



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 28 Oct 2021 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S60/2021
File Title: Wells Fargo Trust Company, National Association (as owner of
Registry: Sydney
Document filed: Amended Form 27B Appellant's chronology
Filing party: Appellants
Date filed: 28 Oct 2021

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. 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 and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
 SYDNEY REGISTRY

S60/2021

BETWEEN: **WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION**
(AS OWNER TRUSTEE)

First Appellant

WILLIS LEASE FINANCE CORPORATION

Second Appellant

and

10 **VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741**

First Respondent

VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS APPOINTED)

ACN 090 670 965

Second Respondent

VAUGHAN NEIL STRAWBRIDGE, JOHN LETHBRIDGE GREIG, SALVATORE

ALGERI AND RICHARD JOHN HUGHES (IN THEIR CAPACITY AS

VOLUNTARY ADMINISTRATORS OF THE FIRST AND SECOND

RESPONDENTS)

Third Respondent

20 **TIGER AIRWAYS AUSTRALIA PTY LIMITED (ADMINISTRATORS**

APPOINTED)

ACN 124 369 008

Fourth Respondent

AMENDED FIRST AND SECOND APPELLANTS' CHRONOLOGY

Part I:

1. This chronology is in a form suitable for publication on the internet.

Part II:

Key:

- 30 2. Reasons for judgment of Middleton J (**PJ**)
3. Statement of Agreed Facts annexed to the reasons for judgment of Middleton J
 (**SAF**)
4. Reasons for judgment of the Full Court (**FFC**)

5. Core Appeal Book (**CAB**)
6. Appellants' Book of Further Materials (**ABFM**)
7. Amended Appellants' Supplementary Book of Further Materials (**AASBFM**)
8. Respondents' Submissions (**RS**)
9. Respondents' Book of Further Materials (**RBFM**)

No.	Date	Event	Source/ Reference
1.	24 May 2019 – 13 Sept 2019	The Appellants leased to VB LeaseCo Pty Ltd (VB LeaseCo) the four Engines and Equipment pursuant to Aircraft Engine Lease Agreements, and the Second Respondent Virgin Australia Airlines Pty Ltd (Virgin Australia) provided guarantees to the Appellants.	PJ[1], [21], [24] SAF[2]-[5], [8], [10], [13], [15], [18], [20], [23] CAB 24, 29, 73- 77 ABFM 5, 66 FFC[8], [19] CAB 112, 114
2.	24 May 2019 – 13 Sept 2019	VB Leaseco sub-leased the four Engines to Virgin Australia, and the Fourth Respondent (Tiger).	PJ[1], [22] SAF[6], [11], [16], [21] CAB 24, 29, 74- 77 FFC[8] CAB 112
3.	24 May 2019 – 13 Sept 2019	The Appellants delivered the four Engines and Equipment to VB LeaseCo.	SAF[9], [14], [19], [24] CAB 74-78

No.	Date	Event	Source/ Reference
4.	20 April 2020	The Third Respondents (Administrators) were appointed as joint and several voluntary administrators of the First, Second and Fourth Respondents and certain related entities (Virgin or Virgin Companies), with total creditors of <u>approximately \$6.8 billion</u> .	PJ[23] SAF[41] CAB 29, 81 FFC[13] CAB 113 <u>AASBFM 60, 97</u> <u>Affidavit of Vaughan Neil Strawbridge sworn 23 April 2020 [48]</u> <u>Affidavit of Vaughan Neil Strawbridge sworn 9 July 2020 [10]</u>
<u>5.</u>	<u>April 2020</u>	Following their appointment, the Administrators <u>"immediately commenced a comprehensive global sale process"</u> seeking expressions of interest and ultimately binding offers for the <u>sale and/or recapitalisation of the business and assets of the Virgin Companies</u> .	<u>AASBFM 76</u> <u>Affidavit of Vaughan Neil Strawbridge sworn 2 July 2020 [11]</u>
<u>5-6.</u>	24 April 2020	The Federal Court of Australia ([2020] FCA 571) made orders, among other things, extending the date by which the Administrators would incur personal liability under s 443B(2) of the Corporations Act to 26 May 2020.	PJ[28] SAF[43] CAB 30, 81

No.	Date	Event	Source/ Reference
6-7.	1 May 2020	The Administrators proposed a standstill agreement to the effect that Willis would not enforce its rights for a period to be determined (Standstill Agreement).	PJ[30] CAB 31
7-8.	25 May 2020	The Federal Court of Australia ([2020] FCA 726) made orders, among other things, extending the time by which the Administrators would incur personal liability under s 443B(2) (and the time within which the Administrators could issue a notice under s 443B(3)) of the Corporations Act to 16 June 2020.	PJ[28] SAF[46] CAB 30, 82
8-9.	30 May – 2 June 2020	Willis wrote to the Administrators, stating that it would not accept the terms of the proposed Standstill Agreement and sought the return of the engines.	PJ[31] CAB 31
9-10.	9 June 2020	The Administrators wrote to Willis foreshadowing that by 16 June 2020 they proposed to issue a notice pursuant to s 443B(3) of the Corporations Act.	PJ[32], [179] CAB 31, 68
10-11.	10 June 2020	Willis wrote to the Administrators seeking the return of the engines and stating that Willis expected the Administrators to comply with its obligations under the Convention and Protocol and the delivery obligations prescribed by the terms of the leases.	PJ[33] CAB31

