

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/09/2020 8:25:26 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: 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: 7/09/2020 8:25:31 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.

1

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

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

**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: Orfhlaith Maria McCoy
Address: Level 15, 1 Bligh Street, Sydney
Occupation: Solicitor
Date: 7 September 2020

No	Document	Paragraph	Pages
1.	Affidavit of Orfhlaith Maria McCoy affirmed on 7 September 2020	All	1-6
2.	Annexure A	2	7-11
3.	Annexure B	3	12-14
4.	Annexure C	4	15-62

I, Orfhlaith Maria McCoy, solicitor, Level 15, 1 Bligh Street, Sydney NSW 2000, affirm:

- On 3 September 2020, the Court gave its reasons for judgment in these proceedings (**Judgment**). The Respondents have filed an appeal from the Judgment (**Appeal**) and have filed an application to seek to have the Appeal heard on an expedited timetable.

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)

[Version 3 form approved 02/05/2019]

L\336974205.1

- 2. A copy of the notice of appeal dated 7 September 2020 and filed by the Respondents on the same date is annexed to this affidavit and marked **Annexure "A"**.
- 3. A copy of the interlocutory application seeking expedition dated 7 September 2020 and filed by the Appellants in the appeal proceedings on the same date is annexed to this affidavit and marked **Annexure "B"**.
- 4. A copy of my affidavit in support of the interlocutory application, affirmed 7 September 2020 and filed by the Appellants in the appeal proceedings on the same date, is annexed to this affidavit and marked **Annexure "C"**.
- 5. As at the time of affirming this affidavit sealed copies of the documents annexed as Annexures A-C to this affidavit are not yet available.

Affirming of this affidavit

- 6. I have not been able to affirm 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.
- 7. I have been informed by Thomas John Gardner, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn or unaffirmed 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.
- 8. I will formally affirm this affidavit when circumstances allow and will file the affirmed version with the Court.

Affirmed by the deponent)
 at Sydney)
 in New South Wales)
 on 7 September 2020)
 Before me:)

.....
 Signature of Orfhlaith Maria McCoy

.....
 Signature of witness
 Thomas John Gardner, 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 VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & 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 VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & 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 Respondents

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

SCHEDULE 3

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS**Virgin entities in administration**

1. Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
2. Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
3. Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
4. Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
5. Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
6. Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
7. VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
8. Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
9. Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
10. VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059
11. VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
12. Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
13. Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
14. Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
15. Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
16. Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
17. VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
18. A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
19. Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
20. Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159

21. VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
22. Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
23. VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
24. VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
25. VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
26. Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
27. 737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859
28. 737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
29. Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
30. Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
31. Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
32. Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
33. VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
34. VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
35. VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
36. VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
37. VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
38. VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
39. Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944
40. VAH Newco No. 2 Pty Ltd (In Liquidation) (Administrators Appointed) ACN 160 881 354
41. VB Investco Pty Ltd (In Liquidation) (Administrators Appointed) ACN 101 961 095

Form 122
 Rules 36.01(1)(b); 36.01(1)(c)

Notice of appeal

Federal Court of Australia District Registry: New South Wales Division: General	No. _____ of 2020 This and the following 4 pages are Annexure A referred to in the affidavit of Orfhlaith Maria McCoy Affirmed on _____ Before me
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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

To the Respondents

The Appellants appeal from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
 of the District Registrar

Filed on behalf of (name & role of party)	The Appellants		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Tel	+61 2 9353 4000
Email	kaadams@claytonutz.com		
Address for service (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

The Appellants appeal from part of the judgment of the Federal Court of Australia given on 3 September 2020 at Melbourne.

Grounds of appeal

1. The primary judge erred in finding that the obligation of one or more of the Appellants to “give possession” of the Respondents’ aircraft objects under Art XI.2 of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (**Aircraft Protocol**) required them to deliver up the aircraft objects to the Respondents in the United States generally in accordance with the existing lease agreement terms between the parties (see at [8], [85], [87], [108], [110], [118]).
2. The primary judge ought to have found that the obligation on one or more of the Appellants to “give possession” of the Respondents’ aircraft objects under Art XI.2 of the Aircraft Protocol:
 - a. required the Appellants to make the aircraft objects available to the Respondents, which involves giving the Respondents the opportunity to take possession; and
 - b. was satisfied on the facts as found by the primary judge.
3. By reason of grounds 1 and 2 above, the primary judge erred in finding that the Court had power to frame relief in the form of orders 5 to 8 inclusive.
4. By reason of grounds 1 and 2 above, while the Court had power to make orders 4 and 9, and it was appropriate to exercise that power:
 - a. order 4 should have been framed by reference to expenses incurred in connection with the obligation on one or more of the Appellants to “give possession” (rather than by reference to compliance with orders 5 to 8), and should not have included a reference to Virgin Tech Pty Limited (Administrators Appointed); and
 - b. order 9 should have been framed by reference to the date upon which the Respondents take possession of the aircraft objects (rather than by reference to the date in order 6).
5. The primary judge erred in referring to Virgin Tech Pty Limited (Administrators Appointed) in order 4, and ought not to have made any order with respect to that entity, being a non-party to the proceedings.

Orders sought

1. Appeal allowed.
2. Order that orders 5, 6, 7, 8, 11 and 12 of the orders of the Federal Court of Australia made on 3 September 2020 be set aside.
3. Declare that the Appellants have complied with any obligation they are under to “give possession” of the Respondents’ “aircraft objects” under Art XI.2 of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.
4. Order that order 4 of the orders of the Federal Court of Australia made on 3 September 2020 be varied as follows:

~~Any expenses incurred by the Respondents or Virgin Tech Pty Limited (Administrators Appointed) (**Virgin Tech**) in complying with Orders 5 to 8 of these Orders in giving possession of the Respondents’ aircraft objects are:~~

- (a) expenses properly incurred by the Third Respondent in carrying on the business of the First, Second and Fourth Respondents ~~and Virgin Tech~~ within the meaning of section 556(1)(a) of the Corporations Act;
 - (b) debts or liabilities for which section 443D(aa) entitles the Third Respondent to be indemnified within the meaning of section 556(1)(c) of the Corporations Act from the assets of the First, Second and Fourth Respondents ~~and Virgin Tech~~; and
 - (c) debts or liabilities for which s 443D(aa) entitles the Third Respondent to be similarly indemnified within the meaning of s 556(1)(c) of the Corporations Act.
5. Order that order 9 of the orders of the Federal Court of Australia made on 3 September 2020 be varied as follows:

Pursuant to section 443B(8) and section 447A(1) of the Corporations Act, the Third Respondent be excused and relieved of personal liability to pay rent or other amounts payable under any agreement in respect of the Applicants’ aircraft objects that would otherwise have been payable by the Third Respondent pursuant to section 443B(2) from the period commencing 16 June 2020 up to

and including the date on which the Respondents take possession of their aircraft objects in Order 6 of these Orders.

6. Order that the Respondents reimburse the Appellants for any costs expended in compliance with the orders 5 and 7 of the Court below.
7. Costs of the proceeding below.
8. Costs of the appeal.
9. Such further or other orders as the Court deems fit.

Appellants' address

The Appellants' address for service is:

Place: Attention: Timothy Sackar/Kassandra Adams
C/- Clayton Utz Lawyers
Level 15, 1 Bligh Street
Sydney NSW 2000

Email: tsackar@claytonutz.com
kaadams@claytonutz.com

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 7 September 2020



Signed by Timothy James Sackar (by his
partner Orfhlaith Maria McCoy)
Solicitor for the Appellants

Schedule

No. of 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:

Interlocutory Application

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

No. _____ of 2020
This and the following 2 pages are Annexure B referred to in the affidavit of Orfhlaith Maria McCoy
Affirmed on _____ Before me _____

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

To the Respondents

1. The Appellants apply for the interlocutory orders set out in this application.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below.

Time and date for hearing:

Place:

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	The Appellants		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Tel	+61 2 9353 4000
Email	kaadams@claytonutz.com		
Address for service (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

Interlocutory orders sought

1. Order that the final hearing of this appeal be expedited.
2. Such further or other order as the Court thinks fit.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 7 September 2020

A handwritten signature in blue ink, reading "Orfhlaith Maria McCoy", is written on a light-colored rectangular background.

