



## HIGH COURT OF AUSTRALIA

16 March 2022

WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION (AS OWNER TRUSTEE)  
& ANOR v VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 &

ORS

[2022] HCA 8

Today, the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia ("the Full Court"). The primary issue in the appeal concerned the content of the obligation to "give possession" under a treaty which had the force of law in Australia: the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment ("the Protocol").

The first respondent in the appeal ("Leaseco"), part of the Virgin Australia group, leased aircraft engines from the first appellant ("Wells Fargo"). In April 2020, Leaseco went into administration. The lease agreements specified that on an event of default, being here the appointment of administrators, Wells Fargo could demand redelivery of the aircraft engines to a location in Florida. These contractual rights were preserved by the Convention on International Interests in Mobile Equipment ("the Convention") but their enforcement was relevantly constrained as a matter of domestic law by the operation of s 440B of the *Corporations Act 2001* (Cth). Article XI(2) of the Protocol also imposed an obligation on Leaseco's administrators to "give possession" of the aircraft engines to Wells Fargo within a specified time frame. In June 2020, Wells Fargo made a demand to Leaseco's administrators for redelivery of the aircraft engines to a location in Florida. In response, Leaseco's administrators offered the beneficial owner of the aircraft engines (and, therefore, in effect Wells Fargo) an opportunity to take control of the aircraft engines where they happened to be located in Australia. This offer was rejected, and Wells Fargo commenced proceedings in the Federal Court seeking orders to compel Leaseco's administrators to redeliver the aircraft engines to the location in Florida. Wells Fargo was successful at first instance in the Federal Court. The Full Court allowed the appeal.

After the Full Court's decision, the aircraft engines were returned to the United States. Underlying the question in the appeal to this Court was a question of general importance to the aviation industry as to the content of the obligation to "give possession" under Art XI(2) of the Protocol. The practical effect of the Court's answer to that underlying question determined who would pay the costs that had been incurred in returning the aircraft engines to the United States.

The Court held that the content of the obligation to "give possession" under Art XI(2) of the Protocol, having particular regard to matters of context, was for Wells Fargo to be "given the opportunity to take possession" – it was for Leaseco's administrators to take whatever steps may be necessary to provide an opportunity to Wells Fargo to exercise its right under the Convention to take possession. Leaseco's administrators' invitation to Wells Fargo to take control of the aircraft engines in Australia

fulfilled that obligation. Article XI(2), construed in this way, operated consistently with the underlying realities of modern structured finance, particularly to facilitate capital market financing.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*