

## **International Contracts Need Not be Reasonable**

Statutory requirements for commercial contracts to be fair and reasonable do not automatically apply to international supply contracts. So held the Court of Appeal in a recent case concerning an aircraft leasing agreement.

First Flight Couriers Ltd. sought to acquire two aircraft to carry express cargo across India. The aircraft were procured from BAE and a lease agreement was signed in 2004 on behalf of Trident Turboprop (Dublin) Ltd. as the lessor and First Flight as the lessee.

Delivery was accepted in 2006 and both aircraft were put into operation. Shortly afterwards, a third aircraft was acquired under the same lease arrangements. In August 2007, First Flight decided to cease operations with all three aircraft because of alleged shortfalls in specified payload, defects in the aircraft, longer than anticipated flight times and what they described as poor spares support.

The following month, First Flight ceased all rental payments on the aircraft on the ground that the capabilities of the aircraft were misrepresented. Trident then issued default notices in October 2007 and gave notice of termination of the lease agreements in January 2008. First Flight claimed to have rescinded the agreement prior to Trident's termination.

At the original trial at the High Court in 2008, Trident sought to recover unpaid rent and damages exceeding US\$1 million, plus legal costs of around \$40,000. The company relied on a clause in the lease agreements stating that First Flight's obligation to make rent payments was 'absolute and unconditional'. First Flight's defence was that this and other conditions were not reasonable within the meaning of the 1977 Unfair Contract Terms Act (UCTA), given the alleged misrepresentation. The Court found in favour of Trident and First Flight subsequently appealed.

The Appeal Court ruled that the UCTA does not apply to contracts for the supply of goods across international borders. This meant that the statutory requirement for 'reasonableness' did not apply in this instance. As such, First Flight was not entitled to withhold rental payments or to rescind the agreement. The appeal was therefore dismissed.

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