

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/07/2020 10:50:37 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Court Book
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: 29/07/2020 8:59:13 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.

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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: 30/06/2020 5:05:34 PM AEST

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit

No. of 2020

Federal Court of Australia
District Registry: NSW
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


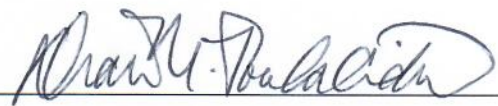
Respondents

Affidavit of: **Dean Poulakidas**
Address: 60 East Sir Francis Drake Boulevard, Suite 209, Larkspur, California, USA
Occupation: Senior Vice President and General Counsel
Date: 29 June 2020

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I, **Dean Poulakidas** of, 60 East Sir Francis Drake Boulevard, Suite 209, Larkspur, California, USA, Senior Vice President and General Counsel, being duly sworn make oath and say as follows:

Filed on behalf of (name & role of party) Applicants
 Prepared by (name of person/lawyer) Noel McCoy
 Law firm (if applicable) Norton Rose Fulbright Australia
 Tel +61 2 9330 8000 Fax _____
 Email noel.mccoy@nortonrosefulbright.com Ref 4015052
Address for service Level 5, 60 Martin Place, Sydney, NSW 2000 Email:
 (include state and postcode) noel.mccoy@nortonrosefulbright.com

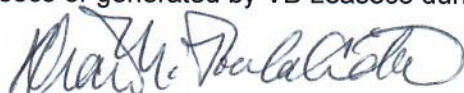
Introduction

- 1 I am Senior Vice President and General Counsel of the second applicant, Willis Lease Finance Corporation (**Willis**).
 - 2 I make this affidavit from my own knowledge except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and believe those facts to be true.
 - 3 I am authorised to make this affidavit on behalf of the applicants. In respect of the first applicant, the second applicant is authorised to bring this proceeding by reason of the following documents exhibited to me at the time of swearing this affidavit in a bundle marked "Exhibit DP-1":
 - (a) Trust Indenture dated 4 August 2017 between, among others, Willis as administrative agent and Willis Engine Structured Trust III (**Beneficiary**) as issuer (**Trust Indenture**). A copy of the Trust Indenture is at pages 1-237 of Exhibit DP-1 in the form filed with the U.S. Securities and Exchange Commission which includes redactions of certain confidential and solely commercial information;
 - (b) Servicing Agreement dated 4 August 2017 between, among others, the Beneficiary and Willis as servicer and administrative agent (**Servicing Agreement**). A copy of the Servicing Agreement is at pages 238-299 of Exhibit DP-1 in form filed with the U.S. Securities and Exchange Commission which includes redactions of certain confidential and solely commercial information;
 - (c) Amended and Restated Trust Agreement No. 888473 dated 8 September 2017 between the Beneficiary as owner participant and Wells Fargo Bank Northwest, N.A. (known now as Wells Fargo Trust Company, National Association), not in its individual capacity but solely as owner trustee (**Wells Fargo**). A copy of that document is at pages 300-319 of Exhibit DP-1;
 - (d) Amended and Restated Trust Agreement No. 897193 dated 8 September 2017 between the Beneficiary as owner participant and Wells Fargo as owner trustee. A copy of that document is at pages 320-339 of Exhibit DP-1;
 - (e) Second Amended and Restated Trust Agreement No. 896999 dated 15 September 2017 between the Beneficiary as owner participant and Wells Fargo as owner trustee. A copy of that document is at pages 340-359 of Exhibit DP-1;
- and

- (f) Amended and Restated Trust Agreement No. 894902 dated 27 September 2017 between the Beneficiary as owner participant and Wells Fargo as owner trustee. A copy of that document is at pages 360-378 of Exhibit DP-1.
- 4 Exhibited to me at the time of swearing this affidavit is a bundle of documents marked "Exhibit DP-2" (**Exhibit DP-2**).
- 5 I make this affidavit in support of an application for orders in respect of property:
- (a) leased by VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 (**VB Leaseco**) from Wells Fargo;
- (b) sub-leased by VB Leaseco to Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965 (**Virgin Australia**).
- 6 Searches of the records maintained by the Australian Securities and Investments Commission for VB Leaseco and Virgin Australia dated 22 June 2020, are respectively, at page 1 and page 20 of Exhibit DP-2.

Background – lease arrangements

- 7 On or about 24 May 2019, Willis and VB Leaseco entered into an Engine Lease Support Agreement (**ELSA**). A copy of the ELSA is at page 54 of exhibit DP-2.
- 8 At about the same time on 24 May 2019, Wells Fargo, as lessor (**Lessor**), for the benefit of Willis entered into a General Terms Engine Lease Agreement (**GTA**) with VB Leaseco, as lessee. A copy of the GTA is at page 65 of exhibit DP-2.
- 9 The GTA provided, among other things:
- (a) by section 2(a):
- (1) for the Lessor to lease aircraft engines to VB Leaseco from time to time, pursuant to individual engine lease agreements, substantially in the form of Exhibit A to the GTA, to be executed by the parties;
- (2) each lease to be for:
- (A) a single engine described by engine number, together with all parts and attachments thereto (collectively, **Engine**);
- (B) all Engine records in the possession of the Lessor which are requested by VB Leaseco or generated by VB Leaseco during the

Lease Term (as defined in section 2(b) of the GTA) (**Engine Records**);

- (C) any quick engine change (**QEC**) unit;
- (D) any engine stand (**Engine Stand**); and
- (E) other items related to the Engine;

(collectively, **Equipment**);

- (b) by section 14 sub-section (a), for VB Leasco to procure and maintain in full force and effect at all times during the term of each Lease, policies of insurance of the kind described in that section;
 - (c) by section 18, for VB Leasco, among other things, to return each Engine and associated Equipment to a particular location (sub-section 18.3(f)), and to provide for the continued maintenance of each Engine (sub-section 18.3(e)), and to safeguard each Engine for shipment by taking various, identified precautions and following specified, industry-standard procedures (sub-section 18.3(h));
 - (d) by section 19(a)(xvii), for an "Event of Insolvency" in relation to VB Leaseco (defined to include the appointment of an administrator) to constitute an "Event of Default" under the GTA and the Cape Town Convention.
- 10 On or about 24 May 2019, pursuant to a deed of guarantee and indemnity (**Guarantee**), Virgin Australia provided the Lessor with a guarantee and indemnity of VB Leaseco's obligations in connection with the GTA, each aircraft engine lease agreement and each transaction document entered into or to be entered into pursuant to the GTA or a lease.

Background

- 11 Each Engine is a CFM56-7B24/3 Boeing model engine, which is used on a Boeing 737 aircraft and has a jet propulsion with at least 24,200 lb of thrust.
- 12 As set out in the delivery receipts referred to below, Willis delivered with each Engine, a QEC unit which constitutes the components that are attached to the external part of the Engine to make it operable, including the Engine's electronic control unit (ECU), software for the ECU, tubes, ducts, wire harnesses, brackets, fuel/hydraulic/pneumatic hardware, pneumatic valves, sensors, switches, valves, filters, transmitters, nozzles, ignition exciters, lubricators and other components referred to in Appendix A of each of the Aircraft Engine Lease Agreements.

- 13 On or about 24 May 2019, the Lessor, for the benefit of the Beneficiary, entered into an Aircraft Engine Lease Agreement with VB Leaseco in respect of the Equipment, including CFM International Engine Model CFM56-7B24/3, with engine serial number 897193 (**Engine 897193**) and Engine Stand with serial numbers:
- (a) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-4;
- (b) Base: P/N D71TRO00005G03, S/n MCC150728-1-4,
- (**Engine 897193 Lease**). A copy of Engine 897193 Lease is at page 125 of exhibit DP-2.
- 14 VB Leaseco sub-leased Engine 897193 to Virgin Australia by an Engine Sublease Agreement dated 24 May 2019 (**Engine 897193 Sublease**). At page 151 is a copy of Engine 897193 Sublease.
- 15 By a Deed of Security Assignment dated 24 May 2019 (**Deed of Security Assignment [Engine 897193]**), VB Leaseco, as assignor, assigned all of its rights in and to Engine 897193 Sublease to Wells Fargo as assignor. A copy of the Deed of Security Assignment [Engine 897193] is at page 180 of exhibit DP-2.
- 16 On or about 24 May 2019, Virgin Australia provided a Guarantee Confirmation (as defined in the Guarantee) to the Lessor and the Beneficiary in respect of Engine 897193. At page 194 is a copy of the Guarantee Confirmation in respect of Engine 897193 Lease.
- 17 On or about 24 May 2019, Willis delivered, among other things, Engine 897193 to VB Leaseco. A copy of the delivery receipt dated 24 May 2019 is at page 195 of exhibit DP-2.
- 18 On or about 14 June 2019, the Lessor, for the benefit of the Beneficiary, entered into an Aircraft Engine Lease Agreement with VB Leaseco in respect of the Equipment, including CFM International Engine Model CFM56-7B24/3 (currently configured as 7B26/3), with engine serial number 896999 (**Engine 896999**) and Engine Stand with serial numbers:
- (a) Cradle: P/N D71CRA00005G02, S/N MCC170335-1-1;
- (b) Base: P/N D71TRO00005G03, S/N MCC170335-1-1,
- (**Engine 896999 Lease**). A copy of Engine 896999 Lease is at page 196 of exhibit DP-2.

- 19 VB Leaseco sub-leased Engine 896999 to Virgin Australia by an Engine Sublease Agreement dated 14 June 2019 (**Engine 896999 Sublease**). At page 220 of exhibit DP-2 is a copy of Engine 896999 Sublease.
- 20 By a Deed of Security Assignment dated 14 June 2019 (**Deed of Security Assignment [Engine 896999]**), VB Leaseco, as assignor, assigned all of its rights in and to Engine 896999 Sublease to Wells Fargo as assignor. A copy of the Deed of Security Assignment [Engine 896999] is at page 249 of exhibit DP-2.
- 21 On or about 14 June 2019, Virgin Australia provided a Guarantee Confirmation (as defined in the Guarantee) to the Lessor and the Beneficiary in respect of Engine 896999. At page 263 of exhibit DP-2 is a copy of the Guarantee Confirmation in respect of Engine 896999 Lease.
- 22 On or about 14 June 2019, Willis delivered, among other things, Engine 896999 to VB Leaseco. A copy of the delivery receipt dated 14 June 2019 is at page 264 of exhibit DP-2.
- 23 On or about 28 August 2019, the Lessor, for the benefit of the Beneficiary entered into an Aircraft Engine Lease Agreement with VB Leaseco in respect of the Equipment, including CFM International Engine Model CFM56-7B24, with engine serial number 888473 (**Engine 888473**) and Engine Stand with serial numbers:
- (a) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-3
- (b) Base: P/N D71TRO00005G03, S/n MCC150728-1-3;
- (**Engine 888473 Lease**). A copy of Engine 888473 Lease is at page 265 of exhibit DP-2.
- 24 VB Leaseco sub-leased Engine 888473 to Virgin Australia by an Engine Sublease Agreement dated 28 August 2019 (**Engine 888473 Sublease**). At page 294 of exhibit DP-2 is a copy of Engine 888473 Sublease.
- 25 By a Deed of Security Assignment dated 28 August 2019 (**Deed of Security Assignment [Engine 888473]**), VB Leaseco, as assignor, assigned all of its rights in and to Engine 888473 Sublease to Wells Fargo as assignor. A copy of the Deed of Security Assignment [Engine 888473] is at page 323 of exhibit DP-2.
- 26 On or about 28 August 2019, Virgin Australia provided a Guarantee Confirmation (as defined in the Guarantee) to the Lessor and the Beneficiary in respect of Engine 888473.