Signed by Timothy James Sackar (by his
partner Orfhlaith Maria McCoy)
Solicitor for the Appellants

Schedule

No. of 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

Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD of 2020

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

This and the following 47 pages are Annexure C referred to in the affidavit of Orfhlaith Maria McCoy

Respondents

Affirmed on Before me

Affidavit of: Orfhlaith Maria McCoy

Address: Level 15, 1 Bligh Street, Sydney _____

Occupation: Solicitor

Date: 7 September 2020

No	Document	Paragraph	Pages
1.	Affidavit of Orfhlaith Maria McCoy affirmed on 7 September 2020	All	1–8
2.	Annexure A	4	9–10
3.	Annexure B	6	11–27
4.	Annexure C	26	28
5.	Annexure D	28	29–33
6.	Annexure E	34	34–46
7.	Annexure F	34	47–48

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

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) _____

[Version 3 form approved 02/05/2019]

I, Orfhlaith Maria McCoy, solicitor, Level 15, 1 Bligh Street, Sydney NSW 2000, affirm:

1. I am a partner of Clayton Utz, the solicitors for the Appellants. Together with my partner Timothy Sackar, I have carriage of these proceedings.
2. I am authorised to make this affidavit on behalf of the Appellants.
3. I make this affidavit in support of the Appellants' application for an order that the appeal be expedited and heard outside the published Full Court and appellate sitting dates and for consequential directions.
4. The Respondents have indicated that they consent to the expedition of the appeal. A copy of the Respondents' solicitor's email to me communicating that consent is annexed to this affidavit and marked **Annexure "A"**.
5. I have over 23 years' experience as a legal practitioner, 14 of which have been practising in the area of restructuring and insolvency with Clayton Utz in Sydney, including 6 as a partner of Clayton Utz. I have extensive experience acting for insolvency practitioners in external administration matters.
6. In this affidavit I make reference to the affidavit of Salvatore Algeri sworn 7 September 2020 and filed in the proceedings below (**Algeri Affidavit**). A copy of the Algeri Affidavit is annexed to this affidavit and marked **Annexure "B"**.
7. Except where otherwise stated, I make this affidavit from facts within my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
8. I am informed by the Appellants that, in applying for expedition, they appreciate and have taken into account the difficulty to the Court in accommodating an urgent hearing in circumstances where the Court has other important business and faces challenges posed by the COVID-19 pandemic.

Relevant factual background

9. The Third Appellants are the joint and several voluntary administrators of the First, Second and Fourth Appellants and thirty-eight related companies (together, **Virgin Companies**). At the time of the appointment of the Third Appellants the Virgin Companies operated in the domestic and international passenger and cargo airline business offering a variety of aviation products and services to the Australian aviation market, including corporate, government, leisure, low cost, regional and charter travellers and air freight customers. The Virgin Companies employed approximately 10,000 people nationally at the time of the Third Appellants' appointment. The Virgin

Companies operated a fleet of 144 owned and leased or financed aircraft and other aircraft property, including 17 leased engines.

10. Prior to the appointment of the Third Appellants, the First, Second and Fourth Appellants leased or operated aircraft engines owned by the Respondents (**Willis Property**).
11. Due to the impact of the COVID-19 pandemic on the Virgin Companies' business, the Willis Property has not been used or operated (other than for essential maintenance reasons) since the date of appointment of the Third Appellants.

Background to appeal

12. On 30 June 2020, after a dispute arose between the parties as to the Appellants' obligations with respect to the Willis Property, the Respondents brought proceedings NSD714 of 2020 in the Court below.
13. On 3 September 2020, judgment was handed down in those proceedings in favour of the Respondents (**First Instance Decision**).
14. On 7 September 2020, the Appellants filed a Notice of Appeal, appealing the First Instance Decision.
15. The appeal relates to the operation of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (**Protocol**), which relevantly requires an insolvency administrator or debtor, as applicable, to cure all defaults under a lease of aircraft objects, or to "*give possession of the aircraft object to the creditor*" no later than 60 calendar days after an insolvency event. More specifically, the appeal raises the question of what the Appellants are required to do in order to comply with their obligation to "*give possession*" of the Respondents' aircraft objects under Article XI(2) of the Protocol. This will turn on the proper construction of the phrase "*give possession of the aircraft object to the creditor*" in that Article.
16. In my opinion the hearing of the appeal should take no longer than 1 day.

The importance of expedition for aircraft lessors and lessees generally

17. The Protocol has been widely ratified, including in the world's largest economies, and almost all ratifying countries have declared that they have adopted Alternative A to Article XI, which is central to this appeal.
18. As at the date of this affidavit, I believe that the First Instance Decision is the only judgment on the construction of the phrase "*give possession of the aircraft object to the creditor*" in Article XI(2) of the Protocol.

19. In view of the devastating economic effect of the COVID-19 pandemic on commercial aviation and the paucity of judicial consideration of the main issue in the appeal, I believe that the disposition of this appeal is of urgent importance to aircraft lessors and lessees throughout the world, including to the First, Second and Fourth Respondents and the lessors of the 62 aircraft and up to 15 engines impacted by the Fleet Restructure described in paragraphs 10-13 of the Algeri Affidavit, because the First Instance Decision clarifies the obligations on aircraft lessees and insolvency administrators with respect to leased aircraft objects in an insolvency context.

The importance of expedition for the Appellants

20. The Appellants seek to have the appeal heard on an expedited basis for the following reasons.
21. First, the *Corporations Act 2001* (Cth) (**Act**) and the deeds of company arrangement approved by creditors of the Virgin Companies at the meetings of creditors of the Virgin Companies held on 4 September 2020 (**DOCAs**) contemplate that the Third Appellants will cease to be external administrators of the First, Second and Fourth Appellants when their functions and duties as voluntary administrators and deed administrators under the Act and the DOCAs have been discharged.
22. Pursuant to section 444B(2) of the Act, the DOCAs must be executed within 15 business days of 4 September 2020 and it is anticipated at the present time that the relevant steps to completion of the DOCAs will be satisfied by 31 October 2020, at which time the Virgin Companies will cease to be in external administration and a pool of funds will be made available for distribution to creditors of the Virgin Companies through a Creditors' Trust which will be established as one of the steps to completion of the DOCAs.
23. The obligations under Article XI(2) of the Protocol are imposed not only on debtor companies but also insolvency administrators and the Third Appellants were accordingly made parties to the first instance proceedings (and are Appellants in the appeal). It would, in my view, be preferable for the appeal to be determined (if possible) while the Third Appellants remain in office as insolvency administrators of the other Appellants and retain the powers of their office.
24. Secondly, as explained in the Algeri Affidavit at paragraphs 10 to 13, the Virgin Companies' fleet is undergoing a very significant restructure in connection with the external administrations of the companies. The Appellants must coordinate the exceptionally complex and resource-intensive logistical exercise of facilitating repossession by lessors of a large amount of aircraft equipment. At the same time, the business of Virgin Companies is being restructured in connection with the Bain Capital

DOCAs so as to continue operating as a viable business (utilising the same regulatory, technical, engineering and leasing resources as are currently undertaking the Fleet Restructure exercise). I am informed by Salvatore Algeri, one of the Third Appellants, and believe that an ongoing requirement to store and maintain the Willis Property pending an appeal heard in the next Full Court sitting dates (or, if no stay is granted, an obligation to take steps to return that Property) would impede the Fleet Restructure and the Virgin Companies' day-to-day business by imposing additional demands on the Appellants' maintenance, storage and technical staff and facilities. The additional costs of continuing to remain in possession of the Willis Property (both in terms of the direct costs of preserving that property and any general increase in the costs of the Fleet Restructure caused) will ultimately be borne by the unsecured creditors of the Virgin Companies. Expedition of the appeal will limit the impact of retention of the Willis Property on the Appellants, and facilitate the efficient conduct by the Appellants and Bain Capital of the Fleet Restructure and the rehabilitation of the Virgin Companies' day-to-day business.

