



Neutral Citation Number: [2023] EWHC 1107 (Comm)

Case No: CL-2020-000856

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2023

Before :

MR JUSTICE FOXTON

Between :

GASL IRELAND LEASING A-1 LIMITED

Claimant

- and -

SPICEJET LIMITED

Defendant

**Philip Shepherd KC and Erin Hitchens (instructed by Watson Farley & Williams LLP) for
the Claimant**

The Defendant did not appear and was not represented

Hearing date: 3 May 2023

Draft Judgment Circulated: 4 May 2023

Approved Judgment

**I direct that no official shorthand note shall be taken of this Judgment and that copies
of this version as handed down may be treated as authentic.**

.....
THE HONOURABLE MR JUSTICE FOXTON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Wednesday 10 May 2023 at 10:30 am.

The Honourable Mr Justice Foxton:

1. This is a straightforward claim arising under a commercial aircraft lease dated 10 May 2017 (**the Lease**) of a Boeing 737-800 aircraft bearing manufacturer's serial number 29670 (**the Aircraft**), fitted with two engines bearing manufacturer serial numbers 892380 and 892381 (**the Engines**, and respectively **Engine 380** and **Engine 381**). The Aircraft was leased to the Defendant (**SpiceJet**), which operates a low-cost airline based in India. There is no longer any dispute that the Claimant (**GASL**) is now the lessor under the lease (following a determination to that effect in these proceedings by Mr Simon Salzedo KC, sitting as a Deputy Judge of the High Court (*GASL Ireland Leasing A-1 Limited v SpiceJet Limited* [2022] EWHC 382 (Comm))).
2. The Lease provides for the application of English law and the exclusive jurisdiction of the High Court of England and Wales. It also contained a number of provisions which are standard in aircraft leases of this kind relating to the payment of rent and the conditions which the Aircraft had to meet when redelivered back to the lessor at the end of the Lease (which I will refer to as the **Redelivery Conditions**).
3. GASL commenced proceedings against SpiceJet relating to the alleged non-payment of rent and the alleged failure to comply with the Return Conditions. On 18 February 2022, GASL obtained summary judgment on the claim for outstanding rent in the sum of US\$5,334,121.25. This hearing concerns the balance of its claim arising from the alleged non-compliance with the Redelivery Conditions.

The proceedings

4. SpiceJet was served with these proceedings in accordance with the terms of the Lease. Through the well-known firm of solicitors, Reed Smith LLP (**Reed Smith**), SpiceJet acknowledged service, and it made no challenge to the court's jurisdiction. For the major part of the proceedings, SpiceJet was represented by Reed Smith and by leading and junior (and then junior) counsel. On 28 February 2023, both solicitors and counsel for SpiceJet came off the record for non-payment of fees.

The Adjournment and Amendment Applications

5. SpiceJet applied to adjourn the hearing, relying in that context on the fact that it no longer had legal representation and on the fact that on 4 April 2023, GASL indicated its intention to seek permission to re-amend the Particulars of Claim. I considered SpiceJet's application for an adjournment and GASL's application for permission to amend at the start of the hearing. I refused SpiceJet's application for an adjournment and allowed GASL's application for permission to amend. I repeat the substance of my reasons for doing so in this section of this judgment.
6. In considering the adjournment application, it is important to note the position SpiceJet is now in:
 - a. The Defence does little more than put GASL to proof of its claim or deny breach of the Lease in general terms, without complying with CPR 16.5(2) or advancing any alternative version of events. This is also true of the Amended Defence, which admits many of the complaints made by GASL about the aircraft's physical condition on redelivery while maintaining a bare denial of GASL's case.

