records/Status Statements described in Schedule 2, paragraph 7(b) and Lease Inspection Records described in Schedule 2, paragraph 7(c); or
  - (d) preparation of Engines or QECs in readiness for road transportare to be taken in the presence of the Applicants' nominated representative and, so far as reasonable and consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases, will use their best endeavours to cause those steps to be carried out in accordance with the directions of the Applicants' nominated representative.
- (3) At the time of removal of Engines or QECs, the Respondents' will give the Applicants' nominated representative sufficient access to the Engines and components in order to undertake an inventory of the parts belonging to the Applicants.

### **Preparation of Engines in readiness for road transportation**

- (4) Where it is specified in these Orders that the Respondents shall cause the Engines prepared in readiness for transportation, they shall cause to occur, for each Engine, consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases:
  - (a) capping and plugging all openings of the Engine;
  - (b) preserving the Engine for long-term preservation and storage for a minimum of 365 days in accordance with the applicable manufacturer's procedures for the Engine;



- (c) completely sealing the Engine in a Moisture Vapour Proof (MVP) Bag provided by the Applicants or with heavy gauge vinyl plastic if the Applicants do not provide an MVP Bag;
- (d) otherwise preparing the Engine for shipment and, if applicable, the shipment of the Engine, in accordance with the manufacturer's specifications and recommendations.

### **Definition of Engine Lease**

- (5) In this Schedule 3, a reference to an Engine Lease is a reference to any or all of, as the case may be, the lease agreements between the First Applicant and the First Respondent, the engine lease support agreement between the Second Applicant and the First Respondent, and the sub-lease agreements between the First Respondent and the Second Respondent as follows:
  - (a) Engine Lease Support Agreement dated 24 May 2019 between the Second Applicant and the First Respondent;
  - (b) General Terms Engine Lease Agreement dated 24 May 2019 between the First Applicant and the First Respondent;
  - (c) Aircraft Engine Lease Agreement in respect of Engine 897193 dated 24 May 2019 between the First Applicant and the First Respondent;
  - (d) Engine Sublease Agreement in respect of Engine 897193 dated 24 May 2019 between the First Respondent and the Second Respondent;
  - (e) Aircraft Engine Lease Agreement in respect of Engine 896999 dated 14 June 2019 between the First Applicant and the First Respondent;
  - (f) Engine Sublease Agreement in respect of Engine 896999 dated 14 June 2019 between the First Respondent and the Second Respondent;
  - (g) Aircraft Engine Lease Agreement in respect of Engine 888473 dated 28 August 2019 between the First Applicant and the First Respondent;
  - (h) Engine Sublease Agreement in respect of Engine 888473 dated 28 August 2019 between the First Respondent and the Second Respondent; and
  - (i) Aircraft Engine Lease Agreement in respect of Engine 894902 dated 13 September 2019 between the First Applicant and the First Respondent; and



- (j) Engine Sublease Agreement in respect of Engine 894902 dated 13 September 2019 between the First Respondent and the Second Respondent.