25. Thirdly, I am informed by Salvatore Algeri, and believe, that he considers that there is a risk that some misconceptions or uncertainty about the Protocol will arise amongst the many lessors with which the Appellants are liaising as part of the Fleet Restructure flowing from the First Instance Decision.
26. Since the hearing of the First Instance Proceedings, a number of aircraft lessors who have been notified by Bain Capital that their property is surplus to the requirements of the Virgin Companies' business have asserted a positive right to redelivery of their aircraft property in accordance with the terms of their underlying leases, or have reserved their rights to do so. This is so, notwithstanding the fact that such lessors have entered into Aircraft Protocol Agreements with the Virgin Companies, which do not confer a right on the lessors to have their aircraft property redelivered in accordance with the terms of their underlying leases. Annexed to this affidavit and marked **Annexure "C"** is a copy of a letter dated 25 August 2020 from Norton Rose Fulbright to my partners Graeme Tucker and Timothy Sackar sent on behalf of Perth Aircraft Leasing (UK) Limited in which Messrs Norton Rose Fulbright state:
- "... our client contends that, upon termination of the Aircraft Protocol (whether that be by issuing a section 443B Notice or otherwise) your clients have, under the Cape Town Convention, a positive obligation to give possession of our client's Equipment at their cost in accordance with the lease provisions. Unless your clients agree with those propositions, the redelivery process is, unfortunately, not a purely commercial logistical matter."*
27. I have redacted from the letter at Annexure C a paragraph which was expressed to be without prejudice, to preserve the confidentiality of that communication.

28. On 3 September 2020, Clayton Utz received a letter from the solicitors for Jin Shan 29 Ireland Company Limited, which leases aircraft to the Second Appellant. A copy of that letter is annexed to this affidavit and marked **Annexure "D"**. The letter states (in relevant part):
- "[...] we note the decision published today by the Federal Court of Australia in Wells Fargo Trust Company, National Association (trustee) v VB Leaseco Pty Ltd (administrators appointed) [2020] FCA 1269. Jin Shan is considering that decision and its relevance to the Leases, and in the meantime reserves all of its rights."*
29. The remainder of the letter at Annexure D does not pertain to the issues in these proceedings and has been redacted to preserve the commercial confidentiality of the matters set out therein.
30. Any misconceptions or uncertainty on the part of other lessors risks disrupting the Fleet Restructure process and creating potentially multiple other parallel legal disputes between the Appellants and those lessors about the Protocol. Those risks can be minimised if the appeal is expedited.

The importance of expedition for the Respondents

31. As I noted above at paragraph 4, on 7 September 2020, the Respondents indicated, by their solicitor, that they consent to the expedition of the appeal. A copy of the Respondents' solicitor's email to me communicating that consent is annexed to this affidavit and marked **Annexure "A"**.
32. The Respondents' consent to expedition is consistent with their conduct of the proceedings in the Court below, and reflects the fact that, from the perspective of a lessor, the 60 calendar day timing requirement in Article XI(2) of the Protocol would be undermined unless any dispute as to the proper interpretation of the Protocol could be resolved quickly.
33. Once it became apparent that the Respondents did not wish to enter into an Aircraft Protocol Agreement for the purposes of the Willis Property being retained for consideration by Bain Capital as part of the ongoing operations of the Virgin Companies, the Appellants served a notice on the Respondents on 16 June 2020, before the end of the 60 day period, to invite the Respondents to take possession of the Willis Property. On 30 June 2020, after a dispute arose between the parties as to the correct interpretation of Article XI(2) of the Protocol and the efficacy of the Appellants' notice, the Respondents commenced proceedings with a duty application for short service and substituted service on approximately 90 minutes' notice to the Appellants, with a view to having an urgent case management hearing listed for the following day and an urgent final hearing listed for the first available date.

34. A copy of the Respondents' originating process, prayer 10 of which sought urgent hearing dates, is annexed to this affidavit and marked **Annexure "E"**. A copy of the Respondents' submissions in support of their application for short service and urgent hearing dates is annexed to this affidavit and marked **Annexure "F"**.
35. It is relevant in this context to note that on 7 September 2020, the Appellants filed an interlocutory process in the first instance proceedings seeking a stay, pending appeal, of Orders 5, 6, 8 and 12 of the Orders made by the primary judge on 3 September 2020. A copy of the interlocutory process is annexed to this affidavit and marked **"Annexure G"**.
36. The Appellants' application for a stay of Orders 5, 6, 8 and 12 of the Orders made by the primary judge on 3 September 2020 is listed for hearing before the primary judge on 8 September 2020. Expedition of the appeal will minimise the period of the stay, if the stay is granted. Expedition will therefore help to minimise any disadvantage to the Respondents occasioned by any stay.

Affirming of this affidavit

37. I have not been able to affirm 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.
38. I have been informed by Thomas John Gardner, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn or unaffirmed 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.
39. I will formally affirm this affidavit when circumstances allow and will file the affirmed version with the Court.

Affirmed by the deponent)
 at Sydney)
 in New South Wales)
 on 7 September 2020)
 Before me:

Signature of Orfhlaith Maria McCoy

Signature of witness
 Thomas John Gardner, solicitor.

Schedule

No. of 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: 7 September 2020

Gardner, Tom

From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Monday, 7 September 2020 7:59 AM
To: Glavac, Mikhail
Cc: Lee, Veronica; Khan, Safiyya; Zhu, Julie; McCoy, Orla; Project Volar; Gardner, Tom
Subject: Re: VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) [CU-Legal.FID3017446]

Dear Mikhail

We are instructed to consent to the expedition of any appeal and to oppose any application for stay of the orders made on 3 September 2020.

Kind regards

Noel McCoy | Partner
 Norton Rose Fulbright Australia
[Level 5, 60 Martin Place, Sydney, Australia](#)
 Tel [+61 2 9330 8133](#) | Mob [+61 414 764 525](#) | Fax [+61 2 9330 8111](#)
noel.mccoy@nortonrosefulbright.com

This and the following page are Annexure A referred to in the affidavit of Orfhlaith Maria McCoy

Affirmed on _____

Before me _____

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

On 4 Sep 2020, at 8:05 am, Glavac, Mikhail <mglavac@claytonutz.com> wrote:

Dear Noel

VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) (Proceeding)

We refer to the judgment issued in the Proceeding yesterday (**Judgment**). We have instructions to appeal to the Court from the Judgment and will seek to have the appeal expedited and heard as soon as possible.

Can you please confirm at your earliest convenience and in any case by no later than **10am Monday (7 September 2020)** whether your clients agree that the appeal should be expedited? If your clients are agreeable to that course (which would appear to us to be in the parties' common interest and consistent with the urgency your clients expressed at the case management hearing on 30 June 2020), we will approach the registry on Monday, providing you with the opportunity to review any written correspondence with the registry before it is sent.

Further, as your clients are aware, our clients intend to seek a stay on enforcement of orders 5, 6, 8 and 12 of the orders made today in the Proceeding (**Stay Application**), to preserve the status quo pending resolution of the appeal. Complying with orders 5, 6 and 8 (which mandate redelivery to your clients in accordance with the regime set out in Schedules 2 and 3) would render the appeal nugatory, given that the question of what is required by our clients to "give possession" of your clients' aircraft objects is the key issue to be determined on appeal. The payment of the costs of the first instance proceeding (order 12) should also be stayed pending resolution of the appeal, given that they will need to be repaid if our clients are successful on appeal. In our clients' view, your clients will not suffer any significant detriment from a stay, given that our clients will continue to insure and maintain your clients property in accordance with order 7 (which will not be subject to the stay). In our clients' view, the circumstances decisively favour the granting of the Stay Application (see, for example, the principles summarised in *Penrith Whitewater Stadium Ltd v Lesvos Pty Ltd* [2007] NSWCA 103 at [18] to [20]).

Noting that our clients' evidence and submissions in support of the Stay Application are due to be filed by 4pm on Monday, 7 September 2020, can you please also confirm by **10am Monday** whether your clients intend to oppose the Stay Application? We would also suggest that the Stay Application may be a factor for your clients' consideration of

whether the appeal should be expedited, given that the stay (if granted) will expire at the time judgment is handed down on the appeal.

Kind regards,

Mikhail Glavac, Senior Associate

Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

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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

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS

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

Applicants

This and the following 16 pages are Annexure B
 referred to in the affidavit of Orfhlaith Maria McCoy

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

Affirmed on _____ Before me _____

Respondents

Affidavit of: Salvatore Algeri

Address: 447 Collins Street, Melbourne, Victoria 3000

Occupation: Registered Liquidator and Chartered Accountant

Date: 7 September 2020

No	Document	Paragraph	Pages
1.	Affidavit of Salvatore Algeri sworn on 7 September 2020	All	1–11
2.	Annexure A	7	12–13
3.	Annexure B	10	14–17

I, Salvatore Algeri, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), of 447 Collins Street, Melbourne, Victoria 3000, Registered Liquidator and Chartered Accountant, say on oath:

- I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I practise as

Filed on behalf of (name & role of party) The Applicants
 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) _____

[Version 3 form approved 02/05/2019]

- an accountant specialising in corporate restructuring and insolvency-related matters, with key experience in the consumer business, retail and transport sectors.
2. I am one of the four joint and several voluntary administrators of the First, Second and Fourth Respondents and the other 38 companies set out in schedule 3 to this affidavit (collectively, the **Virgin Companies**), together with Mr Vaughan Strawbridge, Mr John Greig and Mr Richard Hughes (together, the **Administrators** and each an **Administrator**). Mr Strawbridge, Mr Greig and Mr Hughes are also partners of Deloitte. The Administrators are the Third Respondents in the proceeding.
 3. I am authorised by Mr Strawbridge, Mr Greig and Mr Hughes to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the views which I and each of Mr Strawbridge, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
 4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information that staff members at Deloitte and I have obtained in connection with my role as an Administrator of the First, Second and Fourth Respondents and the other Virgin Companies, which I believe to be true.
 5. This is the fourth affidavit I have made in these proceedings. In this affidavit, I refer to:
 - (a) the affidavit of Darren Dunbier affirmed 17 July 2020 (**First Dunbier Affidavit**);
 - (b) my affidavit sworn 5 August 2020 (**Second Affidavit**);
 - (c) the affidavit of Darren Dunbier affirmed 5 August 2020 (**Second Dunbier Affidavit**) (I adopt the definition of **Willis Property** used in that affidavit); and
 - (d) the affidavit of Darren Dunbier affirmed 14 August 2020 (**Third Dunbier Affidavit**),each filed in these proceedings.
 6. On 3 September 2020, the Court gave its reasons for judgment in these proceedings (**Judgment**). I have instructed the Respondents' solicitors, Clayton Utz, to file an appeal from the Judgment (**Appeal**) and to seek to have the Appeal heard on an expedited timetable. The notice of appeal and application for expedition are being prepared and I am informed by Orfhlaith Maria McCoy, a partner of Clayton Utz with carriage of this matter, that they should be filed and served either this evening or early tomorrow. I make this affidavit in support of the Respondents' application for a stay on enforcement of orders 5, 6, 8 and 12 of the orders made in these proceedings on 3 September 2020 (**Orders**), pending the resolution of the Appeal.

7. The Applicants have indicated that they consent to the expedition of the Appeal but oppose a stay of the Orders. A copy of the Applicants' solicitor's email to my solicitors communicating that opposition is annexed to this affidavit and marked Annexure "A".

Orders 5, 6, 8 and 12 should be stayed pending the Appeal

8. Orders 5, 6 and 8 of the Orders require the Respondents to deliver the Willis Property to the Applicants as soon as possible but by no later than 15 October 2020 in accordance with the detailed regime set out in schedule 3 to the Orders (**Redelivery Regime**). Order 12 of the Orders requires the Respondents to pay the Applicants' costs of the first instance hearing.
9. I respectfully request that Orders 5, 6, 8 and 12 of the Orders be stayed pending the Appeal for the following reasons:
- (a) the Respondents are challenging the Court's decision that the Respondents are required by the Cape Town Convention to redeliver the Willis Property to the Applicants broadly in accordance with the terms of the applicable leases in the Appeal. If the Respondents are required to redeliver the Willis Property in the meantime, there is a risk that the Appeal will be frustrated on the key issue, as the very obligation in issue on the Appeal will already have been performed;
 - (b) the frustration of the Appeal by reason of the redelivery of the Willis Property cannot, in my view, be avoided by requiring the Applicants to reimburse the Respondents for the full costs expended in carrying out the redelivery. This is because the Applicants are based in the United States of America and, to the best of my knowledge, neither has any or any significant assets in Australia, other than the Willis Property. If the stay is not granted, but the Appeal is successful, the Respondents may have to take steps in in the United States of America or another foreign jurisdiction to enforce their rights to recover the costs of redelivery of the Willis Property and the costs of the first instance proceedings. That may not be practically possible given the administration of the Virgin Companies, which is an interim regime, only. In those circumstances, there is a significant measure of uncertainty associated with the Respondents' ability to recover the costs of redelivery and the costs of the first instance proceedings;
 - (c) even if costs expended on carrying out the Redelivery Regime and the costs of the first instance hearing are ultimately able to be recovered from the Applicants should the Appeal succeed, I expect there will be a substantial delay in recovering such costs by reason of the enforcement steps required. A delay in receiving reimbursement from the Applicants if the Appeal is successful will, in my view, make

the distribution of such funds to creditors of the Respondent companies challenging, in circumstances where the administration of those companies may be complete by the time those costs are recovered. Such a delay would therefore cause detriment in excess of \$1 million to the Respondents;

- (d) further, once again assuming that costs expended in carrying out the Redelivery Regime are, in theory, able to be recovered from the Applicants in circumstances where the Appeal is successful, there is a real risk of further disputation between the parties as to what costs expended on the Redelivery Regime are properly recoverable should the Appeal succeed given that the Applicants and Respondents have filed competing evidence in respect of what they each consider to be the most cost-effective and expeditious means of redelivering the Willis Property. That dispute may give rise to satellite litigation and further costs for both the Applicants and the Respondents, as well as delays in the final resolution of these proceedings, which would be avoided should the orders be stayed;
- (e) as set out in the First Dunbier Affidavit at paragraph 16 and paragraph 54 of my First Affidavit, redelivery of the Willis Property is likely to cost in the order of AU\$1 million (and may potentially be higher now, in circumstances where the COVID-19 pandemic continues to affect the cost of air-freight), which will ultimately be borne by unsecured creditors of the Respondent companies. In circumstances where the Administrators are presently forecasting a return of 9c to 13c on the dollar for ordinary unsecured creditors under the deed of company arrangement proposals put forward by Bain Capital which were approved by creditors on 4 September, I am concerned as to the appropriateness of incurring such substantial costs given that an Appeal is pending, and, if the Appeal is successful, those costs would not have to be incurred at all;
- (f) order 12 of the Orders requires the Respondents to pay the Applicants' costs of the first instance proceedings, but if it is set aside on appeal, the Applicants will likely be required to repay those costs. To avoid complexities associated with repayment, in circumstances where the Respondent companies are in administration, it is preferable to preserve the status quo on costs pending the resolution of the Appeal;
- (g) the Appeal is being sought on an expedited basis, which, if such expedition is granted, will minimise the duration of the stay sought by the Respondents, and thereby minimise any detriment to the Applicants associated with a stay;
- (h) there is unlikely to be significant detriment to the Applicants caused by a stay given that the Respondents will continue to preserve the Willis Property as required by order 7 of the Orders for the duration of any stay ordered by the Court and the First,

Second and Fourth Respondents will, if the appeal is unsuccessful, have sufficient funds to complete redelivery to the Applicants.

Difficulties with the Redelivery Regime

10. In an email from Mikhail Glavac of Clayton Utz sent on 24 August 2020 and annexed to this affidavit and marked Annexure "B", my solicitors notified the Court that the Redelivery Regime was no longer feasible. In the following paragraphs, I explain why that is so. It follows that, if orders 5, 6, 8 and 12 are not stayed, an application pursuant to Order 11 of the Orders or an agreement with the Applicants to vary the terms of Schedule 3 to the Orders will be necessary.
11. As a consequence of the external administrations of the Virgin Companies, the Virgin Companies (including the First, Second and Fourth Respondents) are currently undergoing a very significant operational restructure as part of the transaction concluded with Bain Capital, the purchaser of the business and assets of the Virgin Companies.
12. As noted at paragraphs 13 to 14 of my Second Affidavit and paragraph 22 of the Second Dunbier Affidavit, Bain Capital has determined that the Respondent companies will operate only one type of aircraft as part of its restructured and streamlined operations following its exit from external administration (**Fleet Restructure**). The consequences of that determination are that all aircraft and aircraft objects other than the aircraft property subject to the leases which Bain Capital intends the Respondents to continue following external administration, are in the process of being readied for repossession by the owners and lessors of that property and a number of notices pursuant to section 443B of the Corporations Act have been issued and will be issued by the Administrators. The Fleet Restructure process involves the regulatory, technical and engineering preparation for collection and transit of 62 aircraft and up to 15 engines and other aircraft property. As at the date of this affidavit, 48 aircraft and up to 15 engines (excluding the Willis Property) remain to be readied for the purpose of being repossessed in the next 3 weeks.
13. Since being appointed as administrator of the Virgin Companies I have come to learn that, in the aviation industry, aircraft, engines and other aircraft property are regularly interchanged for maintenance, for technical reasons and for reasons of administrative convenience. This means that any one airframe could have attached to it the leased property of multiple other aircraft object lessors, and the corresponding engines and aircraft property of the airframe lessor could be attached to several other airframes. That practice was adopted by the Respondent companies such that making all leased property which is surplus to the requirements of the Respondent companies available to the lessors of that surplus property involves the Administrators and the Virgin teams

addressing enormous practical complexities and challenges. This includes multiple requests for the repositioning, realignment and return of a very large quantity of aircraft property (in addition to the Willis Property), requiring the consent of the relevant lessors, often in circumstances where the consent of multiple lessors is required in respect of one aircraft, and where such agreements are reached, identifying and allocating the necessary Virgin resources to facilitate the exercise, all in a very short space of time.