- b. SpiceJet has served no factual witness evidence.
 - c. SpiceJet has served no expert evidence.
7. It has been a hallmark of the case to date that SpiceJet has sought to delay the timetable whenever possible:
- a. It opposed GASL’s application to serve Particulars of Claim of over 25 pages, and would not serve a defence until such permission had been granted. SpiceJet’s defence to the Particulars of Claim (which were served on 22 March 2021) was not served until 10 June 2021.
 - b. SpiceJet refused to consent to minor amendments to the Particulars of Claim or agree the case memorandum or list of common ground prepared by GASL.
 - c. SpiceJet put forward an objectively unreasonable 8-day trial estimate, leading to a trial date being fixed in November 2021 for April 2023.
 - d. SpiceJet put forward no real answer to the rent claim, before raising a series of technical and unsuccessful points for the first time orally at the summary judgment hearing. That unsatisfactory behaviour led to the order for indemnity costs.
 - e. SpiceJet has repeatedly sought to adjourn hearings and delay procedural steps, including an attempt to adjourn the first CMC, two extensions for its amended defence, two extensions totalling 8 weeks for disclosure and two requests for an extension of time to serve its expert report. When GASL sought an order debaring SpiceJet from calling expert evidence, SpiceJet sought to adjourn the hearing listed before Mr Justice Bright on 17 March 2023 for two weeks.
8. Indeed, at the hearing before Mr Salzedo KC, SpiceJet admitted that it was, essentially, playing for time, its leading counsel submitting:
- “So in one sense, it is true that SpiceJet does have a general commercial strategy of trying to get itself into a position to honour its proper obligations. Delay is a significant, but not the only, aspect of that. It is not a dishonourable delay, but rather the reverse. Sometimes creditors, who wish their due, must appreciate this and it is no use saying there is a ‘hell and high water’ obligation if there is no financial ability to satisfy it.”
9. SpiceJet sought to adjourn this trial on the basis that it needs time to find and brief new solicitors. However, there was no evidence from SpiceJet as to what steps (if any) had been taken to find legal representatives in the period of over 2 months since Reed Smith applied to come off the record on 21 February 2023. Further, the reality is that problems between SpiceJet and Reed Smith must have become apparent before then.
10. On 17 March 2023, Mr Sand, an in-house lawyer and company secretary of SpiceJet, appeared at the hearing before Mr Justice Bright and made submissions. Mr Sand informed the court that

SpiceJet was in the process of instructing solicitors, finalising an expert report, and that the report would be ready in two weeks. Those predictions have not come to pass. That suggests the court must approach SpiceJet's explanations for why it says it is not ready for trial and its statements that it can be ready in six weeks with great circumspection.

11. On 13 April 2023, Mr Sand suggested an adjournment was justified because GASL had recently served proposed amendments to its claim, which were described as “substantial”. The principles relating to amendments are very clear. Parties are expected to consent to limited amendments which can comfortably be addressed at the trial. In this case, the amendments in question are very limited. As is frequently the case at the start of a trial, they bring the pleaded case as to quantum into line with the expert evidence served in accordance with the timetable to which SpiceJet agreed. They also rely on a provision which is standard in aircraft leases that the lessor can certify amounts due under the Lease, which is binding in the absence of manifest error, with the result that those amounts are recoverable as a debt. I was satisfied that it was appropriate to grant permission to amend, and that the attempt to seize on the proposed amendments as a basis for an adjournment was without merit and wholly opportunistic.
12. I was fully satisfied that it would not be appropriate to adjourn this long outstanding trial:
 - a. As I have explained, the application for the adjournment was the latest in a long-running series of attempts by SpiceJet to play for time. This came against the background of financial difficulties which have led to summary judgment being entered against SpiceJet (see for example *Wilmington Trust SP Services (Dublin) Ltd v SpiceJet Ltd* [2021] EWHC 1117 (Comm), referring at [70] to evidence that SpiceJet was “in a parlous financial state”, and similar submissions made by SpiceJet before Mr Salzedo KC).
 - b. The effect of such an adjournment would be to push this trial back for a substantial period of time, well into 2024, and not simply for 6 weeks as SpiceJet suggested. That would cause serious prejudice to GASL, who has been looking to recover amounts alleged to be due since early 2021, and disrupt other court users at a time when court resources are under considerable pressure.
 - c. The adjournment would involve significant wasted costs for GASL, in circumstances in which I have the gravest doubt as to SpiceJet's ability or willingness to pay them. SpiceJet has failed to pay the judgment of \$5.34m entered against it on 18 February 2022 in respect of rent or the indemnity costs of \$213,000 it was ordered to pay on that occasion.
 - d. There is nothing to suggest that SpiceJet's difficulties in meeting legal fees have been resolved since it parted company with Reed Smith, or that there is any prospect of it being better placed in 6 weeks or 6 months.
 - e. There is no evidence that SpiceJet is making serious attempts to prepare for trial.
13. In these circumstances, the trial proceeded without SpiceJet's participation (Mr Sand making no attempt, as he had done before Mr Justice Bright on 17 March 2023, to make submission on its

