

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/07/2020 9:12:09 AM 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: Statement of Agreed Facts
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: 31/07/2020 9:34:16 AM AEST

Registrar

Important Information

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

The 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.



Statement of Agreed Facts

No. NSD714 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

For the purpose of the proceeding only, the Applicants and the Respondents agree the following facts:

1. The Second Applicant is authorised to bring this proceeding on behalf of the First Applicant.

General terms of lease agreements

2. On or about 24 May 2019, Willis Lease Finance Corporation (**Willis**) and VB LeaseCo Pty Ltd (Administrators Appointed) ACN 134 268 741 (**VB LeaseCo**) entered into an Engine Lease Support Agreement. [A copy of that document is at page 117 of the Court Book.]
3. On or about 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 128 of the Court Book.]
4. On or about 24 May 2019, pursuant to a deed of guarantee and indemnity (**Guarantee**), Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965 (**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

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transaction document entered into or to be entered into pursuant to the GTA or a lease.

Engine 897193

5. 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 (currently configured as 7B26/3), with engine serial number 897193 (**Engine 897193**) and engine stand (**Engine Stand 897193**) 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 188 of the Court Book.]
6. VB LeaseCo sub-leased Engine 897193 to Virgin Australia by an Engine Sublease Agreement dated 24 May 2019 (**Engine 897193 Sublease**). [At page 214 of the Court Book is a copy of Engine 897193 Sublease.]
7. By a Deed of Security Assignment dated 24 May 2019, VB LeaseCo, as assignor, assigned all of its rights in and to Engine 897193 Sublease to Wells Fargo as assignee. [A copy of that document is at page 243 of the Court Book.]
8. 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 257 of the Court Book is a copy of the Guarantee Confirmation in respect of Engine 897193 Lease.]
9. On or about 24 May 2019, Willis delivered the following equipment to VB LeaseCo:
 - (a) Engine 897193;
 - (b) Engine Stand 897193;
 - (c) a QEC unit comprised of components set forth in Appendix A to Engine 897193 Lease;
 - (d) engine records, including a copy of the life-limited parts profile attached as Appendix B to Engine 897193 Lease.

[A copy of the delivery receipt dated 24 May 2019 is at page 258 of the Court Book].

Engine 896999

10. 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 CFM56-7B26/3, with engine serial number 896999 (**Engine 896999**) and engine stand (**Engine Stand 896999**) 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 259 of the Court Book.]
11. VB LeaseCo sub-leased Engine 896999 to Virgin Australia by an Engine Sublease Agreement dated 14 June 2019 (**Engine 896999 Sublease**). [At page 283 of the Court Book is a copy of Engine 896999 Sublease.]
12. By a Deed of Security Assignment dated 14 June 2019, VB LeaseCo, as assignor, assigned all of its rights in and to Engine 896999 Sublease to Wells Fargo as assignee [A copy of that document is at page 312 of the Court Book]
13. 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 326 of the Court Book is a copy of the Guarantee Confirmation in respect of Engine 896999 Lease.]
14. On or about 14 June 2019, Willis delivered the following equipment to VB LeaseCo:
- (a) Engine 896999;
- (b) Engine Stand 896999;
- (c) a QEC unit comprised of the components set forth in Appendix A to Engine 896999 Lease;
- (d) engine records, including a copy of the life-limited parts profile attached as Appendix B to Engine 896999 Lease.
- [A copy of the delivery receipt dated 14 June 2019 is at page 327 of the Court Book].

Engine 888473

15. 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 (currently configured as 7B26/3), with engine serial number 888473 (**Engine 888473**) and engine stand (**Engine Stand 888473**) 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 328 of the Court Book.]
16. VB LeaseCo sub-leased Engine 888473 to Virgin Australia by an Engine Sublease Agreement dated 28 August 2019 (**Engine 888473 Sublease**). [At page 357 of the Court Book is a copy of Engine 888473 Sublease.]
17. By a Deed of Security Assignment dated 28 August 2019, VB LeaseCo, as assignor, assigned all of its rights in and to Engine 888473 Sublease to Wells Fargo as assignee. [A copy of that document is at page 386 of the Court Book.]
18. 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 400 of the Court Book is a copy of the Guarantee Confirmation in respect of Engine 888473 Lease.]
19. On or about 28 August 2019, Willis delivered the following equipment to VB LeaseCo:
- (a) Engine 888473;
 - (b) Engine Stand 888473;
 - (c) a QEC unit comprised of the components set forth in Appendix A to Engine 888473 Lease;
 - (d) engine records, including a copy of the life-limited parts profile attached as Appendix B to Engine 888473 Lease.