No.	Date	Event	Source/ Reference
11.12.	16 June 2020	Willis by its solicitors wrote to the Administrators again seeking compliance with the obligations under Art XI of the Protocol to “ <i>give possession</i> ” of the Engines and Equipment.	PJ[34] SAF [47] CAB 31, 82 FFC[16] CAB 113
12.13.	16 June 2020	The Administrators issued a notice purportedly in accordance with s 443B(3) of the Corporations Act (443B(3) Notice) to the Appellants stating, among other things, that the Administrators did not propose to exercise rights in relation to “ <i>the specified property in Schedule B</i> ” to the 443B(3) Notice.	PJ[35], [154] CAB 31, 61
13.14.	16 June 2020	According to Schedule B to the 443B(3) Notice, Willis’ engines were located at Melbourne Airport (Engine 896999, Engine 897193 and Engine 888473) and Adelaide Airport (Engine 894902). The 443(B) Notice identified nothing else of the Appellants’ Equipment.	PJ[36] CAB 32
14.15.	16 June 2020	Willis sent an email to the Administrators with details of the serial numbers of the Engines, Engine Stands and the type of QEC kits provided to VBLEaseCo.	PJ[37] CAB 32

No.	Date	Event	Source/ Reference
15-16.	18 June 2020	The Administrators sent an email to Willis identifying the locations of the Engine Stands (two in Melbourne and two at “ <i>Delta Atlanta</i> ”). The email identified differences in relation to the location of two of the Engines. The email did not mention the QEC kits or the records.	PJ[38] – [40], [155] SAF [48] CAB 32, 61, 82
16-17.	19 June 2020	Willis sought to clarify if it was authorized to remove the engines from the aircraft owned by third parties.	PJ[41] CAB 32
17-18.	19 June 2020	The Administrators advised Willis that it would be required to engage either Virgin technicians or other Civil Aviation Safety Authority approved engineers at Willis’ expense to remove the engines.	PJ[42] CAB 33
18-19.	22 June 2020	<p>The Administrators wrote to Willis asserting that the “<i>records, QEC units and engine stands (collectively, Ancillary Property), is all property that is directly associated with the Engines and necessary to operate, store, and transport them</i>”, but indicated that the “<i>Ancillary Property</i>” had “<i>no, or minimal, use or value independently of Engines</i>”.</p> <p>The Administrators also asserted that the Convention and Protocol did not give rise to any more onerous obligation on an “<i>insolvency administrator</i>” than simply giving a lessor the opportunity to take possession.</p>	PJ[43], [44] CAB 33

No.	Date	Event	Source/ Reference
20.	26 June 2020	<p><u>The Administrators and the Virgin Companies entered into a transaction with Bain Capital Private Equity LP, Bain Capital Credit LP and their affiliates and related entities (Bain Capital) in relation to the acquisition of the business of the Virgin Companies (Transaction).</u></p> <p><u>The Administrators asserted that following the Transaction, Virgin Australia would “emerge from Voluntary Administration with a strong balance sheet” backed by Bain Capital who was “one of the world's leading private investment firms with more than \$AUD150 billion assets under management.”</u></p>	<p><u>AASBFM 13</u> <u>Affidavit of Salvatore Algeri sworn 17 July 2020 [20]</u> <u>RBFM 24</u> <u>Affidavit of Salvatore Algeri sworn 5 August, annexure “B”</u></p>
19-21.	30 June 2020	The Appellants commenced proceedings NSD 714/2020 in the Federal Court of Australia.	FFC[17] CAB 113

No.	Date	Event	Source/ Reference
<u>22.</u>	<u>1 July 2020</u>	<u>Pursuant to the terms of the Transaction, Bain Capital assumed economic risk for the financial position of the Virgin Companies on and from 1 July 2020. The Transaction included a funding facility by which Bain Capital lent a “large sum” to the Administrators to enable them to continue to trade the Virgin Companies and meet ongoing liabilities to progress the external administration of the Virgin Companies. The terms of the Transaction provided that the Administrators’ personal liability would be limited to the assets of the Virgin Companies.</u>	<u>AASBFM 22, 78, 85, 86, 99</u> <u>Affidavit of Salvatore Algeri sworn 17 July 2020 [55]</u> <u>Affidavit of Vaughan Neil Strawbridge sworn 2 July 2020 [15], [24], [29]</u> <u>Affidavit of Vaughan Neil Strawbridge sworn 9 July 2020 [17]</u>
<u>23.</u>	<u>July 2020</u>	<u>Bain Capital determined that the Virgin Companies would operate only one type of aircraft as part of its restructured and streamlined operations following its exit from external administration. The consequences of that determination was that all aircraft and aircraft objects other than the aircraft property subject to the leases which Bain Capital intended the Virgin Companies to continue following external administration, were readied for repossession by the owners and lessors of that property.</u>	<u>AASBFM 134</u> <u>Affidavit of Salvatore Algeri sworn 7 Sept 2020 [12]</u>

