

Wallis Trading v Air Tanzania The Importance of Standard Lessee Representations and Warranties

Article By:

John Pearson

Jack Goold

Aircraft leases typically include standard representations and warranties regarding: (i) the power and authority of the lessee to enter into the agreement and the transactions contemplated by the agreement; (ii) the agreement constituting the lessee's legal and binding obligations; (iii) the agreement not conflicting with any applicable laws; and (iv) all authorisations, consents and registrations required in connection with the agreement being obtained or in effect.

The recent case of *Wallis Trading Inc v Air Tanzania Company Ltd & Anor*¹ in the High Court of England and Wales demonstrates the utility and importance of these standard representations and warranties, including as an estoppel against the defendants' claim that a lease was void and unenforceable as a result of alleged breaches of foreign public procurement legislation and lack of authority. The case also demonstrates the benefit of choosing English law as the governing law of a contract, particularly between international parties, who may be concerned about how local law may act to interfere with a contract's enforceability.

Facts

A Liberian company that acquired and leased aircraft, Wallis Trading Inc. (**Wallis**), sought over \$30 million in unpaid sums from the defendants, Air Tanzania Company (**Air Tanzania**) and the Government of the United Republic of Tanzania (the **Government of Tanzania**, together with Air Tanzania, the **Defendants**), arising out of the lease of an Airbus A320 aircraft (the **Aircraft**) by Wallis to Air Tanzania.

Wallis had leased the Aircraft to Air Tanzania pursuant to an English law-governed lease agreement entered into in November 2007 (the **Lease**). The Government of Tanzania had guaranteed the obligations of Air Tanzania under the Lease pursuant to a Tanzanian-law governed guarantee (the **Guarantee**). Before entering into the Lease, the board of directors of Air Tanzania and the Attorney General of the Tanzania had approved the entry into the Lease provided that certain terms deemed unacceptable be renegotiated and Air Tanzania's board of directors delegated authority to Air Tanzania's managing director to sign the Lease. The managing director managed to renegotiate some of these terms, but not all, and subsequently signed the Lease. Both the Lease and the

Guarantee contained standard representations and warranties relating to power and authority, legal and valid effect, non-conflict and authorisations.

Following a number of payment defaults by Air Tanzania, Wallis accepted early redelivery of the Aircraft and the termination of the Lease in October 2011. Wallis and the Defendants entered into a settlement agreement in October 2013 (the **Settlement Agreement**) with respect to the unpaid sums owed to Wallis. Following this, the Defendants made six payments to Wallis in 2013 and 2014, then stopped paying. Wallis issued proceedings against the Defendants in April 2017 for the outstanding amount.

The Claim

Wallis' primary case was that the Defendants were liable for the unpaid sums pursuant to the Settlement Agreement. Alternatively, Wallis claimed damages for breach of the Lease or the Guarantee.

The Defendants put forward a number of defences to Wallis' claim: ²

Alleged invalidity of lease due to non-compliance with Tanzanian law

The Defendants contended that they were not liable to pay the unpaid sums to Wallis principally on the basis that the Lease was invalid and "null and void" because Air Tanzania had failed to comply with Tanzanian public procurement legislation, so the Lease had been entered into in breach of such legislation and, as such, Air Tanzania had no power to enter into the Lease.

Alleged unenforceability of lease due to illegality

The Defendants further argued that the non-compliance with the Tanzanian public procurement legislation rendered the Lease unenforceable on the basis of the English law principle that English courts will not enforce an obligation which requires a party to a contract to do something unlawful under the law of the country where the contract will be performed.

Alleged lack of authority

Air Tanzania also claimed that its managing director lacked authority to sign the Lease on the basis that: (i) they had failed to renegotiate the provisions of the Lease deemed unacceptable; (ii) they had failed to comply with Tanzanian public procurement law; and (iii) they had breached their fiduciary duty to act in good faith.

Alleged unenforceability of guarantee

The Defendants also contended that the Guarantee was unenforceable on the grounds that its issuance violated Tanzanian public procurement legislation. Alternatively, the Defendants argued that as there was no primary enforceable obligation under the Lease, the Guarantee was unenforceable.

Alleged unenforceability of settlement agreement³

Lastly, the Defendants argued that the Settlement Agreement was also unenforceable because the Lease and Guarantee were unenforceable or illegal (for each of the reasons outlined above) and that the Settlement Agreement was illegal under Tanzanian law.

Decision

Lease's invalidity due to non-compliance with Tanzanian law

The judge found that, as the Lease was expressly governed by English law, by virtue of Article 8 of the Rome Convention (as scheduled to the Contracts (Applicable Law) Act 1991), *“the existence and validity of a contract is to be determined by the law which would govern the contract under the Convention if the contract were valid.”*⁴ – accordingly, as the Tanzanian public procurement legislation does not form part of English law, non-compliance with such legislation did not, as a matter of English law, render the Lease invalid, null or void.

