



ACG Acquisition XX LLC v Olympic Airlines SA



Dinesh Mishre and Davina Mansur
Offshore Aircraft Registration
13 December 2013

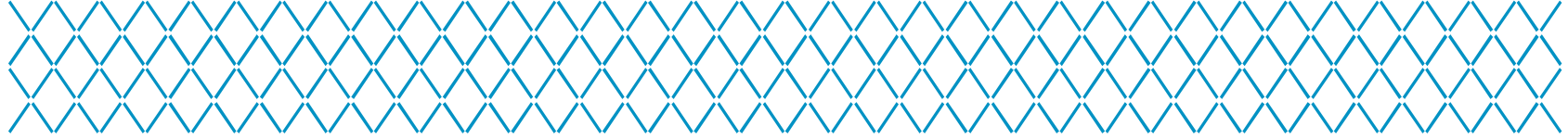
Boeing 737-300





Facts

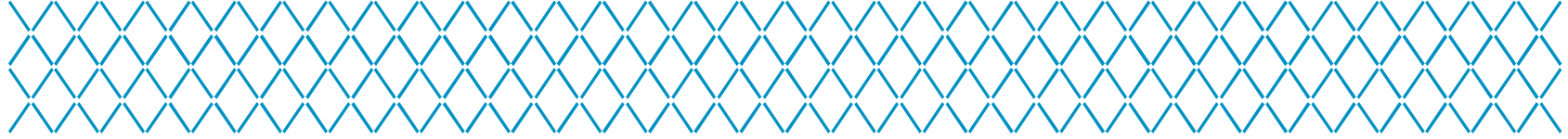
- Dry lease agreement 30 May 2008 B737 aircraft
- ACG: lessor
- Olympic Airways: lessee
- Delivery to Olympic: Certificate of Acceptance 19 August 2008
- 'As is where is'



Certificate of Acceptance

“Lessee irrevocably and unconditionally accepts and leases from the Lessor ... the Aircraft”

“The Lease Property complied in all respects with the condition required at delivery ...”



Lease

Conclusive Proof.

Delivery by the Lessee to Lessor of the Certificate of Acceptance will be conclusive proof as between Lessor and Lessee that Lessee has examined and investigated the aircraft, that the aircraft [...] is satisfactory to the Lessee and that Lessee has irrevocably and unconditionally accepted the Aircraft for lease hereunder without any reservation whatsoever (except for any discrepancies which may be noted in the Certificate of Acceptance).



Facts ...

- Aircraft not airworthy
- Defects in cables
- Airworthiness certificate suspended 11 September 2008



Claims

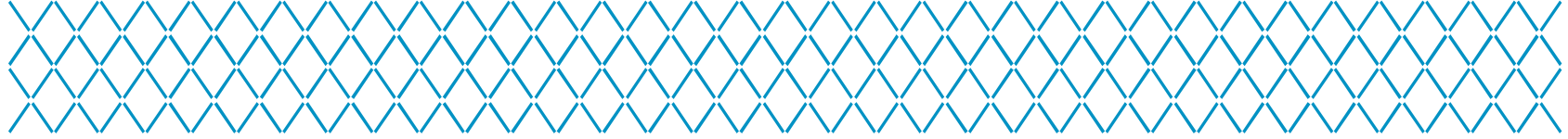
ACG:

Payment rent + maintenance reserves US\$ 4.6 million

Damages loss of rent US\$ 6.9 million

Olympic:

Damages breach of contract – failing delivery aircraft according to contract: US\$ 6.8 million



Essential question

“Whether a claim for damages for defective delivery survives execution by the parties of the Certificate of Acceptance”.



First instance

- Aircraft was neither airworthy nor safe to fly and which “*had not been properly maintained*”. Meaning of Airworthy: ‘fit or safe to fly for the carriage of persons by air’
- ACG relied on Olympic’s statement in the ‘Certificate of Acceptance’ that the aircraft “*complied in all respects with the condition required at delivery*” so as to be “*absolutely certain that Olympic considered that the aircraft complied with the required condition*”. ACG was entitled to rent and Olympic was estopped from pursuing its counterclaim for damages for breach of contract.



Appeal

Certificate of Acceptance is not conclusive proof of compliance of the aircraft and the aircraft documents with the contractual requirements,

but

Certificate of Acceptance contains a representation by the lessee that the condition of the Aircraft is contractually compliant.



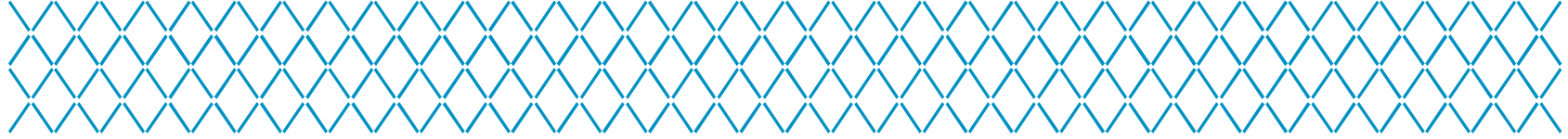
Aruba

- Documentary standardization across industry
- English law / New York law



Choice of Law

- 1980 Rome Convention on the Law Applicable to Contractual Obligations (the “Rome Convention”)
- The courts of Aruba will generally observe and give effect to the choice of English law in the transaction documents, except:
 - Effect may be given to the mandatory rules of law of another country with which the situation has a close connection, if those rules must be applied whatever the law applicable
 - May refuse to apply English law if such application is manifestly incompatible with the public policy of Aruba
 - Shall have regard to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance



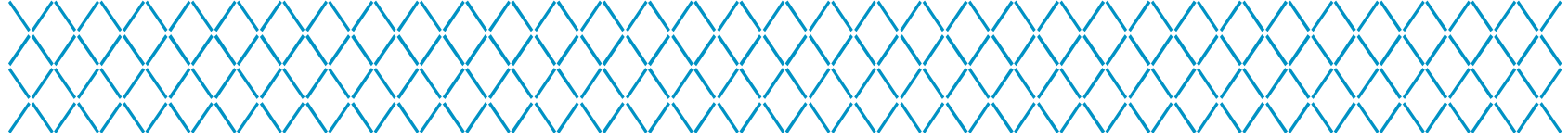
Enforceability

- Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 as amended (“Brussels Convention”)
- Judgment would be recognized and enforced by the courts of Aruba
- Without re-examination of the merits
- Based on and subject to the limitations imposed by the Convention



Aruba Law

- Common law versus Civil law
- Haviltex / DSM
- Reasonableness and Fairness



Practical Considerations

- Procedures for aircraft deliveries
- Delivery staff
- Acceptance certificates
- Delivery coordination
- **Lease provisions and negotiations**

Contact



Dinesh Mishre (LL.M.)

Attorney-at-Law

www.spigtcd.com

dinesh.mishre@spigtcd.com



Davina Mansur (LL.M.)

Attorney-at-Law

www.spigtcd.com

davina.mansur@spigtcd.com