



Neutral Citation Number: [2024] EWHC 721 (Comm)

Case No: CL-2024-000145

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING’S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 March 2024

Before :

Mr Justice Foxton

Between :

TWC Aviation Capital Limited
- and -
SpiceJet Limited

Claimant

Defendant

Bajul Shah (instructed by **Trowers and Hamlin LLP**) for the **Claimant**
Thomas Sprange KC and **Kabir Bhalla** (instructed by **King & Spalding**) for the **Defendant**

Hearing dates: **22nd March 2024**

RULING

Ruling by MR JUSTICE FOXTON

1. This is the return date for an interim injunction that I granted on 14 March on short notice to the Defendant (“SpiceJet”) relating to aircraft and aircraft engines leased by the Claimant (“TWC”) to SpiceJet. SpiceJet has at a late stage instructed counsel to represent it at this hearing, and Mr Sprange KC has appeared before me today, in what in aviation terms, I am conscious for him, must have at times, have seemed like something of a kamikaze mission. However, these are challenges we have all faced in the course of our professional lives.
2. The background is that the SpiceJet, as is well-known, is facing an existential financial crisis. I do not underestimate the stress that that crisis will have created for all concerned as they fight to keep their business on the road. However, the court is required to consider the legal rights of the parties and what remedy or interim remedy is appropriate against that background.
3. In brief, there has been extensive efforts by TWC to accommodate SpiceJet’s difficulties in meeting the amounts due under aircraft leases for two aircraft, and four engines leased by TWC to SpiceJet, leading to revised payment terms reflected in a series of addenda to the leasing agreements. However, by January of this year, SpiceJet’s financial difficulties were such that, save for three very small payments, it was unable to carry on paying the amounts it had agreed to pay. The fact of that non-payment has, as far as I can see, never been challenged. And indeed, the difficulties SpiceJet has in the current circumstances in meeting its obligations under aircraft leases is well-known to this court from other cases which have come before it.
4. Against that background, TWC submits that there has been an event of default, that it has exercised its right to terminate the leases and it seeks an order for redelivery. TWC makes the powerful, and to my mind at the moment, unanswerable point that the effect of those defaults is that in any event the leases would come to an end on 31 March (and hence in a very short period) because continuing defaults preclude the exercise of any evergreen extension provision in the leases.
5. Termination notices have been served. They were not challenged by SpiceJet at the time, and they are not challenged in any meaningful sense today.
6. Against that background, I was persuaded, without having heard from SpiceJet, on 14 March that the balance of convenience justified an interim prohibitory injunction that would stop SpiceJet from using the Claimant’s three engines which are still in its possession (one being in repairs at Aero Norway) on other aircraft, in what I regard as a clear breach of the leasing contracts. There were concerns voiced by TWC in correspondence that the engines were being used in circumstances which were not appropriate, given their thrust rating. There has been an attempt to challenge that suggestion today, but there was no attempt to do so at the time, which I regard as very significant. There has been issues concerning the repair of at least one engine and the evidence suggests that over 100 parts have been removed from one aircraft and 70 from another.

7. I quite accept, as Mr Sprange KC submits, that there are many more parts in an aircraft than there are in a car, but nonetheless, there appears to be a progressive process of moving parts to other aircraft, or as it is frequently referred to, “cannibalising” them.
8. Against that background, the issue which has been the central focus on this return date today is where the balance of convenience lies. Mr Sprange KC for SpiceJet submits that the balance of convenience favours the court accepting undertakings proffered in a letter sent this afternoon by King & Spalding, that would in permit SpiceJet to continue to use TWC’s engines on other aircraft, but would prevent further cannibalisation taking place, save “In circumstances where there is no alternative to allow business efficacy”, words I shall have to come back to.
9. Taking matters in stages, the first issue for me on balance of convenience is if I permit SpiceJet to continue to use the engines on other aircraft, and to continue to cannibalise the aircraft where necessary for business efficacy, would TWC suffer harm? I am amply satisfied that they would. There are real issues as to the appropriateness of using what in the contract are stipulated to be 24,000 lbs engines with other engines rated at 26,000 lbs. Further. any delay in TWC being in a position to restore and redeploy the aircraft and engines will entail a significant financial loss, which SpiceJet is clearly unable to meet in its current financial condition. There are real concerns as to SpiceJet’s ability to maintain and repair in circumstances in which one engine, which it was meant to repair, has had to go off to Aero Norway in order to be repaired there. So, it does seem to me that there are very real risks if matters are allowed to continue so far as the arrangements proposed in the King & Spalding letter are concerned, of loss to TWC that SpiceJet cannot compensate.
10. Further, I do not regard the undertakings proffered by SpiceJet as any adequate answer to that. First of all, they continue to allow SpiceJet to use the engines on other aircraft. Second, because there is a very woolly exception which would continue to allow them to cannibalise, and in any event the undertakings are expressed in some parts in very broad language that would not readily be susceptible to enforcement by committal jurisdiction if the undertaking is breached. Third, another reason why the undertakings are in my view valueless is the wholesale breach of the order I made on 14 March, established on the evidence, as SpiceJet continued to use the engines on other aircraft in breach of my order.
11. I accept the effect of an order that prevents SpiceJet from continuing to use the engines will have very serious impact on its operations and although there is no evidence of this, broadly the fact SpiceJet would lose 15 per cent of its fleet, as Mr Sprange KC submitted, sounds credible. Although understandably Mr Shah took the formal point about the lack of evidence of this figure, I did not understand there to be a serious dispute that preventing the use of the three engines SpiceJet still have on other aircraft would have a material impact on its ongoing operations.
12. Were there even a colourable argument that such usage might be lawful, I would have had to think very carefully about the relative balance of convenience at that stage. But there has been nothing pointed to which would suggest there is any legitimate basis for SpiceJet to continue these engines on other aircraft, or at all after 31 March. Mr Shah has offered a very convincing answer to the suggestion that there can be a three-month

renewal of the leases. Further, it is important to remember that this dispute goes back some way. SpiceJet are very sophisticated operators. They know the aviation business and they know their leases, not least they have had cause to look at aircraft leases very closely over the last few months. Were there an answer to this claim, I am satisfied that it would have surfaced long before King & Spalding's very late instruction in this matter.

13. Against that background, I am not prepared to sanction what, to a very high degree of probability, would be unlawful usage of the engines because of the consequences to SpiceJet if it was forced to cease what there appears to be to a very high probability is unlawful usage. This court is not a bankruptcy court which grants moratoria or breathing space to debtors while they restructure. There may, as Mr Sprange KC submits, be a number of very good commercial reasons why TWC might want to reach an agreement of that kind with SpiceJet. If there is any substance in the very late offer communicated at 3.10pm that rent will be paid, no doubt that will be considered by TWC. However, I have absolutely no doubt that the appropriate order in these circumstances is at a minimum to continue the interim injunction I had already granted preventing the use of the engines.
14. However, there was no suggestion that there was any meaningful difference, so far as SpiceJet is concerned, between being unable to use the engines on other aircraft and having to deliver them up to TWC. In those circumstances, I propose to order delivery up of the leased engines and aircraft to TWC, but I am going to order that the engines and two aircraft cannot be exported from India for a period from eight weeks from today. That would at least ensure, if SpiceJet can somehow conjure up some sort of arguable response, that the position would be reversible to some extent. However, I fear the reality is that SpiceJet have run out of runway unless they are able under these particular leases to negotiate with TWC for a further extension.