

CAPE TOWN CONVENTION LEGAL ACTIVITY ANALYSIS¹

Produced by the Legal Advisory Panel to the Aviation Working Group

Reference: Ireland, case 6 [2018]		
Date of Judgment:	9 April 2018	
Case:	Global Principal Finance Company LLC –v- Aviareto (unreported)	
Relevant CTC/Protocol (IR Rules and Procedures)	Article 25 (4); Article 44	IR Rules and Procedures None
Relevant CTC Jurisdictions	Ireland, USA	
CTC Facts, Conclusions and Analysis		
<p>I. Facts:</p> <ol style="list-style-type: none"> 1. The Applicant, a US company, was the owner of an Airbus A320-211 aircraft bearing msn 662 (the Airframe) and two CFM56-5A aircraft engines bearing esn 731818 and 731903 (the Engines and together with the Airframe, the Aircraft) which it had acquired in November 2017. At the time of acquiring the Aircraft, the Airframe and the Engine bearing esn 731903 (the 731903 Engine) were subject to international interests registered on 26 June 2013 in the International Registry (IR) in relation to a lease dated 16 April 2013 (the Lease) between AARIFS (662) LLC as lessor (AARIFS) and Aviatrans – K LLC as lessee (Aviatrans). 2. The parties to the international interests were incorrectly recorded in the IR. AARIFS as lessor and accordingly, under the terms of CTC, the "creditor" and "right to discharge holder" was incorrectly registered as the "debtor". Aviatrans as lessee and accordingly, under the terms of CTC, the "debtor" was incorrectly registered as the "creditor" and "right to discharge holder". 3. The Lease expired on or about 10 January 2014. No steps were taken to discharge the international interests. 		

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**.

4. In November 2017, Aviatrans was placed in liquidation or "termination status" and had ceased to exist.
5. 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 Aviatrans to remove the registrations or, in circumstances where Aviatrans 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 write to the liquidator of Aviatrans requesting him to discharge the registrations. There was no response to the request.
6. AARIFS, while registered as "debtor", on the IR was not in substance the "debtor". Not being an affiliate of the Applicant, the Applicant could not compel AARIFS to correct the filings and/or to discharge them. Aviatrans, as registered "creditor" and "right to discharge holder", having ceased to exist could not register the discharges.
7. There was no order of any court having jurisdiction under CTC in relation to the discharge of the registration, so the Court's jurisdiction under Article 44(3) could not be relied upon.
8. 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 an order pursuant to Article 44(1) directing the Respondent to remove the registrations of the international interests in respect of the Airframe and the 731903 Engine.
9. The Applicant argued that, the registration of the international interests in respect of the Lease insofar as it related to the Airframe and the 731903 Engine were incorrect and misleading in that:(i) the parties were incorrectly registered and (ii) the registration should have been discharged when the Lease expired. It argued that, in circumstances where (i) the incorrect and misleading registration was causing active prejudice to the Applicant; (ii) the continued presence of the incorrect and misleading registration of the international interests in relation to the Airframe and the 731903 Engine was likely to prevent the Applicant from dealing with the Aircraft as they constitute a burden on title to the Airframe and 731903 Engine impeding the Applicant's ability to sell, lease or finance them as it would be unable to warrant clear title to the Airframe and the 731903 Engine free from liens; and (iii) the Applicant would suffer serious prejudice unless the situation was remedied quickly, there was an appropriate case for the Court to exercise its jurisdiction pursuant to Article 44(1) of CTC and/or its inherent jurisdiction to rectify the registration of the international interests.

The Applicant's arguments were made in affidavits submitted with the application for the order. The Judge had read the application papers in advance. The Applicant was asked to make only limited oral submissions to the Court.
10. The facts were not disputed.
11. The Applicant sought the co-operation and consent of the Respondent in making its application.
12. The Respondent did not make any objection to the application for the order under the Courts jurisdiction under Article 44(1) directing it to discharge the registrations. It did not consent to the Court exercising its inherent jurisdiction to make an order to correct the registrations.

