

## CAPE TOWN CONVENTION LEGAL ACTIVITY ANALYSIS<sup>1</sup>

Produced by the Legal Advisory Panel to the Aviation Working Group

Initial posting: 1 November 2015<sup>2</sup>

Reference: Ireland, case 2 [2013]		
Date of Judgment:	13 May 2013	
Case:	Transfin-M -v- Stream Aero Investments SA and Aviareto Limited (unreported)	
Relevant CTC/Protocol (IR Rules & Procedures)	Article 20; Article 25(4); Article 40; Article 44(1); Article 44(3)	IR Rules and Procedures None
Relevant CTC Jurisdictions	Ireland; Panama; Russia	
CTC Related Facts, Conclusions and Analysis		
<b>I. <u>Facts:</u></b>		
1. The Defendant, a Panama corporation, pursuant to Article 20(5) of CTC registered a purported registrable non-consensual interest in an aircraft owned by the Applicant, a Russian corporation, in respect of commission it claimed was owed to it in respect of a sale of the aircraft.		

---

<sup>1</sup> Unless otherwise indicated, Articles references in Arabic numerals are to those the Convention on International Interests in Mobile Equipment (**Convention**), and in Roman numerals are to those on the Protocol on Matters Specific to Aircraft Objects (**Protocol**). The Convention, as modified by the Protocol, is referred to as **CTC**.

<sup>2</sup> See part IV, if applicable, containing annotations based on subsequent legal developments

2. The Applicant served a demand on the Defendant pursuant to Article 25(4) of CTC to remove the registration.
3. Neither Panama nor Russia made a declaration under Article 40 of CTC relating to registrable non-consensual rights or interest.
4. Separately the Defendant had brought proceedings against the Applicant in the District Court of Oklahoma seeking payment of the commission by the escrow agent from the sales proceeds account. The Applicant sought an order of the Irish High Court (the **Court**), through its Commercial Court division, pursuant to Articles 20, 25(4), 40 and 44(3) of CTC directing the Defendant to remove the registration and, in the alternative, an order pursuant to Article 44(1) and/or Article 44(3) of CTC, directing the Registrar to discharge the registration in the event that the Defendant failed to comply with the Court order to discharge the registration.
5. There was no order of a foreign court "having jurisdiction under this Convention" declaring the registration of the non-consensual interest invalid and ordering the Defendant to discharge the registration.
6. The Defendant did not make an appearance in the proceedings.
7. In the absence of the circumstances provided for in Article 44(2) (the Defendant had not ceased to exist and could be found) and Article 44(3) (there was no order of a foreign court having jurisdiction under CTC), the Court had to establish its jurisdiction to make the order sought by the Applicant against the Defendant and the Registrar.
8. The case was heard in the specialist Commercial Division of the Court.

## **II. Conclusions:**

9. The Court accepted jurisdiction under the Irish Rules of the Superior Courts 1986 (Order 11, Rules 1(f) and 1(g)) (**RSC**) on the basis that the action was based on torts committed in Ireland (namely, slander on title, malicious falsehood and misrepresentation by maintaining an invalid registration on the International Registry located in Ireland) to make an order directing the Defendant to discharge an invalid registration of a non-consensual interest and, in the absence of compliance by the Defendant with that order, directing the Registrar under Article 44(3) to discharge the registration.
10. The Court awarded costs against the Defendant ordering it to pay both the Applicant's and the Registrar's costs.
11. The Court gave the Applicant leave to pursue a claim for damages against the Defendant.

## **III. Analysis:**

12. This case was resolved in 4 weeks. There were no factual disputes, as the Defendant did not appear. The case was not appealed.
13. The Court, in exercising its jurisdiction, concluded that the registration of the non-consensual interest was not valid since neither Russia nor Panama had made a declaration under Article 40 of CTC regarding "registrable non-consensual interests" and, accordingly, regardless of the merits of the Defendants

claim against the Applicant, the Defendant did not have a valid registrable non contractual interest.

14. This case demonstrates the willingness of the Court to uphold the purpose and spirit of CTC by expanding its jurisdiction under CTC by using RSC to make the requisite order under CTC to discharge the invalid registration.
15. On its face the decision could be construed as the Court accepting jurisdiction simply by virtue of the International Registry being located in Ireland. However, the Court, in accepting jurisdiction and making the orders, placed significant emphasis on the fact that, regardless of the merits of the Defendants claim for commission on the sale of the aircraft, neither Panama nor Russia had made a declaration under Article 40 of CTC and accordingly the Defendant did not and could not have a "registrable non-consensual interest" under Article 40. If there was a dispute as to the validity of the registration of the non-consensual interest, it is not certain that the Court would have accepted jurisdiction pending resolution of that dispute in the relevant foreign court having jurisdiction under CTC. It is also unlikely that the Court would itself take jurisdiction to resolve a dispute as to the validity of a registration under CTC where it is not clear that the registration is invalid.
16. The relative speed of the case, the award of costs and leave to the Applicant to sue for damages, gives a strong message to those minded to make invalid registrations with a view to frustrating the owner of aircraft from dealing with its assets, that there is potentially a significant cost to them of doing so.

#### IV. **Annotations Reflecting Subsequent Legal Developments**

17. Ireland, case 2 [2013] was the first case taken to the Court through its specialist Commercial Court division. The speed of the case (4 weeks) against the speed of the more straightforward Ireland, case 1 [2012] (2 months) reflects the benefit of applying to the specialist Commercial Court division of the Court for an order to discharge a registration.