behalf). When a trial is not attended by one of the parties, there is still an obligation of fair presentation on the claimant. Mr Justice Cresswell in *Braspetro Oil Services v FPSO Construction Inc* [2007] EWHC 1359 (Comm), [33] held that the claimant was required to draw to the attention of the court “points, factual or legal, that might be to the benefit of [the defendant]”. I am satisfied that this has been done. I have adopted the same approach in this case as HHJ Waksman QC (as he then was) did in *CMOC Sales & Marketing Limited v Person Unknown* [2018] EWHC 2230 (Comm), [14], namely carefully examining GASL’s evidence to establish whether it had made out its case to the requisite standard. This has been no rubber-stamping exercise.

The Lease

14. The Lease is a standard operating lease. As Tomlinson LJ explained in *Olympic Airlines SA (in special liquidation) v ACG Acquisition XX LLC* [2013] EWCA Civ 369, [40]-[41]:

“Under an operating lease.... the lessee takes possession of the aircraft and becomes responsible for its maintenance and insurance. After delivery the aircraft, engines and every part are at the sole risk of the lessee, who therefore bears the risk of loss, theft, damage, destruction and unexpected mechanical problems.”

15. The Lease contained the following provisions:

- a. By clause 5.3, SpiceJet was liable to pay rent in the sum of \$240,000 per month.
- b. By clause 7.1, SpiceJet was liable to pay Supplemental Rent calculated in accordance with Part A of Schedule 7.
- c. Clause 7.2 (Maintenance Redelivery Adjustments) provided that:

“Lessee shall make payment to Lessor of Redelivery Maintenance Payment Adjustments pursuant to Schedule 12 (Redelivery Maintenance Payment Adjustments) on the Redelivery Date, and if Lessee fails to make such payment of the Redelivery Maintenance Payment Adjustments, Lessor shall be entitled to set-off the Deposit or drawdown on the Credit Document as applicable and apply any such amount against such payment.”
- d. Schedule 12 set out the formula for calculation of Redelivery Maintenance Payment Adjustments (**RMPAs**) payable in compensation for the use of the Aircraft since the last scheduled maintenance event in respect of engine module performance restorations (**PRs**), engine life limited parts), Airframe structural checks, landing gear overhaul and Auxiliary Power Unit (**APU**) PRs.
- e. By clause 8.3(a) SpiceJet’s obligation to pay Rent and perform its other obligations under the Lease were “absolute and unconditional”.
- f. By clause 8.7: “Any certificate or determination by Lessor as to any rate of interest (which shall be capped at the Default Rate) or as to any other amount payable under this Agreement shall, in the absence of manifest error, be conclusive and binding on Lessee.”