14. The Respondent companies' resources and facilities are not set up for an immediate and large scale aircraft property return exercise. Meanwhile, resources and facilities must be used to preserve existing day-to-day operations and readying the remaining fleet of approximately 60 aircraft for operations following external administration. The operational maintenance of the entire fleet is onerous, given the complexity of aircraft property and its stringent regulatory and safety requirements.
15. For a number of weeks, daily calls have been held with up to 35 key members of the relevant teams, including representatives of Bain Capital, to plan the logistics of the Fleet Restructure exercise and report on progress. Any decision taken in respect of any single aircraft can have a flow on effect on planning and resourcing and the ability to meet other deadlines and commitments to other lessors. The scale of the task facing the Virgin regulatory, technical, engineering and leasing teams, and the Administrators in relation to the Fleet Restructure is unprecedented. It is made more difficult by reason of the fact that it is being undertaken during the COVID-19 pandemic and the insolvency of Virgin.
16. While the Redelivery Proposal set out in paragraph 5 of the Second Dunbier Affidavit (the contents of which is not substantively different from the contents of the Redelivery Regime) was the most cost-effective and efficient method of effecting redelivery of the Willis Property as at the date of that affidavit (5 August 2020 or 29 days ago), it is no longer feasible. This is because:
 - (a) (by agreement with the Applicants) Engine 894902 has already been flown from Adelaide to Melbourne;
 - (b) (by agreement with the Applicants) borescope checks have been conducted on each of the engines in Melbourne by Virgin Tech, meaning that the inspections at Delta contemplated in Schedule 3 of the Redelivery Regime would be duplicative;
 - (c) due to the passage of time and uncertainty as to outcome between the date of the Redelivery Proposal and the date of judgment, the Respondents have not reached agreement with third parties, such as Delta, for assistance and services as contemplated in the Redelivery Regime, which may not now be available; and

(d) due to the immediate and practical challenges that now face the Respondents' resources and facilities in connection with the Fleet Restructure, it is now unlikely that there will be any airframe that is available to undertake both of the ferry flights contemplated in paragraph 5 of the Second Dunbier Affidavit and alternative arrangements such as air freight would need to be planned and implemented.

- 17. In light of the Fleet Restructure, it is also extremely difficult to determine the most cost effective and expeditious means of delivering the Willis Property to the Applicants or to estimate how long the redelivery process may take. That is because the expense and time required will turn on the precise stage of the Fleet Restructure at the time redelivery occurs, including the availability and capacity of staff and facilities and the location and configuration of aircraft property, which is changing on a daily basis. Any redelivery proposal is also subject to the actions of third parties, including critical creditors of the Respondent companies, whose support is required in order to effect redelivery.
- 18. Accordingly, if the stay is refused, the Respondents will seek to agree a new redelivery proposal with the Applicants or, failing agreement, will exercise of their liberty to apply pursuant to order 11 of the Orders.

Swearing of this affidavit

- 19. 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.
- 20. 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.
- 21. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent)
 at Melbourne)
 in Victoria)
 on 7 September 2020) Signature of Salvatore Algeri
 Before me:)

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 VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & 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 VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & 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 Respondents
Fourth Respondent	Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008

SCHEDULE 3

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

No. NSD 714 of 2020

IN THE MATTER OF VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS**Virgin entities in administration**

1. Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
2. Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
3. Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
4. Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
5. Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
6. Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
7. VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
8. Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
9. Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
10. VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059
11. VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
12. Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
13. Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
14. Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
15. Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
16. Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
17. VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
18. A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
19. Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
20. Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159

21. VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
22. Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
23. VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
24. VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
25. VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
26. Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
27. 737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859
28. 737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
29. Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
30. Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
31. Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
32. Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
33. VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
34. VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
35. VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
36. VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
37. VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
38. VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
39. Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944
40. VAH Newco No. 2 Pty Ltd (In Liquidation) (Administrators Appointed) ACN 160 881 354
41. VB Investco Pty Ltd (In Liquidation) (Administrators Appointed) ACN 101 961 095

Gardner, Tom

From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>
Sent: Monday, 7 September 2020 7:59 AM
To: Glavac, Mikhail
Cc: Lee, Veronica; Khan, Safiyya; Zhu, Julie; McCoy, Orla; Project Volar; Gardner, Tom
Subject: Re: VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) [CU-Legal.FID3017446]

Dear Mikhail

We are instructed to consent to the expedition of any appeal and to oppose any application for stay of the orders made on 3 September 2020.

This and the following page are Annexure A referred to in the affidavit of Salvatore Algeri

Kind regards

Noel McCoy | Partner
 Norton Rose Fulbright Australia

[Level 5, 60 Martin Place, Sydney, Australia](#)

Tel [+61 2 9330 8133](#) | Mob [+61 414 764 525](#) | Fax [+61 2 9330 8111](#)

noel.mccoy@nortonrosefulbright.com

Sworn on _____

Before me _____

NORTON ROSE FULBRIGHT

Law around the world

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On 4 Sep 2020, at 8:05 am, Glavac, Mikhail <mglavac@claytonutz.com> wrote:

Dear Noel

VB Leaseco Pty Ltd (Administrators Appointed) & Ors ats Wells Fargo Trust Company, National Association (as Owner Trustee) & Anor (NSD714/2020) (Proceeding)

We refer to the judgment issued in the Proceeding yesterday (**Judgment**). We have instructions to appeal to the Court from the Judgment and will seek to have the appeal expedited and heard as soon as possible.

Can you please confirm at your earliest convenience and in any case by no later than **10am Monday (7 September 2020)** whether your clients agree that the appeal should be expedited? If your clients are agreeable to that course (which would appear to us to be in the parties' common interest and consistent with the urgency your clients expressed at the case management hearing on 30 June 2020), we will approach the registry on Monday, providing you with the opportunity to review any written correspondence with the registry before it is sent.

Further, as your clients are aware, our clients intend to seek a stay on enforcement of orders 5, 6, 8 and 12 of the orders made today in the Proceeding (**Stay Application**), to preserve the status quo pending resolution of the appeal. Complying with orders 5, 6 and 8 (which mandate redelivery to your clients in accordance with the regime set out in Schedules 2 and 3) would render the appeal nugatory, given that the question of what is required by our clients to "give possession" of your clients' aircraft objects is the key issue to be determined on appeal. The payment of the costs of the first instance proceeding (order 12) should also be stayed pending resolution of the appeal, given that they will need to be repaid if our clients are successful on appeal. In our clients' view, your clients will not suffer any significant detriment from a stay, given that our clients will continue to insure and maintain your clients property in accordance with order 7 (which will not be subject to the stay). In our clients' view, the circumstances decisively favour the granting of the Stay Application (see, for example, the principles summarised in *Penrith Whitewater Stadium Ltd v Lesvos Pty Ltd* [2007] NSWCA 103 at [18] to [20]).

Noting that our clients' evidence and submissions in support of the Stay Application are due to be filed by 4pm on Monday, 7 September 2020, can you please also confirm by **10am Monday** whether your clients intend to oppose the Stay Application? We would also suggest that the Stay Application may be a factor for your clients' consideration of

whether the appeal should be expedited, given that the stay (if granted) will expire at the time judgment is handed down on the appeal.

Kind regards,

Mikhail Glavac, Senior Associate

Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

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Gardner, Tom

From: Glavac, Mikhail
Sent: Monday, 24 August 2020 3:52 PM
To: 'McCoy, Noel'; 'Associate MiddletonJ'; 'Lee, Veronica'; 'Zhu, Julie'; McCoy, Orla; Project Volar; 'Khan, Safiyya'; Gardner, Tom
Cc: 'EA - Middleton J'
Subject: RE: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

This and the following 3 pages are
 Annexure B referred to in the affidavit of
 Salvatore Algeri

Dear Associate

We are instructed as follows in relation to items 1, 3 and 4 (adopting the subheadings in Mr McCoy's email below).

