

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/07/2020 3:47:04 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:	Submissions
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: 1/07/2020 3:47:26 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.



IN THE FEDERAL COURT OF AUSTRALIA

NSD 714 /2020

WELLS FARGO TRUST COMPANY

First Applicant

WILLIS LEASE FINANCE CORPORATION

Second Applicant

VB LEASECO PTY LTD

First Respondent

VIRGIN AUSTRALIA AIRLINES PTY LIMITED

Second Respondent

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND
RICHARD HUGHES OF DELOITTE (TOGETHER, THE 'ADMINISTRATORS')**

Third Respondent

**FIRST AND SECOND APPLICANTS' SUBMISSIONS
FOR SHORT SERVICE AND URGENT CASE MANAGEMENT HEARING**

A. Introduction to the substantive issue

1. This case presents an issue of wide significance to the aviation industry. It turns on the interpretation of Article XI.2 of the Cape Town Aircraft Protocol, in respect of which there has been no consideration by a Court of any Contracting State.
2. The First and Second Applicants (**Applicants**) are respectively the legal and beneficial owners of four aircraft engines. The engines (and associated stands, equipment, and records) were leased to the First Respondent who in turn subleased them to the Second Respondent, together **Virgin**. Each of the four engines is currently installed on four different Boeing 737 aircraft.
3. The First Applicant's rights as lessor (held beneficially for the second applicant) are an "*international interest*"¹ afforded certain rights, privileges, and immunities by the Cape Town Convention, and Cape Town Aircraft Protocol.² The Cape Town Convention and Aircraft Protocol have direct force of law in Australia and prevail over other Australian laws.³
4. Article XI.2 of the Cape Town Aircraft Protocol provides that upon the occurrence of an "*insolvency-related event*", the insolvency administrator or the debtor "*shall ... give possession of the aircraft object to the creditor*".

¹ Article 2.2(c), and Article 7, of the *Convention on International Interests in Mobile Equipment (Cape Town Convention)*, signed at Cape Town on 16 November 2001. Assented to by Australia on 1 May 2015 (subject to the matters set out in the Declarations made by Australia at the time of the deposit of its instrument of accession).

² *Protocol to the Convention on International Interests in Mobile Equipment Matters Specific to Aircraft Equipment*, signed at Cape Town on 16 November 2001, assented to by Australia on 26 May 2015 (subject to the matters set out in the Declarations made by Australia at the time of the deposit of its instrument of accession).

³ Taking force on 1 September 2015 upon the commencement by Proclamation of section 7 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* (Cth), see sections 7 and 8.

5. The Applicants seek an urgent hearing date for the issues raised by Prayers 1, 2, 3 and 4 of the Originating Process. Those issues each turn on the interpretation of the obligation in Article XI of the Cape Town Aircraft Protocol to “*give possession*” of the aircraft objects.
6. The Respondents’ position appears to be that they are permitted to disclaim the engines and are only required to provide an “*opportunity to take possession*” on an “as is, where is” basis, wherever the engines happen to be located at that time. The Applicants contend that such a position is both unreasonable, and inconsistent with the requirements of the Cape Town Convention.
7. The correspondence between the parties from 1 May 2020 in respect of the return of the engines is summarised in the Applicants’ Genuine Steps Statement filed on 30 June 2020.
8. The urgency arises because on 16 June 2020 the Administrators served a notice disclaiming the engines and stating they would pay for insurance coverage only for a further 14 days, ie until 30 June 2020. In the circumstances the Applicants cannot be certain whether the Respondents are complying with their obligations under Article XI.5 of the Cape Town Aircraft Protocol to “*preserve the aircraft object and maintain it and its value*” in accordance with the lease. It appears the Administrators may have ceased, or intend to cease, maintenance of the engines, which require timely and continuous maintenance and care.

B. Urgent first case management hearing and short service

9. In light of the above circumstances, the Applicants seek an urgent first case management hearing with a view to fixing a hearing on the first available date (prayer 10).
10. To facilitate an urgent first case management hearing the Applicants seek short service of the Originating Process (pursuant to rules 1.39 and 8.06 of the Federal Court Rules 2011 (**FCR**) (prayer 11); and substituted service (pursuant to rule 10.24 of the FCR) of the Originating Process by email to the Administrators and their solicitors who have engaged in substantial correspondence on this issue (prayer 12).
11. Counsel for the Applicants are available to appear by telephone if required.

30 June 2020



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