FEDERAL COURT OF AUSTRALIA

Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed) (No 3) [2020] FCA 726

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| File number: |  |
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| Judge: | **MIDDLETON J** |
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| Date of judgment: | 25 May 2020 |
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| Date of publication of reasons: | 27 May 2020 |
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| Catchwords: | **CORPORATIONS –** extension of the period for administrators to give notice to lessors of property – personal liability of administrators under ss 443A(1)(c) and 443B(2) of the Corporations Act 2001 (Cth) – personal liability of administrators excluded during set period  |
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| Legislation: | *Convention on International Interests in Mobile Equipment* (Cape Town, entered into force 1 March 2006)*Corporations Act 2001* (Cth)*International Interests in Mobile Equipment (Cape Town Convention) Act 2013* (Cth)*Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (Cape Town, entered into force 1 March 2006)  |
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| Cases cited: | *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed)* [2020] FCA 571  |
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| Date of hearing: | 25 May 2020 |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 44 |
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| Counsel for the Plaintiffs: | Dr R C A Higgins SC with Mr D Sulan, Mr R Yezerski and Mr D Krochmalik |
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| Solicitor for the Plaintiffs: | Clayton Utz |

ORDERS

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|  | NSD 464 of 2020 |
| IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS  |
| BETWEEN: | VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED)First PlaintiffVIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226Second PlaintiffVIRGIN AUSTRALIA INTERNATIONAL OPERATIONS PTY LTD (ADMINISTRATORS APPOINTED) ACN 155 859 608 (and others named in the Schedule)Third Plaintiff |

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| JUDGE: | MIDDLETON J |
| DATE OF ORDER: | 25 May 2020 |

THE COURT ORDERS THAT:

1. The Interlocutory Process filed on 22 May 2020 be made returnable at 10.15am on 25 May 2020.
2. Order 9 of the orders of the Court made on 24 April 2020 in these proceedings be varied such that, pursuant to sections 443B(8) and 447A(1) of the Corporations Act, Part 5.3A of the Corporations Act is to operate in relation to each of the Second to Fortieth Plaintiffs as if:
	1. any liability of the First Plaintiffs under sections 443A(1)(c) and 443B(2) of the Corporations Act with respect to any aircraft, aircraft engines or other aviation equipment leased, used or occupied by, or in the possession of, any of the Second to Fortieth Plaintiffs (**Aircraft Leased Property**), is attributable to the period which begins after 16 June 2020, such that the First Plaintiffs are not personally liable for any liability with respect to any Aircraft Leased Property (including amounts payable pursuant to any leases of aircraft, aircraft engines or other aviation equipment entered into by any of the Second to Fortieth Plaintiffs), in the period from 28 April 2020 to 16 June 2020 inclusive;
	2. any liability of the First Plaintiffs under sections 443A(1)(c) and 443B(2) of the Corporations Act with respect to any property leased, used or occupied by, or in the possession of, any of the Second to Fortieth Plaintiffs, other than Aircraft Leased Property (**Other Leased Property**), is attributable to the period which begins after 26 May 2020, such that the First Plaintiffs are not personally liable for any liability with respect to any Other Leased Property (including amounts payable pursuant to any leases of Other Leased Property entered into by any of the Second to Fortieth Plaintiffs), in the period from 28 April 2020 to 26 May 2020 inclusive; and
	3. the words “within five business days after the beginning of the administration” in section 443B(3) of the Corporations Act instead read:
		1. “by 16 June 2020”, in the case of Aircraft Leased Property; and
		2. “by 26 May 2020”, in the case of Other Leased Property.
3. The First Plaintiffs take all reasonable steps to cause notice of the Court’s orders to be given, within two (2) business days of the making of the orders, to:
	1. owners and lessors of Aircraft Leased Property and Other Leased Property leased, used or occupied by the Second to the Fortieth Plaintiffs, in the following manner:
		1. where the First Plaintiffs have an email address for an owner or lessor, by notifying each such owner or lessor, via email, of the making of the orders and providing a link to a website where the owner or lessor may download the orders and the Interlocutory Process;
		2. where the First Plaintiffs do not have an email address for an owner or lessor but have a postal address for that owner or lessor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), by notifying each such owner or lessor, via post, of the making of the orders and providing a link to a website where the owner or lessor may download the orders and the Interlocutory Process; and
		3. placing scanned, sealed copies of the Interlocutory Process and the orders on the website maintained by the First Plaintiffs at https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australiaholdings-limited-subsidiaries.html; and
	2. the Australian Securities and Investments Commission.
4. Any person who can demonstrate a sufficient interest have liberty to apply to vary or discharge any orders made pursuant to paragraph 2 above, on 1 business day’s written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
5. The Plaintiffs have liberty to apply on 1 business day’s written notice to the Court in relation to any variation of the Court’s orders.
6. The Plaintiffs’ costs of the application be treated as costs in the administrations of each of the Second to Fortieth Plaintiffs, jointly and severally.
7. These orders be entered forthwith.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MIDDLETON J:

# INTRODUCTION

1. On 25 May 2020 the Court made further orders in this proceeding. These are the reasons for these orders.
2. The First Plaintiffs, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes of Deloitte (together, the ‘**Administrators**’), in their capacity as administrators of each of the Second to Fortieth Plaintiffs (together, referred to as the ‘**Virgin Companies**’), sought various orders in the Interlocutory Application filed on 25 May 2020.
3. On 24 April 2020, the Court made orders extending the time in s 443B of the *Corporations Act 2001* (Cth) (the ‘**Corporations Act**’), in which the Administrators were to give notice to lessors of all property leased by the Virgin Companies as to whether to retain or give up possession of that property, together with a corresponding extension of the period in which the Administrators did not have personal liability for obligations under those leases. That extension of time was until 26 May 2020 as set out in Order 9 of the orders made on 24 April 2020 (the ‘**24 April Orders**’).
4. The Administrators now seek a further extension of that time, to 16 June 2020, but only with respect to a limited class of property being, aircraft, aircraft engines and other aviation equipment used, occupied or in the possession of the Virgin Companies which are the subject of finance and operating leases (the ‘**Aircraft Leased Property**’).
5. Each of the relevant counter-parties of the Aircraft Leased Property has been given notice of this application (both directly and to their solicitors, where applicable). No interested person appeared to oppose the orders now sought.

# CONDUCT OF THE ADMINISTRATION WITH REGARD TO THE AIRCRAFT LEASED PROPERTY

1. The evidence in support of the application is set out in:
2. the affidavit of Vaughan Neil Strawbridge dated 23 April 2020;
3. the affidavit of Vaughan Neil Strawbridge dated 11 May 2020; and
4. the affidavit of Salvatore Algeri dated 22 May 2020.

## The Aircraft Leased Property

1. The Virgin Companies’ fleet includes 142 aircraft that are the subject of Aircraft Leased Property, with approximately 73 lessors and financiers (collectively, the ‘**Aircraft Lessors**’) of that property in total.
2. Following the 24 April Orders, the Administrators reached the conclusion (and remain of this view) that causing the Virgin Companies to remain in possession of the Aircraft Leased Property is in the interests of the Virgin Companies. This is because:
3. it is necessary to retain an operational fleet of leased and/or financed aircraft to permit the business of the Virgin Companies to continue operating as a going concern (to the extent possible) through the administration process;
4. retaining that property would promote the successful recapitalisation or sale of the business on a going concern basis, as:
	1. it would permit an acquirer of the business to recommence operations following a relaxation of the COVID-19 restrictions from a moving start rather than a standing start; and
	2. the cost and time associated with the acquisition, financing and mobilisation of new aircraft would, for a number of reasons, make a sale impractical.
5. The aggregate monthly liability payable to the Aircraft Lessors is in excess of $40 million per month. The Administrators have been unwilling to take on personal liability for the substantial debts and obligations that would be imposed by continuing to use aircraft, in circumstances where the COVID-19 travel restrictions have significantly reduced the gross revenue generated by the operating fleet (compared to pre-COVID-19 levels) to a comparatively insignificant sum of about $25 million per month (before associated direct costs including fuel, wages, landing charges, navigation charges and air services fees).
6. Since their appointment and following the 24 April Orders, the Administrators and their staff at Deloitte have undertaken extensive efforts in identifying the property leased by the Virgin Companies. With respect to real property leases and other equipment leases, the Administrators were able to form a concluded view as to whether the Virgin Companies ought to continue to remain in possession of that property (having regard to the importance of that property for the ongoing viability of the business) and were able to complete negotiations with those lessors. However, that process has been more complex and protracted with respect to the Aircraft Leased Property.