[A copy of the delivery receipt dated 28 August 2019 is at page 401 of the Court Book].

Engine 894902

20. 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 CFM56-7B26/3, with engine serial number 894902 (**Engine 894902**) and engine stand (**Engine Stand 894902**) 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 402 of the Court Book.]
21. VB LeaseCo sub-leased Engine 894902 to Virgin Australia by an Engine Sublease Agreement dated 13 September 2019 (**Engine 894902 Sublease**). [At page 427 of the Court Book is a copy of Engine 894902 Sublease.]
 22. By a Deed of Security Assignment dated 13 September 2019, VB LeaseCo, as assignor, assigned all of its rights in and to Engine 894902 Sublease to Wells Fargo as assignee. [A copy of that document is at page 456 of the Court Book.]
 23. 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 470 of the Court Book is a copy of the Guarantee Confirmation in respect of Engine 894902 Lease.]
 24. On or about 13 September 2019, Willis delivered the following equipment to VB LeaseCo:
 - (a) Engine 894902;
 - (b) Engine Stand 894902;
 - (c) a QEC unit comprised of the components set forth in Appendix A to Engine 894902 Lease;
 - (d) engine records, including a copy of the life-limited parts profile attached as Appendix B to Engine 894902 Lease.

[A copy of the delivery receipt dated 13 September 2019 is at page 471 of the Court Book].

Security Interests over Engines

25. The First Applicant has a security interest as that term is defined in section 12 of the *Personal Property Securities Act 2009* (Cth) over each of the Engines pursuant to the following lease documents (registered on the Personal Property Securities Register (**PPSR**) with the PPSR registration numbers listed below):
 - (a) Engine 897193 Lease (registered on the PPSR with PPSR numbers: 201905290067617, 201905290067629 and 201905290067638);

- (b) Engine 896999 Lease (registered on the PPSR with PPSR numbers: 201906260103349, 201906260103401, 201906260103673, 201906260103591, 201906260103768 and 201906260103845);
- (c) Engine 888473 Lease (registered on the PPSR with PPSR numbers: 201909120024204, 201909120024215 and 2 01909120024227); and
- (d) Engine 894902 Lease (registered on the PPSR with PPSR numbers: 201910160000574, 201910160000588 and 201910160000590).

Engines

- 26. Each of Engine 897193, Engine 896999, Engine 888473, Engine 894902, together with all parts and attachments thereto (collectively, **Engines**) is a CFM56-7B model aircraft engine, which is used on Boeing 737-800 and 737-900 aircraft and has a jet propulsion with at least 24,200 pounds of thrust.
- 27. Engine 897193 is currently configured to operate as CFM56-7B26/3 engine.
- 28. Engine 896999 is currently configured to operate as a CFM56-7B26/3 engine.
- 29. Engine 888473 is currently configured to operate as a CFM56-7B26 engine.
- 30. Engine 894902 is currently configured to operate as a CFM56-7B26/3 engine.

Location of the Engines at 17 July 2020

- 31. As at 17 July 2020 the Engines are attached to four separate airframes in the following locations [appearing at page 521 of the Court Book]:
 - (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;
 - (d) Engine 894902 is attached to airframe with registration VH-VUT in Adelaide Airport.

QECs

- 32. The QECs constitute certain components that are attached to the external part of the Engines to make them operable and comprise the components described in Appendix A of each of the Aircraft Engine Lease Agreements.

33. The QECs were delivered to VB LeaseCo in the “neutral” configuration.

Engine Stands

34. Each Engine Stand is a static metal structure used to secure the Engines for transportation.
35. Transportation of the Engines on the Engines Stands is in accordance with the Engine manufacturer's requirements for transportation.
36. Aircraft engine stands which are of the make, model described in the manufacturer’s specifications for transporting the Engines can also be used for transportation of the Engines in place of the Engine Stands. The manufacturer’s specifications set out other such stands at pages 733 to 803 of the Court Book.
37. If an Engine is not transported according to the manufacturer's requirements, it is necessary 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.
38. The records required to be provided under the leases to Willis upon redelivery of the Engines are required to assess each Engine’s airworthiness.

