

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS
QUEEN'S BENCH DIVISION
COMMERCIAL COURT



CL-2017-000765

B E T W E E N:

CREDIT SUISSE AG

(a company incorporated under the laws of Switzerland)

Claimant

- and -

GAMA AVIATION (UK) LIMITED

Defendant

PARTICULARS OF CLAIM

THE PARTIES

1. The Claimant (“**Credit Suisse**”) is a well-known financial institution which provides, inter alia, secured financing for the acquisition of aircraft.
2. The Defendant (“**Gama**”) is a company incorporated in England and based at Farnborough Airport. It provides, inter alia, management services for business aircraft.

RELEVANT FACTUAL HISTORY

3. The background to this claim is a transaction involving the financing of the purchase of a Bombardier Global 5000 aircraft with manufacturer’s serial number 9586 and Isle of Man registration mark M-MICS (the “**Aircraft**”) and the management of the Aircraft.
4. Pursuant to a Loan Agreement dated 29 February 2016 (the “**Loan Agreement**”), Credit Suisse lent to Challenger-Mondel Ltd (“**Challenger-Mondel**”) the sum of



US\$30,000,000 (the “**Loan**”). The Loan was made available to Challenger-Mondel for the purpose of financing the purchase of the Aircraft.

5. Challenger-Mondel drew down the Loan in accordance with the Loan Agreement on 29 February 2016 and purchased the Aircraft.
6. By an Aircraft Lease Agreement dated 1 March 2016 (the “**Lease Agreement**”), Challenger-Mondel leased the Aircraft to Taleveras Petroleum Trading DMCC (“**Taleveras**”).
7. By an Aircraft Management Agreement dated 1 March 2016 (the “**AMA**”), Taleveras appointed Gama to assist it in connection with, inter alia, the management and operation of the Aircraft.
8. Clause 10.7 of the AMA states that: *“In the event of termination, the responsibilities of the Manager [i.e. Gama] under this Agreement shall cease and upon payment in full by the Client [i.e. Taleveras] of all amounts due to the Manager pursuant to this Agreement, the Manager shall immediately give up possession of and redeliver to the Client the Aircraft and all related records, log books and manuals.”*
9. By a deed dated 1 March 2016, Challenger-Mondel granted an aircraft mortgage over the Aircraft and its proceeds of sale in favour of Credit Suisse (“**Mortgage**”). The Mortgage is security for the full and punctual payment and performance of the Secured Obligations (as defined therein). By clause 11 of the Mortgage, Credit Suisse is entitled to sell the Aircraft on the occurrence of an Enforcement Event (as defined therein).
10. Credit Suisse, Challenger-Mondel, Taleveras and Gama entered into a Coordination Agreement dated 1 March 2016 and subsequently amended by a Deed of Amendment dated 4 September 2016 (the “**Coordination Agreement**”), by which the contractual rights of Challenger-Mondel, Taleveras and Gama under the above-mentioned agreements are subordinated to those of Credit Suisse.
11. At trial Credit Suisse will rely on the full terms and true meaning and effect of the Coordination Agreement. The Coordination Agreement (in which the Lender means Credit Suisse, the Borrower means Challenger-Mondel, the Lessee means Taleveras, and the Manager means Gama, and capitalised terms quoted in italics below bear the



same meaning as in the Coordination Agreement) contains the following express terms:

- 11.1 “Enforcement Event” is defined in clause 1.1 as the declaration by Credit Suisse of the “...*Loan and all Outstanding Obligations to be... immediately due and payable...*”
- 11.2 By Clause 3.7.2, Taleveras and Gama agreed and acknowledged that the AMA was in all respects subordinated to the Loan Agreement and to Credit Suisse’s rights and interests as the lender pursuant to the Loan Agreement and the mortgagee of the Aircraft pursuant to the Mortgage. If an Enforcement Event occurs, the AMA terminates automatically if Credit Suisse so instructs in writing. Any termination of the AMA pursuant to any provision of the Coordination Agreement or otherwise is stated to be “*without prejudice to the then accrued and unsatisfied rights and obligations of the parties thereto inter se but shall be without any liability to or recourse against the Lender whatsoever.*”
- 11.3 Clause 3.7.4 states that: “*Save in respect of any advance payments required under the Aircraft Management Agreement, the Manager undertakes that it will not, without the prior written consent of the Lender take any security in respect of the Lessee’s obligations under the Aircraft Management Agreement or, save in respect of any preservation, salvage or necessary-repair lien, exercise any right against the Aircraft in respect of any failure by the Lessee to perform its obligations under the Aircraft Management Agreement or otherwise. The Manager shall hold any security taken by it in breach of this clause 3.7.4 on trust for the Lender as security for the discharge in full of the Outstanding Obligations.*”
- 11.4 Clause 3.7.6 states that: “*Following notification in writing by the Lender to the Manager that an Enforcement Event has occurred and is continuing under the Loan Agreement, without prejudice to clause 4: (A) subject to the Manager being put in funds to do so in advance from any of the Borrower, the Lessee or the Lender, provided that the same are then in its possession, the Manager undertakes, if requested to do so in writing by the Lender, to return the Aircraft and the Records to the Lender at the Borrower’s expense...*”



- 11.5** By Clause 3.7.6(B), following notification by Credit Suisse of the occurrence and continuation of an Enforcement Event, Credit Suisse is entitled to give notice to Gama and Taleveras that the AMA be terminated on a date specified;
- 11.6** By Clause 3.7.7, following notification in writing by Credit Suisse to Gama under clause 3.7.6, Gama is obliged to act in accordance with Credit Suisse's instructions subject to being put in funds to do so in advance from any of Challenger-Mondel, Taleveras or Credit Suisse.
- 11.7** By clause 4.1, following the occurrence of an Enforcement Event, if Credit Suisse so requests of Gama, Gama is obliged, inter alia:
- 11.7.1** to suspend the provision of services to Taleveras pursuant to the AMA in respect of the Aircraft (clause 4.1.1)
 - 11.7.2** if the Aircraft is then under its possession and control, to retain the same on behalf of Credit Suisse, together with the Records (clause 4.1.3)
 - 11.7.3** if the Aircraft is then in its possession and control, redeliver possession of the Aircraft to Credit Suisse at such location in Europe as may be specified by Credit Suisse (clause 4.1.6).
- 11.8** Also by clause 4.1, all reasonable costs and expenses incurred by Gama in performing its obligations under clause 4.1 are to be paid by either Challenger-Mondel, Taleveras or Credit Suisse on Gama's demand.
- 11.9** Clause 4.3 contains an agreement between all the parties to the Coordination Agreement as to the distribution of proceeds in the event of a sale of the Aircraft which applies following an Event of Default under the Loan Agreement. The payment of amounts owed to Gama by Taleveras under the Aircraft Management Agreement is expressly subordinated to the satisfaction of all amounts due to the Lender under the Transaction Documents.
- 11.10** By clause 7.8.8 each of the parties irrevocably consented to relief being granted against it by way of injunction or order for specific performance or for the recovery of any property whatsoever.



CHALLENGER-MONDEL'S DEFAULT AND CREDIT SUISSE'S ACTIONS

12. To the best of Credit Suisse's knowledge, the Aircraft was flown to Farnborough Airport after it was purchased and has remained there. The Aircraft has not been used by Taleveras, Challenger-Mondel, or Mr Igho Charles Sanomi (who is, indirectly via a holding company, one of the principal shareholders of Taleveras and for whose use the Aircraft was purchased).
13. In breach of the Loan Agreement, Challenger-Mondel failed to meet its periodic payment obligations under the Loan Agreement between March and June 2016.
14. Accordingly, Credit Suisse took the following steps to enforce its rights:
 - 14.1 On 2 June 2016 it served a 'Notice of Default' on Challenger-Mondel pursuant to the Loan Agreement setting out the amounts due but unpaid by Challenger-Mondel.
 - 14.2 On 13 June 2016 it served a 'Notice of Enforcement' on Challenger-Mondel pursuant to the Loan Agreement by which the Loan and the other Outstanding Indebtedness (as defined in the Loan Agreement) were declared immediately due and payable. The Notice of Enforcement therefore declared an Enforcement Event under the Coordination Agreement.
 - 14.3 Also on 13 June 2016, Credit Suisse served a 'Grounding Notice' on Gama pursuant to clause 4.1 of the Coordination Agreement requiring Gama to ground the Aircraft immediately in Farnborough, UK; cease to take instructions from Taleveras, Challenger-Mondel or their respective agents regarding the operation of the Aircraft until further notice from Credit Suisse; ensure that the Aircraft's Records (as defined in the Loan Agreement) were securely stored and not delivered to Taleveras, Challenger-Mondel or their respective agents; and to store, insure and maintain or procure the storage, insurance and maintenance of the Aircraft as an aircraft on the ground pending delivery to the same to Credit Suisse or other agreed disposal of the Aircraft.
15. Gama has complied with the requests in the Grounding Notice.
16. The outstanding debt to Credit Suisse not having been discharged:



- 16.1 By a 'Repossession Notice' dated 23 December 2016 served on Challenger-Mondel, Credit Suisse exercised its rights under (a) clause 11 of the Mortgage to ground and take possession of the Aircraft, and (b) clauses 3.7.3 and 3.7.6 of the Coordination Agreement to terminate the Lease Agreement. Credit Suisse gave notification that Challenger-Mondel no longer had any rights in or to the Aircraft or any part thereof following the repossession by Credit Suisse and the termination of the Lease Agreement.
- 16.2 By a 'Repossession and Grounding Notice' dated 23 December 2016 and served on Gama and copied to Challenger-Mondel and Taleveras, Credit Suisse requested Gama pursuant to clause 4.1 of the Coordination Agreement, inter alia, to retain possession and control of the Aircraft and the Records on behalf of Credit Suisse as mortgagee in possession, and it terminated the AMA pursuant to clause 3.7.6(B) of the Coordination Agreement.
17. Following those actions, Credit Suisse became mortgagee in possession of the Aircraft.
18. Pursuant to clause 4.1 of the Coordination Agreement Credit Suisse has paid all invoices received from Gama relating to the services requested by Credit Suisse since the Notice of Enforcement and Grounding Notice, both dated 13 June 2016, such invoices and payments amounting to US\$1,113,915.94 as at the date of these Particulars of Claim.
19. Credit Suisse wishes to sell the Aircraft pursuant to its rights under the Mortgage and apply the sale proceeds towards the debt owed to it. Credit Suisse has pursued negotiations for the sale of the Aircraft and is in advanced negotiations with an interested purchaser, and believes that a sale could be possible but only if completed by the end of January 2018.

GAMA'S BREACH OF THE COORDINATION AGREEMENT

20. Pursuant to clauses 3.7.6(A) and 4.1.6 of the Coordination Agreement, Credit Suisse instructed Gama by a "Letter of Instruction" dated 27 November 2017 (the "**Direction**") to deliver up the Aircraft and the aircraft Records (as defined in the Loan Agreement) into the possession of Credit Suisse's agent, TAG Aviation (UK) Limited ("**TAG**") at their hangar in Farnborough Airport by 5pm that day, and to



grant Credit Suisse and TAG access right to the Computerised Aircraft Maintenance Program (“CAMP”) account relating to the Aircraft.

21. Gama has failed to comply with the Direction. Instead it contends by letters dated 28 November 2017 and 8 December 2017 that it is not obliged to comply with the Direction until sums allegedly owed to it by Taleveras are paid off, whether by Taleveras, Credit Suisse or any other party. In particular:

21.1 Gama alleges that it is owed a sum of US\$1,484,308.46 by Taleveras in relation to services performed at the request of Taleveras under the AMA. Gama contends that clause 10.7 of the AMA gives rise to a contract lien in its favour over the Aircraft in respect of all such sums owed to it by Taleveras.

21.2 Alternatively, Gama contends that pursuant to clause 3.7.4 of the Coordination Agreement it may, without the prior consent of Credit Suisse, exercise any “preservation, salvage or necessary-repair lien” against the Aircraft because Taleveras has failed to pay Gama US\$401,071.52 which Gama alleges is owed to it in connection with the preservation, salvage and necessary-repair of the Aircraft.

21.3 Gama also contends that under clause 3.7.6(A) of the Coordination Agreement it may retain the Aircraft until all the sums owed to it, including the sums owed to it for the management of the aircraft, have been paid. The total claimed under this provision is US\$1,484,308.46, which includes the US\$401,071.52 sought on the basis explained at paragraph 21.2 above.

22. On a true construction of the Coordination Agreement, it is denied that Gama is entitled to exercise any lien over the Aircraft or the Records against Credit Suisse for the reasons alleged by Gama or at all or to refuse to deliver up the Aircraft.

23. In particular, it is denied that Gama can rely on clause 10.7 of the AMA to assert any contractual lien against Credit Suisse or to refuse to deliver up the Aircraft:

23.1 On a true construction of clause 10.7 of the AMA, any such lien (if existing and valid) could only be asserted against Taleveras and not against Credit Suisse which is not a party to the AMA.

23.2 On a true construction of clause 3.7.2 of the Coordination Agreement, any such lien could not be enforced against Credit Suisse.