- At page 337 of exhibit DP-2 is a copy of the Guarantee Confirmation in respect of Engine 888473 Lease.
- 27 On or about 28 August 2019, Willis delivered, among other things, Engine 888473 to VB Leaseco. A copy of the delivery receipt dated 28 August 2019 is at page 338 of exhibit DP-2.
- 28 On or about 13 September 2019, the Lessor, for the benefit of the Beneficiary entered into an Aircraft Engine Lease Agreement with VB Leaseco in respect of the Equipment, including CFM International Engine Model CFM56-7B24/3 (currently configured as CFM56-7B26/3, with engine serial number 894902 (**Engine 894902**) and Engine Stand with serial numbers:
- (a) Cradle: P/N AM-2811-4800, S/N 769;
- (b) Base: P/N AM2563-200, S/N 1216,
- (**Engine 894902 Lease**). A copy of Engine 894902 Lease is at page 339 of exhibit DP-2.
- 29 VB Leaseco sub-leased Engine 894902 to Virgin Australia by an Engine Sublease Agreement dated 13 September 2019 (**Engine 894902 Sublease**). At page 364 is a copy of Engine 894902 Sublease.
- 30 By a Deed of Security Assignment dated 13 September 2019 (**Deed of Security Assignment [Engine 894902]**), VB Leaseco, as assignor, assigned all of its rights in and to Engine 894902 Sublease to Wells Fargo as assignor. A copy of the Deed of Security Assignment [Engine 894902] is at page 393 of exhibit DP-2.
- 31 On or about 13 September 2019, Virgin Australia provided a Guarantee Confirmation (as defined in the Guarantee) to the Lessor and the Beneficiary in respect of Engine 894902. At page 407 of exhibit DP-2 is a copy of the Guarantee Confirmation in respect of Engine 894902 Lease.
- 32 On or about 13 September 2019, Willis delivered, among other things, Engine 894902 to VB Leaseco. A copy of the delivery receipt dated 13 September 2019 is at page 408 of exhibit DP-2.

Background – registration of engines with International Registry of International Interests in Aircraft Equipment (IRIAE)

- 33 Exhibited to this affidavit are the following documents:




- (a) a copy of Priority Search Certificate number 1360017 issued by the IRIIAE on 6 May 2020 in respect of Engine 888473 is at page 409 of exhibit DP-2;
- (b) a copy of Priority Search Certificate number 1360024 issued by the IRIIAE on 6 May 2020 in respect of Engine 897193 is at page 415 of exhibit DP-2;
- (c) a copy of Priority Search Certificate number 1360023 issued by the IRIIAE on 6 May 2020 in respect of Engine 896999 is at page 421 of exhibit DP-2; and
- (d) a copy of Priority Search Certificate number 1360022 issued by the IRIIAE on 6 May 2020 in respect of Engine 894902 is at page 447 of exhibit DP-2.

Voluntary administration of Virgin Australia airline group

- 34 I am informed and believe from reviewing documents lodged by the Third Respondent with the Federal Court of Australia and made publicly available on the Court's website that on 20 April 2020, Vaughan Strawbridge, Sal Algeri, John Greig and Richard Hughes of Deloitte were appointed voluntary administrators to the Virgin Australia airline group, including to VB Leaseco and Virgin Australia, by resolution of the directors of each of the Virgin Companies pursuant to section 436A of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 35 On 23 April 2020, the Administrators filed an application (**First Application**) in the Federal Court of Australia pursuant to which they sought, among other things, an order:
- (a) extending the time for the exercise of rights in relation to property from 'within five business days after the beginning of the administration' in section 443B(3) of the Corporations Act to '26 May 2020'; and
 - (b) that the Administrators are not personally liable under section 443A(1)(c) and 443B(2) of the Corporations Act for any liability with respect to any property leased, used or occupied by any of Virgin Group from any lessors in the period from 28 April 2020 to 26 May 2020.
- 36 The First Application was heard by Justice Middleton, and the judgment was handed down, on 24 April 2020 (with the reasoning in respect of the judgment published on the Federal Court of Australia website on 29 April 2020). The Court made orders, including orders 9 and 11, which are in the following terms:



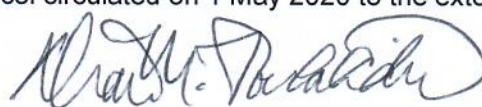

9. Pursuant to sections 443B(8) and 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to each of the Second to Thirty-Ninth Plaintiffs as if:

(a) the First Plaintiffs' personal liability under sections 443A(1)(c) and 443B(2) of the Corporations Act begins on 26 May 2020, such that the First Plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by any of the Second to Thirty-Ninth Plaintiffs (including amounts payable pursuant to any leases entered into by any of the Second to Thirty-Ninth Plaintiffs), from any lessors, in the period from 28 April 2020 to 26 May 2020 inclusive; and

(b) the words 'within five business days after the beginning of the administration' in section 443B(3) of the Corporations Act instead read 'by 26 May 2020'.

11. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to paragraphs 2 to 9 above, on 1 business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.

- 37 On 1 May 2020, I caused Willis' solicitors, Norton Rose Fulbright Australia (**NRFA**) to write to the administrators' solicitors, Clayton Utz. A copy of that letter is at page 456 of exhibit DP-2.
- 38 I am informed and verily believe that NRFA did not receive a response to that letter.
- 39 On 1 May 2020, NRFA received from Clayton Utz an email attaching a document styled "Aircraft Protocol" (**Aircraft Protocol**). The email informed NRFA that the administrators intended the Aircraft Protocol "will be entered into on a bilateral basis by the Voluntary Administrators, each lessee, each lessor and any relevant financier in connection with each of the aircraft leasing arrangements". A copy of the email from Clayton Utz dated 1 May 2020 together with the attachments which included the Aircraft Protocol is at page 458 of exhibit DP-2.
- 40 On 12 May 2020, the Administrators filed an application (**Second Application**) in the Federal Court of Australia. As part of the Second Application, the Administrators sought, among other things, an order that the Administrators will not be personally liable to repay debts or liabilities in respect of any future agreement on the terms of, or substantially in accordance with, the draft Aircraft Protocol circulated on 1 May 2020 to the extent that

the assets of the relevant Virgin company or companies are insufficient to satisfy the debt or liabilities incurred by the Administrators arising out of or in connection with that agreement.

- 41 The Second Application was heard by Justice Middleton on 13 and 15 May 2020, and the Court made orders, including orders 2(a)(i) and 2(b), on 15 May 2020 which are in the following terms:

2. Pursuant to section 447A(1) of the Corporations Act 2001 (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule 2016 (Cth), being Schedule 2 to the Corporations Act (**IPSC**), Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:

(a) the liabilities of the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future: agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 12 of Exhibit VNS-2 to the Strawbridge Affidavit;...(together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and

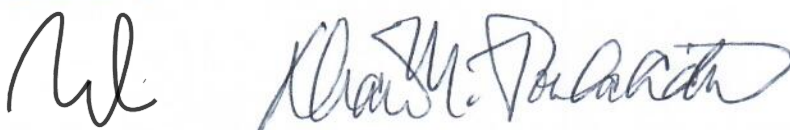
(b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company or Virgin Companies that is or are a party to the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements.

- 42 On 27 May 2020, following a further application of the Administrators, the Federal Court of Australia made orders further extending the 'rent free period' by making orders such that the words 'within five business days after the beginning of the administration' in section 443B(3) of the Corporations Act instead read 'by 16 June 2020'.

- 43 In an email exchange commencing 30 May 2020 and ending 2 June 2020 between me and Mukhtader Mohammed of Deloitte, Willis informed the voluntary administrators that

the proposed Aircraft Protocol was not acceptable to Willis and that Willis would not sign it. At page 479 is a copy of the email exchange ending 2 June 2020.

- 44 On 4 June 2020, Brian Hole, the President of Willis, wrote to the administrators. A copy of that letter is at page 481 of exhibit DP-2 Mr Algeri of Deloitte wrote to Willis by letter dated 9 June 2020 (**9 June Letter**). A copy of that letter is at page 482 of exhibit DP-2.
- 45 On 10 June 2020, Brian Hole, responded to the 9 June Letter by email dated 10 June 2020. A copy of Mr Hole's email dated 10 June 2020 is at page 485 of exhibit DP-2.
- 46 On 16 June 2020, NRFA wrote to Clayton Utz in response to the 9 June Letter. A copy of NRFA's letter to Clayton Utz dated 16 June 2020 is at page 488 of exhibit DP-2.
- 47 On 16 June 2020, NRFA received an email from Clayton Utz enclosing:
- (a) a letter from Clayton Utz dated 16 June 2020 addressed to NRFA;
 - (b) a letter from Mr Algeri of Deloitte to advise Willis that neither VB Leaseco nor Virgin Australia intended to exercise any of their rights in respect of the property identified in an attached Notice of Administrators' Intention Not to Exercise Property Rights (**Notice**).
- 48 A copy of Clayton Utz's letter dated 16 June 2020 (**16 June Letter**) is at page 490 of exhibit DP-2; and a copy of the Notice is at page 490 of exhibit DP-2.
- 49 On 18 June 2020, NRFA responded on behalf of Willis to the 16 June Letter. A copy of NRFA's letter to Clayton Utz dated 18 June 2020 is at page 496 of exhibit DP-2.
- 50 On 19 June 2020, NRFA sent a further letter to Clayton Utz. A copy of NRFA's letter to Clayton Utz dated 19 June 2020 is at page 498 of exhibit DP-2.
- 51 On the same day, 19 June 2020, Clayton Utz responded by email. A copy of Clayton Utz's email to NRFA dated 19 June 2020 is at page 500 of exhibit DP-2.
- 52 On about 19 June 2020, Willis received an email from Gordon Chan of Deloitte to Garry Failler, Senior Vice President of Materials & Services and Chief Technical Officer at Willis, in which Deloitte informed Willis of the alternatives for the return of the engines, and that Deloitte considered the engines would need to be removed from the airframes at Willis' cost and direction. A copy of Deloitte's email to Willis dated 19 June 2020 is at page 502 of exhibit DP-2.



53 On 22 June 2020 Clayton Utz sent a further letter to NRFA. A copy of that letter dated 22 June 2020 from Clayton Utz is at page 508 of exhibit DP-2.

Current location of engines and equipment

54 Based on my review of the correspondence exhibited to this affidavit and in particular Schedule B to the Notice (appearing at page 495 of exhibit DP-2), to the best of my knowledge, I believe the Engines are currently attached to four separate airframes in the following locations:

- (a) Engine 896999 is attached to airframe with registration VH-VOT at Melbourne Airport;
- (b) Engine 897193 is attached to airframe with registration VH-VUA at Melbourne Airport;
- (c) Engine 888473 is attached to airframe with registration VH-VOY in Melbourne Airport; and
- (d) Engine 894902 is attached to airframe with registration VH-VUT in Adelaide Airport.

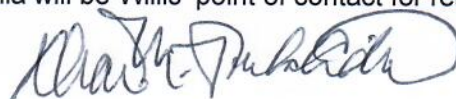
55 The applicants do not own and do not have any interest as lessor or otherwise in the airframes referred to in the previous paragraph to which the Engines are attached. It is my understanding that the respondents also have no ownership interests in the airframes referred to in the previous paragraph and on which the Engines are installed.

56 The email from Gordon Chan of Deloitte to Garry Failler referred to in paragraph 52 and appearing at page 502 of exhibit DP-2 indicates that for Engine 897193 and Engine 888473 the "Engine Stand location" is "Delta Atlanta." I interpreted that to mean that the Engine Stands referred to in paragraphs 13 and 23 above are located at the Delta Air Lines aircraft and aircraft engine maintenance facility located at Hartsfield-Jackson International Airport in Atlanta, Georgia, United States of America.

57 On 22 June 2020, Willis was advised by Steven Boecker of Delta TechOps MRO Services that those Engine Stands were not in fact located at that facility nor did he or members of his team at Delta know the whereabouts of those Engine Stands. A copy of an email dated 24 June from Mr Boecker to a member of Willis' staff, Mr Bob Matson is at page 512 of exhibit DP-2.