## Dealings with Aircraft Lessors during the administration period

1. The Administrators have undertaken a significant amount of work to identify, and engage in discussions with, the Aircraft Lessors.
2. On 1 May 2020, the Administrators proposed to each Aircraft Lessor a set of protocols (the ‘**Aircraft Protocols**’) in relation to the ongoing possession, maintenance and preservation and, where applicable, usage of the aircraft and engines by the Virgin Companies.
3. The key features of the Aircraft Protocols at that time included:
4. a limitation of the Administrators’ personal liability in relation to the Aircraft Leased Property and any debts incurred by reason of entry into the Aircraft Protocols;
5. a standstill by the relevant Aircraft Lessors in relation to certain rights under the applicable leases of the Aircraft Leased Property;
6. an extension of the time periods for repossession of the aircraft under the Convention on International Interests in Mobile Equipment (the ‘**Convention**’) and the Protocol to the Convention (the ‘**Protocol**’), where applicable;
7. an undertaking by the Administrators to use reasonable endeavours to identify, as soon as practicable, whether the property is surplus to the Virgin Companies’ business requirements and to notify the Aircraft Lessors as soon as reasonably practicable after such a determination is made (to enable them to repossess their aircraft and engines, and to remarket them);
8. the provision of information to the Aircraft Lessors;
9. payment by the Administrators of a usage charge for the aircraft and engines that are being used by the Virgin Companies during the administration period at a specified rate;
10. certain undertakings by those Virgin Companies that are lessees in relation to usage of the aircraft and engines and registration of the aircraft with the Civil Aviation Safety Authority;
11. provision for maintenance of the aircraft and engines by the lessees;
12. maintenance by the lessees of insurances over the aircraft and engines; and
13. detailed schedules in respect of these matters and additional details for the property (such as calculating the applicable usage charges and a regime for the provision of the information about the property).
14. On 6 May 2020, the Aircraft Lessors were provided with access to a data room containing key information with respect to the Aircraft Leased Property and permitting the Aircraft Lessors to make arrangements with the Administrators for physical inspections of the relevant aircraft, engines and accompanying electronic records.
15. On 14 May 2020, the Administrators sent further correspondence to the Aircraft Lessors to address certain questions, comments and issues raised by the Aircraft Lessors in relation to the Aircraft Protocols.
16. There were then further dealings between the Administrators’ solicitors and the solicitors for the Aircraft Lessors with respect to the terms of the Aircraft Protocols. On 21 May 2020, further communications were issued to the Aircraft Lessors and their representatives setting out the desired timeframe to finalise the negotiations on the Aircraft Protocols and foreshadowing this application.
17. Negotiations with the Aircraft Lessors have been advanced to the point where in-principle agreement has been reached with the lessors of the vast majority of the Virgin Companies’ fleet, and constructive discussions are ongoing to finalise the Aircraft Protocols.
18. The delays in reaching final agreement on the Aircraft Protocols, which have meant that the negotiations have not concluded within the time period contemplated in the 24 April Orders (being up to 26 May 2020), have largely been attributable to:
19. the large number of Aircraft Lessors with whom negotiations have been conducted;
20. the location of Aircraft Lessors across multiple different time zones;
21. the relatively complex and commercially unique terms of the Aircraft Protocols, and the challenges facing all of the negotiating parties, particularly in the context of the COVID-19 pandemic;
22. negotiations on the form and scope of the Administrators’ limitation of liability and/or personal liability;
23. the fact that a number of the Aircraft Lessors have sought specific amendments to the Aircraft Protocols, and the desire of the Administrators to adopt a consistent approach in dealings with all counter-parties;
24. the negotiation and preparation of bespoke amendments to the schedules to the Aircraft Protocols specific to the relevant Aircraft Lessor counterparties; and
25. the commercial scale of the negotiations, having regard to the capital value of the Aircraft Leased Property and the scale of the ongoing liabilities arising under the leases.
26. Although the negotiations for the Aircraft Protocols are very advanced, further time is needed to reach a binding agreement with each Aircraft Lessor, including having regard to the following:
27. finalisation of the bespoke amendments to the schedules to the Aircraft Protocols for particular Aircraft Lessors;
28. the need for certain Aircraft Lessors to obtain credit committee or other internal approvals; and
29. practical arrangements to be made for each of the Aircraft Protocols to be executed by the various counter-parties and exchanged with the Administrators (given the extensive number of Aircraft Lessors).