Sworn on Before me

1. Transcript page 9.25 (re wording of item 7)

The Respondents' are content with the Applicants' proposed wording _____

3. Transcript page 16.15 (re timetable)

We are instructed as follows (by reference to schedule 3 to the Applicants' short minutes of order (**Schedule 3**) and paragraph 5 of the affidavit of Mr Dunbier dated 5 August 2020 (**Second Dunbier Affidavit**)):

- a) the ferry flight of Engine 894902 from Adelaide to Melbourne on airframe VH-VUT has taken place, such that all four of the Applicants' Engines are presently attached to airframes at Melbourne Airport (Schedule 3 at [1(b)] and Second Dunbier Affidavit at [5(a)]);
- b) none of the Applicants' Engines is now affected by any claimed lien (Second Dunbier Affidavit at [7(b)]); and
- c) the "c-checks" have been undertaken by the Respondents for each of the Engines (Second Dunbier Affidavit at [5(a)]).

We are further instructed that the Redelivery Proposal set out in Schedule 3 and the Second Dunbier Affidavit may need to be amended due to the practical challenges presently facing the Virgin Tech and engineering teams. Specifically, it no longer appears feasible to transport all four engines to the Delta Facility by ferry flights. It may ultimately be necessary to transport at least two of the engines by air freight.

We note our clients' instructions with respect to the Redelivery Proposal to keep the Court informed, only. We do not seek to reopen the issue or to seek liberty to apply to put forward an alternative redelivery proposal at this time. As foreshadowed at the hearing, once the Court delivers its reasons and makes orders in this matter, the Respondents intend to apply for a stay of the Court's orders pending the determination of the Respondents' foreshadowed appeal, so as to preserve the status quo. If the Respondents' application for a stay succeeds, the redelivery proposal will not be progressed until the determination of the Respondents' foreshadowed appeal. If that application fails, the parties can exercise their liberty to apply in respect of the redelivery proposal (or, alternatively, an amendment can be agreed in writing pursuant to the mechanism in item 4 below).

4. Transcript page 7.31 (re additional wording for Schedule 3, order 1)

The Respondents agree that Schedule 3, paragraph 1 ought to be prefaced with the words "*Unless the parties otherwise agree in writing*".

Kind regards,

Mikhail Glavac, Senior Associate
Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: Glavac, Mikhail

Sent: Monday, 24 August 2020 12:12 PM

To: 'McCoy, Noel' <noel.mccoy@nortonrosefulbright.com>; Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>
 Cc: EA - Middleton J <EA.MiddletonJ@fedcourt.gov.au>
 Subject: RE: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

Dear Associate

In relation to item 2, please see **attached** the respondents' submissions as to the form of costs order which should be made by the Court. We will proceed to file the submissions now.

We are taking final instructions in relation to items 1, 3 and 4 and will respond as soon as possible. We had been working towards a general deadline of 24 August 2020 at 5pm (as indicated by our counsel at page 13.47 of the Transcript in relation to the submissions on costs) to provide that information to the Court, and expect to be able to adhere to that deadline.

Kind regards,

Mikhail Glavac, Senior Associate

Clayton Utz

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4614 | F +612 8220 6700 |

mglavac@claytonutz.com | www.claytonutz.com

Please consider the environment before printing this e-mail

From: McCoy, Noel <noel.mccoy@nortonrosefulbright.com>

Sent: Monday, 24 August 2020 10:50 AM

To: Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>; Glavac, Mikhail <mglavac@claytonutz.com>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>

Cc: EA - Middleton J <EA.MiddletonJ@fedcourt.gov.au>

Subject: RE: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

Dear Associate

We respond to the matters raised by his Honour as follows. We note that the Respondents solicitors are copied into this email.

1. Transcript page 9.25 (re wording of item 7).

Paragraph 8 of the Applicants' short minutes of order requires the Administrators to "do all such things as are necessary and within [their] power" to cause the other respondents to transmit the records described at Schedule 2, paragraph 7 of the orders. Paragraph 11 provides for liberty to apply on 3 days' notice. It is submitted by the Applicants that this wording is sufficient to address any concerns or issues raised by the Respondents. As to the specific issue of the dual release certificates, the Court would take comfort from Mr Failler's evidence in his affidavit of 10 August 2020 at [4] that the Delta Facility has the capacity to issue the dual release certificates. That evidence is consistent with the evidence given by Mr Dunbier in his affidavit of 14 August 2020 at [18]. Nevertheless, the Applicants are content for the orders to be amended as follows:

- 8 The Third Respondent do all such things as are necessary and within its power, using best endeavours to cause the First, Second, and Fourth Respondent to carry out the Orders of this Court in respect of the completion and transmittal of the records described at Schedule 2, paragraph 7 of these Orders.

2. **Transcript page 14.39 (re costs).**

The Applicants' position is set out at Transcript pages 13.34-38 and 14.20-22. If the Respondents' file submissions on costs, the Applicants will review those submissions to determine whether a rejoinder is required.

3. **Transcript page 16.15 (re timetable).**

The Respondents indicated that they would report to the Court on the status of the lien asserted by Adelaide airport over aircraft with registration VH-VUT to which is attached Engine 894902 to be transported from Adelaide to Melbourne and the status of that proposed ferry flight.

4. **Transcript page 7.31 (re additional wording for Schedule 3, order 1)**

For completeness and the convenience of the Court, we note that during argument, the Applicants' counsel proposed at page 7.24 that Schedule 3, order 1 be prefaced with the words "unless the parties otherwise agree in writing." Counsel for the Respondents indicated that that suggestion was helpful (see transcript page 7.31, noting that although the transcription reads "that's all for", the Applicants understood Dr Higgins said "that's helpful"). The Applicants' proposed Schedule 3, order 1 will read as follows:

Unless the parties otherwise agree in writing, consistent with the applicable engine manufacturer's procedures for removal and the terms of the Engine Leases, the Respondents and where required, using Virgin Tech, to cause the Engines, Engine Stands and QECs to be transported to the Applicants according to the following steps as soon as possible using best endeavours but by no later than 15 October 2020:

Kind regards

Noel McCoy | Partner
Norton Rose Fulbright Australia
Level 5, 60 Martin Place, Sydney, Australia
Tel +61 2 9330 8133 | Mob +61 414 764 525 | Fax +61 2 9330 8111
noel.mccoy@nortonrosefulbright.com

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From: Associate MiddletonJ <Associate.MiddletonJ@fedcourt.gov.au>

Sent: Saturday, 22 August 2020 12:44 PM

To: Glavac, Mikhail <mglavac@claytonutz.com>; McCoy, Noel <noel.mccoy@nortonrosefulbright.com>; Lee, Veronica <veronica.lee@nortonrosefulbright.com>; Zhu, Julie <julie.zhu@nortonrosefulbright.com>; McCoy, Orla <omccoy@claytonutz.com>; Project Volar <Volar@claytonutz.com>; Khan, Safiyya <safiyya.khan@nortonrosefulbright.com>; Gardner, Tom <tgardner@claytonutz.com>

Cc: EA - Middleton J <EA.MiddletonJ@fedcourt.gov.au>

Subject: Wells Fargo Trust Company, National Association (as owner trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741 & Ors (NSD714/2020) (4015052)[NRF-APAC.FID2541150] [CU-Legal.FID3017446]

UNCLASSIFIED

Dear Practitioners

His Honour brings to your attention three outstanding matters which the relevant parties indicated at the hearing on 17 August 2020 they would be in contact with Chambers about – see transcript pages 9.25 (re wording of item 7), 14.39 (re costs) and 16.15 (re timetable).

Could you please provide to Chambers all relevant materials in respect of the above matters as soon as possible.

Kind regards

Dilara Reznikas | Associate to the Honourable Justice Middleton
Federal Court of Australia | 305 William Street, Melbourne Victoria 3000
t (03) 8600 3631 | f (03) 8600 3632 | e associate.middletonj@fedcourt.gov.au

Please ensure that all official correspondence to Chambers is also sent to ea.middletonj@fedcourt.gov.au

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25 August 2020

Mr Timothy Sackar and
Mr Graeme Tucker
Clayton Utz
Level 15, 1 Bligh Street
Sydney NSW 2000

By email: tsackar@claytonutz.com;
gtucker@claytonutz.com

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GPO Box 3872, Sydney NSW 2001
DX 368 Sydney
nortonrosefulbright.com

Direct line
+61 2 9330 8133

Email
noel.mccoy@nortonrosefulbright.com

Your reference:

Our reference:
2832364

Dear Colleagues

Perth Aircraft Leasing (UK) Limited and Virgin Australia Group (administrators appointed) (Virgin)

We refer to your letter dated 21 August 2020.