- 58 On 24 June 2020, Willis wrote to Deloitte to request clarification as to the location of those Engine Stands and for photo confirmation of the Engine Stands which the Administrators previously advised were at Melbourne Airport. A copy of the email chain from a member of Willis' staff, Mr Noel Rogers, to Ian Boulton and Gordon Chan of Deloitte, dated 24 and 29 June 2020, is at page 514 of exhibit DP-2. As at the date of this affidavit, Mr Rogers has received photo confirmation of the Engine Stands located at Melbourne Airport but not clarification as to the location of the Engine Stands referred to in paragraphs 13 and 23 above.
- 59 I have been General Counsel at Willis for over 7 years, and have advised in the aircraft financing industry for approximately 8 years before that. In my experience advising in the industry and based on the advice of Willis technical experts, aircraft engines are usually leased with a specific engine stand (usually with its own unique serial number).
- 60 From my review of the manufacturer's guide to transportation of CFM engines and the advice of Willis technical experts, I believe transportation of engines on the Engine Stands is the approved method of transporting commercial aircraft engines (where they are not affixed to airframes). A copy of the manufacturer's guide to transportation of CFM engines is at page 524 of exhibit DP-2.
- 61 From my experience, it is a standard requirement of aircraft engine leases to require the transportation of engines in accordance with the manufacturer's guide to transportation.
- 62 Based on the email dated 19 June 2020 from Gordon Chan of Deloitte to Garry Failler referred to in paragraph 52 and (appearing at is at page 502 of exhibit DP-2), to the best of my knowledge, none of the Administrators, VB Leaseco, or Virgin Australia has the facilities or personnel available in Adelaide to remove Engine 894902 from an airframe.
- 63 Based on my review of correspondence received from the Administrators either directly from Deloitte to Willis or from their solicitors, Clayton Utz to NRFA, the Engine Records of the kind specified in Exhibit F of the GTA (described as "Redelivery Documentation") has not been provided to Willis.
- 64 The Redelivery Documentation and other Engine Records are essential to the operation and value of the Engines and the Engines are commercially inoperable and of significantly depressed or minimal value without them.
- 65 I am informed and verily believe that on 25 June 2020, Darren Dunbier, the General Manager of Engineering and Aircraft Servicing at Virgin Australia, advised Garry Fallier that Simon Andersen at Virgin Australia will be Willis' point of contact for retrieval of

Redelivery Documentation. That fact further suggests to me that the Redelivery Documentation has not yet been made available to Willis.

66 Based on my review of correspondence received from the Administrators either directly from Deloitte to Willis or from their solicitors, Clayton Utz to NRFA, the location of each piece of Equipment that accompanies the Engines (being the QECs, Engine Records and Engine Stands) has not been confirmed except to the extent that the Engine Stands corresponding to Engines 896999 and 894902 (referred to in paragraphs 13 and 23 above) are at Melbourne Airport (I refer to paragraph 58 above and the document appearing at page 514 of exhibit DP-2).


67 I am otherwise unaware of the location of each piece of Equipment that accompanies the Engines (being the QECs, Engine Records and Engine Stands) and to the best of my knowledge, the applicants do not have such information. The applicants are relying upon information provided to them by the Administrators in order to locate the Engines, Engine Stands, QECs and Engine Records. To date, the information provided by the Administrators has been incomplete and, in some cases, has incorrectly identified the location of certain Equipment.

68 In sum:

- (a) all four of the Engines remain installed on airframes that the Administrators do not own;
- (b) the Engines may only be removed by skilled technicians;
- (c) Virgin Australia personnel have confirmed that they have not yet made the Redelivery Documentation available to the applicants; and
- (d) to the best of my knowledge, the Administrators have not yet located all of the engine stands on which the Engines were delivered and which are required for the Engines to be returned.

Sworn by the deponent
at Larkspur, California, United States of
America on 29 June 2020
Before me:

)
)
)
)
)
Signature of deponent




Signature of witness
Noel McCoy, solicitor

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)**

Date: 29 June 2020

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/07/2020 4:40:18 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

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: 9/07/2020 4:40:25 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.

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.



Affidavit

No. NSD 714 of 2020

Federal Court of Australia
District Registry: NSW
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

Affidavit of: **Garry Failer**
Address: 4700 Lyons Technology Parkway, Coconut Creek, Florida, 33073, United States of America
Occupation: Senior Vice President of Materials & Services and Chief Technical Officer
Date: 8 July 2020

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Filed on behalf of (name & role of party) Applicants
Prepared by (name of person/lawyer) Noel McCoy
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(include state and postcode)

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
6	Annexure GF-5	27	90

I, **Garry Failler** of, 4700 Lyons Technology Parkway, Coconut Creek, Florida, 33073, United States of America, Senior Vice President of Materials & Services and Chief Technical Officer, Willis Lease Finance Corporations duly affirm as follows:

Introduction

- 1 I am Senior Vice President of Materials & Services and Chief Technical Officer of the second applicant, Willis Lease Finance Corporation (**Willis**).
- 2 I am based at Willis' facility located at 4700 Lyons Technology Parkway, Coconut Creek, Florida, United States of America where Willis stores its engines, operates a workshop for engine repairs (but not overhauls) maintains its stock of spare and replacement parts and is also its company headquarters which provides office facilities for approximately 70 people.
- 3 I make this affidavit from my own knowledge except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and believe those facts to be true.
- 4 I am authorised to make this affidavit on behalf of the applicants.
- 5 Exhibited to me at the time of swearing this affidavit is a bundle of documents marked "Exhibit GF-1" (**Exhibit GF-1**).
- 6 I make this affidavit in support of an application for orders in respect of property:
 - (a) leased by VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 (**VB Leaseco**) from Wells Fargo Trust Company, National Association (**Wells Fargo**);
 - (b) sub-leased by VB Leaseco to Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965 (**Virgin Australia**).
- 7 In this affidavit, I give evidence about:
 - (a) the CFM International Engine, Model CFM56-7B24 aircraft engines with serial numbers 888473, 897193, 896999 and 894902 (**Engines**);

- (b) the quick engine change units corresponding to each of the Engines (**QECs**);
- (c) the engine stands corresponding to each of the Engines (**Engine Stands**);
- (d) the records corresponding to each of the Engines, including engine condition monitoring (**ECM**) data,

(collectively, **the Equipment**).

Qualifications and experience

- 8 I have been Senior Vice President of Materials & Services and Chief Technical Officer at Willis for almost 3 years, and in that role:
- (a) I have responsibility for our worldwide technical team, Willis Asset Management Team (Wales, UK), Willis Aeronautical Services, Inc. after-market parts business, our aircraft maintenance, storage and teardown facilities in UK and Spain, our two engine repair shops in Florida and UK, facilities and health and safety and logistics. Approximately 130 out of 230 of Willis' staff report to me.
 - (b) I report to Brian Hole, the President of Willis.
- 9 I hold diplomas in both mechanical and aeronautical engineering from the Southern Alberta Institute of Technology, Calgary Canada and have held various engineering roles in the aviation industry for 39 years. At Annexure GF-1 is my resume current as at 2017 describing my qualifications and experience.

Engines

- 10 Each of the Engines is a CFM56-7B24/3 model aircraft engine, which is used on Boeing 737-700, 737-800 and 737-900 aircraft and has a jet propulsion with at least 24,200 pounds of thrust.
- 11 Based on the communications that I and Willis staff reporting to me, I understand that the Engines are still attached to aircraft ("on wing") as follows:
- (a) Engine 896999 is attached to airframe with registration VH-VOT at Melbourne Airport;
 - (b) Engine 897193 is attached to airframe with registration VH-VUA at Melbourne Airport;

- (c) Engine 888473 is attached to airframe with registration VH-VOY in Melbourne Airport; and
- (d) Engine 894902 is attached to airframe with registration VH-VUT in Adelaide Airport.

QECs

- 12 The QECs constitute certain components that are attached to the external part of the Engine to make it operable, including, tubes, ducts, wire harnesses, brackets, fuel/hydraulic/pneumatic hardware, pneumatic valves, sensors, switches, transmitters, and other components described in Appendix A of each of the Aircraft Engine Lease Agreements.
- 13 The QEC that Willis provided with these engines are in the 'neutral' configuration meaning the customer uses additional components which it supplies in order to complete installation on the particular airframe it is using. At the time the Engines are removed from aircraft, each of the non-Willis owned items must be removed from the Engines.
- 14 The removal of those components is usually undertaken at the same time as the engine is taken down and placed into Willis' engine stand and wrapped appropriately to ready them for shipment. If it is proposed that the non-Willis owned items will be removed at that time, Willis' usual practice is to have a representative (either an employee or local contractor) present to supervise the removal before the engine is shipped to Florida.
- 15 Alternatively, in the past some customers have returned engines to Willis to our facility in Florida with the customer's components still attached to the engine. In those cases, we have undertaken the removal of the non-Willis owned equipment and returned that equipment to the customer at their expense.

Engine Stands

- 16 An aircraft engine stand is a static metal structure used to secure an aircraft engine for transportation. It is necessary to use stands during the transportation of engines in order to adhere to the manufacturer's requirements for transportation. A copy of the manufacturer's guide to transportation of CFM engines is at Annexure GF-2 which describes the structure and operation of the Engine Stands.
- 17 Any failure to adhere to the manufacturer's requirements can have very serious consequences for engine operability and safety.

- 18 If an engine has not been transported according to the manufacturer's requirements, it is necessary for Willis to conduct an inspection of the bearings as these can be jarred in transportation (causing what is known as "Brinelling") and potentially fail and in turn cause the engines to fail.
- 19 An inspection for the condition of the bearings can only be undertaken by disassembling the engine. In my experience, that type of inspection is likely to cost approximately USD\$100,000 to \$200,000 (including transportation, disassembly, inspection, reassembly and test). However, this amount can increase significantly as additional repairs may be required when the engine is opened up as exposed parts of the engine will be subject to inspection. The engine might be out of service for approximately two to three months during this process. Willis does not overhaul engines in our Coconut Creek, Florida facility, and accordingly, it would be necessary to pay for transportation of the engine to another facility.
- 20 In my experience, it is a standard requirement of aircraft engine leases to require the transportation of engines in accordance with the manufacturer's guide to transportation.
- 21 A failure to comply with the manufacturer's requirements can be a failure to comply with FAA regulatory requirements.
- 22 I note from the email from Gordon Chan dated 3 July 2020 at 3:48pm that the Engine Stands for two of the Engines have been located at Delta DTO which I understand to mean their facility in Atlanta, Georgia.
- 23 Willis leases its engines with engine stands that it owns and maintains. Willis' leasing terms require the return of the same engine stands leased to a customer. This means Willis is able to keep track of the condition of its engine stands and is not given an older or inferior stand which may require significant maintenance/repairs and which would inhibit Willis' ability to use the stand again to transport an engine to the next customer.

Engine records

- 24 After the Engines are removed from "on wing" of the aircraft, or at a minimum, after cessation of operation (post ferry flight if any) certain documents will need to be generated by Virgin Australia, without which the Engines are inoperable and of minimal commercial value.
- 25 Examples of the types of documents Willis requires at the conclusion of a lease are:

- (a) History Statement which indicates certain maintenance activities performed during the lease;
- (b) Non-Incident Statement indicates that an occurrence associated with the operation of an aircraft, which affects or could affect the safety of operations (such as exposure to fire, sever heat, severe stress, exposure to salt water) has not occurred;
- (c) Combination Statement;
- (d) Life Limited Part (LLP) Status which indicates the status of engine components described as cycle limited parts within the engine that must be replaced at pre-determined intervals or number of cycles (being one take off and landing). It is a safety requirement that an LLP cannot be used beyond the number of prescribed cycles and must be discarded. The utility (and therefore commercial value) of the engine is affected if any of the LLP are approaching replacement date, because replacement requires the whole engine to be taken off wing and opened up. For that reason it is essential for Willis to review the LLP Status documents at the conclusion of a lease;
- (e) Airworthiness Directive (AD) status which indicates the status of tasks required or regulated by the US Federal Aviation Administration or other regulatory authorities, such as inspection or parts replacement that must be accomplished at pre-determined intervals;
- (f) ECM Data provides critical engine performance information, including both take off and cruise performance and mechanical parameters, during certain periods of the lease;
- (g) Oil Consumption data which indicates the amount of oil consumed by an engine and is therefore an indicator of a possible internal mechanical breakdown;
- (h) Preservation Documentation which indicates the method and process for maintaining an engine when it is not in operation for extended periods of time.
- (i) On-wing maintenance task cards;
- (j) Pilot Reports/Tech Log Pages;

- (k) Service Bulletin (SB) work cards which are a written instruction from the engine manufacturer that outlines action that should be taken on an engine including inspections, parts rework or parts replacement;
 - (l) Component certificates for replacement parts which certifies the serviceability and operational airworthiness of replacement parts.
- 26 According to the regulatory requirements of the European Union Aviation Safety Agency (**EASA**) and the United States Federal Aviation Administration (**FAA**), upon redelivery, it is necessary for Virgin Australia to affix what are known as “serviceable tags”.
- 27 These serviceability tags indicate that a part is serviceable and airworthy, including that 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) have been completed. The serviceable tags should also be accompanied by the following documents:
- (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) an example of which is at Annexure GF-3; 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 CRF 43.9) an example of which is at Annexure GF-4; and
 - (c) an FAA Form 337 an example of which is at Annexure GF-5.
- 28 As at the time of swearing this affidavit, I have not nor am I aware that since 16 June 2020 any Willis staff have received any Engine records of the kind described above. Shortly before affirming this affidavit my technical team has been provided with access to a data room by the administrators. I am not yet aware of the information that is available on the data room at this point in time.
- 29 While most of these records should already exist, these records are required to be updated and provided to Willis at the conclusion of the lease. For that reason, Willis typically waits until the Engine is about to be returned to collect the records. Conversely, if we were to obtain what records might be available while the lease is ongoing, our technical records personnel would have to go back to the operator for updates on most of these documents at time of removal. To avoid that duplication, Willis’ usual practice is

to wait for the documents to be provided at the end of the lease and after the last operation of the engine.

