

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/09/2020 7:56:56 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
File Number:	NSD994/2020
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 8/09/2020 10:04:34 AM 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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 122
Rules 36.01(1)(b); 36.01(1)(c)



Notice of appeal

No. of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court of Australia

VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 and others named in the schedule

Appellants

Wells Fargo Trust Company, National Association (as owner trustee) and another named in the schedule

Respondents

To the Respondents

The Appellants appeal from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	The Appellants
Prepared by (name of person/lawyer)	Timothy James Sackar
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The Appellants appeal from part of the judgment of the Federal Court of Australia given on 3rd September 2020 at Melbourne.

Grounds of appeal

1. The primary judge erred in finding that the obligation of one or more of the Appellants to “give possession” of the Respondents’ aircraft objects under Art XI.2 of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (**Aircraft Protocol**) required them to deliver up the aircraft objects to the Respondents in the United States generally in accordance with the existing lease agreement terms between the parties (see at [8], [85], [87], [108], [110], [118]).
2. The primary judge ought to have found that the obligation on one or more of the Appellants to “give possession” of the Respondents’ aircraft objects under Art XI.2 of the Aircraft Protocol:
 - a. required the Appellants to make the aircraft objects available to the Respondents, which involves giving the Respondents the opportunity to take possession; and
 - b. was satisfied on the facts as found by the primary judge.
3. By reason of grounds 1 and 2 above, the primary judge erred in finding that the Court had power to frame relief in the form of orders 5 to 8 inclusive.
4. By reason of grounds 1 and 2 above, while the Court had power to make orders 4 and 9, and it was appropriate to exercise that power:
 - a. order 4 should have been framed by reference to expenses incurred in connection with the obligation on one or more of the Appellants to “give possession” (rather than by reference to compliance with orders 5 to 8), and should not have included a reference to Virgin Tech Pty Limited (Administrators Appointed); and
 - b. order 9 should have been framed by reference to the date upon which the Respondents take possession of the aircraft objects (rather than by reference to the date in order 6).
5. The primary judge erred in referring to Virgin Tech Pty Limited (Administrators Appointed) in order 4, and ought not to have made any order with respect to that entity, being a non-party to the proceedings.



Orders sought

1. Appeal allowed.
2. Order that orders 5, 6, 7, 8, 11 and 12 of the orders of the Federal Court of Australia made on 3 September 2020 be set aside.
3. Declare that the Appellants have complied with any obligation they are under to “give possession” of the Respondents’ “aircraft objects” under Art XI.2 of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.
4. Order that order 4 of the orders of the Federal Court of Australia made on 3 September 2020 be varied as follows:

~~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 in giving possession of the Respondents’ aircraft objects are:~~

- (a) expenses properly incurred by the Third Respondent in carrying on the business 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.

5. Order that order 9 of the orders of the Federal Court of Australia made on 3 September 2020 be varied as follows:

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 on which the Respondents take possession of their aircraft objects in Order 6 of these Orders.

6. Order that the Respondents reimburse the Appellants for any costs expended in compliance with the orders 5 and 7 of the Court below.
7. Costs of the proceeding below.
8. Costs of the appeal.
9. Such further or other orders as the Court deems fit.

Appellants' address

The Appellants' address for service is:

Place: Attention: Timothy Sackar/Kassandra Adams
C/- Clayton Utz Lawyers
Level 15, 1 Bligh Street
Sydney NSW 2000

Email: tsackar@claytonutz.com
kaadams@claytonutz.com

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 7 September 2020

A handwritten signature in blue ink, appearing to read 'Orfhlaith Maria McCoy', written over a light blue horizontal line.

Signed by Timothy James Sackar (by his
partner Orfhlaith Maria McCoy)
Solicitor for the Appellants

**Schedule**

No. of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court of Australia

Appellants

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

Third Appellant: Vaughan Neil Strawbridge, John Lethbridge Greig, Salvatore
Algeri & Richard John Hughes (in their capacity as voluntary
administrators of the First and Second Appellants)

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

Respondents

Second Respondent: Willis Lease Finance Corporation

Date: