

Neutral Citation Number: [2020] EWHC 2025 (Comm)

Case No: CL-2019-000204

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 July 2020

Before :

Mrs Justice Cockerill

Between :

AerCap Ireland Ltd and Others
- and -
Hainan Airlines Holding Co. Ltd

Claimant

Defendant

Akhil Shah QC (instructed by **Clifford Chance LLP**) for the **Claimant**
Andrew Pearson (instructed by **Winter Scott LLP**) for the **Defendant**

Hearing dates: **10th July 2020**

JUDGMENT

Mrs Justice Cockerill
(3.01 pm)

Friday, 10 July 2020

Judgment by **MRS JUSTICE COCKERILL**

1. This is an application for summary judgment brought by the Claimants, AerCap Ireland Limited, AerVenture Export Leasing Limited, Celtago II Funding Limited, Wilmington Trust SP Services (Dublin) Limited for a summary judgment on the whole of each of their claims against the Defendant, Hainan Airlines Holding Co Ltd.
2. The application arises out of what is said to be a failure to pay rent and contractual interest in relation to six aircraft lease agreements for commercial passenger aircraft. Those lease agreements were: two of them with the first Claimant, two of them with the fourth Claimant acting as owner trustee, and one which each of the second and third Claimants.
3. There is no dispute before me as to the fact that the Defendant entered into those lease agreements, nor as to the terms of those lease agreements. The Claimants' case is that the Defendant has failed to pay rent for the leased aircraft as well contractual interest. The aggregate amount claimed is for somewhat over \$40 million US.
4. Refreshingly, the Defendant does not deny that it failed to perform its obligations. That much is made clear by paragraph 1 of the skeleton argument put before me today, which says in terms:

"The respondent does not deny and has never denied failure to perform its obligations under the six commercial aircraft leases that underlie this claim."
5. What the defendant has done is joined issue via Mr Pearson of counsel solely to ensure that, as it says, firstly, the applicants are able to prove their claims save to the extent admitted; secondly, that any judgment entered against them is obtained in accordance with the relevant rules of procedure and Practice Directions and in particular that judgment is not given on unpleaded claims; and thirdly, that its position on costs is properly protected. There is also within there an issue as to interest to which I will come in due course.

6. On the pleadings, the defence to the claim for rent was technically one of non-admission of the amount payable and that the defendant has failed to pay the rent. As I have said, the Defendant has not pleaded and did not advance before me a positive defence to the Claimant's claims for rent or contractual interest and indeed indicated that there was really no dispute so far as concerns the amounts which were pleaded.
7. However, I should make clear the materials with which I have been provided and what I have read. I have been provided with the relevant pleadings and the evidence which has been served in support of the application for summary judgment. I have read all of the pleadings and the body of the witness statements served in support of the summary judgment application. I have also been taken during the course of argument to a number of the underlying documents. I have myself looked at a sample of the lease agreements and some of the other documents referred to in Mr Shah's skeleton argument.
8. I should make clear that I have included within the amounts that I have read also the third statement of Ms Freeman, which was served very recently, correcting the first and second statements in relation to the question of compound interest. Some issue was taken as to whether I ought to take account of that, but given that it was clear that the Defendant had engaged with that to the extent that they have looked carefully at the interest calculation, I was not minded to say that I should not look at that evidence.
9. As I have noted, the Defendant has not advanced any positive case. Consistent with that, it has not advanced any evidence in opposition to the application, but it did request an extension of time to do so.
10. The relevant factual background is set out in Freeman 1.
 - a. The First Claimant entered into two lease agreements with the Defendant: the first dated 9 March 2015 for a Boeing 787-9 aircraft, **the 38781 Lease**, and the second dated 17 September 2018 for a Boeing B787-8 aircraft, **the 34944 Lease**.

- b. The Second Claimant entered into a lease agreement dated 9 February 2010 with the Defendant for one Airbus-A320-200 aircraft, **the 4569 Lease**.
- c. The Third Claimant entered into a lease agreement dated 9 March 2015 with the Defendant for one Boeing 787-9 aircraft, **the 38773 Lease**.
- d. The Fourth Claimant (as owner trustee) entered into two lease agreements with the Defendant: the first dated 15 August 2017 for an Airbus A350-900 aircraft, **the 112 Lease**, and the second also dated 15 August 2017 for an Airbus A350-900 aircraft, **the 098 Lease**.

