

NOTICE OF FILING

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Details of Filing

Document Lodged: Chronology
File Number: NSD994/2020
File Title: VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS V WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 14/09/2020 3:53:40 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.

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Rule 36.55

No. NSD994/2020

Federal Court of Australia

District Registry: New South Wales

Division: General

On appeal from the Federal Court of Australia

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

Appellants

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

Respondents

Appellants' Chronology of Relevant Events

No.	Date	Event	Evidentiary reference
1.	24 May 2019	Willis and VB Leaseco enter into an Engine Lease Support Agreement. Wells Fargo, as lessor, enters, for the benefit of Willis, into a General Terms Engine Lease Agreement with VB Leaseco, as lessee. Virgin Australia Airlines provides Wells Fargo, as lessor, a guarantee and indemnity of each aircraft engine lease agreement and each transaction document entered into or to be entered into pursuant to the General Terms Engine Lease Agreement or a lease.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [7], [8], [10] Exhibit DP-2 at 54, 65
2.	24 May 2019	Wells Fargo, as lessor, enters, for the benefit of Willis, into the Engine 897193 Lease. VB Leaseco sub-leases Engine 897193 to Virgin Australia Airlines.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [13]–[14] Exhibit DP-2 at 125, 151
3.	14 June 2019	Wells Fargo, as lessor, enters, for the benefit of Willis, into the Engine 896999 Lease. VB Leaseco sub-leases Engine 896999 to Virgin Australia Airlines.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [18]–[19] Exhibit DP-2 at 196, 220

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

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4.	28 August 2019	Wells Fargo, as lessor, enters, for the benefit of Willis, into the Engine 888473 Lease. VB Leaseco sub-leases Engine 888473 to Virgin Australia Airlines.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [23]–[24] Exhibit DP-2 at 265, 294
5.	13 September 2019	Wells Fargo, as lessor, enters, for the benefit of Willis, into the Engine 894902 Lease. VB Leaseco sub-leases Engine 894902 to Virgin Australia Airlines.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [28]–[29] Exhibit DP-2 at 339, 364
6.	20 April 2020	The Third Appellants (Administrators) are appointed as joint and several voluntary administrators of the First, Second and Fourth Appellants and certain related entities (Virgin or Virgin Companies).	Affidavit of Vaughan Strawbridge sworn 23 April 2020 at [7]
7.	24 April 2020	The Federal Court of Australia makes orders, on the Administrators' and Virgin Companies' application, that include orders under s 443B(2) of the Corporations Act excusing the Administrators from liability for property leased, used or occupied until 26 May 2020 and extending the time to give a notice under s 443B(3) of the Act until 26 May 2020.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [13](a)
8.	1 May 2020	Norton Rose Fulbright write to Clayton Utz regarding the 24 April orders. Clayton Utz circulate a draft agreement called an aircraft protocol agreement to aircraft lessors and their representatives, including Norton Rose Fulbright (Aircraft Protocol Agreement).	Affidavit of Vaughan Strawbridge sworn 11 May 2020 at [90] Affidavit of Salvatore Algeri sworn 22 May 2020 at [17] Affidavit of Dean Poulakidas sworn 30 June 2020 at [37], [39] Exhibit DP-2 at 456, 458
9.	27 May 2020	The Federal Court of Australia makes orders, on the Administrators' and Virgin Companies' application, that include orders extending the date referred to in the 24 April orders from 26 May 2020 to 16 June 2020.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [42] Affidavit of Salvatore Algeri sworn 17 July 2020 at [13](d)
10.	30 May–2 June 2020	Deloitte and Willis exchange emails regarding the Aircraft Protocol Agreement. By their email dated 2 June 2020, Willis indicate that they do not agree to sign the Aircraft Protocol Agreement and wish to	Affidavit of Dean Poulakidas sworn 30 June 2020 at [43] Exhibit DP-2 at 479

		have their engines returned to them immediately in accordance with the redelivery provisions in the leases.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [22]
11.	4 June 2020	Willis write to Deloitte stating that they wish for their engines to remain with Virgin Australia subject to the terms of their valid leases or, alternatively, renew their request that Deloitte return Willis' engines in accordance with the leases.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [44] Exhibit DP-2 at 481 Affidavit of Salvatore Algeri sworn 17 July 2020 at [22]
12.	9 June 2020	The Administrators write to Willis stating that they are not in a position to adopt the leases because to do so would be prejudicial to the administration, other creditors and potentially the success of the Administrators' sale process for the Virgin Companies.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [44] Exhibit DP-2 at 482 Affidavit of Salvatore Algeri sworn 17 July 2020 at [23]–[24]
13.	10 June 2020	Willis sends an email to Deloitte stating that Willis expects the Administrators to comply with the leases and applicable law, including the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, done at Cape Town on 16 November 2001 (CTC Protocol).	Affidavit of Dean Poulakidas sworn 30 June 2020 at [45] Exhibit DP-2 at 485 Affidavit of Salvatore Algeri sworn 17 July 2020 at [26]
14.	16 June 2020	Norton Rose Fulbright write to Clayton Utz regarding the engines and CTC Protocol.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [46] Exhibit DP-2 at 488
15.	16 June 2020	The Administrators issue a notice under s 443B(3) of the Corporations Act, under cover of a letter stating that the Administrators and companies do not intend to exercise any of their rights in respect of the property outlined in the schedule to the s443B(3) notice and proposing that Deloitte, Virgin and Willis co-ordinate the orderly return of the engines and records. Clayton Utz write to Norton Rose Fulbright in relation to the notice.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [47]–[48] Exhibit DP-2 at 490 Affidavit of Salvatore Algeri sworn 17 July 2020 at [27]
16.	16 June 2020	Willis sends an email to Deloitte regarding the engine recovery process and listing the engine, engine stand and QEC kit serial numbers.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [29] Exhibit DP-2 at 506

