The Importance of Compliance with Aircraft Lease Provisions

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A recent High Court case held a lessor had not validly terminated a number of aircraft leases as per the lease clauses and therefore did not have a valid claim for compensation.

Peregrine Aviation Bravo Limited & Ors v Laudamotion GMBH & Anr [2023] EWHC 48 (Comm)

In July 2019, Peregrine Aviation Bravo Limited (Peregrine) and AerCap Ireland Limited (AerCap) entered into four aircraft leases with Laudamotion GMBH (Laudamotion), a subsidiary of Ryanair Holdings PLC (Ryanair). Ryanair acted as guarantor under the first lease of these aircraft, MSN 3361. There were a number of pre-existing aircraft leases from 2018.

During early 2020, amidst the inception of the Covid pandemic, the parties corresponded and held discussions about deferring rent and rescheduling delivery. MSN 3361 was originally scheduled for delivery on 20 March 2020. A few days prior, Laudamotion notified AerCap that it would be deferring delivery of the four aircraft until at least June 2020. A draft global amendment agreement to that effect was circulated but never signed.

On 20 April 2020, Laudamotion advised AerCap that it would be reducing its monthly rental payments under the 2018 leases and could not accept delivery of the aircraft under the 2019 leases. On 1 May 2020, AerCap served notice on Laudamotion that the delivery date of MSN 3361 would be 7 May 2020, and the aircraft was tendered for delivery on that date. Laudamotion refused to accept the delivery of MSN 3361. AerCap subsequently terminated the 2018 and 2019 leases under cross-default provisions.

The Court's Decision

Laudamotion was not obliged to accept delivery of MSN 3361

Laudamotion contested, to which the court agreed that Aercap had failed to comply with their obligations under the lease in respect of delivery and, therefore, Laudamotion were entitled to refuse delivery.

Aercap failed to provide a complete suite of documentation by 7 May 2020, including, amongst other items, an

Export Certificate of Airworthiness for the aircraft. The lease provided that Laudamotion were not obliged to accept the aircraft if there were any material deviations to the specified aircraft condition at delivery.

Furthermore, Aercap were obliged to consult with Laudamotion prior to determining a delivery date and provide reasonable notice of the scheduled delivery date. The court found that AerCap's notice of 1 May 2020 and delivery tender on 7 May 2020 was in breach of AerCap's obligations.

Laudamotion's actions did not meet the necessary standard to be considered an event of default by way of suspension of payments

Aercap argued that Laudamotion's letter of 20 April threatened to suspend the payment of Laudamotion's debts and therefore constituted an event of default. The court found, considering the "natural and ordinary meaning of the words used", that Laudamotion's letter was not a clear and unequivocal suspension or threat to suspend payments. AerCap were not entitled to terminate the lease on this ground.

The debts under the 2019 leases were contingent, not becoming actual until three business days before the Scheduled Delivery Date. As discussed above, such a date had not yet occurred. The implication of Laudamotion's letter was they would defer payment of certain specific contingent future obligations to pay rent, which was not sufficient to trigger the insolvency clause.

Laudamotion had indicated their willingness to negotiate with Aercap. Aercap's actions similarly evidenced a willingness to reach an agreement to defer the lease start dates.

AerCap's termination notice was defective under the lease

- Aercap failed to show that Laudamotion were liable for damages under clause 24.6 of the lease, as the termination notice did not refer to the specific suspension of payment insolvency clause.
- The termination notice only specified Laudamotion's failure to take delivery of MSN 3361 and "certain additional Events of Default and breaches have occurred and remain outstanding".
- The court, therefore, concluded that this ground for termination was identified retrospectively, and the expenses claimed could not be regarded "as a result" of the event of default.
- The court suggested, obiter, that suspension of payment would have been a valid event of default, and AerCap would have a claim had the termination specified.

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Key take away

- This case highlights the need for lessors to ensure compliance with lease provisions.
- The importance of termination notices drafting should not be overlooked, and lessors should consider all possible grounds for termination.

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