11. Each of the Aircraft Lease Agreements had the following terms:

- a. Payment of Base / Basic Rent on agreed date and in an amount agreed when each aircraft was delivered;
- b. Payment of Base / Basic Rent under each of the Aircraft Lease Agreements was to be made in full without deduction or withholding.
- c. Each of the Aircraft Lease Agreements was a net lease and the Defendant's obligation to pay Base / Basic Rent was absolute and unconditional under any and all circumstances.
- d. Time was of the essence in the performance of all obligations under the Aircraft Lease Agreements.
- e. Contractual interest was payable where the Defendant failed to pay any amount due under the relevant Aircraft Lease Agreement. The contractual rates were identical for five of the aircraft, namely 3% plus the Prime Rate as defined. For the sixth aircraft – the 4569 Lease – the contractual rate was 5% above the 1 month USD LIBOR.
- f. Non-payment of Base / Basic Rent was an Event of Default, the occurrence which gave rise to a number of rights and remedies.

12. The legal principles to be applied can also be found in those notes.

13. The law governing applications for summary judgment is not contentious. In summary:

- a. The test for summary judgment is that (i) the party against whom the application is made has no real prospect of success on the claim or issue in question, and (ii) there is no other compelling reason why the claim or issue should be disposed of at trial: CPR 24.2.
 - b. A real prospect of success means a “‘realistic’ as opposed to a ‘fanciful’ prospect of success”: *Swain v Hillman* [1999] EWCA Civ 3053.
 - c. At the same time, a ‘realistic’ claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
14. It should be uncontroversial that the Applicants bear the burden of proving their case, on liability and quantum. If authority is needed, the Court is respectfully referred to *Jane Wakelin (Pauper) v The London and South Western Railway Company* (1886) 12 App. Cas 41 per Lord Halsbury at 45 (liability), and *The Clarence* (1850) 3 W. Robinson 283 at 286 – 7 (quantum).
15. Indeed, CPR 16.5(4) provides that:
- “Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to an amount of money claimed be proved unless he expressly admits the allegation.”
16. This alters the ordinary presumption found in CPR 16.6(5), namely that a defendant who fails to deal with an allegation shall be deemed to admit it.
17. The respondent in this case stands on the burden of proof and has required the applicants to prove their pleaded claims and to prove their quantum to the court's satisfaction. No positive submissions were made.
18. A number of markers were put down as to quantum. Those were in particular as to (i) a late increase in the specified principal sum claimed and (ii) interest post-judgment which was originally thought to be claimed as contractual interest, but which has been clarified to be explained that what is sought is judgment interest, but at a commercial rate. I will return to that later.

The point of principle

19. The main issue was the former point. The argument which was taken was that the later sums are not pleaded and therefore are not recoverable. It is said that it is not open to a party to argue an unpleaded claim on a summary judgment application by reference to *Credit Suisse AG v Arabian Aircraft & Equipment Leasing Co & Ors* [2013] EWHC 1094 (Comm) by Moore-Bick LJ at [17].
20. What is said is that the applicants particularised the principal sums claimed under paragraph 9(c) of their amended claim form and the claim for relief in paragraph 10 of the claim form expressly referred to those sums. Then a similar approach was taken in the particulars of claim, which set out specific sums owing and then in the prayer referred back to “*payment of all outstanding rent and other amounts accrued under the aircraft lease agreements as specified in paragraphs 23 and 27(1) above*”, with damages in the alternative again being made referable to paragraph 23 of the pleading.
21. I shall deal with this point first because once that is decided, effectively much of what then has to be said can be taken quite swiftly.
22. In relation to that point, having carefully considered the documents and the skeletons and having heard submissions, I am entirely persuaded that it is appropriate to give judgment for the amounts specified in the evidence going up to June, but I will deal separately with the question of the most recent amount.
23. What has been said on behalf of the Claimants for this is that this is a barren pleading point. I effectively accept that submission. When one looks at the authorities, the important point that emerges from the authorities (for example, the case of *Perestrello v United Paint Co* [1969] 1 WLR 570 to which I was taken) is, as is so often the case, the importance is that a defendant understands the case that it has to meet.
24. In *Perestrello*, the issue which the court was bothered by was that one form of loss had been pleaded and then another form of loss, expectation loss, was, at a later stage, sought. The Court of Appeal in that judgment specifically talks about the need to tell the defendant the case they have to meet and refers in particular to what was not told as being the difference between general and special damage.