17.	18 June 2020	Willis sends an email to Deloitte regarding the 16 June email and engine stands.	Exhibit DP-2 at 505
18.	18 June 2020	Deloitte sends an email to Willis regarding the status of the engines, the s 443B(3) notice, and insurance and maintenance; offering to provide an estimate of costs and timing to remove and redeliver the engines; and including a table setting out the status of engines and stands and including the locations of the stands.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [48]–[49] Exhibit DP-2 at 503–505
19.	18 June 2020	Norton Rose Fulbright write to Clayton Utz regarding the s 443B(3) notice and asserting that the Administrators have a positive obligation to give possession of the equipment.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [49] Exhibit DP-2 at 496
20.	19–30 June 2020	Emails between Willis, Deloitte and Virgin, regarding engine removal, insurance, storage, preservation and transport; engine stand audit and locations; QEC kits; and digital and physical records collation. Deloitte proposes a discussion.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [52], [58], [65] Exhibit DP-2 at 502, 514 Affidavit of Salvatore Algeri sworn 17 July 2020 at [37], [39]–[41], [50]–[51] Exhibit SA-2 at 1–7, 16–17, 45–47, 60–65, 71–73
21.	19 June 2020	Norton Rose Fulbright write to Clayton Utz foreshadowing a court application. Clayton Utz respond by email.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [50]–[51] Exhibit DP-2 at 498, 500
22.	22 June 2020	Clayton Utz write to Norton Rose Fulbright regarding the s 443B(3) notice, recovery of Willis' property and the CTC Protocol.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [53] Exhibit DP-2 at 508
23.	22 June 2020	Delta sends an email to Willis claiming that Willis' engine stands are not located at Delta's facility.	Affidavit of Dean Poulakidas sworn 30 June 2020 at [57] Exhibit DP-2 at 512–513 Affidavit of Salvatore Algeri sworn 17 July 2020 at [41]
24.	23–30 June 2020	Virgin corresponds with Delta to attempt to confirm the location of Willis' engine	Affidavit of Salvatore Algeri sworn 17 July

		stands without success. Deloitte confirm those continued inquiries to Willis.	2020 at [39]–[41], [51] Exhibit SA-2 at 1–2, 45, 52–59
25.	26 June 2020	The Administrators and the Virgin Companies enter into a transaction with Bain Capital for the acquisition of the Virgin Companies' business.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [20]
26.	30 June 2020	Deloitte sends an email to Willis requesting a telephone call.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [51] Exhibit SA-2 at 1–2
27.	30 June 2020	The Respondents commence the proceedings. Brief procedural hearing before the Honourable Justice Jagot.	
28.	1–17 July 2020	Further emails between Willis, Deloitte and Virgin, regarding engine insurance, maintenance, removal, preservation and transport; engine records and further document requests; and confirmation that two engine stands are located at Delta's facility. Virgin and Deloitte correspond as to how to close out items in Willis' 'records open items' list by generating files or downloading data.	Affidavit of Garry Failler affirmed 8 July 2020 at [22], [31] Affidavit of Salvatore Algeri sworn 17 July 2020 at [32], [38], [52]–[53] Exhibit SA-2 at 1, 22–35, 86–101 Affidavit of Derych Warner sworn 22 July 2020 at [9] Exhibit DW-1 at 10–14
29.	3 July 2020	Delta confirm to Virgin that Willis' engine stands are located at Delta's facility. Deloitte relate that confirmation to Willis and send Willis photographs of the stands.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [42] Exhibit SA-2 at 71–73
30.	3–7 July 2020	The Administrators correspond with lessors to whose airframes Willis' engines are fixed.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [43]–[47] Exhibit SA-2 at 77–85
31.	4 July 2020	Norton Rose Fulbright write to Clayton Utz regarding the sale of Virgin's business.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [33]–[34] Exhibit SA-2 at 13
32.	8 July 2020	Historical operator records are made available to Willis through a secure online data room.	Affidavit of Salvatore Algeri sworn 17 July 2020 at [36], [38] Exhibit SA-2 at 27–30
33.	9 July 2020	Clayton Utz write to Norton Rose Fulbright	Affidavit of Salvatore