No.	Date	Event	Source/ Reference
20-24.	8 July 2020	<p>The Administrators provided the Appellants with access to an online “<i>data room</i>” containing Operator Records. This included the vast majority of Historical Operator Records (save for HMU Records in respect of engine 896999).</p> <p>The data room did not include any of the End of Lease Operator Records and Lease Inspection Records from Engine Shop.</p>	<p>PJ[45], [176] SAF [49] CAB 33, 67, 82</p>
21-25.	17 July 2020	<p>Willis prepared a “<i>Records Open Items List</i>” (ROIL) in respect of each of the engines that identified the status of records provided by Virgin Australia. Willis provided a copy of the ROIL to the Administrators.</p>	<p>PJ[47] SAF [39] CAB 33, 80</p>
22-26.	30 July 2020	<p>As at the time of the Statement of Agreed Facts (prepared shortly before the hearing on 30 July 2020) the Respondents had not provided to the Appellants any of the End of Lease Operator Records; nor Lease Inspection Records from Engine Shop.</p>	<p>PJ [48] SAF [52]-[53] CAB 33, 82</p>

No.	Date	Event	Source/ Reference
<u>27.</u>	<u>5 August 2020</u>	<u>The Respondents' Amended Interlocutory Process dated 5 August 2020, sought declarations (in proposed order 5) that the expenses of complying with orders of the Primary Judge to give possession were "expenses properly incurred" within the meaning of section 556(1)(a) of the Corporations Act; or alternatively were "debts or liabilities" for which s443D(aa) entitled the Third Respondent to be indemnified within the meaning of section 556(1)(c) of the Corporations Act.</u>	<u>RBFM 18</u>
23. <u>28.</u>	18 August 2020	By the time of final submissions to the Court in respect of the form of orders, the Respondents had provided existing documents to the Appellants, and arrangements were made for the removal of the engines reflected in the orders.	PJ[49] CAB 33
24. <u>29.</u>	3 Sept 2020	The primary judge published reasons and made orders ([2020] FCA 1269).	CAB 84 -99

No.	Date	Event	Source/ Reference
<u>30.</u>	<u>4 Sept 2020</u>	<p><u>Deeds of company arrangement were approved by creditors of the Virgin Companies at the meetings of creditors of the Virgin Companies held on 4 September 2020 (DOCAs).</u></p> <p><u>Upon completion of the DOCAs, the Virgin Companies would cease to be in external administration and a pool of funds would be made available for distribution to creditors of the Virgin Companies through a Creditors' Trust.</u></p>	<p><u>RBFM 35</u></p> <p><u>Affidavit of Orfhlaith Maria McCoy affirmed 7 September 2020 [21]-[22]</u></p>
<u>31.</u>	<u>7 Sept 2020</u>	<p><u>The Administrators are "presently forecasting a return of 9c to 13c on the dollar for ordinary unsecured creditors" under the DOCAs.</u></p>	<p><u>AASBFM 133</u></p> <p><u>Affidavit of Salvatore Algeri sworn 7 September 2020 [9(e)]</u></p>
<u>25.</u> <u>32.</u>	7 Sept 2020	<p>Respondents filed a Notice of Appeal in respect of the orders of the primary judge.</p>	<p>CAB 101-105</p>
<u>26.</u> <u>33.</u>	22 Sept 2020	<p>Hearing of appeal to Full Court.</p>	<p>FFC [55] CAB 126</p>
<u>27.</u> <u>34.</u>	7 October 2020	<p>The Full Court published reasons and made orders allowing the appeal and remitting certain matters to the primary judge ([2020] FCAFC 168).</p>	<p>CAB 149</p>

No.	Date	Event	Source/ Reference
28. <u>35.</u>	10 November 2020	The primary judge made orders, among other things, adjourning the remitter proceeding, on the undertaking the Appellants would prosecute an appeal to this Court with due dispatch, declaring that any redelivery costs incurred would be costs in the administration, and requiring the Appellants to pay the amount of any further redelivery costs into Court.	ABFM 92-94
29. <u>36.</u>	19 November 2020	The Federal Court of Australia confirmed payment into Court of the redelivery costs by the Appellants.	ABFM 97

Dated ~~28 May 2021~~ 28 October 2021



.....
Bret Walker
Fifth Floor St James' Hall
T: 02 8257 2527
E: maggie.dalton@stjames.net.au



.....
P F Santucci
New Chambers
T: 02 9151 2071
santucci@newchambers.com.au