

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/07/2020 3:47:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Applicant's Genuine Steps Statement - Form 16 - Rule 8.02
File Number: NSD714/2020
File Title: WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE) & ANOR v VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 1/07/2020 3:47:25 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.



Applicants' genuine steps statement

No. NSD714 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

This genuine steps statement is required by section 6 of the *Civil Dispute Resolution Act 2011*.

Steps taken to try to resolve the issues in dispute

The following steps have been taken to try to resolve the issues in dispute between the Applicants and the Respondents in the proceeding:

- 1 Since 1 May 2020 the Third Respondent and the Second Applicant have been communicating in relation to rights of use and/or return of the engines leased by the Applicants to the First Respondent.
- 2 On 1 May 2020 the Third Respondent proposed a "standstill" of the Second Applicant's rights (described as a draft "Aircraft Protocol") (**Standstill Agreement**).
- 3 On 30 May and again on 2 June 2020 the Second Applicant informed the Third Respondent that it would not agree to the terms of the proposed Standstill Agreement and sought, in writing, the return of its engines.
- 4 On 9 June 2020 the Third Respondent foreshadowed that by 16 June 2020 the Third Respondent proposed to issue a notice pursuant to section 443B(3) of the Corporations Act 2001 (Cth) (**Corporations Act**), and stated that the "*issue of a section 443B(3) notice does not result in the redelivery of the engines pursuant to the redelivery*

Filed on behalf of (name & role of party)	The Applicants		
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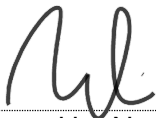
provisions of the aircraft leases. After the notice is issued, you [the Second Applicant] will have to recover possession of the Engines at your own cost on an “as is, where is” basis...”.

- 5 On 10 June 2020 by email from its President Mr Hole, the Second Applicant sought the return of its engines and stated that it expected the Third Respondent to comply with the terms of the leases and the Cape Town Convention.
- 6 On 16 June 2020 by letter from its solicitors, Norton Rose Fulbright, the Second Applicants wrote to the solicitors for the Third Respondent, Clayton Utz, insisting that the Third Respondent comply with its obligation under Article XI of the Cape Town Aircraft Protocol to “*give possession*” of the engines and equipment.
- 7 On the same day 16 June 2020 the Third Respondent purported to issue a notice to the Second Applicant in accordance with section 443B(3) of the Corporations Act disclaiming the engines, and stating among other things:
1. “*the Administrators are unable to comply with all the return terms of the lease agreement that Virgin has with you [the Second Applicant]”;*
 2. *the Administrators proposed to pay for insurance “in the interest of maintaining the existing insurance protection for the engines during the period until you have taken possession or control of the engines and in any event no later than 14 days from this notice [ie, until 30 June 2020]”.*
 3. *the Second Applicant “will have all risk in the engines when you have taken possession or control of the engines and in event no later than 14 days from this notice [ie, until 30 June 2020]; and*
 4. *the engines were “on the wing of” four separate aircraft, three of which were in Melbourne, and one of which was in Adelaide.*
- 8 On 18 June 2020 Norton Rose Fulbright on behalf of the Second Applicant wrote to Clayton Utz stating that the notice was deficient and that the Third Respondent was obliged to “*give possession*” pursuant to the Cape Town Aircraft Protocol.
- 9 On 19 June 2020 Norton Rose Fulbright on behalf of the Second Applicants wrote to Clayton Utz foreshadowing court action to recover possession of the engines.
- 10 On 19 June 2020 Clayton Utz on behalf of the Third Respondent replied: *We anticipate being in a position to respond substantively to your letters by 5pm on Monday 22 June.”*
- 11 On 22 June 2020 Clayton Utz on behalf of the Third Respondent wrote to Norton Rose Fulbright, among other things, disputing the Applicants’ interpretation of Article XI stating: “*Similarly, paragraphs [2] and [5] of Article XI of the CTC Protocol do not give*

rise to any more onerous obligation on an 'insolvency administrator' than simply giving an owner or lessor the opportunity to take possession of property."

- 12 The parties differ on the extent of the obligation to "*give possession*" of the engines and associated equipment under Article XI.2 of the Cape Town Aircraft Protocol. The resolution of that issue also informs whether the Respondents are under a continuing obligation to "*preserve the aircraft object and maintain it and its value in accordance with the [lease obligations]*" under Article XI.5 of the Cape Town Aircraft Protocol.
- 13 Those issues warrant an urgent hearing in circumstances where the Respondents disclaim responsibility to insure and maintain the engines from 30 June 2020.
- 14 The interpretation of the obligations on insolvency administrators and debtors in Article XI.2 of the Cape Town Aircraft Protocol is a matter of wider importance to the aviation industry. It involves the interpretation and application of provisions of the Cape Town Convention which have not previously been considered by this, or any other Court of a Contracting State.

Date: 30 June 2020



Signed by Noel McCoy
Lawyer for the Applicants

Schedule 1

No. 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)**