		regarding the collection of Willis' property and the sale of Virgin's business.	Algeri sworn 17 July 2020 at [34] Exhibit SA-2 at 14–15
34.	13 July 2020	Applicants' Interlocutory Application filed seeking leave to proceed pursuant to section 440D(1)(b) of the Corporations Act	
35.	17 July 2020	Respondents' Interlocutory Process filed seeking orders pursuant to sections 443B(8) and 447A of the Corporations Act and section 90-15 of the IPSC that the Administrators be excused from liability in respect of, and may exercise a lien over the aircraft objects in respect of their costs of identifying, caring for, preserving or facilitating the return of that property.	
36.	19 July 2020	Deloitte sends an email to Willis summarising the status of engines, stands and records.	Affidavit of Derych Warner sworn 22 July 2020 at [10] Exhibit DW-1 at 15–19
37.	31 July 2020	The primary judge hears the proceedings. His Honour indicates to the parties that he accepts Willis' position in relation to the construction of Article XI of the Aircraft Protocol that the Administrators are required to redeliver Willis' property generally in accordance with the lease. The primary judge directs the parties to propose a redelivery regime to give effect to that position, and adjourns the proceedings to 5 August 2020.	
38.	4 August 2020	Telephone call between Deloitte, Virgin and Willis to confer in relation to a redelivery proposal.	Affidavit of Darren Dunbier affirmed 5 August 2020 at [7] Affidavit of Salvatore Algeri sworn 5 August 2020 at [15]
39.	5 August 2020	Willis sends an email to Deloitte regarding a redelivery proposal.	Affidavit of Salvatore Algeri sworn 5 August 2020 at [15] and Annexure C
40.	5 August 2020	Virgin Australia Holdings Limited announces to the Australian Securities Exchange that in accordance with the restructure being undertaken at the direction of the purchaser of the business (Bain Capital), the Virgin Companies will move to an all-Boeing 737 mainline fleet for domestic and short haul operations which will mean the cessation of use of ATR, Boeing 777, Airbus A330 and Airbus	Affidavit of Salvatore Algeri sworn 5 August 2020 at [13] and Annexure B

		A320 aircraft.	
41.	5 August 2020	The resumed hearing is stood over by consent to 10 August 2020.	
42.	7 August 2020	Virgin had by this date provided versions of all historical operator engine records or resubmitted such versions in formats that were acceptable to Willis.	Affidavit of Darren Dunbier affirmed 14 August 2020 at [7]–[8]
43.	7 August 2020	Mr Ian Boulton of Deloitte prepares an example "record open items list" indicating how ferry flights to transit engines will affect records.	Affidavit of Darren Dunbier affirmed 14 August 2020 at [15] and Annexure B
44.	10 August 2020	The hearing is stood over to 11 August 2020.	
45.	11 August 2020	Further hearing before the primary judge as to the form of orders to be made. Adjourned to 17 August 2020.	
46.	17 August 2020	Further hearing before the primary judge as to the form of orders to be made. Judgment reserved.	
47.	24 August 2020	In an email sent at the request of the Associate to the primary judge, Clayton Utz notify the Associate that the redelivery regime proposed in the Dunbier Affidavit of 5 August 2020 as the most efficient method of effecting redelivery is no longer feasible.	Affidavit of Salvatore Algeri sworn 7 September 2020 at [10] and Annexure B
48.	25 August 2020	Norton Rose Fulbright write to Clayton Utz on behalf of an aircraft lessor, Perth Aircraft Leasing (UK) Limited, contending that the Administrators have, under the Cape Town Convention, a positive obligation to give possession of their client's Equipment at the Administrators' cost in accordance with the lease provisions.	Affidavit of Orfhlaith McCoy affirmed 7 September 2020 at [26] and Annexure C (filed in NSD994/2020)
49.	27 August 2020	The primary judge lists the matter for judgment on 3 September 2020 and for the hearing of any stay application on 8 September 2020.	
50.	3 September 2020	The primary judge makes orders and gives reasons for judgment.	
51.	3 September 2020	The solicitors for an aircraft lessor, Jin Shan 29 Ireland Company Limited, write to Clayton Utz, reserving their rights in relation to the decision of the primary judge.	Affidavit of Orfhlaith McCoy affirmed 7 September 2020 at [28] and Annexure D (filed in NSD994/2020)
52.	4 September 2020	Deeds of Company Arrangement proposed by Bain Capital for the Virgin Companies are approved at the second meetings of creditors.	Affidavit of Salvatore Algeri sworn 7 September 2020 at [9(e)]
53.	8 September 2020	The primary judge hears and dismisses the Appellants' stay application.	

Schedule

No. NSD994/2020

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

On appeal from the Federal Court of Australia

Appellants

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

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

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

Respondents

Second Respondent: Willis Lease Finance Corporation

Date: 14 September 2020