

Insights

HIGH COURT CONSIDERS REPUDIATORY BREACH AND WRONGFUL TERMINATION IN AN AIRCRAFT LEASE CONTRACT DISPUTE - OCA V NOVANS

Feb 21, 2022

SUMMARY

The High Court recently considered the termination of an aircraft lease to purchase contract between OCA and Novans (an aircraft broking and consultancy company). In finding for the Claimant, the judgment considers the thorny contractual issues of repudiatory breach, contractual suspension, unjust enrichment and interpretation, all against the backdrop of a contract drafted without the benefit of legal advice.

The Defendant terminated the contract for non payment of an invoice on the grounds that the Claimant's non payment had amounted to a repudiatory breach. OCA subsequently brought its claim saying that this purported termination was in and of itself a breach. It also brought an alternative claim in unjust enrichment seeking restitution in relation to the monies it had paid over under the contract prior to the termination.

The Defendant counterclaimed that the Claimant's failure to pay the disputed invoice had amounted to a repudiation of the agreement that the Defendant had duly accepted.

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Olympic Council of Asia v Novans Jets LLP [2022] EWHC 88 (Comm)

A lot of the findings in the judgment can be attributed to the fact that neither party had involved lawyers in the drafting of the contract. As a result, the contractual interpretation proved difficult, firstly for the parties in determining how to handle the disputed invoice, and ultimately for the Court in reaching its decision.

Noting the potential unfairness of sticking to the literal interpretations of the clauses, Moulder J's clear message was that the Court will be willing to look at the commercial reality which surrounds

an agreement, especially when the drafting is uncertain and there is a clear risk that parties may have agreed to terms which “*with hindsight did not serve [their] interest*” [para 163].

The case further provides a warning for parties seeking to enforce contractual remedies prior to engaging with their counterparty. The Court, in considering whether there had been a repudiatory breach of the contract, reaffirmed the requirement for clear evidence of the desire to abandon the contract.

Ultimately, an onus is placed on parties who are on the receiving end of a breach to take care in their pursuit of contractual remedies, especially when the position under the contract is open to interpretation. As to act too quickly and without the required context, risks it committing its own, and in this case, much larger and more costly breach of contract.

The Claimant, a not-for-profit organisation based in Kuwait, entered into the contract, an aircraft lease to purchase agreement (“ALPA” or the “Contract”), under which Novans agreed to charter an aircraft to OCA by providing certain “block hours” for OCA’s priority use. The dispute between them arose in relation to an invoice for expenses amounting to approximately \$282,000 which OCA did not pay (the “Disputed Invoice”). There were various attempts to meet and try to discuss the Disputed Invoice although the Court found these were primarily driven by the Claimant.

Novans purported to firstly suspend the Contract (and use of the aircraft) and then subsequently purported to terminate as a result of the non payment of the Disputed Invoice.

OCA alleged that the Defendant had breached the agreement by: (i) failing to co-operate in relation to its queries regarding the Disputed Invoice; (ii) suspending its use of the aircraft; (iii) purporting to terminate the ALPA; and (iv) failing to share profits from third-party charters. In the alternative, the Claimant advanced a claim in unjust enrichment, seeking restitution of sums paid in respect of unused “block hours”. Novans counterclaimed that OCA’s failure to pay the Disputed Invoice had amounted to a repudiation of the ALPA that it had duly accepted.

The High Court allowed the claim against Novans, for breach of the Contract. Mrs Justice Moulder found that OCA had breached the Contract by failing to pay the Disputed Invoice, however this breach was not repudiatory. As such, the purported contractual remedies Novans acted upon (suspension of use of the aircraft and termination of the ALPA) meant it was itself in breach of contract.

Therefore, OCA was entitled to damages for Novans’ breaches, (with a credit applied to the value of the Disputed Invoice).

A few specifics in the judgment on the nuts and bolts of contractual interpretation are worth considering a little further:

Implied terms

In concluding that OCA had breached the ALPA through non-payment of the Disputed Invoice, the Court was asked to consider whether a term could be implied into the Contract for reasons of business efficacy, requiring Novans to engage and cooperate in relation to legitimate queries. Moulder J confirmed that such an agreement was not implied, as the terms regarding invoicing of expenses “*did not lack commercial or practical coherence*” without it.

Repudiation and any abandonment of the Contract

The Court found no evidence of an intention by OCA to abandon or refuse to perform the Contract and that it had actively sought clarification and resolution of the issue surrounding the Disputed Invoice. Their attempts to resolve the issue, including attempts to meet Novans, and an offer to pay the disputed funds into escrow were held by the Court as evidencing an intention to continue the relationship and maintain the Contract.

Termination for breach

In considering whether Novans had a contractual right to terminate, the Court placed weight on the non-legal drafting of the ALPA, as the prima facie reading of the termination clause for non-payment of expenses would have produced an uncommercial result. Namely, automatic contract termination would have been allowed for a breach which taken in the whole of the Contract was of limited financial magnitude. By contrast, more serious breaches contemplated in the ALPA were only capable of termination following notice. As such, the Court held it unlikely that non-payment of expenses could have been intended to trigger an automatic termination without a cure period.

CASE DETAILS

- Court: High Court of Justice, Queens Bench Division, Commercial Court
- Judge: Moulder J
- Date of judgment: 19/1/2022

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