- 30 It is standard procedure to deal with an individual at the airline who will provide all of the appropriate documentation that Willis requires as set out in the lease agreement.
- 31 I have been informed that the administrators are continuing to maintain the Equipment – Mr Chan says in his email of 3 July 2019 at 3:48pm that “Virgin is continuing to adhere to its statutory and regulatory maintenance obligations in relation to the Willis engines.”.
- 32 I am relying on the information provided and representations made by the administrators in respect of the maintenance carried out on the Engines. I have not been provided with specific information as to how maintenance is being carried out, what particular procedures are being implemented to maintain the Engines while not in use, nor the date from which those procedures were implemented.

Sworn by the deponent
 at Coconut Creek, Florida, United States of
 America on 8 July 2020
 Before me:

)
)
)
)
)

Garry Failler

 Signature of deponent

Signature of witness
 Safiyya Khan, solicitor

*This document was signed
 and witnessed over audio
 visual link in accordance
 with clause 2 of Schedule
 1 to the Electronic Transactions
 Regulation 2017 (NSW)*

Schedule 1

No. NSD 714 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)**

Date: 8 July 2020

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/07/2020 7:01:18 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

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: 21/07/2020 11:42:38 AM AEST

Registrar

Important Information

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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

Plaintiffs

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

Defendants

Affidavit of: Salvatore Algeri
Address: 447 Collins Street, Melbourne, Victoria 3000
Occupation: Registered Liquidator and Chartered Accountant
Date: 17 July 2020

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

1. 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 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 and Second Defendants and the other 37 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

Filed on behalf of (name & role of party) The Plaintiffs
 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)

Administrator). Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. The Administrators are the Third Defendants 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 staff members at Deloitte and I have obtained in connection with my role as an Administrator of the First and Second Defendants and the other Virgin Companies, which I believe to be true.
5. Exhibited to me at the time of making this affidavit is a bundle of documents, to which I make reference in this affidavit marked "**SA-2**" (**Exhibit SA-2**).
6. I make this affidavit on behalf of the Defendants:
 - (a) in response to the Plaintiffs' application made by way of originating process dated 30 June 2020 (**Originating Process**) and interlocutory process dated 14 July 2020 (**Plaintiffs' Interlocutory Process**); and
 - (b) in support of the Defendants' application made by way of interlocutory process dated 17 July 2020 (**Defendants' Interlocutory Process**).
7. In this affidavit, I refer to the:
 - (a) the affidavit of Dean Poulakidas dated 29 June 2020 (**Poulakidas Affidavit**) and its exhibit marked "DP-2" (**Exhibit DP-2**) and the affidavit of Garry Failler affirmed 8 July 2020 (**Failler Affidavit**), both filed in this proceeding on behalf of the Plaintiffs;
 - (b) the affidavits of Vaughan Strawbridge dated 24 April 2020 (**First Strawbridge Affidavit**), 11 May 2020 (**Second Strawbridge Affidavit**), 2 July 2020 (**Third Strawbridge Affidavit**) and 9 July 2020 (**Fourth Strawbridge Affidavit**) and my affidavit dated 22 May 2020 (**First Algeri Affidavit**), each filed in proceeding number NSD464/2020 (**Virgin Companies Proceeding**) on behalf of the Administrators and Virgin Companies; and
 - (c) the affidavit of Darren Dunbier dated 17 July 2020 (**Dunbier Affidavit**), filed in this proceeding on behalf of the Defendants.

8. I am informed by Orla McCoy of Clayton Utz, and believe that:
- (a) copies of the First, Second, Third and Fourth Strawbridge Affidavits and the First Algeri Affidavit have been provided to the solicitors for the Plaintiffs, Norton Rose Fulbright (**NRF**); and
 - (b) NRF have been informed that those affidavits, and all additional material filed in the Virgin Companies Proceeding which is not the subject of confidentiality and non-disclosure orders, together with orders and judgments made in the Virgin Companies Proceeding, can be downloaded from the Federal Court of Australia website.
9. I also note that:
- (a) in paragraph [34] of the Poulakidas Affidavit, Mr Poulakidas refers to "*reviewing documents lodged [by the Administrators] with the Federal Court of Australia and made publicly available on the Court's website*";
 - (b) NRF (on behalf of the Plaintiffs) received a copy of the First Algeri Affidavit on 22 May 2020, at the time that the Administrators' solicitors, Clayton Utz, provided notice of the application made in the Virgin Companies Proceeding on 25 May 2020. The First Algeri Affidavit was filed in support of the application heard on that date. Paragraphs [4] to [6] of the affidavit of Cassandra Adams dated 24 May 2020 filed in the Virgin Companies Proceeding describe the provision of notice to NRF on behalf of the Plaintiffs.

General Background

10. The First and Second Defendants are, together with the other Virgin Companies, part of a corporate group that conducts a business offering a variety of domestic and international aviation products and services to the Australian and international market, including corporate, government, leisure, low cost, regional and charter travellers and air freight customers (collectively, the **Business**). The role of the First Defendant in the Business is to lease aircraft, engines and other associated personal property (collectively, **Aircraft Property**) from aircraft lessors (including the Plaintiffs) and then sub-lease the Aircraft Property to the Second Defendant.
11. Following our appointment, the Administrators formed the view that we should continue to trade the Business on a 'business as usual' basis (subject to the restrictions resulting from the COVID-19 pandemic), in order to maximise the chances of the Business continuing in existence and to preserve the value of the Business with a view to achieving a sale of the Business or restructure of the Virgin Companies.

12. To implement that strategy, the Administrators took steps to retain as much of the Aircraft Property in the possession of the Virgin Companies as possible, so that it remained available to the Business to continue trading activities and/or be assumed by any purchaser in line with their plans for the future of the Business, having regard to the constraints imposed by the financial position of the Virgin Companies and the Administrators' personal liabilities arising under the *Corporations Act 2001* (Cth) (**Corporations Act**). As set out in more detail in the Second Strawbridge Affidavit at paragraphs [94] to [96], the Administrators considered that, if the Aircraft Property was not retained, the practicalities, costs and time associated with the acquisition, financing and mobilisation of new aircraft would make the sale of the Business as a going concern impractical, if not impossible. The Administrators also formed the view that retaining Aircraft Property (on appropriate terms) created an opportunity for the aircraft lessors and financiers to have a continuing commercial relationship with the Business (under the control of a new owner or an incoming purchaser) (see paragraph [47] of the First Algeri Affidavit).
13. The steps taken to retain Aircraft Property have included:
- (a) in the Virgin Companies Proceeding, applying for and obtaining, on 24 April 2020, in respect of the Aircraft Property and other leased property an order pursuant to sections 443B(8) and 447A(1) of the Corporations Act:
- (i) limiting the personal liability of the Administrators under sections 443A(1)(c) and 443B(2) of the Corporations Act; and
- (ii) extending the time within which a notice under section 443B(3) of the Corporations Act may be issued,
- until 26 May 2020 (**First Extension Order**). The rationale for the First Extension Order is set out in detail at paragraphs [65] to [69] of the First Strawbridge Affidavit. In short, having regard to the number of real property and personal property leases, the significant liabilities associated with them and the complexity of the Business (among other things), the Administrators needed a longer period than provided for in section 443B(3) of the Corporations Act to consider whether it was necessary or desirable, in the interests of preserving the value of the Business, to exercise rights in relation to each piece of leased property;
- (b) seeking to agree, with each of the 73 lessors and financiers of Aircraft Property (including the Plaintiffs), a protocol in relation to the ongoing possession, maintenance and preservation of, and, where applicable, any usage of Aircraft Property by the Virgin Companies during the administration period (**Aircraft**

- Protocol).** The rationale for, terms of and negotiations in relation to the Aircraft Protocol (up to 22 May 2020) are set out in detail in paragraphs [87]-[99] of the Second Strawbridge Affidavit and paragraphs [13] to [43] of the First Algeri Affidavit;
- (c) applying for in the Virgin Companies Proceeding and obtaining, on 15 May 2020, an order limiting the Administrators' personal liability under any Aircraft Protocol subsequently executed; and
- (d) applying for in the Virgin Companies Proceeding and obtaining, on 25 May 2020, in relation to Aircraft Property (only) an order extending the First Extension Order until 16 June 2020 (**Second Extension Order**). As out in the First Algeri Affidavit at paragraph [45], the Second Extension Order was necessary to allow more time in which to attempt to agree the Aircraft Protocol with each of the (numerous) aircraft lessors and financiers.
14. The Administrators have relied on information and advice provided by appropriately qualified and experienced staff within the Business, including Mr Dunbier, in relation to the technical and operational aspects of dealing with the Aircraft Property. Staff within the Business have also been directly involved in negotiations in relation to the Aircraft Protocol, in particular where there is an existing professional relationship with the relevant lessor/financier.
15. As at the date of this affidavit, 70 out of the 73 lessors and financiers of Aircraft Property have signed Aircraft Protocols, and a total of 84 Aircraft Protocols have been signed. Notices pursuant to section 443B(3) of the Corporations Act have been issued to three lessors and financiers of Aircraft Property (including the Plaintiffs). The Aircraft Property the subject of those notices has been made available for collection by the Administrators, and collected by two lessors and financiers of Aircraft Property (not including the Plaintiffs).
16. As foreshadowed in paragraph [39(e)] of the First Algeri Affidavit, while the Aircraft Protocol has a unified form and structure and the subject matter of each individual agreement is the same, the precise terms of each individual agreement vary, taking into account the particular circumstances of the relevant lessor/financier (including the applicable lease/finance documents), the nature of the applicable Aircraft Property, specific commercial terms including usage charges and any specific amendments proposed during the course of negotiations.
17. In general terms, the Aircraft Protocols provide for, among other things, appropriate insurances to be maintained in respect of the Aircraft Property in accordance with applicable lease/finance documents, payments to be made if the relevant Aircraft

Property is used by the Business, the provision of information to the lessor/financier and usage and maintenance to be conducted in accordance with Civil Aviation Safety Authority (**CASA**) requirements.

18. In circumstances where the majority of the Aircraft Property cannot be utilised to generate revenue due to the COVID-19 pandemic, the Aircraft Protocol seeks to strike a balance between the rights of financiers and lessors and the interests of the Virgin Companies having regard to the operational needs of the Business and the value generated by providing optionality to the purchaser in relation to the future of the aircraft fleet and opportunities for the financiers and lessors to continue with the new purchaser. In particular, the Aircraft Protocol provides for certain costs arising under pre-appointment agreements (including costs in relation to maintenance and insurance of Aircraft Property) to be borne by the Virgin Companies, when such costs would ordinarily need to be met by the lessor or financier following the issuance of a notice under section 443B(3) of the Corporations Act. At the same time, the Aircraft Protocol facilitates the retention of Aircraft Property without exposing the Virgin Companies or the Administrators to the cost and personal liability risk of having to satisfy the full ongoing costs applicable under the lease and finance arrangements. In my opinion, the Aircraft Protocol promotes the objectives of Part 5.3A of the Corporations Act as, without the Aircraft Protocol (or a similar arrangement) being in place, it would have been very difficult to preserve the value of the Business through the administration process and the sale of the Business as a going concern would have been impractical or impossible to achieve (leading to a worse outcome for creditors).
19. The Aircraft Protocol also provides a framework (the precise terms of which vary according to each individual agreement) to facilitate the return of aircraft that are not required by the Business, following the issuance of a notice under section 443B(3) of the Corporations Act. The redelivery framework is, in general, tailored to the particular nature of Aircraft Property and is more favourable to lessors and financiers than the usual right to recover property on a strict 'as, is, where is' basis under section 443B of the Corporations Act (which I describe below). Among other things, the redelivery framework provides for the comprehensive delivery of records pertaining to Aircraft Property and for the Administrators to work collaboratively with the lessor/financier in relation to redelivery. I note, however, that none of the Aircraft Protocols includes an undertaking that the Administrators or Virgin Companies will incur the costs of returning Aircraft Property. In every case, the lessor or financier is required to collect their property from the Virgin Companies (at their own cost).

