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CLIENT ALERT

Peregrine v. Laudamotion – Practical Lessons for Lessors

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In the recent case of *Peregrine Aviation Bravo & Ors* v. *Laudamotion GmbH & Anor* [2023] EWHC 48 (Comm), the English High Court rejected a claim brought by AerCap against Austrian airline Laudamotion GmbH (a subsidiary of Ryanair) in connection with the purported termination of the leasing of four A320 aircraft scheduled to be delivered at the time of the onset of the Covid-19 pandemic. The case raises a number of issues for lessors when considering the delivery of aircraft under lease agreements and when contemplating lease terminations.

Key facts

Peregrine Aviation Bravo Limited ("Peregrine") and AerCap Ireland Limited (AIL) entered into lease agreements for four A320 aircraft in July 2019 with Laudamotion GmbH ("Laudamotion") (the "2019 Leases") to be delivered before June 2020. Laudamotion had also entered into five aircraft leases in 2018 with AerCap Ireland Capital Designated Activity Company (AICDAC, collectively with Peregrine and AIL, "AerCap") (the "2018 Leases").

From late 2019 to early 2020, AerCap's and Laudamotion's technical teams worked towards delivery of the aircraft, the first of which (MSN 3361) was scheduled for around 20 March 2020. Following the implementation of global travel restrictions due to the onset of the Covid-19 pandemic, Laudamotion advised AerCap on 18 March 2020 that it would be deferring delivery of the four aircraft under the 2019 Leases until at least the end of June 2020. Laudamotion did not have a contractual basis for such a deferral and, in the judgment, it was found that the communication formed part of Laudamotion's negotiation strategy to obtain concessions from lessors, in common with many other airlines during the Covid-19 pandemic. Following Laudamotion's 18 March 2020 communication, AerCap and Laudamotion continued to communicate regarding technical matters (although Laudamotion ultimately disengaged from the process) and entered into discussions regarding a global amendment agreement to the 2019 Leases to amend the scheduled delivery dates to June 2020, although this document was not signed by the parties.

On 20 April 2020, Laudamotion sent a further letter to AerCap to the effect that it would be reducing its monthly rental payments on the 2018 Leases and that it was unable to accept delivery of the aircraft under the 2019 Leases. This was rejected by AerCap, who by email on 1 May 2020 designated 7 May 2020 as the delivery date for MSN 3361 and subsequently tendered MSN 3361 for delivery on that date. Laudamotion did not take delivery of MSN

3361, claiming that AerCap had failed to comply with its obligation under Article 3.2 of the MSN 3361 lease agreement to: (i) notify Laudamotion in a timely manner of the exact date for expected delivery, (ii) to consult with Laudamotion prior to making a determination of such date and (iii) to provide reasonable notice of the scheduled delivery date. Laudamotion also argued that certain delivery conditions under the MSN 3361 lease agreement had not been satisfied by AerCap, including the provision of an Export Certificate of Airworthiness (ECoA), CAT.IDE statement and EASA compliance statement.

Based on Laudamotion's failure to take delivery of MSN 3361 (which was argued to constitute an event of default under Article 24.2(a) of the MSN 3361 lease agreement) and "*certain additional Events of Default*", AerCap served notices on Laudamotion on 15 May 2020 terminating the lease in respect of MSN 3361 and terminating the leases in respect of the other three aircraft under the cross-default provisions of the 2019 Leases.

Although not specified in the termination notices, AerCap also subsequently relied on the suspension of payments event of default set out in article 24.2(n) of the lease agreements as a ground for termination, which provided that an event of default would occur if "*Lessee (...) (ii) suspends or threatens in writing to suspend payment with respect to all or any of its debts or other payment obligations (...)*".

Decision

Laudamotion was not obliged to accept delivery of MSN 3361

The High Court found that Laudamotion was not obliged to take delivery of MSN 3361 on 7 May 2020 and that the event of default in Article 24.2(a) of the MSN 3361 lease agreement had not been triggered for two reasons. Firstly, it was held that AerCap's notice designating the scheduled delivery date was invalid as AerCap had failed to comply with its obligation to consult with Laudamotion and to provide reasonable notice of the scheduled delivery date. The High Court did not accept AerCap's argument that Laudamotion's deliberate decision to disengage from the delivery process relieved them from such obligation since AerCap did not require Laudamotion's cooperation in order to comply. Secondly, the High Court considered that AerCap's failure to provide the ECoA, the CAT.IDE statement and the EASA compliance statement, which were all delivery conditions under the MSN 3361 lease agreement, constituted a material deviation from the delivery condition, and since it was not cured by AerCap prior to the final delivery date, Laudamotion was therefore not obliged to accept delivery of MSN 3361.

The suspension of payments event of default did not apply

The High Court also rejected AerCap's claim that Laudamotion's 18 March 2020 and 20 April 2020 letters constituted an event of default under article 24.2(n) of the lease agreements. The High Court interpreted the words "*suspends or threatens in writing to suspend*", in the context of the clause in full, as covering a situation where there is "*a clear and unequivocal suspension of payments or threat to suspend payments*" relating to the lessee's debts in general (or at least a category of them), indicative of financial difficulties carrying a risk of insolvency or a similar situation, and where the debts are existing (not merely contingent) and are not disputed in good faith on substantial grounds. In this case, the High Court found that Laudamotion's 18 March 2020 and 20 April 2020 letters related to an obligation that was merely contingent (as no rental was then due under the lease agreements), was genuinely disputed on substantial grounds, did not relate to the lessee's debts in general and was covered in a separate non-payment event of default that provided for a grace period. Therefore, the High Court concluded that there was not an event of default under article 24.2(n) of the lease agreements.

Failure to specify a contractual termination right may preclude claims for contractual damages

The High Court further considered in *obiter* the effect of AerCap's termination notices and, specifically, AerCap's claims for sums payable pursuant to Article 24.6(c) of the MSN 3361 lease agreement, which set out the lessor's ability to claim indemnification from the lessee for costs and expenses incurred directly as a result of an event of default. As noted above, the termination notices served by AerCap did not specifically refer to the suspension of payments event of default under Article 24.2(n) of the lease agreement that was ultimately relied on by AerCap as the ground for termination.

The High Court stated that the relevant question would have been whether a chain of causation connecting the breach of contract with the express contractual damages claimed under the relevant contract existed, which is ultimately a question of construction. On the facts, even if AerCap had been entitled to terminate the leasing of the aircraft, it was held that on balance they would not have been entitled to claim damages under Article 24.6(c) as there was no evidence that a perceived suspension of payments event of default under Article 24.2(n), which would have been the actual grounds for termination, in fact led to the termination of the leasing of the aircraft.

Conclusion

Whilst leasing disputes will inevitably be highly dependent on the particular drafting of the lease agreement and the relevant factual circumstances, the decision in *Peregrine* v. *Laudamotion* serves as a reminder that careful consideration of applicable lease events of default and the basis for termination should be undertaken prior to terminating a lease. It should also be noted that the failure to specify a relevant event of default in a termination notice may, depending on the drafting of the lease agreement, subsequently preclude a lessor from claiming certain contractual damages. In addition, this case illustrates the importance of ensuring compliance by a lessor of its delivery obligations under a lease agreement, even when dealing with a reluctant and uncooperative lessee, including compliance with the applicable notification requirements under the lease agreement.

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