25. Similarly, in the case of *Credit Suisse AG v Arabian Aircraft & Equipment Leasing Co EC & Ors* [2013] EWHC 1094 (Comm), on which I think particular reliance was placed because it was also an aircraft lease case, that was, if anything, an even more extreme example because in that case there were two possible clauses for the claimant to claim under. One Clause, 18.3, provided for payment on termination. The other Clause, 18.4, provided effectively liquidated damages as an alternative, enabling the claimant to claim all the rent payable to the end of the lease adjusted by NPV less a discount.
26. Those two claims were clearly, having looked at them, and were described by the Court of Appeal also as being alternative and mutually inconsistent bases. What happened in that case was that having pursued a claim under 18.3, at a very late stage, in fact, in the skeleton argument for the hearing, an entirely different tack was taken and 18.4 was pursued.
27. In addition, that was a case where, as one can see from paragraph 12, I think it is, of the authority, there had been service of a defence and a reply. Witness statements were served in support of both sides' cases, described as "lengthy" and "*containing a good deal of argument, not all of which was helpful*". But that indicates that that was a case where there was effectively a substantive and contentious defence.
28. The court there was again making the point that the pleading point was about defining the claim which had been made and that was a point which had a particular resonance where what was possible was effectively two mutually inconsistent claims. The court said:
- "The particulars of claim ... must set out the essential allegations of fact on which the claimant relies and which they will seek to prove at trial, but they should also state the nature of the case that is to be made in order to inform the defendant and the court of the basis on which it is said that the facts gives rise to a right to the remedy being claimed."
29. In my estimation, that has been sufficiently done in the pleadings before me. In essence, what has been made very clear is that this is a claim on a contract, which the Claimants intend to prove the existence of, which gave rise to a right to a certain amount of rent per month, which they intend to

prove, and where payment has ceased at a certain point and that they intend to claim the amounts which have fallen due by the time of judgment, including default interest and so forth.

30. That, it seems to me, is sufficient. The relevant contract is pleaded. The relevant amounts are pleaded. The relevant breach is pleaded. The Defendant can have been in no doubt. If the Defendant had been in any doubt, that was made perfectly clear by the evidence which was served.
31. I would also add that, although it was not necessarily a point which Mr Shah took as one of his with any degree of verve or keenness, I would myself view paragraph 10(b) of the prayer in the claim form as being apt to cover amounts which become due under the aircraft lease agreements by way of rent. Clause 10(a) seeks: "*All outstanding rent and other amounts accrued under the aircraft lease agreements as specified in paragraph 9(c) above.*"
32. There is then at 9(b): "*All additional late charges and default interest accrued up to the date of judgment.*"
33. That covers any late charges and default interest accrued up to the date of judgment on any amounts which become due. So then "*any other amounts which may become due under the aircraft lease agreements*" is a phrase which is perfectly apt to cover further rent and other amounts. Indeed, there is there "other amounts", as there is in 10(a). To the extent that anything further were needed, I would be minded to think that the plea of further and other relief, for example damages in the amount of any further sums, might well be capable of being put under that heading.
34. Despite what Mr Pearson had to say about this, I do not see this as a case where the Defendant can credibly say that it did not know what case was being advanced against it. In relation to such sums as have fallen due at the date of judgment, I consider that there is no need to amend and that Mr Shah is entitled to advance before me a claim for summary judgment in relation to them and that he is, subject to verifying the points in relation to all of the leases, entitled to that summary judgment.
35. In addition, had it been necessary to do so, which I do not think it is, it seems to me that, consistently with the CPR, which requires me to deal with this case, as in all cases, expeditiously and fairly, having

regard to proper use of the court's valuable resources and the encouragement which I find in the overriding objective to deal with as many aspects of the case as possible in one hearing, subject always to fairness to the other parties, that it would have been perfectly fair and appropriate to accede to Mr Shah's backstop application to amend because this was something which really was a very small amendment and could perfectly simply have been done. It did not add a new type of claim at all. It did not add anything for which the Defendant could reasonably, given the concession clearly made in relation to failure to perform the obligations, anything in relation to which it could be said it was prejudiced.

36. I would, if necessary, have said that although it would be an unusual course to take on a summary judgment application, in this case, given the absence of real dispute, it would have been appropriate to exercise my discretion to allow that amendment.

37. That deals with what have been called the late amounts. I will therefore then go through the claims under each aircraft lease agreement.

