

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: April 18, 2007
Decided: April 19, 2007

Thad J. Bracegirdle
Reed Smith LLP
1201 Market Street, Suite 1500
Wilmington, DE 19801

Susan E. Kaufman
Heiman, Gouge & Kaufman, LLP
800 King Street, Suite 303
P.O. Box 1674
Wilmington, DE 19801

Re: *CEF 2002 Aircraft, L.L.C., et al. v. RC Leasing LLC, et al.*
Civil Action No. 2567-CC

Dear Counsel:

Having read the submissions of all parties and carefully considered all arguments, I am denying defendants' motion to vacate the preliminary injunction entered by this Court on January 18, 2007. Instead, I am ordering that the injunction be amended to avoid potentially irreparable harm to defendants. I do so because as this case has developed, the grounds upon which this Court concluded that plaintiffs face an irreparable harm have faded, if not altogether disappeared.

When this Court issued the preliminary injunction, I noted that:

[Plaintiffs] allege that one of the planes has been flown out of the country already; that a fraudulent contract for lease or purchase of one plane has been signed by one defendant; and that the plaintiffs might

face substantial hardship repossessing the plane even if they won a judgment.¹

Heavy in my mind were allegations that defendants had already executed an illegal sublease and that one of the planes was being flown internationally under the terms of that lease. Defendants have now offered evidence suggesting that both parties to the lease understood that their agreement was conditional upon approval by plaintiffs, and defendants deny that the collateral has ever left their operational control. Plaintiffs have presented little evidence that the sublease, ostensibly signed on September 7, 2006, has ever been put into effect.

Though this case, at first, appeared remarkably similar to the facts described by Vice Chancellor Strine in *General Electric Capital Corp. v. LP Learjets, LLC*,² differences have emerged as the record evolved. In *Learjets*, plaintiffs were unaware of the location of their collateral and were at risk of an insolvent debtor flying the plane beyond the jurisdiction of a United States court. Further, plaintiffs in *Learjets* emphasized defendants' precarious financial position and the possibility that a money recovery would not be available.

The risk of irreparable harm to plaintiffs in this case is less compelling. The individual defendants, guarantors of the debts at issue, have not attempted to hide the collateral, nor are there significant allegations as to their impending insolvency. Instead, both parties dispute, in apparent good faith, the rights and obligations owed to their counterparty as a result of the leasing agreement. These disagreements appear to predate this case, including disputes over the allocation of payments under the MSP program resolved outside of litigation.

If plaintiffs succeed in their claims, there is every likelihood that both their collateral and any monetary damages resulting from depreciation may be recovered. Defendants are much smaller entities, however, and may suffer harm from a continuing injunction—including, for instance, lost profits and foregone business opportunities—that will be difficult for this Court to estimate after the fact. Such concerns, coupled with evidence that plaintiffs' risk of irreparable harm is less significant than originally feared, lead the Court to conclude that the balance of the equities justifies only a narrow injunction.

¹ *CEF 2002 Aircraft, L.L.C. v. RC Leasing LLC*, C.A. No. 2567-CC (Del. Ch. Jan. 18, 2007), Tr. at 45.

² C.A. No. 1071-VCS (Feb. 3, 2005).

To the extent that plaintiffs still face irreparable harm, it may be addressed through a much narrower injunction. So long as the aircraft remain in the United States, plaintiffs' risk of non-recovery remains minimal. The Court will, therefore, amend its injunction in the following manner:

1. Defendants, subject to the conditions below, are entitled to operate the aircraft under the terms of the lease agreement, so long as the aircraft do not travel, and are not transported, out of the United States.
2. Before resuming operation of the aircraft, defendants shall provide to this Court proof that they have:
 - a. Paid all amounts owed under the MSP program;
 - b. Paid all insurance payments owed on either aircraft;
 - c. Performed all maintenance required by the lease agreement; and
 - d. Paid to plaintiffs all lease payments as required under the contract, including payments withheld during the course of this litigation.
3. During the course of this litigation, defendants shall maintain all payments under the terms of the lease, including, but not limited to, lease payments, maintenance costs, costs of the MSP program, and insurance payments. Should defendants fail to maintain these payments, they shall immediately cease operation of both aircraft.
4. The aircraft shall remain, at all times, under the direction and control of defendants or CorpJet, and shall not be sold or subleased.
5. Plaintiffs' bond shall remain set at \$1 million.

This less-restrictive injunction will suffice to protect plaintiffs' interests in the aircraft while avoiding the risk that defendants shall be denied their legitimate expectations under the lease agreement. I will not decide today, and expressly reserve decision upon, defendants' claims for money damages arising from the original injunction. If, at the conclusion of this litigation, defendants prevail upon their counterclaims and demonstrate that they were harmed by the grounding of the planes, the Court will remain able, through the bond, to make them whole at that time.

Having reviewed the record, I wish to make one further observation. Many of the acrimonious allegations hurled back and forth do not center upon substantive issues but upon failures in communication. Both parties insist that they have not been informed of the key decisions made by their counterparts. Once again, I urge the parties to come together to attempt to resolve or compromise their grievances in a manner advantageous to them both, avoiding both the costs and the risks of trial. If this is not possible, however, the Court remains ready to usher this matter to a conclusion.

Counsel shall confer and provide a form of order implementing this decision, such form of order shall be filed with the Court by April 25, 2007.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in dark ink and includes a horizontal line at the end.

William B. Chandler III

WBCIII:aar