

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/10/2020 7:41:03 PM AEDT 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: 26/10/2020 7:41:15 PM AEDT

Registrar

Important Information

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

The 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.



**WELLS FARGO TRUST COMPANY &
WILLIS LEASE FINANCE CORPORATION**
Applicants

VB LEASECO PTY LTD & ORS
Respondents

**FIRST AND SECOND APPLICANTS' SUBMISSIONS
CASE MANAGEMENT HEARING 27 OCTOBER 2020**

Introduction

1. By Interlocutory Application dated 20 October 2020, the Applicants seek to file an Amended Originating Application, to stay the remitter proceedings pending the result of an appeal (assuming special leave is granted) to the High Court of Australia; and seeking interlocutory relief to maintain the status quo in respect of the aircraft objects pending the appeal.
2. The Applicants' Draft Short Minutes of Order for 27 October 2020 seek:
 - (a) to file the Further Amended Originating Application;
 - (b) an interim regime to maintain the status quo in respect of the Engines;
 - (c) timetabling orders for the conduct of a substantive hearing on the Application.

Timetabling the stay application

3. The stay application can be dealt with substantively on 10 November. The Applicants propose a timetable for submissions on that issue.
4. The gist of the stay application is that the remitter proceedings will prove entirely unnecessary if the Applicants are ultimately successful on appeal to the High Court. The point remains one of finely balanced construction and of international significance. Pursuing the remitter at this point, without knowing the outcome of the appeal, may prove a waste of the Court's resources, and a waste of the parties' time and legal costs.

Interim regime to maintain status quo until 10 November 2020

5. The Applicants have attempted in correspondence to reach agreement with the Respondents as to an interim regime to maintain the status quo until a hearing of the Application can take place on 10 November 2020.

6. The reason for the Applicants' concern arose from the Respondents' suggestion in paragraph 15 of the letter dated 11 October 2020 from Clayton Utz that the Respondents would: "*proceed to deal with your clients' aircraft objects according to domestic law, on the basis that your clients have elected not to exercise their self-help remedy to take possession under the Protocol*" (page 683 of Exhibit DP-3).
7. By email dated 12 October 2020 (at page 760 of Exhibit DP-3), the Applicants sought clarification of what was meant by '*deal with*' the aircraft objects, and asked for an undertaking from the Respondents not to deal with the engines. By email from Clayton Utz dated 14 October 2020, an undertaking was offered until Friday, 16 October 2020 (page 758, DP-3).
8. The Applicants sought further clarification in two emails on 16 October 2020 (pages 757, 756 DP-3). A telephone call on Monday 19 October 2020 was unsuccessful in resolving the present situation. The Applicants then prepared the present Interlocutory Process dated 20 October 2020 (formally filed the following day 21 October 2020).
9. As set out above, the Respondents refer in correspondence to "*dealing*" with the Engines in accordance with domestic law. But the Respondents are yet to explain what they would seek to do, or when they would need to do it.
10. The Applicants' instructions are that the Engines have now each been preserved and remain on stands at Virgin premises in Melbourne. On that basis, it appears nothing more needs to be done with the Engines other than for them to remain on stands with Virgin.
11. In their recent letter dated 26 October 2020, the Respondents express a desire to move the Engines to third party storage. No explanation has been given for why such storage is required, or what cost will be occasioned by the Engines remaining at Virgin.
12. Nevertheless, in an attempt to resolve the matter, the Applicants have written to the Respondents on 26 October 2020 providing an undertaking to reimburse any reasonable storage costs that the Respondents incur, if the Applicants are ultimately unsuccessful. That undertaking is reflected in Order 6.
13. On the basis of that undertaking, there is no impediment to making the interim orders sought by the Applicants in Order 2.

Filing of the Further Amended Originating Application

14. Order 1 of the Applicants' proposed Short Minutes, provides for filing of a Further Amended Originating Application. By proposed prayer 6A of the Further Amended Originating Application, the Applicants seek enforcement of the terms of the leases pursuant to Article 12 of the Cape Town Convention. That is a claim only against the Virgin entities (and not the administrators). It can be dealt with at the same time as the remitter (but would also prove unnecessary if the Applicants succeed in the High Court).
15. On the Full Court's interpretation, the Article 12 claim could not have been brought until after the lifting of the domestic law moratorium on enforcement (under s440B). That moratorium was lifted on 25 September 2020 upon the entry into the DOCA on 25 September 2020, which had the effect of terminating the administration (see section 435C). Accordingly, the Article 12 claim was not available at any earlier date.
16. By letter dated 26 October 2020 the Respondents raise a number of defences to that claim, including *Anshun* estoppel; that leave to proceed is required, or an argument that the DOCA has compromised such claims.
17. Each of those matters is open to be raised by way of substantive defence to claim, but ought not impede the filing of the Further Amended Originating Application.
18. To the extent that the Respondents argue that any part of the Article 12 claim that relies on any of the Article XI Remedies on Insolvency must be commenced while the "*insolvency proceedings*" remain on foot (see letter from Clayton Utz 26 October 2020 paragraph 3(b)(ii)) – such argument only further confirms the interests of justice require the document to be filed immediately, and any defences to be dealt with subsequently, or even determined summarily on 10 November 2020.

26 October 2020



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