- g. Clause 19.1(a) provided for Redelivery on the Expiry Date or (if earlier) the date of required redelivery of the Aircraft pursuant to Clause 20.2 (Lessor's Rights). On Redelivery, the Lessee was required (unless a Total Loss had occurred) to redeliver the Aircraft and Aircraft Documents to the Lessor at the Lessee's expense at the Redelivery Location in accordance with the procedures, and in compliance with the conditions set forth, in Schedule 13 (Redelivery Procedure and Redelivery Conditions).
 - h. Clause 19.1(b) provided "At the time of such redelivery the Aircraft shall be free and clear of all Security Interests (other than Lessor Liens) and in a condition qualifying for immediate issuance of a certificate of airworthiness under FAR 121 or as otherwise agreed between Lessor and Lessee.
 - i. Clause 19.1(c) provided "if requested by Lessor, Lessee shall thereupon cause the Aircraft to be deregistered by the Aviation Authority" and clause 19.1(d) that "on the Redelivery Date, Lessee shall pay to Lessor the Redelivery Maintenance Payment Adjustments calculated in accordance with Schedule 12 (Redelivery Maintenance Payment Adjustments)."
 - j. Pursuant to clause 19.2(d) and (e), SpiceJet was required to indemnify GASL in the event of non-compliance with the Redelivery Conditions, against the cost of putting the Aircraft into the condition required by the Lease and any losses GASL might suffer or incur by reason of the Aircraft not being in such condition.
16. Part B of Schedule 13 set out the extensive Redelivery Conditions in detail, covering each aspect of the Aircraft (including the Engines) and the technical records. These were set out at some length in the expert report of Mr Peter Bull served by GASL. I refer to a number of these provisions below.
17. Clause 20.1 of the Lease identified a number of Events of Default including "non-payment of any payment due under the Lease within 3 business days after such payment was due", "failure to comply with any other provision of the Agreement and, if such failure is capable of remedy, such failure continues for 10 business days" after notice has been given and failure to redeliver the Aircraft on the Scheduled Expiry Date in accordance with clause 19.
18. Pursuant to clause 20.2(a), GASL's rights following an Event of Default included "serving notice require Lessee to redeliver the Aircraft to Lessor at the Redelivery Location (or such other location as Lessor may require)."

Redelivery

19. As has already been established by Mr Salzedo KC's judgment, SpiceJet failed to pay rent when it was due. Notices of demand were served, by GASL which did not lead to payment, and on 8 March 2021, GASL instructed SpiceJet, pursuant to clause 20.2(a)(iii) of the Lease, to redeliver the Aircraft at Shannon in the Republic of Ireland. That instruction was not complied with but on 4 August 2021 the Aircraft was made available to GASL at Bangalore from where it was flown by GASL to an aircraft maintenance facility based in Lithuania, FL Technics, where it underwent maintenance and inspections. Notably no Certificate of Airworthiness for Export was issued by

India. The Aircraft was then flown to an aircraft maintenance facility based in China for various works.

The condition of the Aircraft when inspected in Lithuania

20. The Aircraft was inspected in Lithuania by Mr Peter Bull for GASL, and by a representative of SpiceJet, Mr Tewatia. Mr Bull has worked in the aviation industry for over 40 years. He is a Licenced Aircraft Maintenance Engineer. In addition to his maintenance experience, he has extensive experience in aircraft leasing and handling the delivery and redelivery of aircraft on behalf of both lessors and lessees. He explains his experience in detail in his report and I questioned him on this subject at the hearing. I am satisfied that he is amply qualified to ascertain the condition of the Aircraft on redelivery and to assess the costs of repair. I am also satisfied that he fully understood his duty to the court as an expert witness. As will be apparent below, there are a number of occasions when he has supported lower figures than those which GASL had advanced.
21. Both in his report and in evidence, Mr Bull explained that, despite adverse weather, he had been able to carry out a thorough inspection of the Aircraft at Vilnius, including taking over 1,800 photographs, many of which were put into evidence.
22. Mr Tewatia also inspected the Aircraft at Vilnius, and was given copies of the 1,800 photographs. It is inconceivable that Mr Tewatia did not provide a report to SpiceJet on the condition of the Aircraft, including a factual account of what he saw. However, no report of any kind has been produced, nor has SpiceJet served any report from its own expert. I accept Mr Shepherd KC's submission that the inference which falls to be drawn from the absence of any written or oral evidence from Mr Tewatia is that his evidence would not have supported SpiceJet's pleaded case that the Aircraft met the Redelivery Conditions.

