



WE'RE NOT EXCLUSIVE
ENGLISH HIGH COURT
ACCEPTS JURISDICTION
OVER AIRCRAFT LEASE
GOVERNED BY NEW
YORK LAW

The recent judgment of the English High Court in *Aersale 25362 Aviation & Anor v Med-View Airline PLC* demonstrates how effective for lessors a one-way non-exclusive jurisdiction clause in an aircraft lease can be.

“This decision shows that, provided it is properly drafted, non-exclusive jurisdiction language is a reliable tool to give lessors the flexibility to commence proceedings in the English courts where it makes commercial sense to do so.”

Aersale had leased a number of aircraft to a Nigerian airline. The airline was in breach of its payment plans. The leases were subject to New York law but each also contained two important provisions:

- A non-exclusive jurisdiction agreement which stated that although the parties agreed that the courts of New York had jurisdiction over disputes between them, the lessor (only) was not prevented from bringing proceedings in any other jurisdiction.
- A clause waiving objections to jurisdiction based on FNC (forum non conveniens aka inconvenient forum).

The airline had a registered office at Gatwick airport, where an English claim was validly served. However the airline then sought to have the case thrown out of the English court. It argued that it had no other connection with England beyond

the office and its aircraft landing there, the parties had agreed that the governing law was New York law, there was no connection between the leases and England and Wales and the payments required were in US dollars.

The English court refused to decline jurisdiction. Emphasising that the lessor and the airline were commercial parties who had all matters in mind when the leases were agreed, it held that the non-exclusive jurisdiction clause and the FNC waiver meant that the court needed a “strong or exceptional” reason to decline jurisdiction. The factors relied upon by the airline, such as currency and domicile, were foreseeable at the time the lease was entered into and not greatly influential.

Commentary

This decision shows that, provided it is properly drafted, non-exclusive jurisdiction language is a reliable

tool to give lessors the flexibility to commence proceedings in the English courts where it makes commercial sense to do so. Jurisdiction does not have to go hand-in-hand with governing law and lessors can choose to make the clause one-way only. Unlike the French Courts, which have twice in recent years found such clauses invalid, the English courts will not easily be convinced to override the contractual language.

For more information about non-exclusive jurisdiction clauses and other legal issues relating to aircraft leasing, please contact:

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