13. The Respondent sought, and the Applicant agreed, a contribution to its legal costs on the basis that the error in registration of the international interests was an error on the part of the parties to the international interests and not an error on the part of the Registrar.

II. Conclusions:

14. The Court, having satisfied itself that the registrations of the international interests could not otherwise be corrected or discharged save by the Respondent, made the order 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.
15. No formal written judgment was handed down by the Court.
16. An order was made to the Applicant to contribute €5000 to the Respondent's costs.

III. Analysis:

[Timing of Case]

17. The case was resolved in 4 weeks.

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

[Court's jurisdiction]

18. 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.
19. 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.
20. The case differs from each of Ireland case 1 [2012], Ireland case 2 [2013] and Ireland case 3 [2015]. In those cases, the registrations of international interests were not valid registrations. This case is similar to but differed slightly from Ireland case 4 [2017] and Ireland case 5 [2017]. In those cases the Court was asked to assume jurisdiction to make an order under Article 44(1) in circumstances where:
- (i) the registration of the international interests were registrations of validly created international interests and as such were not incorrect and/or ought not to have been made but which, following expiration of the underlying sublease, had become incorrect and misleading to third parties obtaining a priority search certificate in relation to the Aircraft; and
 - (ii) there was no order of a court of competent jurisdiction to procure the discharge of the registration with which a party had not complied.

In this Ireland case 6 [2018] the registration of the international interests were incorrect insofar as the "debtor", "creditor" and "right to discharge holders" were incorrectly registered. The registered "creditor" and "right to discharge holder" had ceased to exist and the registered "debtor" was not a "debtor" in substance and the Applicant had no means to compel it to make a demand to discharge or to correct the incorrect registrations and/or discharge the registrations.

There were 3 options available to the Applicant:

Option 1: Request the Court to exercise its jurisdiction pursuant to Article 44(1) of the CTC to make an order directing the discharge of the registrations on the basis that it had previously made such orders where the applicant was not a "debtor" within the meaning of the CTC.

Option 2: Request the registered "debtor" (AARIFS) to issue an Article 25 demand to Aviatrans to discharge the registration and, if it failed to comply, request the registered "debtor" to bring an application pursuant to Article 44(2) of the CTC for an order directing the Registrar to discharge the registrations. This approach was considered unsatisfactory however where the registered "debtor" was not in fact the debtor within the meaning of Article 1(j) of the CTC. Furthermore, the Applicant was not able to compel AARIFS to bring any application. A letter calling on the liquidator of the registered "creditor" and "right to discharge holder" to discharge the registrations was issued but no response was received.

Option 3: Seek an order of the Court ordering the Registrar to rectify the clear error in the registrations and, if the error was corrected, then the correct party could simply apply to have the registrations discharged in the usual way as the registered "right to discharge holder". This latter option was considered overly complex, novel in terms of a Court order for rectification and would still require the Applicant to take the further step of procuring the discharge of the registrations by AARIFS.

While the Judge did not expressly state the basis of his interpretation of Article 44(1), it was clear that the Judge accepted the arguments put forward by the Applicant and, on that basis, was prepared to take a broad interpretation of Article 44(1) to accept jurisdiction to make the order directing the Respondent to discharge the registrations.

The case now firmly establishes the precedent created by Ireland case 4 [2017] and Ireland case 5 [2017] and shall be useful for other Applicants with Aircraft encumbered by incorrect and/or 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 facts including expiration of the international interests registered on the IR.

21. The case highlights that the Registrar will register what the parties submit. If the parties make an error in a registration, they will get what they register. It is not the role of the Registrar to review, assess or correct an erroneous registration.
22. This was the first case where the Respondent looked to the Applicant for a contribution to its costs. There was no other party against whom an order for costs would be made. The Respondent was anxious to emphasise that the error in the registrations was an error of the parties and not an error by the Registrar. By making the order to the Applicant to contribute to the Respondent's costs, the Court upheld the integrity of the Registrar in its operation of the IR.

