AVIATION CASE BULLETIN

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"The claim that Laudamotion had wrongfully refused to take delivery of the aircraft was rejected."

While the various actions brought in England and other jurisdictions by aircraft leasing companies against insurers of aircraft which are stranded in Russia work through the early procedural stages, the first half of 2023 has nonetheless seen a number of decisions in the English courts which will be of interest to lessors, financiers and lessees. By way of a reminder of what has happened so far this year, here are quick-read summaries of the decisions.

LESSOR NOT ENTITLED TO TERMINATE LEASES AND LESSEE NOT OBLIGED TO TAKE DELIVERY OF AIRCRAFT

In a dispute that arose early in the Covid pandemic, the Commercial Court has concluded that Laudamotion was not obliged to take delivery of four aircraft that it had leased from the claimants. The claim that Laudamotion had wrongfully refused to take delivery of the aircraft was rejected, along with assertions that there had been events of default and cross-defaults under the leases. The claimants' notice to take delivery was unreasonable and gave no time for the airline to consider whether the aircraft and documents were ready for delivery. Further, there were material deviations in the aircraft from the specification and therefore the airline was not required to accept them. As a result, the claimants had not been entitled to terminate the leases and their claim was dismissed.

Peregrine Aviation Bravo Limited and others v Laudamotion GmbH and another [2023] EWHC 48 (Comm), 17 January 2023

For a more in-depth discussion of the case, see our article here.

"Payment did not discharge Sberbank's obligations."

LEASES, LETTERS OF CREDIT, SANCTIONS AND THE CONFIRMING BANK REFUSING TO PAY

UniCredit were the confirming bank for a number of standby letters of credit issued by Sberbank, a Russian bank, in 2017, 2018 and 2020 in relation to leases of aircraft to Russian airlines. They were payable in US dollars.

Celestial and Constitution, who were the beneficiaries, made valid demands for payment in March 2022 due to the lessees' failure to comply with their obligations under the leases. UniCredit refused to pay on the basis that it was prohibited from doing so by the UK, EU and US sanctions in response to the Ukraine conflict.

The Commercial Court held that UniCredit was not prohibited from paying because the supply of the aircraft and confirmation of the letters of credit took place before the sanctions' prohibitions came into effect. Payment by UniCredit was the discharge of an obligation that was undertaken long before the sanctions were implemented. Further, payment did not discharge Sberbank's obligations as they were still liable to UniCredit; nor did it involve dealing with Sberbank's property; nor did it benefit the Russian entities involved in other elements of the overall transaction.

Celestial Aviation Services Limited and Constitution Aircraft Leasing (Ireland) 3 Limited and another v Unicredit Bank AG (London Branch) [2023] EWHC 663 (Comm), 23 March 2023

"UniCredit seemed to be concerned to protect its cash flow."

In a further judgment in the case dealing with consequential matters, the court held that it had not been reasonable for UniCredit to believe that it was prohibited from making payment under the letters of credit. It therefore could not rely on the defence under section 44 of the Sanctions and Anti Money-Laundering Act 2018 and as a result was liable for the costs of the proceedings and interest.

The court reached this conclusion for several reasons, including that it should have been clear that the obligation of UniCredit, a German entity, to pay Celestial and Constitution, Irish entities, was wholly independent of the receipt of funds from Sberbank and so was unaffected by Regulation 28 (of the Russia (Sanctions)(EU Exit)(Amendment)(No.3) Regulations). UniCredit is a major international bank and must therefore be familiar with the principle of autonomy in the field of international commerce. UniCredit seemed to be concerned to protect its cash flow by making sure that it did not have to pay out under its confirmation before it was put in funds by Sberbank.

Celestial Aviation Services Limited v UniCredit Bank AG, London Branch [2023] EWHC 1071 (Comm), 5 May 2023

FAILURE BY LESSEE TO COMPLY WITH REDELIVERY CONDITIONS AND VALID CLAIM CERTIFICATION BY LESSOR

"There was no manifest error in the certification."

The Commercial Court found in favour of WFW client GASL in a dispute arising out of the repossession of a Boeing 737-800. GASL was successful in its claim that the aircraft failed to comply in a number of respects with the contractual redelivery conditions.

GASL was awarded approximately US$8.5m for the cost of repairs. It had certified the amount of its claim under the relevant provision of the lease agreement and said that this certification was conclusive and binding on Spicejet in the absence of manifest error. The court agreed that GASL was entitled to do this as the lease contained appropriate indemnity language and a lessor determination clause. There was no manifest error in the certification and GASL was entitled to judgment in the amount certified.

GASL Ireland Leasing A-1 Limited v Spicejet Limited [2023] EWHC 1107 (Comm), 10 May 2023

LEASE RENT ACCELERATION CLAUSE UPHELD

"The lessor was automatically entitled to payment of all sums due up to the date of redelivery."

Spicejet, the defendant, agreed to lease a Boeing 737-700 from the claimant lessor for a term of 96 months, due to end on 3 May 2026. Spicejet defaulted on a number of payments. A rent deferral agreement was entered into but there were then further payment defaults. The lessor brought a claim for the accrued sums due and also future rentals that became due upon the Events of Default. Spicejet remained in possession of the aircraft. The court held in favour of the lessor and granted summary judgment, rejecting Spicejet's arguments as to lack of verification of sums due and lack of entitlement under the contract. The invoices and schedules of sums due that the lessor produced were sufficient "determinations" for the purposes of the lessor determination clause (although they were not certificates). There was no suggestion of any error in calculation. Once there was an Event of Default, the lessor was automatically entitled to payment of all sums due up to the date of redelivery, namely 3 May 2026. Notwithstanding the unsatisfactory drafting of the lease, the meaning was clear and the suggestion that the clause was a penalty was rejected.

VS MSN 36118 CAV Designated Activity Company v Spicejet Limited [2023] EWHC 1146 (Comm), 15 May 2023

Should you wish to discuss any of these cases in further detail, please speak with a member of our Global Aviation disputes team, or your regular contact at Watson Farley & Williams.

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