

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/11/2020 9:56:35 AM AEDT 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:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 3/11/2020 10:20:20 AM AEDT

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.



Further amended originating application

No. 714 of 2020

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

Wells Fargo Trust Company, National Association (as owner trustee) and others named in schedule 1

Applicants

VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 and others named in schedule 1

Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or 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: Law Courts Building, Queens Square, Sydney, NSW

The Court ordered that the time for serving this application be abridged to.

Date:

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

Filed on behalf of (name & role of party)	The Applicants		
Prepared by (name of person/lawyer)	Noel McCoy		
Law firm (if applicable)	Norton Rose Fulbright Australia		
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Details of claim

On the grounds stated in the accompanying affidavit of Mr. Dean Poulakidas sworn 29 June 2020, the Applicants claim:

Declaration of international interest

- 1 A declaration that the First Applicant holds (for the benefit of the Second Applicant) an “*international interest*” in the “*aircraft objects*” identified in Schedule 2 pursuant to Article 2 and 7 of the Convention on International Interests In Mobile Equipment on Matters Specific to Aircraft Equipment, done at Cape Town on 16 November 2001 (**Cape Town Convention**).

Particulars

Section 7 of the International Interests In Mobile Equipment (Cape Town Convention) Act (Cth) 2013 (**Act**) applies the Cape Town Convention and Protocol as a law of the Commonwealth.

Article 2.2(c) of the Cape Town Convention provides for an “*international interest*” to be “*vested in a person who is the lessor under a leasing agreement*”, constituted in accordance with the formal requirements of Article 7.

Declaration of failure to comply with Article XI of the Cape Town Aircraft Protocol

- 2 A declaration that 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 Article XI of the Cape Town Aircraft Protocol to “*give possession*” of the “*aircraft objects*” identified in Schedule 2.

Particulars

Section 7 of the International Interests In Mobile Equipment (Cape Town Convention) Act (Cth) 2013 (**Cape Town Convention Act**) applies the Cape Town Convention and Protocol as the law of the Commonwealth.

Article XI.2 of the Aircraft Protocol to the Convention on International Interests In Mobile Equipment on Matters Specific to Aircraft Equipment, done at Cape Town on 16 November 2001 (**Cape Town Aircraft Protocol**) requires an insolvency administrator or debtor to “*give possession*” of an aircraft object.

By cover of letter dated 16 June 2020 from Clayton Utz, the Third Respondent gave a notice to the Second Applicant purporting to be a notice under section 443B(3) of the Corporations Act 2001 (Cth).



The purported notice failed to give effect to the obligations of the Third Respondent or the First Respondent to give possession within the meaning of the Cape Town Aircraft Protocol.

Delivery up of aircraft objects

- 3 An order that the Respondents or any of them “*give possession*” of the “*aircraft objects*” identified in Schedule 2, by delivering up, or causing to be delivered up the “*aircraft objects*” to the Applicants in the manner set out in Schedule 3 at Coconut Creek, Florida, United States of America by no later than 31 July 2020.

Particulars

Section 7 of the Cape Town Convention Act applies the Cape Town Convention and Aircraft Protocol as the law of the Commonwealth.

Article XI.2 of the Cape Town Aircraft Protocol requires an insolvency administrator or debtor to “*give possession*” of an aircraft object.

The Applicants seeking the delivery up of the aircraft objects in the manner set out in Schedule 3 “*shall be deemed to be exercised in a commercially reasonable manner*” in accordance with Article IX.3 of the Cape Town Aircraft Protocol, because the exercise of that remedy is in conformity with a provision of the agreement between the parties (see the clause 18 of the General Terms Engine Lease Agreement as incorporated into each engine lease).

- 4 An order that unless and until the Respondents, or any of them “*give possession*” in accordance with prayer 3, or until further order of the Court, the Respondents are to preserve the aircraft objects in Schedule 2 by:
- (a) maintaining the Engines identified in Schedule 2 in accordance with paragraph 1 of Schedule 3;
 - (b) maintaining insurance cover over the aircraft objects identified in Schedule 2 to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators.
- 4A An order that the First, Second, and Fourth Respondents take all steps necessary to cause to be completed, and ‘*give possession*’ of, all records and information set out in Schedule 2, paragraph 7 of this Amended Originating Process.