20. As set out in the Third Strawbridge Affidavit at paragraphs [14] and [31(a)] and in the Fourth Strawbridge Affidavit at paragraph [14], on 26 June 2020 the Administrators and the Virgin Companies entered into a transaction with Bain Capital Private Equity LP, Bain Capital Credit LP and their affiliates and related entities (**Bain Capital**) in relation to the acquisition of the Business (**Transaction**).

The section 443B(3) notice issued to the Plaintiffs

21. During the period between the date of the Administrators' appointment and the date on which the section 443B(3) Notice was issued to the Plaintiffs, the Administrators had very frequent and comprehensive dialogue with the Plaintiffs to try to reach a mutually acceptable position in respect of the Engines and Associated Property and on the Aircraft Protocol. The Administrators' staff, Virgin staff and our solicitors engaged in multiple telephone calls and exchanged a significant volume of written correspondence with the Plaintiffs and their solicitors. Consistently with our view that it was in the best interests of the Virgin Companies and their creditors, including lessors and financiers of Aircraft Property for as much Aircraft Property to be retained by the Business as possible, and in line with our negotiations with other Aircraft Property lessors and financiers, the Administrators' preference has at all times (prior to issuing the section 443B(3) Notice), been for the Virgin Companies to retain the four engines (**Engines**) and the associated property specified in schedule 2 to the Originating Process (**Associated Property**) leased from the Plaintiffs by entering into an Aircraft Protocol with them.
22. In an email dated 2 June 2020 from Dean Poulakidas of the Plaintiffs to Mukhtader Mohammed of Deloitte (a copy of which is at page 479 of Exhibit DP-2), the Plaintiffs stated that they did not *"agree to sign this Protocol and reiterate that we wish to have our engines back immediately"*, and further stated *"[i]f the Administrator accepts our lease agreements with Virgin Australia, we will expect prompt compliance with the terms of those agreements"*, being the applicable leases pertaining to the Engines and Associated Property (collectively, with applicable sub-leases and security documents, **Lease Documents**). The Lease Documents are described in paragraphs [13]-[32] of the Poulakidas Affidavit and exhibited in Exhibit DP-2. In his letter to me dated 4 June (a copy of which is at page 481 of Exhibit DP-2), Brian Hole of the Plaintiffs said that *"we wish for our engines to remain with Virgin Australia subject to the terms of our valid leases"* or, alternatively, *"we renew our request that you return our engines now in accordance with our leases"*.
23. I interpreted the correspondence referred to in paragraph 22 to amount to a request that the Administrators effectively adopt the Lease Documents. Accordingly, in my letter

dated 9 June 2020 responding to Mr Hole (a copy of which is at pages 482-484 of Exhibit DP-2), I said among other things that:

"4. [...] there are no circumstances in which the Administrators will be in a position to adopt the leases of your Engines as you seem to request in your letter. This is because of the manner in which Australian insolvency law works, and the circumstances Virgin Australia finds itself in due to COVID-19 all of which have been detailed in numerous conversations and communications with yourselves and other aircraft and engine lessors and secured financiers.

5. Any other position would be prejudicial to the Administration, other creditors and potentially the success of the sale process. Specifically:

a. if the Administrators adopt the leases then they will continue to be liable on them if the successful bidder does not adopt those leases, a position which you can appreciate is not something the Administrators could realistically consider for long term engine leases;

b. COVID-19 continues to substantially impact Virgin Australia's ability to generate earnings with revenue dropping substantially from pre COVID-19 levels and its inability to meet costs over and above operating costs directly linked to current income generation. You may be aware that that circa 80% of Virgin Australia's workforce has been stood down without wages other than the Australian government support package being made available to employees of Australian businesses impacted adversely by COVID-19;

c. your proposal would require the Administrators to prefer Willis over all creditors including employees and particularly other lessors and secured financiers in relation to their Aircraft and Engines, by paying Willis the full amount of the lease costs as per the leases of your Engines, rather than a usage charge referable to actual usage of your Engines. This is not something that can be considered

[...]

7. [...] the court orders in favour of the Administrators extending the period under which they do not have liability for the use of the engines expires on 16 June 2020 and in the absence of an alternative agreement with Willis in the form of a signed protocol you will unfortunately leave the Administrators no choice and, as contemplated by the court orders, the Administrators intend to issue a section 443B(3) notice in relation to your Engines on that date.

8. [...] After the [section 443B notice] is issued, you will have to recover possession of the Engines at your own cost on an "as is, where is" basis, without the benefit of the undertakings being offered by the Administrators in Schedule 7 of the Protocol."

24. My letter dated 9 June 2020 reflects my understanding, based on my experience as a registered liquidator who has been appointed as an administrator in numerous voluntary administrations, as to how section 443B of the Corporations Act operates with respect to leased property. In particular, I have always understood that a lessor must collect their property on an 'as is, where is' basis and bears all of the risks and costs associated with the collection process (which can later be claimed by way of the proof of debt process). In the conduct of administrations, I always insist on this position because to do otherwise would have the effect of preferring the lessor over other unsecured creditors (including employee priority creditors), who would likely have their return diluted in proportion to the amount of such costs paid by the company in administration. I am, however, generally willing to offer some limited practical assistance to a lessor to assist them in recovering property that is subject to a notice under section 443B(3), on the basis that this often prevents disputes and promotes the efficient conduct of the administration process and, therefore, conveys overall benefits to the company and its creditors.
25. While I have not previously dealt with property subject to the Cape Town Convention, I note that the Aircraft Protocol in effect assumes that the collection process under section 443B of the Corporations Act will be applicable in relation to any Aircraft Property that is ultimately not required by the Business upon completion of the Transaction. The Plaintiffs are the only lessor or financier which has both declined to sign an Aircraft Protocol and insisted that the Defendants return (rather than provide opportunity to take possession of) their Aircraft Property.
26. In his email dated 10 June 2020 (a copy of which is at page 485 of Exhibit DP-2), Mr Hole said that "*[w]e obviously expect the Administrators to comply with our leases and applicable law, including the Capetown Convention (which we think the comments in paragraph 8 of your letter forget), in taking all good care of our equipment now and during your facilitation of the engine return*".
27. On 16 June 2020, prior to the expiry of the Second Extension Order on that day, I issued a notice pursuant to section 443B(3) to the Plaintiffs notifying them that the Virgin Companies did not intend to exercise any of their rights in respect of the property leased from the Plaintiffs (**443B Notice**). Copies of the 443B Notice and the covering letters from me and the Administrators' solicitors (Clayton Utz) are at pages 490 to 495 of Exhibit DP-2. I note that:

(a) the 443B Notice specified the serial numbers, applicable Lease Documents and location of each of the four Engines (see page 495 of Exhibit DP-2); and

(b) my covering letter said that:

(i) *"it is our intention to discuss and agree an orderly hand back arrangement with you. Gordon Chan and Ian Boulton from Deloitte will work with you and the Virgin team to co-ordinate the orderly return of your engines and all their respective technical and historical records"* (page 491 of Exhibit DP-2);

(ii) the insurances applicable to the Engines would be maintained for 14 days from the date of the 443B Notice as a matter of good faith; and

(iii) the Engines were *"available for you to take possession and arrange collection from the date of this letter"*.

28. The 443B Notice stated that the Administrators did not propose to exercise rights in relation to "the specified property in Schedule B" to the notice. Schedule B to the 443B Notice is in the form of a table listing each relevant Lease Document and the serial numbers and locations for each of the four Engines. In circumstances where:

(a) I assumed that the Engines comprised the overwhelming majority of the economic value of the property leased from the Plaintiffs and that the Associated Property was purely ancillary to the Engines or akin to components of the Engines (which is supported by the estimates of the relative value of the Engines and Associated Property in paragraph 11–15 of the Dunbier Affidavit); and

(b) the Engines were the exclusive or at least the dominant focus of the prior communications between the parties, as is evident from Mr Poulakidas' emails dated 30 May and 2 June 2020 (copies of which are in the email chain at pages 479 to 480 of Exhibit DP-2), Mr Hole's letter dated 4 June 2020 (a copy of which is at page 481 of Exhibit DP-2) and Mr Hole's email dated 10 June 2020 (a copy of which is at page 485 of Exhibit DP-2) all of which refer to return of the Engines without reference to the Associated Property,

I considered that issuing a notice with respect to all of the Engines and relevant Lease Documents unambiguously conveyed the Administrators' intention not to exercise rights in relation to any property leased from the Plaintiffs and that there was no need or benefit to undertaking the task of compiling a list of the Associated Property for the purposes of the 443B Notice.

29. I observe that in correspondence following service of the 443B Notice, the Plaintiffs conveyed an understanding that the Associated Property formed part of the property the

subject of the 443B Notice. For example, in his email dated 16 June 2020 to Gordon Chan of Deloitte (a copy of which is at page 506 of Exhibit DP-2), Steve Chirico of the Plaintiffs gave details of engine stands and quick engine change units in manner which clearly indicated his expectation that they would form part of the "*redelivery of the engines*" and would not be retained by the Virgin Companies.

Steps undertaken to assist the Plaintiffs

30. The Engines have not been used by the Business at any time during the administrations of the Virgin Companies (apart from 'ground runs' which have been conducted as part of regular maintenance), nor has any revenue been generated from them. They have been affixed to 'parked up' aircraft since before the Administrators were appointed and remain at the locations specified in the 443B Notice.
31. The Administrators do not intend to use the Engines (or the Associated Property) or otherwise exercise any rights in respect of them, as stated in the 443B Notice.
32. Despite the issuance of the 443B Notice, and the attempts made by the Administrators to facilitate the prompt collection of the Engines and the Associated Property (which are set out below), the Plaintiffs have refused to collect the Engines or the Associated Property from the Virgin Companies pending the outcome of the proceedings, in line with their position that the Defendants should bear the costs of delivering that property to the Plaintiffs (among other things, the Plaintiffs have not to the Administrators' knowledge obtained insurance in respect of the Engines or Associated Property). For example, on 1 July 2020, Garry Failer of the Plaintiffs sent an email to Mr Chan of Deloitte (on which I was copied), a copy of which is located at page 1 of Exhibit SA-2, stating that:

"the Administrators have asserted that their only obligation is to identify the location of our assets (which, as noted, still has not been done) and it allegedly is our obligation to remove the engines from airframes Virgin Australia doesn't own and complete the return ourselves. We have made clear on multiple occasions that we disagree with your position and we don't see any benefit in continuing to argue about this between us. This fundamental issue needs to be resolved and we have taken steps to achieve that end."
33. On 4 July 2020, Clayton Utz received a letter from NRF, a copy of which is located at page 13 of Exhibit SA-2.
34. On 9 July 2020, I instructed Clayton Utz to send a letter in response to NRF's letter dated 4 July, a copy of which is located at pages 14 and 15 of Exhibit SA-2 (**4 July Letter**), which has not, to my knowledge, been responded to as at the date of this affidavit. Among other things, the 4 July Letter made clear that the Administrators would

hold the Plaintiffs liable for all costs incurred after 30 June 2020 in relation to the Engines and Associated Property (including insurance costs, maintenance costs and the Administrators' professional time in dealing with the property).

35. Notwithstanding the disputed position and the commencement of the proceedings by the Plaintiffs on 30 June 2020, the Administrators have both before the proceedings were commenced and since that date continued to engage directly with the Plaintiffs and have taken steps to facilitate the Plaintiffs' recovery process. Those activities have included the steps set out below.

Engine records

36. As reflected in the correspondence referred to in paragraphs 37 to 38 below, the Administrators' staff have assembled documentary and electronic records forming part of the Associated Property under the Lease Documents, being the records listed in paragraph [7] of Schedule 2 to the Originating Process, and facilitated the return of those records in Willis' preferred format, being an online secure data room. Other than the "Non Incident Statements, History & Combination Statements, and LLP & AD status statements and certifications" (**Status Statements**) which the Plaintiffs have requested the First Defendant to sign, and thereafter obtaining FAA Form 8130-3 or EASA Form 1 serviceable tags (which are issued upon the "engineering shop" assessment of an engine following the end of lease inspection), as at the date of this affidavit the Administrators' staff have made all documents identified at paragraphs 24 and 25 of the Failer Affidavit available to Willis. The Administrators are not prepared to cause or permit the Virgin Companies to issue signed Status Statements without an appropriate disclaimer or limitation of liability from the Plaintiffs that reflects the external administration of the Virgin Companies and the inability of the Administrators to provide warranties in relation to facts and circumstances which are not within our direct area of control or expertise. In my opinion, proceeding to sign the Status Statements in the absence of such a disclaimer or limitation of liability would expose the Administrators and the Virgin Companies to an unacceptable level of risk, where no commensurate benefit is being offered.
37. In response to Mr Boulton's email of 18 June 2020, Mr Kinnane sent an email on 25 June 2020, on which I was copied, outlining preliminary steps for the process of returning engine records. Mr Boulton forwarded that email to the Second Defendant's Technical Assets team, copying Mr Dunbier, instructing them to collate the engine records. Mr Boulton stated in the email that, although the Administrators are not obliged to collate the engine records, they would do so as a courtesy to Willis if it was not too

much work. A copy of the email chain containing Messrs Kinnane's and Boulton's emails is located at pages 16 to 21 of Exhibit SA-2.