38781 Lease

Base Rent

38. Article 5.3.1 of the 38781 Lease at required the Defendant to pay the First Claimant in advance Base Rent of USD 1,237,213.00 per month. The Defence admits the obligation to pay Base Rent but not the amount. The amount of USD 1,237,213.00 was communicated and agreed to by the Defendant on 10 November 2017. The Defendant has paid this amount on previous occasions without complaint.

39. The date for payment of Base Rent was 10th day of the month, or if not a Business Day on the Preceding Business Day: see Article 5.3.2 at and the Rent Confirmation Letter at which was dated 10 November 2017.

40. The Defendant has failed to pay Base Rent of USD 1,237,213.00 per month due under the 38781 Lease on: (a) 10 January 2020, (b) 10 February 2020, (c) 10 March 2020, (d) 9 April 2020, (e) 8

May 2020, (f) 10 June 2020. The arrears of Base Rent therefore to 10 June 2020 is USD 7,423,278.00. The unpaid Base Rent is set out in a schedule.

41. Only those instalments of Base Rent to 10 March 2020 have been pleaded.
42. In relation to this aircraft lease, exactly today a further instalment of base rent of \$1,237,213 has fallen due for payment. Article 5.3.2 at requires payment of Base Rent to be made on the date that it is due: “...*payment of Base Rent will be due monthly thereafter no later than the same day of the month as the Delivery Date of the Aircraft...*”. At the time of the hearing, I am told that no payment had been received. I am told that previously payment had been made from bank accounts in China or Hong Kong and therefore payment should have been received before the hearing.
43. The First Claimant has invited me to include this instalment in my judgment if the payment had not been received. I will deal with that subject separately..
44. In relation to the other sums, those were fairly due at the time of the judgment. They were indeed due at the time of the application being made. They were addressed in evidence. The defendant had at least an opportunity to deal with those as they were dealt with in the evidence. I have no hesitation in granting judgment on those sums.
45. In relation to the amount due today, while I accept it is vanishingly unlikely that there will be any payment now made today, it seems to me that it is conceptually possible that it could be. In those circumstances, I cannot properly conclude that there has been a failure to make payment such that I could give judgment on it. I would, if necessary, and will, if asked to, be prepared, under the heading of further or other relief, to grant a declaration that that sum falls due today and was due for payment today to the extent that that may be of any significance at all.

Contractual Interest

46. The next topic is contractual interest. The First Claimant is entitled to recover contractual interest under the 38781 Lease at the rate of 3% plus the Prime Rate (defined as the prime commercial lending rate of interest announced from time to time by JP Morgan Chase Bank in New York): see Article 5.7

of the 38781 Lease. For the purpose of this application the First Claimant has restricted its claim to simple interest.

47. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.
48. Freeman-1 explains that the contractual interest claimed under the 38781 Lease was USD 56,952.03 as at 26 May 2020. The Prime Rate used is set out in a spreadsheet which I have seen.
49. There was an error in that the amount of contractual interest due was understated because the schedule at only included interest for the month on which an invoice was raised and did not include interest which accrued after that date. The amount due based on simple interest is USD 153,265.62.
50. The First Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 153,265.62 in relation to the 38781 Lease.
51. The rest of the amounts claimed follow a similar pattern

34944 Lease

Base Rent

52. Article 5.3.1 of the 34944 Lease required the Defendant to pay the First Claimant in advance Base Rent of USD 656,000.00 per month. The Defence admits the obligation to pay Base Rent but not the amount. The amount of USD 656,000.00.00 was set out in Article 5.3.1. The Defendant has paid this amount on previous occasions without complaint.
53. The date for payment of Base Rent was 8th day of the month, or if not a Business Day on the Preceding Business Day and the Bill of Sale dated 8 September 2019.
54. The Defendant has failed to pay Base Rent of USD 656,000.00 per month due under the 34944 Lease on: (a) 7 February 2020, (b) 6 March 2020, (c) 8 April 2020, (d) 8 May 2020, and (e) 8 June 2020. The arrears of Base Rent therefore to 8 June 2020 is USD 3,280,000.00. The unpaid Base Rent is set out in the schedule.
55. Again there is no real issue as to rent to and including March, and I accept the submission that judgment must follow.

56. Similar issues arise here as to April, May and June rent, as well as a July rent which was due on 8 July. The payment was not made on 8 July 2020.
57. Accordingly, the First Claimant seeks and is entitled to a judgment in respect of Base Rent due under the 34944 Lease of USD 3,936,000.00.