Particulars

Section 7 of the Cape Town Convention Act applies the Cape Town Convention and Aircraft Protocol as the law of the Commonwealth.



Article XI.2 of the Cape Town Aircraft Protocol requires an insolvency administrator or debtor to “give possession” of an aircraft object.

“aircraft object” is defined in the Cape Town Aircraft Protocol to include an “aircraft engine”.

“aircraft engine” is defined to include “all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto”.

The records identified in Schedule 2 paragraph 8 are “data” and “records” “relating” to the Engines and parts and equipment installed on the Engines, and form part of the “aircraft object” in respect of which the Respondents are obliged to give possession to the Applicants.

The affidavit of Derych Warner sworn 22 July 2020 exhibits a Records Open Item List at Exhibit DW-1 page 2 (**ROIL**). The ROIL sets out in particular all outstanding ‘Operator Records’ and ‘Lease Inspection records from engine shop’ sought by Willis.

- 4B An order that the Third Respondent do all such things as are necessary and within its power to cause the First, Second, and Fourth Respondents 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 this Amended Originating Process.

Rent or other amounts payable under section 443B of the Corporations Act

- 5 A declaration that 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) (**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.
- 6 An order that the Third Respondent pay rent or other amounts payable pursuant to section 443B(2) of the Corporations Act in respect of the property identified in Schedule 2 from 16 June 2020 until the date of this order.

Specific Performance of Leases and Article 12 of the Cape Town Convention

- 6A. An order that the Respondents return the aircraft objects identified in Schedule 2 in the manner set out in Schedule 3 at Coconut Creek, Florida, United States of America as soon as possible, and by no later than a date to be determined by the Court.

Particulars

Article 12 of the Cape Town Convention provides that “any additional remedies permitted by the applicable law, including any remedies agreed



upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15". ★

The Applicants are entitled to and seek to exercise the remedies "agreed upon" by the parties being the remedy for redelivery in section 18 of the GTA as incorporated into each engine lease.

Clause 19(b)(iii)(C) of the General Terms Lease Agreement provides upon the occurrence of an Event of Default, the Lessor may demand and the Lessee shall "return any Equipment promptly to lessor" in accordance with section 18 the General Terms Lease Agreement as incorporated into each engine lease as if such Equipment were being returned at the end of the Lease Term.

On 20 April 2020, upon the appointment of an administrator on the Lessee, an Event of Insolvency within the meaning of section 19 occurred.

On 4 September 2020, at a meeting of creditors of the First Respondent convened in accordance with section 439A of the Corporations Act:

- (a) the Applicants voted against a resolution that the First Respondent execute a deed of company arrangement (DOCA); and
- (b) a majority of creditors resolved to execute the DOCA.

On 25 September 2020, the Second Respondent executed the DOCA on behalf of the First Respondent. Accordingly, under section 435C of the Corporations Act 2001, the administration of the First Respondent ended on that day and the moratorium under section 440B of the Corporations Act 2001 came to an end.

Article XI.10 of the Cape Town Protocol provides that no obligation of the debtor under the agreement may be modified without the consent of the creditor.

Under section 444D(2) and (3) of the Corporations Act 2001 the Applicants' rights to realise or otherwise deal with their security interest and their rights as an owner or lessor of property in relation to that property are unaffected by the DOCA unless the DOCA so provides. The DOCA does not so provide and to the contrary expressly preserves those rights (clauses 7 and 9 of the DOCA).

General

- 7 Interest.
- 8 Costs.
- 9 Such further and other order as the Court thinks fit.



Interlocutory relief

- 10 An order that this Originating Process be listed for an urgent first case management hearing at 10:00 am on Wednesday, 1 July 2020 with a view to fixing a hearing date in respect of prayers 1, 2, 3, and 4 on an urgent basis.
- 11 An order that the time for service of the Originating Process and affidavit of Dean Poulakidas sworn 29 June 2020 together with a copy of these Orders (collectively the **Documents**), be abridged to 6:00 pm on Tuesday, 30 June 2020.
- 12 An order that service of the Documents may be effected on the Respondents by emailing a copy of the documents to:
- (a) Orla McCoy of Clayton Utz at omccoy@claytonutz.com;
 - (b) Timothy Sackar of Clayton Utz at tsackar@claytonutz.com;
 - (c) Graeme Tucker of Clayton Utz at gtucker@claytonutz.com;
 - (d) Salvatore Algeri of Deloitte at saalgeri@deloitte.com.au.