38. Between 1 and 10 July, the Administrators' staff continued to correspond with Willis to fulfil their requests for engine records. An email chain between and among Mr Failler of the Plaintiffs, Mr Chan and Mr Boulton of Deloitte and Andy Symons of the Business, on which I was copied, containing that correspondence, is at pages 22 to 35 of Exhibit SA-2. In particular, on 9 July 2020, Mr Failler sent an email to Mr Boulton stating that Willis' technical records team had completed their review of the engine records in the secure data room and would make a further request for engine records (see pages 28 of Exhibit SA-2). On 9 and 10 July 2020, Mr Kinnane of the Plaintiffs sent emails to Mr Boulton regarding Willis' further request (see pages 24 to 27 of Exhibit SA-2). Also on 10 July 2020, Mr Boulton sent an email to Andy Symons, Leader, Technical Assets of the Second Defendant, asking Mr Symons to consider the Plaintiffs' further document request (see pages 89 and 90 of Exhibit SA-2). Mr Symons sent an email in reply on the same day stating that he would start collating the records requested in the further request (see page 89 of Exhibit SA-2). A copy of the spreadsheet making the further request is located at pages 36 to 44 of Exhibit SA-2.

Engine stands

39. The Administrators have caused the Second Defendant to undertake a national physical audit of engine stands, which Mr Dunbier described in his email of 25 June 2020 to Mr Kinnane, on which I was copied. A copy of that email is at page 45 of Exhibit SA-2. The Administrators identified that two of Willis' engine stands were in Melbourne (being those stands identified in sub-paragraphs [5](c) and [5](d) of Schedule 2 to the Originating Process) and two were at the facilities of Delta Air Lines, Inc (**Delta**) in the United States of America (being those stands identified in sub-paragraphs [5](a) and [5](b) of Schedule 2 to the Originating Process).
40. On 29 June 2020, Virgin Companies' staff obtained photographs of the data plates of the engine stands and cradles located in Melbourne and sent them to Mr Rogers of the Plaintiffs. An email from Mr Chan to Mr Rogers of the Plaintiffs attaching the photographs, on which I was copied, dated 30 June 2020, is at page 3 of the email chain at pages 1 to 12 of Exhibit SA-2.
41. Virgin Companies' staff also took steps to locate Willis' engine stands that were at Delta's facilities in Atlanta, Georgia. Mr Dunbier observed in his email of 24 June 2020, to which I refer above, that Delta initially denied being in possession of the engine stands. On 26 June 2020, Virgin Companies staff participated in a teleconference with Delta employees to locate the engine stands. On 30 June 2020, Mr Dunbier sent a

further email to staff at Delta inquiring as to the outcome of Delta's searches for the stands. A copy of that email is located at page 52 of Exhibit SA-2. Mr Dunbier and Virgin Companies staff then investigated whether there was supporting evidence (such as bills of lading) to provide to Willis to establish that Delta were in possession of 2 engine stands. Email chains between Virgin staff and the Administrators' staff in relation to that investigation, dated 2 July 2020, are located at pages 56 to 59 of Exhibit SA-2.

42. On 3 July 2020, staff at Delta sent an email to Mr Dunbier (which was forwarded to me and my staff) located at pages 60 to 65 of Exhibit SA-2 informing Mr Dunbier that they had located both of the Willis engine stands on their property and attaching photographs of the physical locations and serial numbers of those stands. Delta has confirmed to me that it had been in possession of those engine stands since at least the appointment of the Administrators. Also on 3 July 2020, Mr Chan sent an email to Mr Failler, on which I was copied, confirming the location of the engine stands at Delta's facilities and attaching the photographs. A copy of that email is located at pages 71–73 of Exhibit SA-2.

Dealings with airframe lessors

43. The Engines are fixed to airframes leased to Virgin Companies by Bocomm Leasing and Dubai Aerospace Enterprise.
44. The Administrators have liaised with Bocomm Leasing and Dubai Aerospace Enterprise to facilitate the process of the Engines being removed from the airframes and taken by Willis.
45. On 3 July 2020, I wrote to Bocomm Leasing and Dubai Aerospace Enterprise in relation to the Engines. Copies of those letters are located at 77–78 and 79–80 of Exhibit SA-2 respectively.
46. An email chain with emails in relation to the letter between Mr Chan and Dubai Aerospace Enterprise, dated 3 July 2020, is located at 81–82 of Exhibit SA-2.
47. An email chain with emails in relation to the letter between Mr Chan and Bocomm Leasing, dated 7 July 2020, is located at 83–85 of Exhibit SA-2.

Giving possession of the Engines to Willis, and insuring and maintaining the Engines

48. On 18 June 2020, Mr Boulton sent an email to Mr Failler that:
- (a) confirmed that the Administrators would liaise with Willis' staff to facilitate an orderly hand-back of the Engines;
 - (b) summarised the status and locations of the Engines and engine stands;

- (c) offered to assist in providing services to Willis in removing and delivering the Engines (at Willis' cost); and
- (d) confirmed that the Administrators continued to insure and store the Engines.
49. A copy of that email is located at pages 503–505 of Exhibit DP-2.
50. On 19 June 2020, Mr Chan sent an email to Mr Failler, on which I was copied, suggesting some alternative ways to return the Engines and proposing that the best way forward would be for the Administrators and Willis to have a discussion. A copy of that email is located at page 502 of Exhibit DP-2.
51. On 30 June 2020, Mr Chan sent an email to Mr Rogers, on which I was copied, again requesting a telephone call with Mr Rogers and his team to discuss the way forward. In that email, Mr Chan again confirmed that the Administrators kept the Engines maintained and insured and that the Administrators were making continued inquiries of Delta as to the exact location of the engines stands at Delta's facilities. Mr Failler responded to that email, 1 July 2020, without accepting the invitation for a telephone call. Copies of those emails are located at pages 1–2 of Exhibit SA-2.
52. Mr Chan's email of 3 July 2020 to Mr Failler, to which I refer above, attached a letter confirming that the Engines remained insured. Mr Chan also confirmed in that email that Virgin continued to adhere to its statutory and regulatory maintenance obligations in relation the Engines. Mr Chan reiterated the Administrators' offer to have a telephone call with Willis.
53. On 13 July 2020, Mr Chan sent an email to Mr Kinnane, offering the Administrators' assistance and again reiterating the Administrators' offer to have a telephone call with Willis. A copy of an email chain that includes that email and Mr Kinnane's response is located at pages 86–88 of Exhibit SA-2.

The prejudice that will be caused to the Virgin Companies and their creditors if the orders sought by the Plaintiffs in relation to the Cape Town Convention are made

54. In my view, having regard to my experience as an administrator, if the Cape Town Convention has the effect asserted by the Plaintiffs, namely requiring the First and Second Defendants to comply with the Lease Documents in full, including meeting the costs of a redelivery process in accordance with schedule 3 to the Originating Process, it would amount to a complete inversion of the way leased property is dealt with in Australian voluntary administrations in that an insolvent lessee in administration would be forced to incur very substantial costs in complying with pre-appointment agreements, regardless of whether it had funds to do so or what effect that would have on the viability of the company's business or the ultimate return to other unsecured creditors of the

company. Such a position would, in my view, be contrary to the pari passu principle that underlies insolvency law and be commercially unreasonable because an insolvent company should not be subject to unavoidable costs that it may not have assets to meet. I am not aware of any other such mandatory and unavoidable costs which are stipulated under Australian insolvency law, except for taxes, where they arise, and the modest filing fees imposed by the Australian Securities and Investments Commission (**ASIC**).

55. In relation to the administrations of the Virgin Companies, specifically, as explained in the Fourth Strawbridge Affidavit at paragraph [21], pursuant to the terms of the Transaction, Bain Capital assumed economic risk for the financial position of the Virgin Companies on and from 1 July 2020. All liabilities arising before that date (including liabilities arising in relation to pre-appointment lease and financing arrangements) must be met by the Administrators from the assets of the Virgin Companies, without recourse to the finance facility extended by Bain Capital as part of the Transaction. It is only the net assets remaining after such liabilities and the costs of the administration are satisfied that will be available to creditors.
56. It follows that all costs incurred in relation to causing the Virgin Companies to comply with the terms of schedule 3 to the Originating Process (which are estimated in paragraph 16 of the Dunbier Affidavit to amount to a total of over AU\$1 million and potentially significantly more), together with the costs of defending the proceeding brought by the Plaintiffs and satisfying any adverse costs orders made in the proceeding (should the Plaintiffs be successful), will ultimately be borne by the unsecured creditors of the Virgin Companies.

The orders sought in the Defendants' Interlocutory Process should be made

57. The Defendants' Interlocutory Process seeks:
- (a) in paragraph 1, an order pursuant to section 443B(8) or section 447A(1) of the Corporations Act excusing the Administrators from liability in respect of the Engines and Associated Property; and
 - (b) in paragraph 2, an order that the Administrators may exercise a lien over the Engines and Associated Property in respect of the reasonable and proper remuneration, costs and expenses attributable to work done in identifying, caring for, preserving or facilitating the return of that property to the Plaintiffs (**Administrators' Lien**).
58. The factual basis for the order sought in paragraph 1 of the Defendants' Interlocutory Process is set out at paragraphs 21 to 29 above.

59. In relation to the order sought in paragraph 2 of the Defendants' Interlocutory Process, as noted in paragraph 24 above, I would ordinarily be of the view that taking reasonable steps to assist a lessor to recover property (without charge) would be in the overall interest of a company and its creditors. However, having regard to:
- (a) the complexity and the quantum of costs involved in maintaining, insuring, locating, isolating and readying the Engines and the Associated Property for collection by the Plaintiffs, in light of the applicable technical and regulatory requirements and the constraints imposed by the COVID-19 pandemic; and
 - (b) the fact that the Plaintiffs have effectively rejected our explanations of the conventional manner in which leased property in which the lessee no longer claims any interest is recovered from a company in administration and have sought to enforce their position through a Court proceeding, which will likely lead to significant costs being borne by the Virgin Companies and their creditors (even if the Defendants are ultimately successful in the proceeding),

I do not consider that it is in the interests of the First and Second Defendants and their creditors (or the Virgin Companies more broadly) to bear the costs of taking the steps set out in paragraphs 30 to 53 above, as well as any further or other steps that may be required to identify, care for, preserve or facilitate the recovery of the Engines and Associated Property (including all steps insisted on by the Plaintiffs).

60. Given that those steps are solely for the benefit of the Plaintiffs, I consider that the applicable costs should be borne by the Plaintiffs and, until paid, the Administrators intend to exercise a lien over the Engines and Associated Property which must be discharged before the property can be collected by the Plaintiffs and seek a declaration or order that they may do so. The Plaintiffs are on notice, by way of the 4 July Letter, that the Administrators will seek to recover those costs from the Plaintiffs. However, in line with my covering letter to the 443B Notice and the 4 July Letter, the Administrators have voluntarily agreed to meet insurance and maintenance costs and the Administrators' professional time arising between 16 and 30 June 2020.
61. Should the lien which the Administrators intend to assert over the Engines and Associated Property be upheld by the Court, the Administrators intend to file further evidence in support of the quantum of costs to which the lien relates, at that time.

Swearing of this Affidavit

62. 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.