- 23.3 Credit Suisse has not given its consent (whether in writing or otherwise) to the exercise by Gama of any right against the Aircraft in respect of the failure by Taleveras to perform its obligations under the AMA or otherwise.
24. Further, it is denied that Gama is entitled to assert a lien against the Aircraft, or to refuse to deliver up the Aircraft, by virtue of Clause 3.7.4 of the Coordination:
- 24.1 Credit Suisse has not given its consent (whether in writing or otherwise) to the exercise by Gama of any right against the Aircraft in respect of the failure by Taleveras to perform its obligations under the Aircraft Management Agreement or otherwise.
- 24.2 It is denied that any preservation of the Aircraft was required for Taleveras under the AMA or that any preservation lien arose.
- 24.3 It is denied that any salvage of the Aircraft was required for Taleveras under the AMA or that any salvage lien arose.
- 24.4 No admissions are made as to whether Gama carried out any necessary repairs on the Aircraft for Taleveras under the AMA.
25. Further, it is denied that Gama is entitled under Clause 3.7.6(A) of the Coordination Agreement to refuse to deliver up the Aircraft until paid US\$1,484,308.46 in full. On a true construction of clause 3.7.6(A), Gama is only entitled to be put in sufficient funds necessary to effect the return of the Aircraft and the Records to Credit Suisse, and not to all the amounts allegedly owing to Gama by Taleveras under the AMA. Gama has estimated that it will require US\$5,000 to redeliver the Aircraft and Credit Suisse is ready, willing and able to pay that sum.
26. Further or alternatively, Gama ceased to have possession of the Aircraft on behalf of Taleveras on 13 June 2016, or alternatively on 23 December 2016, and since then has had possession of the Aircraft solely on behalf of Credit Suisse. Accordingly, having lost possession of the Aircraft as against Taleveras, any lien which it might have had as against Taleveras under clause 10.7 of the AMA and/or clause 3.7.4 of the Coordination Agreement has been extinguished.
27. No admissions are made as to the amount of US\$1,484,308.46 or US\$401,071.52 or the services in respect of which such sums are alleged to be owing.



28. Further or alternatively, no admission is made as to whether any such service was provided by Gama. If and insofar as any such service was provided by another company or entity (whether affiliated to Gama or not), it is denied that Gama can exercise any lien over the Aircraft or refuse delivery up of the Aircraft to the extent of any sums owed to it in respect of such service.
29. Accordingly, Gama is in breach of clauses of clauses 3.7.6(A), 3.7.7, and 4.1.6 of the Coordination Agreement in failing to deliver up the Aircraft and the Records to TAG and in failing to grant access to TAG and Credit Suisse to the CAMP account in respect of the Aircraft. Further or alternatively, Gama is in breach of clause 3.7.4 insofar as it purports to rely upon a contractual lien to detain the Aircraft without Credit Suisse's prior written consent.

RELIEF SOUGHT

30. Credit Suisse seeks a declaration that Gama is not entitled in the circumstances here to refuse to deliver up the Aircraft or the Records to TAG and is not entitled to refuse to give TAG and Credit Suisse access to the CAMP account in respect of the Aircraft.
31. Credit Suisse claims an order for specific performance of the Coordination Agreement. Credit Suisse has at all material times been and is now ready and willing to fulfil its obligations under the Coordination Agreement.
32. Alternatively, Credit Suisse seeks a mandatory injunction that, upon Credit Suisse paying Gama's costs of US\$5,000, Gama should forthwith comply with the Direction to deliver up the Aircraft and the Records to TAG and to grant TAG and Credit Suisse access to the CAMP account in respect of the Aircraft.
33. If Credit Suisse suffers any loss or damage from Gama's breaches of the Coordination Agreement, Credit Suisse reserves the right to apply to amend to plead and claim such loss and damage.

AND THE CLAIMANT CLAIMS:

1. Declaratory relief as pleaded above;
2. Specific performance of the Coordination Agreement;
3. Alternatively to 2, a mandatory injunction requiring the Defendant to comply with the Direction to deliver up the Aircraft and the Records to TAG and to grant TAG




and Credit Suisse access to the CAMP account in respect of the Aircraft upon the Claimant paying the Defendant's costs of US\$5,000,

4. Further or other relief; and
5. Costs.

BAJUL SHAH

STATEMENT OF TRUTH

The Claimant believes that the facts contained in these Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Signed on behalf of the Claimant: 

Name: Patrick Robinson

Position or office held: Partner, Linklaters LLP

Date: 15 December 2017

Served this the 15th of December 2017 by Linklaters LLP, One Silk Street, London EC2Y 8HQ, solicitors for the Claimant