Contractual Interest

58. Again The First Claimant is entitled to recover contractual interest under the 34944 Lease at the rate of 3% plus the Prime Rate (defined as the prime commercial lending rate of interest announced from time to time by JP Morgan Chase Bank in New York): see Article 5.7 of the 34944 Lease. Interest is calculated in accordance with Article 5.7 at and compounded monthly at the end of each calendar month.
59. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.
60. Freeman-1 explains that the contractual interest claimed under the 34944 Lease was USD 35,742.07 as at 26 May 2020: see the calculation in the schedule. The Prime Rate used is set out in the spreadsheet.
61. The amount of contractual interest due was understated because the schedule only included interest for the month on which an invoice was raised and did not include interest after that date. In this application the First Claimant has restricted its claim to simple interest and the amount due for the entire period when the invoice has been overdue is USD 58,319.91. The rates used for the calculation are set out in the spreadsheet to which I have referred.
62. The First Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 58,319.91 in relation to the 34944 Lease.

Summary: First Claimant

63. The sums in relation to which the First Claimant is entitled to judgment are therefore:
- a. the sum of USD 11,359,278;
 - b. the sum of USD 211,585.53, being interest thereon pursuant to contract.

4569 Lease*Basic Rent*

64. Section 5.2.1 of the 4569 Lease required the Defendant to pay the Second Claimant in advance Basic Rent of USD 382,222.68 per month. The Defence admits the obligation to pay Basic Rent but not the amount. The amount of USD 382,222.68 was communicated to the Defendant on 31 January. The Defendant's sub-lessee, China West Air Co. Ltd has paid this amount on previous occasions without complaint.
65. The date for payment of Basic Rent was 28th day of the month, or if not a Business Day on the immediately succeeding Business Day.
66. The Defendant has failed to pay Basic Rent of USD 382,222.68 per month due under the 4569 Lease on: (a) 29 November 2019, (although the Defendant made two part payments of USD 50,000 on 28 November 2019) (b) 30 December 2019, (c) 28 January 2020, (d) 28 February 2020, (e) 30 March 2020, (f) 28 April 2020, (g) 28 May 2020, and (h) 29 June 2020. The arrears of Basic Rent therefore as at 10 July 2020 is USD 2,907,781.44. The unpaid Basic Rent is set out in the schedule.
67. On 9 July 2020 the Second Claimant received payment from the sub-lessee of USD 50,000 for the 4569 Lease. I am told that this sum will be applied against the arrears, and taking that into account the Second Claimant seeks judgment in relation to Basic Rent due under the 4569 Lease in the sum of USD 2,857,781.44.
68. Here again there is no issue as to the early payments, and issues arise as to the later payments. I conclude as I have done above that the Second Claimant is entitled to judgment on all sums due at the date of this hearing.

Contractual Interest

69. The Second Claimant is entitled to recover contractual interest under the 38781 Lease at the rate of 5% above the 1 month USD LIBOR. Interest is calculated in accordance with Section 5.9.1 and compounded monthly at the end of each calendar month.
70. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.
71. Freeman-1 explains that the contractual interest claimed under the 4569 Lease was USD 4,458.89 as at 26 May 2020. The Prime Rate used is set out in the spreadsheet.

72. The amount of contractual interest due was understated because the schedule only included interest for the month on which an invoice was raised and did not include interest after that date. In this application the Second Claimant has restricted its claim to simple interest and the amount due for the entire period is USD 53,815.75. The rates used for the calculation is set out in the spreadsheet.

73. The Second Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 53,815.75 in relation to the 4569 Lease.

Summary: Second Claimant

74. The sums in relation to which the Second Claimant is entitled to judgment are therefore:

- a. the sum of USD 2,857,781.44;
- b. the sum of USD 53,815.75, being interest thereon pursuant to contract.

38773 Lease

Base Rent

75. Article 5.3.1 of the 38773 Lease required the Defendant to pay the Third Claimant in advance Base Rent of USD 1,228,866.00 per month. The Defence admits the obligation to pay Base Rent but not the amount. The amount of USD 1,228,866.00 was communicated and agreed to by the Defendant on 8 May 2017, and the Rent Confirmation Letter. The Defendant has paid this amount on previous occasions without complaint.

