

CAPE TOWN CONVENTION LEGAL ACTIVITY ANALYSIS¹

Produced by the Legal Advisory Panel to the Aviation Working Group

Reference: Ireland, case 5 [2017]		
Date of Judgment:	17 July 2017	
Case:	SASOF III (A22) Aviation Ireland DAC -v- Aviareto Limited (unreported)	
Relevant CTC/Protocol (IR Rules & Procedures)	Article 25(4); Article 44	IR Rules and Procedures None
Relevant CTC Jurisdictions	Ireland, USA	
CTC Facts, Conclusions and Analysis		
<p>I. <u>Facts:</u></p> <p>1. The Applicant, an Irish company, was the owner of a Boeing 737-800 aircraft and two CFM56-7B26 aircraft engines (the Aircraft) which it had acquired in 2017. At the time of acquisition, the priority search in the International Registry evidenced registrations in respect of a sublease of the Aircraft entered into in November 2006 by the then lessor XL Airways UK Limited (XL) to TEM Enterprises (TEM) and in respect of an assignment of the sublease by XL to the then owner, International Lease Finance Corporation (ILFC) to secure XLs obligations to ILFC under the head lease of the Aircraft (the "Lease"). The Lease was terminated on September 2008 and the registrations in respect of the assignment of sublease were discharged in October 2010. However XL did not register discharges of the international interests created by the sublease. In June 2014, XL was dissolved in a creditors voluntary winding up and had ceased to exist. In 2016, the Applicant entered into an agreement to sell the Aircraft. The Purchaser required the international interests in respect of the sublease to be discharged.</p> <p>2. Not being the "debtor" within the meaning of the CTC, the Applicant had no express entitlement under the provisions of the CTC to make an Article 25(4) demand on XL to remove the registrations or, in circumstances where XL had ceased to exist, to bring an application to the Irish High Court (the Court) under the provisions of Article 44(2) seeking an order directing the Registrar to discharge the registrations although the Applicant did make a demand on XL to discharge the registrations.</p>		

¹ 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**.

3. There was no order of any court having jurisdiction under CTC in relation to the discharge of the registration, so the courts jurisdiction under Article 44(3) could not be relied upon.
4. The Applicant nonetheless brought an application requesting that the Court take a broad interpretation of Article 44(1) to accept jurisdiction to assist the Applicant by making Orders pursuant to Article 44(1) directing the Respondent to remove the registrations of the international interests in respect of the airframe and two engines.

5. The Applicant argued that, following termination of the sublease, the registration of the international interests in respect of the sublease were incorrect and misleading as they should have been discharged by XL (as the right to discharge holder) when the sublease expired but XL had failed to discharge them.

The Applicant further argued that the continued presence of the international interests on the International Registry has caused, and was continuing to cause, prejudice to the Applicant.

The Applicant argued that the continued presence of the incorrect and misleading registration of the international interests in relation to the Aircraft is a burden on title and that the absence of clear title is a very serious impediment to any further dealing by the Applicant with the Aircraft and therefore significantly impacts the value of the Aircraft as the Applicant will be unable to warrant clear title to the Aircraft free from liens.

The Applicant's arguments were made in affidavits submitted with the application for the Orders. The Judge had read the application papers in advance. The Applicant was not asked to make oral submissions to the Court.

6. The facts were not disputed.
7. The Applicant sought the co-operation and consent of the Respondent in making its application.
8. The Respondent did not make any objection to the application for the Orders directing it to discharge the registrations.

II. Conclusions:

9. The Court, having satisfied itself that the registrations of the international interests could not otherwise be discharged save by the Respondent, made the Orders directing the Respondent to discharge the registrations pursuant to Article 44(1) in circumstances where there was no objection to the making of such an Order by the Respondent.
10. No formal written judgment was handed down by the Court.
11. No order was made with regard to costs.

III. Analysis:

[Timing of Case]

12. The case was resolved within 5 working days.

This decision, and the speed with which it was made, demonstrates again that the Court appreciates the commercial realities of the aviation industry and is prepared to be flexible in giving effect to the objective of the CTC to facilitate efficient aircraft financing and leasing.

[Court's jurisdiction]

13. The Court interpreted its jurisdiction under Article 44(1) broadly to allow it to make an Order notwithstanding that neither the debtor nor the creditor in respect of the international interests were a party to the application and Article 25 did not apply.
14. The Court did not make any express statement with regard to the scope of its jurisdiction. Its acceptance of its jurisdiction under Article 44(1) was implicit in making the Orders to discharge the registrations.
15. This case is similar to Ireland case 4 [2017] where the registrations were valid when made but became incorrect and misleading when the sublease expired. The facts differ slightly to the facts in Ireland case 4 [2017] in that, in Ireland case 4 [2017] there was an impending sale of the Aircraft that was in serious jeopardy if the registrations were not discharged. There was not the same immediate issue in this case. However, the Applicant successfully argued that the continued existence of the registrations negatively impacted the value of the Aircraft and its ability to sell, finance or lease the Aircraft. In the same principles as Ireland case 4 [2017], the Court made the requisite Orders under Article 44(1).
16. The case now firmly establishes the precedent created by Ireland case 4 [2017] and shall be useful for other Applicants with Aircraft encumbered by obsolete filings in circumstances where Article 25 does not apply; the parties to the international interest either cannot or will not co-operate in exercising their rights under CTC to effect discharge of the registrations; and where, factually, there is no dispute as to the expiration of the international interests registered on the International Registry.