## Sale Process

1. The Administrators remain of the view that the continued trading of the Virgin Companies’ business as a going concern during the administration period, and remaining in possession of the Aircraft Leased Property, with a view to achieving a sale of the Business and assets of the Virgin Companies or a restructure through a deed of company arrangement, maximises the chances of the business continuing in existence or may result in a better return to creditors than an immediate winding up.
2. On 15 May 2020, the Administrators received non-binding indicative offers in relation to the assets and business of the Virgin Companies. The Administrators are now working with a shortlist of interested parties on the next intensive phase of the sale process, including: facilitating virtual meetings, presentation, ‘Q&A’ opportunities and ‘roadshows’ between the interested parties and management personnel of the Virgin Companies; sharing more detailed financial and operational information with the interested parties; and facilitating meetings between the interested parties and as many of the Aircraft Lessors, real property landlords, suppliers, unions and other key stakeholders of the business as possible.
3. Final binding offers are due to be provided to the Administrators by 12 June 2020. The Administrators are not in a position to determine which of the aircraft leases any prospective purchaser may wish to continue. Moreover, as long as the sale process is continuing, there is a prospect that the purchaser will want to retain existing Aircraft Leased Property on the terms of the current leases, or enter into new leases with the Aircraft Lessors, all of which will reduce the Aircraft Lessors’ potential claims as creditors of the Virgin Companies. If a sale of the business of the Virgin Companies or a restructure by way of deed of company arrangement can be achieved, there will also be an opportunity for the Aircraft Lessors to renegotiate the lease or financing terms with the successful bidder.
4. Ultimately, it is only when the sale process reaches a very advanced stage that the Administrators will be in a position (in conjunction with the input of the proposed acquirer of the business) to identify which of the Aircraft Leased Property may remain in the possession of the Virgin Companies. The Aircraft Lessors have been made aware of the interaction between the sale process and the ongoing possession of the Aircraft Leased Property.
5. Therefore, the underlying basis for the further extension of time sought under sub-ss 443B(2)-(3), is the nexus between the sale process for the assets and the business of the Virgin Companies and the ultimate decision to be made as to the future of the Aircraft Leased Property (in circumstances where the Administrators are unwilling to assume personal liability for the obligations to the Aircraft Lessors given the magnitude of the liabilities and the trading disruption occasioned by the COVID-19 pandemic).

# FURTHER EXTENSION OF THE PERIOD IN SUBSECTIONS 443(B)(2)-(3)

1. In the Court’s earlier reasons concerning the administration of the Virgin Companies(see *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed)* [2020] FCA 571) (‘**Prior Reasons**’), at [44]-[46] I set out the principles that apply with respect to an application for an extension of the period in sub-s 443B(2):

*[44] The principles governing the Court’s power to extend time under section 443B of the Corporations Act were usefully summarised by Markovic J in* Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 2) *[2020] FCA 472, where her Honour said this at [39]:*

Section 447A(1) of the Act also gives the Court ample power to alter the operation of s 443B(2) and (3) of the Act: see In the matter of *Mothercare Australia Limited (administrators appointed)* [2013] NSWSC 263 at [6]. Alternatively, s 443B(8) gives the Court an additional power to alter the operation of s 443B(2) and (3): see *Silvia v FEA Carbon Pty Ltd* (2010) 185 FCR 301 (*Silvia v FEA*) at [13]. The usual rationale behind the extension of the five business day period in s 443B(2) and (3) or the exercise of the power in s 443B(8) is because the administrator has had insufficient time to conduct the necessary investigations to decide whether he or she thinks it best to retain or give up possession of leased property: see *Silvia v FEA* at [12]-[13]. Further it seems that s 443B(8) allows the Court to excuse the administrator from liability to pay rent even after the five business day period has passed (see *Silvia v FEA* at [13]-[14]) or that s 447A enables a court to amend the operation of Pt 5.3A of the Act retrospectively (see *Australasian Memory v Brien* at [26]). (Emphasis in original)

*[45] In that decision, her Honour went on to note, at [52] and [57], that when considering an extension of this type, it is important to balance the interests of different creditors (particularly in the circumstances of a complex administration).*

*[46] In* In the matter of Mothercare Australia Limited (administrators appointed) *[2013] NSWSC 263, Black J canvassed the rationale for granting an extension of time for administrators to decide whether to give notice to landlords limiting their personal liability, and made the following pertinent comments, at [2]-[4]:*

[2] The first issue which arises is the application for an extension of time in order to give any notice to lessors under s 443B(3) of the Corporations Act. That section broadly deals with the circumstances in which an administrator becomes subject to personal liability for rental or other amounts payable by a company under a lease. In broad terms, the section provides that the administrator is liable for rent payable by a company under administration for the period which begins more than five days after the administration begins, but may avoid that liability by giving notice that specifies the property and states that the company does not propose to exercise its rights in relation to the property. That section will operate in a relatively straightforward manner in circumstances that, for example, a company occupies a single or a small number of properties, and assumes that the administrator will be in a position, by the exercise of appropriate diligence, to form a view as to whether the company should continue to occupy the premises and whether or not to assume personal liability in respect of the premises within that period.

[3] However, a situation may arise where there are obstacles to the administrator forming that view within that period. Such a situation was considered in *Silvia v Fea Carbon Pty Ltd (ACN 009 505 195) (admins apptd) (recs and mgrs apptd)* [2010] FCA 515; (2010) 185 FCR 301, where Finkelstein J noted the policy behind the section and that the section was intended to allow the administrator the opportunity to avoid personal liability for rental payable by giving notice within the five day period, but also recognised the possibility that that period may be too short in a particular case. His Honour noted that the Court can either excuse such liability under s 443B(8) of the Corporations Act or extend the time for investigation under s 447A of the Corporations Act.

[4] The Administrators here seek orders under s 443B(8) of the Corporations Act or alternatively under s 447A which, in effect, extend the time for the giving of notice of an intention not to exercise rights in respect of the relevant properties to 5 March 2013, a month from today. A number of factors relevant to making such an order were identified in *Silvia v Fea Carbon*, including that there may be a large amount of paperwork to review; factual uncertainty in relation to the leases; or the administrators’ inability to form a view within the five business days allowed by the section as to whether it was necessary or desirable to exercise rights over the relevant property for the purpose of maximising the chances that some or all of the members of the companies can continue in existence or maximising the return to creditors.