76. The date for payment of Base Rent was 8th day of the month, or if not a Business Day on the Preceding Business Day: which was dated 8 May 2017.

77. The Defendant has failed to pay Base Rent of USD 1,228,866.00 per month due under the 38773 Lease on: (a) 7 February 2020, (b) 6 March 2020, (c) 8 April 2020, (d) 8 May 2020, and (e) 8 June 2020. The arrears of Base Rent therefore to 10 June 2020 is USD 6,144,330.00. The unpaid Base Rent is set out in the schedule.

78. Further, on 8 July 2020 a further instalment of Base Rent of USD 1,228,866.00 fell due for payment on that day. Article 5.3.2 requires payment of Base Rent to be made on the date that it is due: “...*payment of Base Rent will be due monthly thereafter no later than the same day of the month as*

the Delivery Date of the Aircraft...”. The payment of this further instalment was not made by the Defendant on 8 July 2020.

79. Accordingly, the Third Claimant seeks and is entitled to judgment in respect of Basic Rent due under the 38781 Lease of USD 7,373,196.00.

Contractual Interest

80. The Third Claimant is entitled to recover contractual interest under the 38781 Lease at the rate of 3% plus the Prime Rate (defined as the prime commercial lending rate of interest announced from time to time by JP Morgan Chase Bank in New York). Interest is calculated in accordance with Article 5.7 and compounded monthly at the end of each calendar month.

81. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.

82. Freeman-1 explained that the contractual interest claimed under the 38773 Lease was USD 54,499.07 as at 26 May 2020. The Prime Rate used is set out in the spreadsheet.

83. The amount of contractual interest due was understated because the schedule did not include interest after that date. In this application the Third Claimant has restricted its claim to simple interest and the amount due for the entire period is USD 116,127.24. The rates used for the calculation is set out in the spreadsheet.

84. The Third Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 116,127.24 in relation to the 38773 Lease.

Summary: Third Claimant

85. The sums in relation to which the Third Claimant is entitled to judgment are therefore:

- a. the sum of USD 7,373,196.00;
- b. the sum of USD 116,127.24, being interest thereon pursuant to contract.

112 Lease

Base Rent

86. Article 5.2.1 of the 112 Lease required the Defendant to pay the Fourth Claimant in advance Base Rent of USD 1,237,892.00 per month. The Defence admits the obligation to pay Base Rent but not

the amount. The amount of USD 1,237,892.00 was communicated and agreed to by the Defendant on 16 October 2018. The Defendant has paid this amount on previous occasions without complaint.

87. The date for payment of Base Rent was 16th day of the month, or if not a Business Day on the Preceding Business Day.
88. The Defendant has failed to pay Base Rent of USD 1,237,892.00 per month due under the 112 Lease on: (a) 16 January 2020, (b) 14 February 2020, (c) 16 March 2020, (d) 16 April 2020, (e) 15 May 2020, and (f) 16 June 2020. Thus, the arrears of Base Rent as at 10 July 2020 in respect of which the Fourth Claimant is entitled to judgment is USD 7,427,352.00.

Engine Maintenance Rent

89. Under the 112 Lease the Defendant was liable to pay Engine Maintenance Rent due under Article 5.3.1. The amount due on account of Engine Maintenance Rent was communicated to the Defendant by email. The Defendant has made no complaint about these amounts. Accordingly, the Fourth Claimant claims Engine Maintenance Rent that was due under the 112 Lease on: (a) 20 January 2020 in the sum of USD 617,071.20, (b) 20 February 2020 in the sum of USD 469,355.40, and (c) 20 March in the sum of USD 36,505.42. No further sums of Engine Maintenance Rent have fallen due given that this aircraft has not been operated since March 2020.
90. The Fourth Claimant therefore claims and is entitled to judgment in respect of Engine Maintenance Rent under the 112 Lease in the sum of USD 1,122,932.02.

Contractual Interest

91. The Fourth Claimant is entitled to recover contractual interest under the 112 Lease at the rate of 3% plus the Prime Rate (defined as the prime commercial lending rate of interest announced from time to time by JP Morgan Chase Bank in New York): see Article 5.7 of the 112 Lease. Interest is calculated in accordance with Article 5.7 and compounded monthly at the end of each calendar month.
92. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.
93. Freeman-1 explains that the contractual interest claimed under the 112 Lease was USD 89,890.41 as at 26 May 2020. The Prime Rate used is set out in the spreadsheet.