Applying the decisions of the Court of Appeal in *Peekay Intermark v Australia and New Zealand Banking Group*⁵ and *First Towers Trustees Ltd v CDS*⁶, the judge also found that Air Tanzania was contractually estopped from advancing arguments based on the invalidity of the Lease by reason of non-compliance with the Tanzanian public procurement legislation on the basis that Air Tanzania had represented and warranted in the Lease that the Lease was a legal, valid and binding obligation on it, that the entry into and performance of the Lease did not conflict with any laws binding on it and that all authorisations, consents, registrations and notifications in connection with the entry, validity and enforceability of the Lease had been obtained or effected.⁷

Lease's unenforceability due to illegality

The judge dismissed the Defendants' argument that performance of Air Tanzania's obligations under the Lease were unlawful in Tanzania on the basis that the amounts payable under the Lease were to be made to Wallis' bank account maintained in Switzerland, not in Tanzania. The Defendants did not suggest that payment to Wallis was illegal under the laws of Switzerland. The judge also found that, in any event, the Defendants had failed to show that any performance under the Lease was unlawful under Tanzanian law, even if its entry did not comply with Tanzanian public procurement legislation.

Invalidity due to lack of authority

Non-fulfilment of conditions imposed by Air Tanzania's board of directors

The judge held that, as Wallis was not aware of the conditions imposed by Air Tanzania's board of directors on its managing director signing the Lease, the managing director had ostensible authority to do so. Applying English law principles (which the judge found applied in Tanzania too), the judge found that the managing director must be regarded as being held out by Air Tanzania as having authority to sign the Lease on its behalf. Air Tanzania's managing director would usually have authority to enter into commercial transactions such as aircraft leases for Air Tanzania. The judge also found that, even if Air Tanzania's managing director did not have ostensible authority to sign the Lease, Air Tanzania had ratified the Lease by, among other things, taking delivery of the Aircraft and operating it, and subsequently acknowledging its liability for arrears of rent when the Aircraft was redelivered to Wallis.

Failure to comply with Tanzanian public procurement legislation

Regarding Air Tanzania's argument that its managing director lacked authority to enter the Lease on the grounds that the Tanzanian public procurement legislation had not been complied with, the judge considered that Air Tanzania was again contractually estopped from advancing this argument by

reason of the representations and warranties contained in the Lease.

Breach of fiduciary duties

The judge found that the Defendants had not established that Air Tanzania's managing director had acted dishonestly or otherwise than in good faith, or that they had thought they were acting otherwise than in the best interest of Air Tanzania when they signed the Lease.

The judge found this was evidenced by: (a) the terms and structure of the Lease being based on a previous lease Air Tanzania had entered into, (b) the draft Lease being provided to a number of other people within Air Tanzania's management team and (c) documents showing that the managing director had been attempting to further the interests of Air Tanzania in difficult circumstances owing to the lack of A320 aircraft in the market and Air Tanzania's weak financial position and reputation.⁸

Guarantee's unenforceability

The judge found that, similarly to Air Tanzania, the Government of Tanzania was contractually estopped from relying on the argument that the Guarantee was unenforceable due to non-compliance with Tanzanian law by reason of the standard representation and warranties relating to power and authority, legal and valid effect and non-conflict contained in the Lease. It should be noted that, while the relevant law of contractual estoppel here was Tanzanian law, the judge found that no evidence was proffered that Tanzanian law was any different from English law in this regard. For this reason, and by reason of the Lease being valid and giving rise to enforceable obligations against Air Tanzania (for the reasons discussed above), the judge concluded that the Guarantee was enforceable against the Government of Tanzania.

Settlement agreement's unenforceability

The judge considered that the Defendants' argument that the Settlement Agreement was unenforceable owing to the Lease and Guarantee being unenforceable or illegal (for the reasons advanced by the Defendants) was no answer to Wallis' case.

For the above reasons, the judge found for Wallis.

Conclusion

The case is a good demonstration of the doctrine of contractual estoppel and shows the importance of including standard representations and warranties regarding power, authority and validity in aircraft leases. The decision of the court also illustrates one of the benefits of choosing English law to govern aircraft lease transactions, particularly when this involves international parties. Arguments as to the validity of these agreements based on non-compliance with local laws or legislations would not, generally, cause an English-law governed lease agreement to be invalid.

¹ [2020] EWHC 339 (Comm).

² The contentions highlighted in this article do not represent each of the defences advanced by the Defendants, but are the principal matters discussed in the case. For the avoidance of doubt, each of those other defences failed.

³ The Defendants advanced other arguments as to why the Settlement was Agreement unenforceable, but these are not discussed in this article.

4 Paragraph 76, *Wallis Trading Inc v Air Tanzania Company Ltd & Anor* [2020] EWHC 339 (Comm).

5 [2006] EWCA Civ 386.

6 [2018] EWCA Civ 1396.

7 The judge also found that, in any case, any non-compliance with the Tanzanian public procurement legislation unlikely rendered the Lease invalid or

unenforceable as a matter of Tanzanian law.

8 The judge added that a breach by the managing director of their fiduciary duties in entering into the Lease would not, in itself, have rendered the

National Law Review, Volume X, Number 160

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