Applicants' address

The Applicants' address for service is:

Place: c/- Norton Rose Fulbright Australia, Level 5, 60 Martin Place, Sydney, NSW 2000

Email: noel.mccoy@nortonrosefulbright.com

The Applicant's address is 60 E. Sir Francis Drake Blvd, Suite 209, Larkspur, California 94939 USA, Attention: General Counsel.

Service on the Respondent

It is intended to serve this application on all Respondents.



Date: 20 October 2020

A handwritten signature in blue ink, appearing to be 'Noel McCoy', written over a horizontal dotted line.

Signed by Noel McCoy
Lawyer for the Applicant

**Schedule 1**

No. of 2020

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

Applicants

Second Applicant: **Willis Lease Finance Corporation**

Respondents

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**

Date:

**Schedule 2**

No.

of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

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 of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 28 August 2019;
- (b) (for Engine 897193) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 24 May 2019;
- (c) (for Engine 896999) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 14 June 2019; and
- (d) (for Engine 894902) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 13 September 2019.

Data, manuals, and records

7 The following records in respect of each of the Engines:

- (a) all records and relevant access and log in codes delivered by the Applicants to the First Respondent on the Delivery Date (as defined in the General Terms Engine Lease Agreement **GTA**) including a copy of the life-limited parts profile status attached as Appendix B to each Engine Aircraft Engine Lease Agreement;
- (b) all Engine records generated by the First Respondent as specified at Exhibit F to GTA;
- (c) Engine Certification Statement in accordance with Exhibit E of the GTA;
- (d) complete and legible engine condition monitoring (**ECM**) data, including both take off and cruise performance and mechanical parameters covering the complete installation term of the Engine since delivery;



- (e) with respect to any part installed by the Respondents or any of them, during the term of the Engine lease and not removed prior to the return of an Engine:
 - (i) manufacturer, part number, nomenclature and serial number of life-limited parts, time controlled parts and serialised parts; and
 - (ii) historical records including but not limited to:
 - (A) serviceability status of the part at installation (ie FAA or EASA or CASA Release to Service tag in accordance with the requirements of section 6(c)(ii) of the GTA);
 - (B) for life-limited parts, time controlled parts and serialised parts, total time and cycles, time and, if applicable, cycles since overhaul as may be applicable and total time and, if applicable, cycles of the Engine at the time of part installation; and
 - (C) additionally for a life-limited part, documentation tracing usage of the part since new; and
- (f) any other Engine records generated by the Respondents during the Lease Term (as defined in section 2(b) of the GTA).

**Schedule 3**

No.

of 2020

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

Maintenance in a manner consistent with cl 18.3(e) of the GTA:

- 1 As at the time the aircraft objects in Schedule 2 are returned to the Applicants, the aircraft objects must have all due maintenance completed in accordance with the Approved Maintenance Program (as defined in the GTA) and must be in as serviceable a condition and good repair as when delivered to the First Respondent, fair wear and tear excepted in a manner consistent with cl 18.3 of the GTA.

Serviceable Tags as required by cl 18.3(g) of the GTA

- 2 Upon the return of the Equipment to the First Applicant, the Respondents must affix a serviceable tag to each of the Engines, pursuant to FAA/EASA requirements:
 - (a) either a completed FAA Form 8130-3 (marked approved for Return to Service in accordance with 14 CFR 43.9 and Release to Service in accordance with EASA Part 145.A.50); or
 - (b) alternatively, 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); and
 - (c) an FAA Form 337.

All maintenance tasks related to the return of the Equipment (including, without limitation, Equipment testing, inspections, MPD tasks, preservation tasks, Equipment Repairs, Airworthiness Directives accomplished, Service Bulletins accomplished, and any other associated tasks) are to be included on the serviceable tag, in a manner consistent with cl 18.3(g) of the GTA.



Shipment in a manner consistent with clause 18.3(h) of the GTA

- 3 Prior to returning the aircraft objects in Schedule 2 to the Applicants, the Respondents or any of them must prepare each Engine identified in Schedule 2 for shipment by:
- (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 if provided by the Lessor or with heavy gauge vinyl plastic if the Lessor does 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/recommendations; and
 - (e) Any trucks used for shipment of the Engines must be equipped with air ride or air cushion tractors and trailers.