- 63. I have been informed by Orfhlaith (Orla) 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.
- 64. 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 17 July 2020) Signature of deponent
Before me:)

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

Plaintiffs

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

Second Plaintiff: 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

Defendants

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

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

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

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

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/07/2020 4:20:47 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

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: 20/07/2020 10:52:57 AM AEST

Registrar

Important Information

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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 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

Plaintiffs

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

Defendants

Affidavit of: Darren William Dunbier
Address: 56 Edmondstone Road Bowen Hills Queensland 4006
Occupation: General Manager, Engineering and Aircraft Servicing
Date: 17 July 2020

I, Darren William Dunbier, of Virgin Australia Airlines Pty Ltd (admins apptd), at 56 Edmondstone Road, Bowen Hills, Queensland, General Manager, Engineering and Aircraft Servicing, affirm:

- 1. I am the General Manager, Engineering and Aircraft Servicing, at Virgin. I have over forty years' professional experience in quality assurance, aircraft airworthiness and maintenance, and technical and engineering operations, including 17 years' experience as a manager at Virgin Australia Airlines Pty Ltd and its related entities (**Virgin**). I am the individual that the Civil Aviation Safety Authority (**CASA**) holds responsible for Virgin Australia Boeing 737 aircraft, which includes the major assemblies fitted to the aircraft and includes engines. I am also the CASA Continuing Airworthiness Manager at Virgin Australia Airlines Pty Ltd (admins apptd) and Virgin Australia International Airlines Pty Ltd (admins apptd).

Filed on behalf of (name & role of party) The Plaintiffs
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]

2. Annexed to this affidavit and marked "A" is a copy of my curriculum vitae.
3. I am aware that voluntary administrators (**Administrators**) have been appointed to the First and Second Defendants and the other 37 companies set out in schedule 3 to this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and on information from Virgin staff, which I believe to be true.
5. In this affidavit, I refer to:
 - (a) the affidavit of Dean Poulakidas sworn 29 June 2020 (**Poulakidas Affidavit**) and its exhibit marked "DP-2" (**Exhibit DP-2**); and
 - (b) the affidavit of Garry Failler affirmed 8 July 2020 (**Failler Affidavit**),
 each filed in this proceeding on behalf of the Plaintiffs.
6. I make this affidavit on behalf of the Defendants:
 - (a) in response to certain aspects of the Poulakidas Affidavit the Failler Affidavit; and
 - (b) to provide estimates of the value of equipment leased by the Plaintiffs to the Defendants and the costs of transporting the equipment.

Failler Affidavit

7. I have read the Failler Affidavit. The Failler Affidavit seeks to describe usual industry practices in relation to aircraft engine leases. Although I do not disagree with the descriptions in the Failler Affidavit of many of those usual industry practices, I note that he does not address or describe usual industry practices in circumstances where a lessee is in insolvent external administration or having regard to the COVID-19 pandemic.

Professional experience relevant to value of aircraft equipment and costs of transport

8. In the course of my professional experience and performing my day-to-day responsibilities at Virgin, I occasionally am required to consider quotes, invoices and contracts that detail the purchase or lease costs of aircraft equipment and the costs of maintaining and transporting aircraft equipment. As a result, I am familiar with Virgin's costs of buying or leasing aircraft equipment and of maintaining and transporting it.
9. In order to make this affidavit, I have also had regard to quotes, invoices and contracts in Virgin's possession that in my view are relevant to making the estimates at paragraphs 11 to 16 below.




10. The quotes, invoices and contracts to which I refer above (except Annexure B to this affidavit) have not been exhibited to this affidavit because they contain confidential proprietary information of the relevant manufacturer, are strictly commercial-in-confidence and Virgin is not permitted to disclose them to any person.

Value of aircraft equipment

11. The Failer Affidavit refers to CFM International Engine, Model CFM56-7B24 aircraft engines with serial numbers 888473, 897193, 896999 and 894902 (**Willis Engines**) and the engine stands leased together with the Willis Engines (**Willis Stands**).
12. Each of the four leases located in Exhibit DP-2 at pages 125, 151, 196 and 220 (**Willis Lease**) consists of a lease of "Equipment", a term which is defined as comprising:
- (a) the relevant Willis Engine;
 - (b) a Willis Stand, identified by cradle serial number and base serial number;
 - (c) a QEC (quick engine change) kit with components specified in an accessory inventory annexed to the lease; and
 - (d) all engine records in the possession of the lessor and requested by the lessee, or generated by the lessee during the term of the lease.
13. I consider that the Willis Engines will comprise, by some substantial margin, the majority of the economic value of the Equipment leased to the First Defendant by Willis. As to the estimated value of the individual components of Equipment, I estimate that the current market value of:
- (a) a new aircraft engine comparable to the Willis Engines is approximately US\$11.2 million;
 - (b) the current market value of a stand comparable to a Willis Stand is approximately US\$50,000;
 - (c) the current market value of a QEC kit of superior specification to the kind leased by Willis, is approximately US\$1.6 million; and
 - (d) the records associated with the Willis Engines are of no commercial value other than as documents specifically ancillary to the Willis Engines. I say that because those records record the history of use of the particular engine in each case. They are of value to the lessor and lessee of the particular engine, but have no value otherwise.
14. In each case, the estimates of the values of Equipment that I give at paragraph 13 above are based on new equipment and do not account for depreciation.




15. Based on the estimates of the values of Equipment that I give at paragraph 13 above, the Willis Engines comprise at least 87% of the economic value of the Equipment.

Costs of transporting Willis Engines and Willis Stands

16. I estimate that the total costs of redelivering the Willis Engines to Florida in accordance with the return conditions set out in Section 18 of the General Terms Engine Lease Agreement (**GTA**) which appears at page 65 of Exhibit DP-2 and the relevant Engine lease, would be over AU\$1 million (and potentially significantly higher), comprising:
- (a) approximately AU\$80,000 (or \$20,000 per engine) to remove the Willis Engines from the airframes on which they are currently installed and thereafter to preserve them;
 - (b) approximately US\$400,000 (or US\$100,000 per engine) (which, at the current exchange rate of approximately \$1 US to \$1.43 AU, is approximately AU\$572,000) for the necessary "engine shop inspection" and certification for the overhaul, inspection and repair of the Willis Engines, assuming that no significant or unanticipated issues requiring repair are identified in that process;
 - (c) approximately US\$200,000 to US\$400,000 (which, at the current exchange rate of approximately \$1 US to \$1.43 AU, is approximately AU\$286,000 to AU\$572,000) for shipping or freight costs from Melbourne to Coconut Creek, Florida (for all the Willis Engines) and from Adelaide to Melbourne, then onwards to Coconut Creek, Florida (in the case of engine 897193). The estimate includes air freight to the United States of America and inland transport by truck. Air freight within reasonable timeframes is extremely expensive for aircraft engines due to their size, and considerable premiums are payable for priority freight or guaranteed carriage, particularly during the COVID-19 pandemic. The wide range in my estimate accounts for the current market very high international freight costs due to limited capacity caused by the COVID-19 pandemic. Virgin has not undertaken any comparable shipment during this period. In making this estimate, I have had regard to a quote Virgin has received for transporting a single engine (comparable in weight and size to the Willis Engines) to the United States of America for AU\$108,930 to AU\$117,285. A copy of that quote is annexed to this affidavit and marked "**B**"; and
 - (d) further costs for transporting the Willis Stands currently located at the Delta facility in Atlanta, Georgia to Coconut Creek, Florida and/or buying or leasing other engine stands to transport the Willis Engines from Melbourne to Coconut Creek, Florida.

Records

17. I refer to paragraph 27 of the Failler Affidavit. Virgin is authorised to issue an Australian CASA serviceable tag, but not an FAA Form 8130-3 or an EASA Form 1.




18. In my view, having regard to my experience and industry practice and the circumstances of Virgin, I and my staff (and the Administrators) have taken all reasonable steps to locate the documents identified at paragraphs 24 and 25 of the Failler Affidavit and make them available to Willis as quickly as practicable. Other than the FAA Form 8130-3 or EASA Form 1, as at the date of this affidavit Virgin has made all documents identified at paragraphs 24 and 25 of the Failler Affidavit available to Willis.

Willis Stands

19. In my experience, engine stands of the CFM International (manufacturer's) specification or other specifications that meet the engine manufacturer's required standard for transport can be used interchangeably to remove, store and transport CFM International engines, in accordance with the engine manufacturer's requirements.
20. In respect of the Willis Engines, I note that annexure GF-2 to the Failler Affidavit comprises the transportation guide for CFM56 engines published by the manufacturer (which is applicable to the Willis Engines). Pages 60–65 of annexure GF-2 include a list of approved shipping stands applicable to the Willis Engines (**Approved Shipping Stands**). Virgin is currently in possession of a number of Approved Shipping Stands in addition to the Willis Stands. In my view, nothing in the manufacturer's requirements for transportation would prevent a Willis Engine being transported on any Approved Shipping Stand that may be available. Provided that the Approved Shipping Stand is not damaged or in a state of disrepair, it would be appropriate and not contrary to the the manufacturer's requirements for transportation to use an Approved Shipping Stand regardless of its condition.
21. In that context, I interpret paragraph 23 of the Failler Affidavit as being limited to his opinions in relation to what is typical in a solvent leasing scenario and the preference of Willis to have the Willis Stands returned. I note that Mr Failler does not claim that the Willis Engines must be shipped on Willis Stands to comply with the manufacturer's requirements.




22. Mr Poulakidas states in paragraph 60 of the Poulakidas Affidavit that "*I believe transportation of engines on the Engine Stands is the approved method of transporting commercial aircraft engines (where they are not affixed to airframes)*". "Engine Stands" is defined to mean the Willis Stands. For the reasons outlined in paragraph 20 above, I disagree that the Willis Engines cannot be transported on Approved Shipping Stands other than the Willis Stands.

Affirmed by the deponent
at Brisbane
in Queensland
on 17 July 2020
Before me:



)
)
)
)
)


Signature of Darren William Dunbier

Melissa Jane Bastock
Signature of witness

Melissa Jane Bastock, Legal Practitioner
Name and qualification of witness



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

Plaintiffs

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

Second Plaintiff: 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**Defendants**

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

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

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

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

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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



NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/07/2020 6:55:50 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
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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: 22/07/2020 6:55:52 PM AEST

Registrar

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Form 59
Rule 29.02(1)

Affidavit

No. 714 of 2020

Federal Court of Australia
District Registry: NSW
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

Affidavit of: **Derych Warner**
Address: 60 East Sir Francis Drake Boulevard, Suite 209, Larkspur, California, USA
Occupation: Senior Manager, Customer Liaison
Date: 22 July 2020

Contents

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1	Affidavit of Derych Warner sworn on 22 July 2020	-	1
2	Exhibit DW-1	4	2

I, **Derych Warner** of, 60 East Sir Francis Drake Boulevard, Suite 209, Larkspur, California, USA, Senior Vice President and General Counsel, being duly sworn make oath and say as follows:

Introduction

1 I hold the title of Senior Manager, Customer Liaison of the second applicant, Willis Lease Finance Corporation (**Willis**).

Filed on behalf of (name & role of party)	Applicants		
Prepared by (name of person/lawyer)	Noel McCoy		
Law firm (if applicable)	Norton Rose Fulbright Australia		
Tel	+61 2 9330 8000	Fax	
Email	noel.mccoy@nortonrosefulbright.com	Ref	4015052
Address for service (include state and postcode)	Level 5, 60 Martin Place, Sydney, NSW 2000 Email: noel.mccoy@nortonrosefulbright.com		

[Version 3 form approved 02/05/2019]

APAC-#111016012-v1

2 I make this affidavit from my own knowledge except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and believe those facts to be true.

3 I am authorised to make this affidavit on behalf of the applicants.

4 Exhibited to me at the time of swearing this affidavit is a bundle of documents marked "Exhibit DW-1" (**Exhibit DW-1**).

5 I hold a Bachelor of Science-Professional Aeronautics and Aviation Safety Certificate qualifications from Embry Riddle Aeronautical University (Florida, USA). I have also been awarded a Federal Aviation Administration Airframe and Powerplant Certificate by Spartan College of Aeronautics and Technology (Oklahoma, USA). I have been employed at Willis for 15 years and presently have the responsibility of managing Willis' Lease Return Records Department. The fundamental function of this position is to maintain the integrity of Willis' assets by ensuring the procurement and review of all technical documentation is performed to Willis' standards and in accordance with its customer lease agreements. A resume of my roles and experience at Willis is at page 1 of Exhibit DW-1.

Status of records

6 It is usual practice for Willis to create a Records Open Item List document at the commencement of the lease return process in order to identify all records required.

7 At pages 2 to 9 of Exhibit DW-1 is a copy of a Records Open Item List (**ROIL**) which I have created for the engines leased to the first and second respondents (**Virgin Australia**) that are the subject of this case. The ROIL is utilized to gauge the record's retrieval progress, engage in reciprocating discourse, and provide continual transparency in respect to outstanding records for all parties involved.