We note your clients' position is that the process of redelivery of our client's Equipment is a "*purely commercial logistical matter, which can best be achieved in a collaborative manner, without the involvement of the parties' legal representatives.*"

We also note that your clients foreshadow availing our client "*the opportunity to take possession of its property at that time in accordance with the provisions of Schedule 7 of the Aircraft Protocol*" following the issue of a section 443B(3) Notice.

As set out in our previous letter, our client does not consider Schedule 7 will have any application where it does not issue a Redelivery Notice. Further, our client contends that, upon termination of the Aircraft Protocol (whether that be by issuing a section 443B Notice or otherwise) your clients have, under the *Cape Town Convention*, a positive obligation to give possession of our client's Equipment at their cost in accordance with the lease provisions. Unless your clients agree with those propositions, the redelivery process is, unfortunately, not a purely commercial logistical matter.

This is Annexure C referred to in the affidavit of
Orfhlaith Maria McCoy

Affirmed on

Before me

Please kindly confirm that your clients are content to proceed with redelivery discussions on that basis.

Yours faithfully

Noel McCoy
Partner
Norton Rose Fulbright Australia

Tim Sackar and Graeme Tucker
 Clayton Utz
 1 Bligh Street
 Sydney NSW 2000

Allen & Overy

Level 25
 85 Castlereagh Street
 Sydney NSW 2000
 Australia

PO Box A2498
 Sydney South NSW 1235
 Australia

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 Fax +61 (0)2 9373 7710
 Direct +61 (0)2 9373 7840
 Mobile +61 (0)421 668 485
 david.walter@allenoverly.com

Our ref DATW/0132452-000000M SYO1: 2000539253.1

3 September 2020

Dear Colleagues

Jin Shan 29 Ireland Company Limited | Virgin Australia Airlines Pty Limited (administrators appointed) – Lease agreements

As you are aware, we act for Jin Shan 29 Ireland Company Limited (**Jin Shan**), a creditor of Virgin Australia Airlines Pty Ltd (administrators appointed) (**VAA**). We understand that you continue to represent the Administrators of VAA.

Purpose of this letter

This and the following 4 pages are Annexure D referred to in the affidavit of Orfhlaith Maria McCoy

Affirmed on Before me

Leases

Jin Shan as lessor and VAA as lessee have entered into six Aircraft Operating Lease Agreements, all dated 28 December 2018, in respect of six B737-800 aircraft bearing manufacturer's serial numbers 34013, 34014, 33800, 33801, 33996 and 33997 respectively (and associated engines) (**Leases** and each a **Lease**).

The appointment of the Administrators was an event that entitled Jin Shan to terminate each Lease and repossess the aircraft.

Each aircraft was in the possession of VAA from the commencement of VAA's administration.

Protocol

Following the appointment of the Administrators on 20 April 2020, on 22 May 2020 Jin Shan, the Administrators and VAA entered into a document entitled “Aircraft Protocol” (**Protocol**). The Protocol relates to the Leases. We return to the terms of the Protocol further below.


We invite the Administrators to confirm this understanding as set out above by way of return letter by no later than **4.00 pm** on **9 September 2020**.

Kindly note that any vote by Jin Shan in respect of any deed of company arrangement proposed for VAA (or any of its affiliates) is not a waiver, surrender, variation, election, estoppel or otherwise in respect of the rights that Jin Shan asserts above. Jin Shan makes no admissions and reserves all of its rights, and does not by this letter or otherwise submit to the jurisdiction of any Australian court.

Finally, we note the decision published today by the Federal Court of Australia in *Wells Fargo Trust Company, National Association (trustee) v VB Leaseco Pty Ltd (administrators appointed)* [2020] FCA 1269. Jin Shan is considering that decision and its relevance to the Leases, and in the meantime reserves all of its rights.

We look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Walter', with a long horizontal stroke extending to the right.

David Walter
Partner

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/06/2020 1:41:35 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

This and the following 12 pages are Annexure E referred to in the affidavit of Orfhlaith Maria McCoy



Affirmed on _____

Before me _____

Sia Lagos

Dated: 30/06/2020 5:05:30 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.

49

Form 15
Rules 8.01(1); 8.04(1)



Originating application

No. of 2020

Federal Court of Australia
District Registry: New South Wales
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

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Law Courts Building, Queens Square, Sydney, NSW

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Filed on behalf of (name & role of party)	The Applicants		
Prepared by (name of person/lawyer)	Noel McCoy		
Law firm (if applicable)	Norton Rose Fulbright Australia		
Tel	+61 2 9330 8000	Fax	+61 2 9330 8111
Email	noel.mccoy@nortonrosefulbright.com	Ref	4015052
Address for service (include state and postcode)	Level 5, 60 Martin Place, Sydney, NSW 2000 Email: noel.mccoy@nortonrosefulbright.com		

[Version 2 form approved 09/05/2013]



Date:

.....
Signed by an officer acting with the authority
of the District Registrar



Details of claim

On the grounds stated in the accompanying affidavit of Mr Dean Poulakidas sworn 29 June 2020, the Applicants claim:

Declaration of international interest

- 1 A declaration that the First Applicant holds (for the benefit of the Second Applicant) an “*international interest*” in the “*aircraft objects*” identified in Schedule 2 pursuant to Article 2 and 7 of the Convention on International Interests In Mobile Equipment on Matters Specific to Aircraft Equipment, done at Cape Town on 16 November 2001 (**Cape Town Convention**).

Particulars

Section 7 of the International Interests In Mobile Equipment (Cape Town Convention) Act (Cth) 2013 (**Act**) applies the Cape Town Convention and Protocol as a law of the Commonwealth.

Article 2.2(c) of the Cape Town Convention provides for an “*international interest*” to be “*vested in a person who is the lessor under a leasing agreement*”, constituted in accordance with the formal requirements of Article 7.

Declaration of failure to comply with Article XI of the Cape Town Aircraft Protocol

- 2 A declaration that the Notice dated 16 June 2020 given by the Third Respondent to the Second Applicant did not discharge the First or Third Respondent’s obligation under Article XI of the Cape Town Aircraft Protocol to “*give possession*” of the “*aircraft objects*” identified in Schedule 2.

Particulars

Section 7 of the International Interests In Mobile Equipment (Cape Town Convention) Act (Cth) 2013 (**Cape Town Convention Act**) applies the Cape Town Convention and Protocol as the law of the Commonwealth.

Article XI.2 of the Aircraft Protocol to the Convention on International Interests In Mobile Equipment on Matters Specific to Aircraft Equipment, done at Cape Town on 16 November 2001 (**Cape Town Aircraft Protocol**) requires an insolvency administrator or debtor to “*give possession*” of an aircraft object.

By cover of letter dated 16 June 2020 from Clayton Utz, the Third Respondent gave a notice to the Second Applicant purporting to be a notice under section 443B(3) of the Corporations Act 2001 (Cth).



The purported notice failed to give effect to the obligations of the Third Respondent or the First Respondent to give possession within the meaning of the Cape Town Aircraft Protocol.

Delivery up of aircraft objects

- 3 An order that the Respondents or any of them “*give possession*” of the “*aircraft objects*” identified in Schedule 2, by delivering up, or causing to be delivered up the “*aircraft objects*” to the Applicants in the manner set out in Schedule 3 at Coconut Creek, Florida, United States of America by no later than 31 July 2020.

Particulars

Section 7 of the Cape Town Convention Act applies the Cape Town Convention and Aircraft Protocol as the law of the Commonwealth.

Article XI.2 of the Cape Town Aircraft Protocol requires an insolvency administrator or debtor to “*give possession*” of an aircraft object.

The Applicants seeking the delivery up of the aircraft objects in the manner set out in Schedule 3 “*shall be deemed to be exercised in a commercially reasonable manner*” in accordance with Article IX.3 of the Cape Town Aircraft Protocol, because the exercise of that remedy is in conformity with a provision of the agreement between the parties (see the clause 18 of the General Terms Engine Lease Agreement as incorporated into each engine lease).