1. Those principles apply equally to the further extension of time now sought.
2. However, there is also a particular regime that applies to aircraft, by reason of the Convention and the Protocol.
3. Both the Convention and the Protocol are incorporated into domestic law by the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* (Cth) (the ‘**Cape Town Convention Act**’). By reason of s 8 of the Cape Town Convention Act, the provisions of the Convention and the Protocol prevail over the Corporations Act to the extent of any inconsistency.
4. Article XI of the Protocol deals with the moratorium on recovery of property that applies in a corporate insolvency. Article XI, Alternative A, relevantly provides that, upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of: (a) the end of the ‘waiting period’; and (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply. (Paragraph 7 permits the insolvency administrator or the debtor to retain possession where all defaults are cured and the insolvency administrator or debtor agrees to perform all future obligations under the agreement.)
5. Australia has made a declaration that it will apply Article XI, Alternative A, in its entirety to all types of insolvency proceeding and that the ‘waiting period’, for the purposes of paragraph 3 of Article XI, shall be sixty calendar days.
6. These provisions prevail over the statutory moratorium in s 440B of the Corporations Act and, as a result, Aircraft Lessors are entitled to possession of their property by 19 June 2020, which is 60 days from the commencement of the administration on 20 April 2020, unless the Administrators cure all outstanding defaults and agree to perform all future obligations under the leases.
7. Therefore, the further extension of time sought by the Administrators to decide whether the Virgin Companies ought to continue to remain in possession of the Aircraft Leased Property continues to fall within the waiting period prescribed by the Protocol.
8. The extension of the period in sub-ss 443B(2)-(3) of the Corporations Act is designed to extend the time to 16 June 2020 for the Administrators to decide whether to cause the Virgin Companies to remain in possession of leased property in accordance with the terms of *existing agreements* in place at the commencement of the administration period (and to exclude the Administrators’ personal liability for the obligations of the Virgin Companies under those leases in the interim).
9. The Administrators’ personal liability under *future agreements*, including with respect to the Aircraft Protocols, is governed by the Court’s orders of 15 May 2020: Order 2(a)(i) of the orders made on 15 May 2020, in the case of the Aircraft Protocols. This application does not relate to such future agreements and there is nothing in the orders now sought that will excuse the Virgin Companies from being liable to pay usage charges under the Aircraft Protocols (once agreed). Nor do the orders derogate from the rights of Aircraft Lessors under the Convention and the Protocol, given that the further extension now sought (to 16 June 2020) is still within the 60 day ‘waiting period’ prescribed by paragraph 3 of Article XI of the Protocol.
10. The further extension of time is only sought with respect to the Aircraft Leased Property.
11. In my view, the further extension should be granted for the reasons set out in the Administrators’ written submissions.
12. First, aircraft, engines and other associated aviation equipment are a species of property with peculiar characteristics. Obviously enough, ongoing possession of this type of property is critical to the continuing viability of any airline business, including the Virgin Companies.
13. Secondly, the Administrators have been negotiating with the Aircraft Lessors with a view to reaching agreement on the form of the Aircraft Protocols. Whilst a complex process, substantial progress has been made and the Administrators are close to finalising the arrangements with the counter-parties. The further extension will facilitate agreement being reached with the counter-parties, governing future dealings over the course of the administration period.
14. Thirdly, the timing of the proposed further extension is harmonised with that of the sale process. Final bids are expected by 12 June 2020 and the prospective bidder or bidders are expected to be in a position to provide an indication as to which specific aircraft are sought to be retained following a sale or restructure of the business of the Virgin Companies. Accordingly, by 16 June 2020, the Administrators are likely to be in a position to ascertain which specific aircraft may not be required for the business. Ultimately, given the nature of the property in question, that is a decision the Administrators can only be expected to make in conjunction with a proposed purchaser of the business and assets of the Virgin Companies.
15. Fourthly, the liabilities associated with the Aircraft Leased Property are significant, exceeding $40 million per month. The Administrators are not willing to take on personal liability for those liabilities and, if that were to occur, the Aircraft Lessors would be entitled to take possession of the property before 19 June 2020 (as otherwise permitted by the Protocol), which would be detrimental to the prospects of the Virgin Companies remaining as a going concern.
16. Fifthly, there is unlikely to be any material prejudice to the Aircraft Lessors from the further extension. The Aircraft Leased Property is insured and properly maintained, with the Aircraft Lessors being kept regularly informed of these matters and having had the opportunity to inspect electronic records and the aircraft in their physical form. Moreover, once the Aircraft Protocols are agreed, payments will be made to Aircraft Lessors in cases when the Administrators cause the Virgin Companies to use the particular aircraft as part of the operation of the business. Also, having regard to the significant travel restrictions in place during the COVID-19 pandemic, as a matter of commercial reality it is not apparent that the return or surrender of Aircraft Leased Property to the Aircraft Lessors will enable the relevant lessors and financiers to derive any better financial return for their property in the short term.
17. Sixthly, Mr Algeri, an experienced insolvency practitioner, has deposed that:
18. the Administrators consider that they require the further three weeks to finalise the Aircraft Protocols; and
19. the extension of time is designed to preserve and enhance the value of the Virgin Companies’ business as part of a sale or positive restructure of the business as a going concern.
20. Seventhly, it is necessary for the Court to have regard to the best interests of the creditors of the Virgin Companies as a whole. An extension of time under s 443B maximises the prospect of preserving (either in whole or in part) the business of the Virgin Companies with a view to a sale or restructure of the business as a going concern. That is in the creditors’ best interests (including those of the Aircraft Lessors as it also increases the prospect that there will remain a counter-party in place with respect to existing aircraft leases): Prior Reasons at [49].
21. Finally, to the extent that the Aircraft Lessors are adversely affected, the orders sought are framed in such a way to permit those persons to apply to the Court for a variation of the orders: Prior Reasons at [51].

