

Farnell, David

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ASSET FINANCE RECOVERIES E-ALERT

Acceptance Certificate Prevents Lessee's Denial

In *ACG Acquisition XX LLC v Olympic Airlines (In Liquidation)*, the Commercial Court decided that because the lessee under a lease had signed an acceptance certificate stating that an aeroplane had been delivered in accordance with the lease, the lessee was prevented from alleging that the aeroplane's condition fell short of the required standard.

Background

When Air Asia's lease of the lessor (**ACG**)'s Boeing 737-300 aeroplane ended, ACG agreed to lease the aeroplane to the lessee (**Olympic**) for 5 years. ACG delivered the aeroplane to Olympic, which inspected it but passed-up the chance to conduct a flight-test and signed an acceptance certificate. ACG's representative countersigned the acceptance certificate and then signed a redelivery acceptance certificate for Air Asia. Olympic put the aeroplane into commercial service but found defects, which it reported to the Greek aviation authority, resulting in suspension of the aeroplane's airworthiness certificate. Olympic was unwilling to carry out the work required to resume operating the aeroplane and subsequently ceased trading prior to entering into liquidation.

ACG served notices on Olympic, terminating the lease and demanding redelivery of the aeroplane. Eventually ACG recovered the aeroplane and flew it to the USA, where it obtained an export certificate of airworthiness and leased the aeroplane to a Bolivian operator.

ACG sued Olympic for payment of the monies due on termination of the lease. Olympic contended that the aeroplane had not been airworthy when delivered and counterclaimed damages for breach of contract. ACG argued that Olympic was estopped by its acceptance certificate from asserting that the aeroplane had not been delivered in compliance with the terms of the lease.

Judgment

Mr Justice Teare found that the aeroplane had not been airworthy when delivered by ACG to Olympic but the wording of the lease (which said the acceptance certificate was conclusive proof that Olympic had examined and investigated the aeroplane and that both

the aeroplane and its documents were satisfactory) meant that Olympic waived any right it might otherwise have had to refuse acceptance of the aeroplane.

He also found that this waiver did not affect Olympic's right to counterclaim damages for ACG's breach of its contractual obligation to deliver the aeroplane in the condition required by the lease. But the judge decided that ACG was entitled to rely on an estoppel to prevent Olympic from contradicting the acceptance certificate, which contained a clear and unequivocal representation that the aeroplane and its documents met the condition required by the lease.

That representation was that the aeroplane's condition had met the requirements "in all respects". It would be unfair to allow Olympic to go back on the representation now, because it had spurned the opportunity to test-fly the aeroplane and ACG had relied on the representation to its detriment, because it had gone on to sign the redelivery acceptance certificate (precluding any claim which it might have had against Air Asia).

ACG was therefore entitled to judgment on its claim and Olympic's counterclaim was dismissed.

Comment

This is an excellent decision for all lessors who rely on acceptance certificates, not just those who lease aircraft. If the lease is between two businesses the courts will not allow an informed lessee to go back on a strongly-worded certificate and complain that the goods delivered to him have fallen short of the required contractual standard.

In each case much will depend on the wording of both the certificate and the lease as well as the facts which precede the lessee's signature of the acceptance certificate. Lessors should ensure that their documents are tightly drafted.

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