

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: 31/10/2020 5:56:55 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.



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

WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) AND ANOTHER NAMED IN SCHEDULE 1

Applicants

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

Respondents

Affidavit of: Darren William Dunbier
Address: Level 11, 275 Grey Street, South Brisbane QLD 4101
Occupation: General Manager, Engineering and Aircraft Servicing
Date: 30 October 2020

Annexure	Document	Paragraph	Page
A	Photograph of Willis engine stands	9	8
B	Photograph of similarly-sized engines	9	9
C	Email from Rob Nelson to me dated 30 October 2020	12	10

I, Darren William Dunbier, General Manager, Engineering and Aircraft Servicing of Virgin Australia Airlines Pty Ltd (Subject to Deed of Company Arrangement), Level 11, 275 Grey Street, South Brisbane QLD 4101, Queensland, affirm:

1. This is the fourth affidavit I have made in these proceedings. In these proceedings I have made the following affidavits:

(a) my affidavit affirmed 17 July 2020 (**First Affidavit**);

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

- (b) my second affidavit affirmed 5 August 2020; and
- (c) my third affidavit affirmed 14 August 2020.
2. In my First Affidavit and its annexures, I set out my qualifications and experience.
3. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and on information from other employees of the Respondent companies and Virgin Tech Pty Limited (Subject to Deed of Company Arrangement) (**Virgin Tech**), which I believe to be true.
4. I have read a copy of the judgment of the Full Court of the Federal Court of Australia and understand that the Appellants were successful on the appeal (**Appeal Judgment**). I am also informed by Orfhlaith McCoy of Clayton Utz, the solicitor for the Respondents, and believe, that the Applicants have, since the Appeal Judgment was handed down, filed an application seeking the following orders:
- (a) An order that until further order of the Court, the Respondents are to preserve the aircraft objects in Schedule 2 of the Amended Originating Application filed on 28 July 2020 (**AOA**) by:
- (i) maintaining the Engines identified in Schedule 2 in accordance with paragraph 1 of Schedule 3 of the AOA; and
 - (ii) maintaining insurance cover over the aircraft objects identified in Schedule 2 of the AOA to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators to the first, second and fourth respondents.
- (b) An order that the Third Respondent cause the First Respondent, Second Respondent and Fourth Respondent to preserve each Engine, consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases (see clause 18(h) of the GTA as that term is defined in paragraph 7 of Schedule 2 of the AOA) including the following:
- (i) capping and plugging all openings of the Engine;
 - (ii) preserving the Engine for long-term preservation and storage for a minimum of 365 days in accordance with the applicable manufacturer's procedures for the Engine; and
 - (iii) completely sealing the Engine in a Moisture Vapour Proof (**MVP**) Bag provided by the Applicants or with heavy gauge vinyl plastic if the Applicants do not provide an MVP Bag; and

- (c) An order otherwise staying, until further order, these proceedings, including any application by the Respondents for declaratory relief or any matter remitted to this proceeding in accordance with the order 3 of the orders made on 7 October 2020 in proceeding NSD994 of 2020.
5. The Engines and aircraft objects identified in Schedule 2 of the AOA are currently located in the Virgin Tech Maintenance Hangar (**Maintenance Hangar**) at Melbourne Airport.
 6. As at the date of this affidavit, all of Willis' QEC kits and other Willis' accessories have been reinstalled on the Engines, the Engines have been repositioned on their titled engine stands and cradles, and the Engines have been preserved in a manner consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases,.
 7. The Virgin group leases the Maintenance Hangar from Australia Pacific Airports (Melbourne) Pty Ltd. The Virgin group also leases storage facilities adjacent to each of the major airports from which Virgin operates, including Melbourne.
 8. Virgin Tech operates its Melbourne engineering and maintenance workshop from the Maintenance Hangar. The only aircraft property Virgin Tech usually retains in the Maintenance Hangar is aircraft property supporting the servicing, repair or realignment work of the Virgin Australia fleet of aircraft.
 9. As part of the administration process and Virgin Australia re-launching with a vastly reduced fleet size and associated aircraft maintenance requirement, the historic rental of additional adjacent aircraft hangar space from the Little Group Pty Limited will cease to be required on a permanent basis. In addition all aircraft maintenance tooling and support equipment will be returned back to the Maintenance Hangar. This will further consume available storage space at the Maintenance Hangar.
 10. Whilst Virgin Tech has some storage capability within their aircraft maintenance hangars at Melbourne and Brisbane Airport, including the Maintenance Hangar, those facilities are only typically suitable for the storage of reasonably small sized packages, no greater than 1 cubic metre. For items larger than this (such as aircraft flaps, large cowls and landing gear) the storage is usually outsourced to a third party provider such as DB Schenker which provides bulk storage facilities. Third party bulk storage facilities (**Storage Facilities**) are also used for any aircraft property for which a slower delivery time to the maintenance engineer can be tolerated. Transport of aircraft engines also requires compliance with defined road transport requirements, which makes engines in any Storage Facilities slightly slower to retrieve. While the Virgin companies do store a

very limited number of engines at select safe locations in the maintenance hangars, those engines are stored in the hangars to enable ready access (having regard to the defined road transport requirements referred to above) and so that parts from those stored engines may be removed and replaced in the ordinary course of Virgin's business as needed on an interim basis to support aircraft flying operations when parts are not immediately available.