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| I certify that the preceding forty-four (44) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Middleton. |

Associate:

Dated: 27 May 2020

SCHEDULE OF PARTIES

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|  | NSD 464 of 2020 |
| Plaintiffs |  |
| Fourth Plaintiff: | VIRGIN AUSTRALIA INTERNATIONAL HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) ACN 155 860 021 |
| Fifth Plaintiff: | VIRGIN AUSTRALIA INTERNATIONAL AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 580 823 |
| Sixth Plaintiff: | VIRGIN AUSTRALIA AIRLINES (SE ASIA) PTY LTD (ADMINISTRATORS APPOINTED) ACN 097 892 389 |
| Seventh Plaintiff: | VIRGIN AUSTRALIA AIRLINES HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) ACN 093 924 675 |
| Eighth Plaintiff: | VAH NEWCO NO.1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 160 881 345 |
| Ninth Plaintiff: | TIGER AIRWAYS AUSTRALIA PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 124 369 008 |
| Tenth Plaintiff: | VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 090 670 965 |
| Eleventh Plaintiff: | VA BORROWER 2019 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 633 241 059 |
| Twelfth Plaintiff: | VA BORROWER 2019 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 637 371 343 |
| Thirteenth Plaintiff: | VIRGIN TECH PTY LTD (ADMINISTRATORS APPOINTED) ACN 101 808 879 |
| Fourteenth Plaintiff: | SHORT HAUL 2018 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 622 014 831 |
| Fifteenth Plaintiff: | SHORT HAUL 2017 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 617 644 390 |
| Sixteenth Plaintiff: | SHORT HAUL 2017 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 617 644 443 |
| Seventeenth Plaintiff: | SHORT HAUL 2017 NO. 3 PTY LTD (ADMINISTRATORS APPOINTED) ACN 622 014 813 |
| Eighteenth Plaintiff: | VBNC5 PTY LTD (ADMINISTRATORS APPOINTED) ACN 119 691 502 |
| Nineteenth Plaintiff: | A.C.N. 098 904 262 PTY LTD (ADMINISTRATORS APPOINTED) ACN 098 904 262 |
| Twentieth Plaintiff: | VIRGIN AUSTRALIA REGIONAL AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 008 997 662 |
| Twenty-first Plaintiff: | VIRGIN AUSTRALIA HOLIDAYS PTY LTD (ADMINISTRATORS APPOINTED) ACN 118 552 159 |
| Twenty-second Plaintiff: | VB VENTURES PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 139 004 |
| Twenty-third Plaintiff: | VIRGIN AUSTRALIA CARGO PTY LTD (ADMINISTRATORS APPOINTED) ACN 600 667 838 |
| Twenty-fourth Plaintiff: | VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741 |
| Twenty-fifth Plaintiff: | VA HOLD CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 157 |
| Twenty-sixth Plaintiff: | VA LEASE CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 291 |
| Twenty-seventh Plaintiff: | VIRGIN AUSTRALIA 2013-1 ISSUER CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 326 |
| Twenty-eighth Plaintiff: | 737 2012 NO.1 PTY. LTD (ADMINISTRATORS APPOINTED) ACN 154 201 859 |
| Twenty-ninth Plaintiff: | 737 2012 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 154 225 064 |
| Thirtieth Plaintiff: | SHORT HAUL 2016 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 612 766 328 |
| Thirty-first Plaintiff: | SHORT HAUL 2016 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 612 796 077 |
| Thirty-second Plaintiff: | SHORT HAUL 2014 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 600 809 612 |
| Thirty-third Plaintiff: | SHORT HAUL 2014 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 600 878 199 |
| Thirty-fourth Plaintiff: | VA REGIONAL LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 127 491 605 |
| Thirty-fifth Plaintiff: | VB 800 2009 PTY LTD (ADMINISTRATORS APPOINTED) ACN 135 488 934 |
| Thirty-sixth Plaintiff: | VB LEASECO NO 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 142 533 319 |
| Thirty-seventh Plaintiff: | VB LH 2008 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 280 354 |
| Thirty-eighth Plaintiff: | VB LH 2008 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 288 805 |
| Thirty-ninth Plaintiff: | VB PDP 2010-11 PTY LTD (ADMINISTRATORS APPOINTED) ACN 140 818 266 |