- 4 An order that unless and until the Respondents, or any of them “*give possession*” in accordance with prayer 3, or until further order of the Court, the Respondents are to preserve the aircraft objects in Schedule 2 by:
- (a) maintaining the Engines identified in Schedule 2 in accordance with paragraph 1 of Schedule 3;
 - (b) maintaining insurance cover over the aircraft objects identified in Schedule 2 to the same or greater extent as was maintained at the date of appointment of the Third Respondent as administrators.

Rent or other amounts payable under section 443B of the Corporations Act

- 5 A declaration that the Notice dated 16 June 2020 given by the Third Respondent to the Second Applicant did not satisfy the requirements of section 443B(3) of the Corporations Act 2001 (Cth) (**Corporations Act**), and did not (pursuant to section 443B(4)) have the effect of relieving the Third Respondent of their obligations under section 443B(2) of the Corporations Act in respect of the property identified in Schedule 2.



- 6 An order that the Third Respondent pay rent or other amounts payable pursuant to section 443B(2) of the Corporations Act in respect of the property identified in Schedule 2 from 16 June 2020 until the date of this order.

General

- 7 Interest.
- 8 Costs.
- 9 Such further and other order as the Court thinks fit.

Interlocutory relief

- 10 An order that this Originating Process be listed for an urgent first case management hearing at 10:00 am on Wednesday, 1 July 2020 with a view to fixing a hearing date in respect of prayers 1, 2, 3, and 4 on an urgent basis.
- 11 An order that the time for service of the Originating Process and affidavit of Dean Poulakidas sworn 29 June 2020 together with a copy of these Orders (collectively the **Documents**), be abridged to 6:00 pm on Tuesday, 30 June 2020.
- 12 An order that service of the Documents may be effected on the Respondents by emailing a copy of the documents to:
- (a) Orla McCoy of Clayton Utz at omccoy@claytonutz.com;
 - (b) Timothy Sackar of Clayton Utz at tsackar@claytonutz.com;
 - (c) Graeme Tucker of Clayton Utz at gtucker@claytonutz.com;
 - (d) Salvatore Algeri of Deloitte at saalgeri@deloitte.com.au.

Applicants' address

The Applicants' address for service is:

Place: c/- Norton Rose Fulbright Australia, Level 5, 60 Martin Place, Sydney, NSW 2000

Email: noel.mccoy@nortonrosefulbright.com

The Applicant's address is 60 E. Sir Francis Drake Blvd, Suite 209, Larkspur, California 94939 USA, Attention: General Counsel.



Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 30 June 2020

A handwritten signature in black ink, appearing to be 'Noel McCoy', written over a horizontal dotted line.

Signed by Noel McCoy
Lawyer for the Applicant

**Schedule 1**

No. 41 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)**

Date: 30 June 2020

**Schedule 2**

No.

of 2020

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

Schedule of “aircraft objects”**Engines**

- 1 CFM International Engine, Model CFM56-7B24 with engine serial number 888473.
- 2 CFM International Engine, Model CFM56-7B24 with engine serial number 897193.
- 3 CFM International Engine, Model CFM56-7B24 with engine serial number 896999.
- 4 CFM International Engine, Model CFM56-7B24 with engine serial number 894902.

Accessories, parts, and equipment

- 5 Engine stands:
 - (a) (for Engine 888473) with serial numbers:
 - (i) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-3;
 - (ii) Base: P/N D71TRO00005G03, S/N MCC150728-1-3;
 - (b) (for Engine 897193) with serial numbers:
 - (i) Cradle: P/N D71CRA00005G02, S/N MCC150728-1-4;
 - (ii) Base: P/N D71TRO00005G03, S/N MCC150728-1-4;
 - (c) (for Engine 896999) with serial numbers:
 - (i) Cradle: P/N D71CRA00005G02, S/N MCC170335-1-1;
 - (ii) Base: P/N D71TRO00005G03, S/N MCC170335-1-1; and
 - (d) (for Engine 894902) with serial numbers:



- (i) Cradle: P/N AM-2811-4800, S/N 769;
- (ii) Base: P/N AM2563-200, S/N 1216.

6 Quick engine change (**QEC**) units and accessories:

- (a) (for Engine 888473) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 28 August 2019;
- (b) (for Engine 897193) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 24 May 2019;
- (c) (for Engine 896999) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 14 June 2019; and
- (d) (for Engine 894902) – as specified in Appendix A of the Aircraft Engine Lease Agreement between the First Applicant and First Respondent executed on or about 13 September 2019.

Data, manuals, and records

7 The following records in respect of each of the Engines:

- (a) all records and relevant access and log in codes delivered by the Applicants to the First Respondent on the Delivery Date (as defined in the General Terms Engine Lease Agreement **GTA**) including a copy of the life-limited parts profile status attached as Appendix B to each Engine Aircraft Engine Lease Agreement;
- (b) all Engine records generated by the First Respondent as specified at Exhibit F to GTA;
- (c) Engine Certification Statement in accordance with Exhibit E of the GTA;
- (d) complete and legible engine condition monitoring (**ECM**) data, including both take off and cruise performance and mechanical parameters covering the complete installation term of the Engine since delivery;



- (e) with respect to any part installed by the Respondents or any of them, during the term of the Engine lease and not removed prior to the return of an Engine:
- (i) manufacturer, part number, nomenclature and serial number of life-limited parts, time controlled parts and serialised parts; and
 - (ii) historical records including but not limited to:
 - (A) serviceability status of the part at installation (ie FAA or EASA or CASA Release to Service tag in accordance with the requirements of section 6(c)(ii) of the GTA);
 - (B) for life-limited parts, time controlled parts and serialised parts, total time and cycles, time and, if applicable, cycles since overhaul as may be applicable and total time and, if applicable, cycles of the Engine at the time of part installation; and
 - (C) additionally for a life-limited part, documentation tracing usage of the part since new; and
- (f) any other Engine records generated by the Respondents during the Lease Term (as defined in section 2(b) of the GTA).

**Schedule 3**

No.

of 2020

Federal Court of Australia
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Maintenance in a manner consistent with cl 18.3(e) of the GTA:

- 1 As at the time the aircraft objects in Schedule 2 are returned to the Applicants, the aircraft objects must have all due maintenance completed in accordance with the Approved Maintenance Program (as defined in the GTA) and must be in as serviceable a condition and good repair as when delivered to the First Respondent, fair wear and tear excepted in a manner consistent with cl 18.3 of the GTA.

Serviceable Tags as required by cl 18.3(g) of the GTA

- 2 Upon the return of the Equipment to the First Applicant, the Respondents must affix a serviceable tag to each of the Engines, pursuant to FAA/EASA requirements:
 - (a) either a completed FAA Form 8130-3 (marked approved for Return to Service in accordance with 14 CFR 43.9 and Release to Service in accordance with EASA Part 145.A.50); or
 - (b) alternatively, EASA Form One (marked approved for Release to Service in accordance with EASA Part 145.A.50 and Return to Service in accordance with 14 CFR 43.9); and
 - (c) an FAA Form 337.

All maintenance tasks related to the return of the Equipment (including, without limitation, Equipment testing, inspections, MPD tasks, preservation tasks, Equipment Repairs, Airworthiness Directives accomplished, Service Bulletins accomplished, and any other associated tasks) are to be included on the serviceable tag, in a manner consistent with cl 18.3(g) of the GTA.



Shipment in a manner consistent with clause 18.3(h) of the GTA

- 3 Prior to returning the aircraft objects in Schedule 2 to the Applicants, the Respondents or any of them must prepare each Engine identified in Schedule 2 for shipment by:
- (a) capping and plugging all openings of the Engine;
 - (b) 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;
 - (c) completely sealing the Engine in a Moisture Vapour Proof (MVP) Bag if provided by the Lessor or with heavy gauge vinyl plastic if the Lessor does not provide an MVP Bag;
 - (d) otherwise preparing the Engine for shipment and, if applicable, the shipment of the Engine, in accordance with the manufacturer's specifications/recommendations; and
 - (e) Any trucks used for shipment of the Engines must be equipped with air ride or air cushion tractors and trailers.

IN THE FEDERAL COURT OF AUSTRALIA

NSD /2020

This and the following page are Annexure F referred to in the affidavit of Orfhlaith Maria McCoy

WELLS FARGO TRUST COMPANY

First Applicant

WILLIS LEASE FINANCE CORPORATION

Second Applicant

Affirmed on

Before me

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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