Engine Records

39. Willis has created a ROIL for the Engines. The ROIL identifies the status of records provided by the Respondents as at 17 July 2020 in respect of the Engines. A copy of the ROIL is at pages 624 to 627 of the Court book.

Rental

40. The GTA and Engine 897193 Lease, Engine 896999 Lease, Engine 888473 Lease and Engine 894902 Lease provide for monthly and daily rental for the Engines at the rates specified in the following table:

Equipment (including Engines, Engine Stands, QEC units, Records)	Monthly Rent	Daily Rent
Engine No 1 [897193] + Engine Stand: Cradle: P/N D71CRA00005G02 S/N MCC150728-1-4; Base: P/N D71TRO00005G03 S/N MCC150728-1-4	US\$64,000 per month when Engine is operated as CFM56-7B26 (current configuration).	US\$2,098.36
Engine No 2 [896999] + Engine Stand: Cradle: P/N D71CRA00005G02 S/N MCC170335-1-1; Base: P/N D71TRO00005G03 S/N MCC170335-1-1	US\$64,000 per month when Engine is operated as CFM56-7B26	US\$2,098.36

Equipment (including Engines, Engine Stands, QEC units, Records)	Monthly Rent	Daily Rent
	(current configuration).	
Engine No 3 [888473] + Engine Stand: Cradle: P/N D71CRA00005G02 S/N MCC150728-1-3; Base: P/N D71TRO00005G03 S/N MCC150728-1-3	US\$64,000 per month when Engine is operated as CFM56-7B26 (current configuration).	US\$2,098.36
Engine No 4 [894902] + Engine Stand: Cradle: P/N AM-2811-4800 S/N 769; Base: P/N AM2563-200, S/N 1216	US\$64,000 per month when Engine is operated as CFM56-7B26 (current configuration).	US\$2,098.36

Administration

41. On 20 April 2020, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes of Deloitte (**Administrators**) were appointed as voluntary administrators to VB LeaseCo, Virgin Australia and certain of their related entities, by resolution of the directors of each of those companies pursuant to section 436A of the *Corporations Act 2001* (Cth) (**Corporations Act**).
42. On 23 April 2020, the Administrators filed an application (**First Application**) in the Federal Court of Australia.
43. On 24 April 2020 Court made orders in the First Application. [[2020] FCA 571].
44. On 12 May 2020, the Administrators filed an application (**Second Application**) in the Federal Court of Australia.
45. On 13, 15 and 20 May 2020 the Court made orders in the Second Application. [[2020] FCA 717]
46. On 25 May 2020, the Court made orders that, among other things, provided that the time within which the Administrators could issue a notice under section 443B(3) of the Corporations Act be extended to 16 June 2020 in respect of aircraft leased property. [[2020] FCA 726]

Information given to Applicants

47. The Administrators issued a notice pursuant to section 443B(3) of the Corporations Act (**443B(3) Notice**) to the Applicants on 16 June 2020 stating that the Administrators did not propose to exercise rights in relation to "the specified property in Schedule B" to the notice. A table listing each of the Engine 897193 Lease, the Engine

896999 Lease, the Engine 888473 Lease and the Engine 894902 Lease (together, the **Engine Leases**) is set out in Schedule B to the 443B(3) Notice. The table specified that Engine 896999, Engine 897193 and Engine 888473 were located at Melbourne Airport and that Engine 894902 was located at Adelaide Airport [Page 521 of the Court Book].

48. On 18 June 2020, Ian Boulton of the Administrators' firm sent an email to Garry Failler and Steve Chirico of the Applicants identifying the locations of the Engine Stands. That email also summarised the locations of the Engines, but inadvertently transposed the locations of Engine 894902 and Engine 897193 specified in the table scheduled to the 443B(3) Notice [Pages 529 to 531 of the Court Book].
49. On 8 July 2020 the Respondents provided the Applicants with access to an online "data room" containing Operator Records.
50. On and from 8 July 2020, the vast majority of the Historical Operator Records were provided by the Respondents to the Applicants.
51. Those records that have been provided are described as "Closed" in the ROIL.
52. The Respondents have not provided any of the End of Lease Operator Records to the Applicants.
53. The Respondents have not provided any of the "Lease Inspection Records from Engine Shop."

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)**

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

Date: 30 July 2020