94. The amount of contractual interest due was understated because the schedule only included interest for the month on which an invoice was raised and did not include interest after that date. In this application the Fourth Claimant has restricted its claim to simple interest and the amount due for the entire period is USD 180,414.66. The rates used for the calculation is set out in the spreadsheet.
95. The Fourth Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 180,414.66 in relation to the 112 Lease.

098 Lease

Base Rent

96. Article 5.2.1 of the 098 Lease required the Defendant to pay the Fourth Claimant in advance Base Rent of USD 1,248,331.00 per month. The Defence admits the obligation to pay Base Rent but not the amount. The amount of USD 1,248,331.00 was communicated and agreed to by the Defendant on 28 September 2018. The Defendant has paid this amount on previous occasions without complaint.
97. The date for payment of Base Rent was 28th day of the month, or if not a Business Day on the Preceding Business Day.
98. The Defendant has failed to pay Base Rent of USD 1,248,331.00 per month due under the 098 Lease on: (a) 28 January 2020, (b) 28 February 2020, (c) 27 March 2020, (d) 28 April 2020, (e) 28 May 2020, and (f) 26 June 2020. Thus the arrears of Base Rent as at 10 July 2020 in respect of which the Fourth Claimant is entitled to judgment is USD 7,489,986.00.

Engine Maintenance Rent

99. Under the 098 Lease the Defendant was liable to pay Engine Maintenance Rent due under Article 5.3.1. The amount due on account of Engine Maintenance Rent was communicated to the Defendant by email. The Defendant has made no complaint about these amounts. Accordingly, the Fourth Claimant claims Engine Maintenance Rent that was due under the 098 Lease on: (a) 20 January 2020 in the sum of USD 534,795.04, (b) 20 February 2020 in the sum of USD 458,925.28, and (c) 20 March in the sum of USD 5,215.06. No further sums of Engine Maintenance Rent have fallen due.
100. The Fourth Claimant therefore claims and is entitled to Engine Maintenance Rent under the 098 Lease in the sum of USD 998,935.38.

Contractual Interest

101. The Fourth Claimant is entitled to recover contractual interest under the 098 Lease at the rate of 3% plus the Prime Rate (defined as the prime commercial lending rate of interest announced from time to time by JP Morgan Chase Bank in New York): see Article 5.7 of the 098 Lease. Interest is calculated in accordance with Article 5.7 and compounded monthly at the end of each calendar month.
102. The Defence does not dispute the entitlement to contractual interest. The Defence does not admit the amount of contractual interest.
103. Freeman-1 explains that the contractual interest claimed under the 098 Lease was USD 13,033.83 as at 26 May 2020. The Prime Rate used is set out in the spreadsheet.
104. The amount of contractual interest due was understated because the schedule only included interest for the month on which an invoice was raised and did not include interest after that date. In this application the Fourth Claimant has restricted its claim to simple interest and the amount due for the entire period is USD 151,728.99. The rates used for the calculation is set out in the spreadsheet.
105. The Fourth Claimant therefore seeks and is entitled to judgment for contractual interest for unpaid Base Rent of USD 151,728.99 in relation to the 098 Lease.

Summary: Fourth Claimant

106. The sums in relation to which the Fourth Claimant is entitled to judgment are therefore:
- a. the sum of USD 17,039,205.40;
 - b. the sum of USD 332,143.65, being interest thereon pursuant to contract.

Post Judgment Interest

107. I will finally deal with the question of post-judgment interest. The Claimants have invited me to order a daily rate of interest at 6.25% on the judgment sum. There is a discretion as to how much to order because the judgment sum is in a foreign currency, so Judgments Act interest as such does not apply.

108. I have been invited to order 6.25% essentially on the basis that that was the rate in the contract. In fact, things are slightly more complicated than that, because as it appears from the schedule which has been put before me, the default rate of interest under the contract was variously 3% above Prime, which of course varies slightly. So for much but not all of the time that has equated to 6.25%. In relation to one of the leases, the 4659 lease, the rate of interest was 5% above LIBOR, which has given a different range of figures from just above 5% to very nearly 7%.

109. Mr Pearson for the Defendant says that I should not accede to that application, and that it is conventional in this court to give 1 or 2% above US Prime and otherwise he puts himself in my hands.

110. I accept his submission. I am not comfortable with giving a blanket figure of 6.25%, which is essentially 3% above a particular Prime figure which may or may not still hold to be good. I will give 2% above US Prime.