8 The ROIL identifies the status of records provided by Virgin Australia as at the date of swearing this affidavit in respect of aircraft engines with serial numbers 888473, 894902, 896999, 897193 (**Engines**) leased by Willis to Virgin Australia.

9 My colleague, Declan Kinnane, sent a copy of the ROIL to Darren Dunbier of Virgin Australia on 17 July 2020 (**17 July Email**). At pages 10 to 14 of Exhibit DW-1 is a copy of the email attaching a copy of the ROIL.




- 10 I have been informed that on 19 July 2020, Ian Bolton of Deloitte responded to the 17 July Email. At pages 15 to 19 of Exhibit DW-1 is a copy of that email.
- 11 There are two classes of records described in the ROIL being "Operator Records" and "lease inspection records from engine shop." I describe these two categories of documents in the following paragraphs.

Operator Records (or Part 121 Records)

- 12 "Operator Records" are documents that must be prepared and maintained by the airline operating the relevant aircraft or engine. The Operator of the aircraft or engine is regulated under part 121 of Title 14 of the US Code of Federal Regulations, and accordingly, within the industry the "Operator Records" are sometimes known as "Part 121 Records". The preparation of records is addressed in US Code of Federal Regulations Part 121 in particular Subpart V - Records and Reports). I understand that Australian airlines, including Virgin Australia, operate under equivalent local requirements to those stipulated under 14 CFR §121.
- 13 Operator Records are essential documents without which an aircraft engine such as the Engines cannot be put into service. Subsequent airline customers of Willis considering the leasing of aircraft engines will want to review these pertinent records before inducting the engine into its fleet. It is standard procedure in the airline industry, and Willis' standard procedure, to provide a new lessee airline with records to demonstrate the full "traceability" of the aircraft engine so that the new lessee airline's Quality Department can be satisfied that it complies with its own safety requirements.
- 14 As such, the absence of Operator Records would impact dramatically on the value of the Engines and significantly affect the marketability. The absence of Operator Records would critically affect the value of the Engine for use as spare parts, because it would prevent a subsequent purchaser of a part being able to trace the history to determine, for example, whether it was part of an engine that had been in an incident.
- 15 For the purpose of the present case (although I do not ordinarily draw that distinction), it is useful to divide the Operator Records themselves into two subsets, being:
- (a) Historical Operator Records (also designated as Lease Term Operational Records);



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- (b) End of Lease Operator Records (also designated as Operator Cease of Operation/Redelivery Records.
- 16 Examples of the Historical Operator Records include:
- (a) the "Engine Installation Work Order" documents (completed at the time the engines were installed on the airframes);
- (b) AD/SB Compliance Task Cards;
- (c) Technical Log Pages / Pilot Reports; and
- (d) Schedule Maintenance Records.
- 17 Each of those Historical Operator Records was created during the use of the Engines by Virgin.
- 18 Since 8 July 2020, the vast majority of the Historical Operator Records have been provided by Virgin Australia to Willis (and accordingly are described as "Closed" in the ROIL). One example of an outstanding Historical Operator Record is the Hydro Mechanical Unit (HMU) installation work order for Engine 896999 (item 36 on the ROIL) that I explain further below.
- 19 The "End of Lease Operator Records" are the documents currently outstanding.
- 20 It is standard industry practice that at the end of a lease when an operator returns an engine, the operator reviews its own records in respect of the use of the engines, in order to prepare the End of Lease Operator Records including but not limited to:
- (a) History Statement (referred to on the ROIL as Statement- Install/Removal History) identifies aircraft registration and serial number, installed position(s), all thrust(s) operated, and Total Aircraft Time (TAT) and Total Aircraft Cycles (TAC) at installation(s) and removal(s) of the Engine;
- (b) Non-Incident Statement (referred to in the ROIL as Statement – Non-Incident) indicates that an occurrence associated with the operation of an aircraft, which affects or could affect the safety of operations (such as exposure to fire, severe heat, severe stress, exposure to salt water) has not occurred;
- (c) Combination Statement (referred to in the ROIL as Statement – Combination) A compilation of questions of significant technical relevance, validated by the

operator, which confirms specific technical obligations were monitored and maintained throughout the lease term. As these questions commonly are not identified on other operator-generated documentation, or not readily available for retrieval, the statement summarizes the information in collective form. It provides a summary of essential technical statements that are commonly required by lessees for induction into their fleet. ;

- (d) Life Limited Part Status (referred to in the ROIL as LLP Status) which indicates the status of engine components described as cycle limited parts within the engine that must be replaced at pre-determined intervals or number of cycles (being one take-off and landing). It is a safety requirement that an LLP cannot be used beyond the number of prescribed cycles and must be discarded. The utility (and therefore commercial value) of the engine is affected if any of the LLP are approaching replacement date, because replacement requires the whole engine to be taken off wing and disassembled. For that reason, it is essential for Willis to review the LLP Status documents at the conclusion of a lease;
- (e) Airworthiness Directive Status (referred to in the ROIL as AD Status) which indicates the status of tasks required or regulated by the US Federal Aviation Administration or other regulatory authorities, such as inspection or parts replacement that must be accomplished at pre-determined intervals;

- 21 I refer to the affidavit of Salvatore Algeri sworn on 17 July 2020 and filed in this proceeding. In paragraph 36 of Mr Algeri's affidavit he refers to "Non Incident Statements, History & Combination Statements, and LLP & AD status statements and certifications" which he calls Status Statements. I believe that the Status Statements are the statements I have described in the previous paragraph as End of Lease Operator Records. It is only the operator who can complete the "Status Statements" after reviewing its own internal history of the usage of the engine.
- 22 The ROIL refers to "Template provided for Virgin Australia Airlines Signature". This is a reference to a template version of each of the End of Lease Operator Records. A copy of the End of Lease Operator Records templates provided to Virgin Australia for each of the Engines is at pages 20 to 70 of Exhibit DW-1.
- 23 The template documents were provided by Willis to assist Virgin Australia and expedite completion of the relevant records. Nevertheless, the appropriate member of the Virgin Australia staff could only sign the templates once they are satisfied of the accuracy of the material stated in the template.




- 24 Where the ROIL identifies the status of certain End of Lease Operator Records as "PENDING" and the row in the document referring to that End of Lease Operator Record is highlighted in orange colour, the document is in a form ready to be signed off by Virgin Australia.
- 25 Where the ROIL identifies the status of certain End of Lease Operator Records as "FINDING" and the row in the document referring to that End of Lease Operator Record is highlighted in pink colour, the relevant End of Lease Operator Record needs amendment or clarification to address the issue (or "finding") raised by Willis as set out in the column of the document headed "Willis Lease Comments."
- 26 I make the other following observations about the comments about Operator Records in the ROIL:
- (a) The term disc sheet and LLP status are different expressions of the same set of documents, both terms refer to the documents for the life limited parts;
 - (b) The reference to "ID Plug for engine conversion" is the piece of hardware used to change the thrust of an engine from 24,000 lbs to 26,000 lbs. The comments in the ROIL pertaining to the "ID Plug" indicate that the operator (Virgin) has used its own ID Plug and Willis seeks the return of Willis' ID Plug provided at the time of leasing the engine.
 - (c) To the best of my understanding Tiger, although part of the Virgin Australia group of companies is a separate operator for regulatory purposes operating under a different air operating certificate. For that reason, Willis requires End of Lease Operator Records from Tiger as a separate operator (and in the case of Engine 896999) Willis requires the documents from both Virgin and Tiger.
 - (d) In respect of the Engine records for Engine 896999 Item 36 Component Replaced - Certificates includes a longer description than for the other Engines. That is because following Willis' review of the records provided on 8 July 2020 it was identified that Virgin had replaced the Hydro Mechanical Unit ("HMU"). The comment raised by Willis is seeking:
 - (i) the current "dual release" certificates for the HMU at time of installation on Willis' asset; and
 - (ii) the "WO" or work order for the installation of the HMU completed at the time Virgin replaced that part.







27 In all of my experience of aircraft engine leasing:

- (a) I have always been able to obtain the Operator Records, including End of Lease Operator Records. I am not aware of Willis being unable to obtain Operator Records from any airline at the end of lease. This has been the case, even though I am aware that engines have previously been returned following a default by the airline (including where the airline has entered into bankruptcy or insolvency) and possession and redelivery is sought;
- (b) It is industry practice that, at the end of an aircraft lease, for the operator to provide the Operator Records (including End of Lease Operator Records or "Status Statements");
- (c) It is industry practice that the relevant person who "signs off" or certifies the End of Lease Operator Records or "Status Statements" is an engineer or holding a Quality Assurance position with suitable qualifications, training and experience to do so;
- (d) In the case of Virgin Australia, I would accept End of Lease Operator Records or "Status Statements" if signed by Darren Dunbier having reviewed his professional background that he provides in his affidavit;
- (e) I would not ordinarily expect an airline's "manager", CEO, or member of the board of directors to sign off on the End of Lease Operator Records. As such, I would not expect Mr Algeri or any of the administrators would be able to or should sign off or certify those End of Lease Operator Records or "Status Statements" as he describes them.

Lease inspection records from engine shop (or Part 145 Records)

28 The second suite of records described in the ROIL are identified as "lease inspection records from an engine shop." These records are completed at the end of a lease by an FAA accredited "repair station" often times referred to in the industry as a "maintenance and repair organization or maintenance, repair, overhaul (MRO), which are regulated under part 145 of Title 14 of the US Code of Federal Regulations (14 CFR §145). For that reason the records are sometimes described in the industry as "Part 145 Records or Shop Records".

- 29 I believe these are the documents which Mr Algeri describes in paragraph 36 his affidavit as the documents "issued upon the 'engineering shop' assessment of an engine following the end of lease inspection."
- 30 To issue the documents, the repair station or engineering shop conducts diverse inspections and a full inventory of the aircraft engine's components. If a part is cracked, dented, damaged or otherwise deemed unserviceable the repair station will undertake the necessary repair or replacement. In my experience, all of this is done at the airline's cost before returning the engines.
- 31 I would not expect (or accept) the airline or its directors or officers, and in this case, the administrators, to be issuing these documents.
- 32 In my experience, it is industry practice for the airline to ensure that the documents are obtained from an "engineering shop" and issued, including with the FAA Form 8130-3 and EASA Form 1 serviceable tags (referred to in the industry as "dual release").
- 33 In my experience, Willis' customers (from a multitude of countries throughout the world) will accept an FAA Form 8130-3 and EASA Form 1. It is my experience that the standards imposed by FAA and EASA are recognised by airlines around the world.
- 34 It is Willis' standard practice to provide the FAA and EASA dual release to its customers at the time of providing the leased Engines. It is the standard practice for Willis to insist on being provided with a FAA and EASA dual release upon return of an engine. By contrast the Australian CASA equivalent forms do not have the same wide recognition among airline lessees around the world.
- 35 In my experience lessee airlines provide the FAA and EASA dual release to Willis at the completion of a lease by performing one of the following:
- (a) directly employing staff who are qualified to provide the FAA and EASA releases and have appropriate facilities;
 - (b) sending the Engines to a dual release qualified engineering shop; or
 - (c) sending the Engine to Willis and paying Willis to undertake the process of providing FAA and EASA releases (at a facility referred to as WERC or Willis Engine Repair Centre)

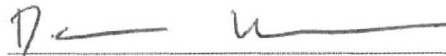




36 In circumstances where Willis is asked to provide the dual release at the Willis WERC facility, Willis ordinarily charge customers approximately USD\$45,000 to undertake the inspection. However, if problems are identified and repairs are required, the costs can escalate, depending on level of rectification necessary.

37 Additionally, it may also be necessary for Willis' technical personnel to make enquiries of an airline if during the inventory inspection it is discovered that certain components have been changed or installed and were not accounted for in the Operator Records provided. In those circumstances it is expected that the operator provide adequate documentation and trace as outlined in the Lease Agreement regarding "Replacement Parts".

38 For that reason it is difficult to estimate the cost or time involved in providing a dual release.

Sworn by the deponent
at Larkspur, California, United States of
America on 22 July 2020
Before me:

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) Signature of deponent



Signature of witness
Ben Fisher, solicitor

This document was signed and witnessed over audio visual link in accordance with clause 2 of Schedule 1 to the *Electronic Transactions Regulation 2017*.

Schedule 1

No. 714 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)**

Date: 22 July 2020