11. Virgin has been endeavouring to have Willis collect its Engines since June 2020. Since that date, Virgin has had to store, maintain, preserve and insure those Engines while the litigation continued, notwithstanding that the Engines are surplus to requirements and not being used.
12. Virgin does not have sufficient space to continue to safely store the Willis Engines for any further period.
13. Specifically, it cannot store the Willis Engines in the Maintenance Hangar because Virgin needs the limited available space to store its own operational engines in the select locations in the Maintenance Hangar that are able to accommodate engines. The Willis engines (and engine stands) are very large items (significantly greater than 1 cubic metre). Annexed to this affidavit and marked "**A**" is a photograph of a Willis Engine stand (without its engine installed). Annexed to this affidavit and marked "**B**" is a photograph of engines of the same or similar size to the Willis Engines in the Maintenance Hangar. The scale of the engine size can be observed when contrasted with the size of the two Virgin Tech engineers who are also visible in the photograph.
14. It also is not feasible to store the Willis Engines in the Maintenance Hangar on an ongoing basis. The Maintenance Hangar is a very busy facility which operates 24 hours a day, 7 days a week. Aircraft are brought into the Hangar overnight for maintenance and returned to operational service during the day when the maintenance work has been done. To enable engineering and technical works to be undertaken, cranes, hoists, bootstraps, heavy machinery and tooling are in constant use, and various tow trucks, tractors, forklifts, vehicles and persons are in motion in the facility. To avoid any unnecessary risk of collision or damage to property, once engineering works are completed on an aircraft or engine, the aircraft property is returned to service, or sent to an external storage facility for long term storage.
15. As a consequence of the COVID-19 pandemic and international and domestic government restrictions on air travel, the majority of the Virgin fleet has been in "parking" or long term storage since early 2020. However, now that aviation restrictions from the COVID-19 pandemic are starting to be reduced, the Virgin companies are presently

ramping up aircraft maintenance and return to service works on a large part of its fleet within Virgin's hangars (including the Maintenance Hangar). In those circumstances, there is limited space in the Maintenance Hangar to store the Willis Engines and, in there is also an inherent risk of damage to the Willis Engines if they are to be kept in the Maintenance Hangar from adjacent aircraft maintenance activities (for example, by reason of the operation of apparatus such as tow trolleys and tractors, fork lifts and mobile cranes).

16. If Virgin owned the Willis Engines and did not see a short term requirement for those Engines, it would place them at a suitable long term storage facility, such as that operated by DB Schenker, for safe storage.
17. Annexed to this affidavit and marked "**C**" is an email to me from Rob Nelson, Manager, Commercial Operations Services of Virgin, dated 30 October 2020 setting out a quote from DB Schenker for storing the Engines at its secure warehouse in Truganina, Victoria. DB Schenker estimate the cost of storage at AU\$250 per Engine per week (or AU\$1,000 per week for all four Engines), plus a one-off cost of AU\$1,500 for forklift hire to lift the Engines off the transport vehicle and to place them in DB Schenker's warehouse (the forklift hire cost will apply again when the Engines are being collected or retrieved). The email also identifies the volume of Virgin property which is currently held in bulk storage with DB Schenker.

Swearing of this Affidavit

18. 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.
19. I have been informed by Orfhlaith 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.

20. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Affirmed by the deponent
at Brisbane
in Queensland
on 30 October 2020
Before me:

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Signature of Darren William Dunbier

.....
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 VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN
100 686 226 & ORS**

Applicants

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

Second Applicant: 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 VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**Respondents**

First Respondent:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Second Respondent:	Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
Third Respondent	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the First and Second Respondent
Fourth Respondent	Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008



This is Annexure A referred to in the affidavit of
Darren William Dunbier

Affirmed on Before me



This is Annexure B referred to in the affidavit of Darren
William Dunbier

Affirmed on

Before me

This and the following page are Annexure C referred to in the affidavit of Darren William Dunbier

Affirmed on

Before me

From: Rob Nelson
Sent: Friday, 30 October 2020 8:58 AM
To: Darren Dunbier <Darren.Dunbier@virginaustralia.com>
Subject: Willis Engine - Schenker

Hi Darren,

Due to the size and nature our normal Schenker facilities in Melbourne are not suitable or have space. VA inflight services use a Schenker warehouse at Truganina in Melbourne. They have sufficient space there. Warehouse is fully secured, the engines will be under direct security.

Rate is \$250 per engine per week = \$1000 total per week.

Forklift hire of \$1500 to lift off and place in warehouse as Schenker do not have a suitable forklift for the size and weight.

Insurance by Schenker is capped at AUD\$25,000. VA insurance covers the remaining value.

VA uses Schenker for our offsite storage as VA does not have suitable facilities.

We hold more than 19,000 batches/serial numbers in external off-site storage.

Row Labels	Count of SN
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SCHENKER BRISBANE	18680
SCHENKER	
CHRISTCHURCH	2
SCHENKER MELBOURNE	322
SCHENKER SYDNEY	37
Grand Total	19041

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