GASL's claims

23. GASL's case as to the respects in which the Aircraft failed to comply with the Redelivery Conditions and the costs of repairing the same are set out in Appendix 2 to the Re-Amended Particulars of Claim, which reflects Mr Bull's report. While in its response to Appendix 2, SpiceJet has taken issue with some of these items, it has adduced no evidence to support its position. I see no reason not to accept Mr Bull's evidence in full, supported as it is by his detailed reports, extensive contemporaneous photographs and by the adverse inferences to be drawn against SpiceJet from the absence of any evidence from Mr Tewatia or expert evidence.
24. I will now consider the contents of Appendix 2 in more detail.

Item 12 of Appendix 2

25. GASL claims US\$8,636,426 for item 12 on Appendix 2. This comprises US\$4,318,213 in respect of each Engine. GASL also claims US\$10,197 for item 13.
26. These claims arise from the failure to comply with Schedule 13 Part B paragraphs 3(b) and (c) of the Lease. These provide:

a. Paragraph 3(b):

“On the Redelivery date... each Engine installed on the Aircraft shall have no less than 3,500 Flight Hours and 3,500 Cycles on-condition life remaining to the next anticipated Engine Performance Restoration shop visit (based on the Lessee’s mean time between removals for engines of the same model and thrust rating in a similar operating environment) and shall have no defect, which provides less than 5,000 Flight Hours and 3,500 Cycles of remaining life pursuant to Manufacturer’s or airworthiness requirements until removal.”

b. Paragraph 3(c):

“On the Redelivery date... each Engine installed on the Aircraft shall have just completed at the location for the Lessor’s acceptance on or about the Delivery Date an all module, hot and cold section video borescope inspection, which inspection shall be performed at the Lessee’s expense. Lessor will also have just completed in respect of each Engine an inspection of each magnetic chip detector, laboratory oil sample analysis, main oil screen and oil and fuel filter inspections. Any defects discovered in such inspections which exceed the Engine manufacturer’s in-service limits shall be corrected at Lessee’s expense. No Engine shall be “on watch” for any reason requiring any special or out of sequence inspection. Each such Engine will comply with and have been maintained in accordance with the Lessee’s Maintenance Program without waiver or exceptions. All items beyond the Engine manufacturer’s in-service limits shall be repaired.”

27. As will be apparent, compliance with paragraph 3(b) turns on the issue of whether, when the Aircraft was finally redelivered, each of the Engines had no less than 3,500 flight hours and 3,500 cycles on-condition life remaining before the next Engine Performance Restoration (**EPR**) shop visit. The Lease required that calculation to be “based on the Lessee’s mean time between removals for engines of the same model and thrust rating in a similar operating environment”. The effect of this latter provision is that the issue of whether this requirement was satisfied is to be determined using *SpiceJet’s* average time between engine removals or **MTBR** (as the particular characteristics and location of the lessee’s business can influence the maintenance life of the engine and the time intervals between EPR shop visits).

28. As to this:

a. I accept Mr Bull’s evidence that the MTBR data provided by SpiceJet is unreliable and contains anomalies, and that it is likely that it does not reflect “mature engines” such as the Engines, but the interval before brand new engines have their first EPR shop visit. For that reason, it was reasonable for Mr Bull to adjust his data set to use three of the engines for which SpiceJet provided MTBR data, which were genuinely comparable, and the data for Engines 380 and 381 themselves. Accordingly, I accept Mr Bull’s calculations of MTBR for SpiceJet of 12,844 Flight Hours and 7,498 Cycles.

b. Engine 380 was assessed by FL Technics, an independent and fully certificated Engine shop, during a borescope inspection performed on 7 October 2021 and found to display signs of thermal distress, degradation and damage to a number of different modules, the effect of

which was that it was declared unserviceable and required removal. That on its own is sufficient to show that it did not comply with the Redelivery Conditions.

- c. Further, I accept Mr Bull's evidence that Engine 380 would have required a full EPR shop visit to ensure that it complied with the Redelivery Conditions and was serviceable and able to be put back into use. He estimates that this would cost from US\$3,114,305 to US\$4,318,213, against which SpiceJet is entitled to credit for the Supplemental Rent accrued for the purposes of an EPR of Engine 380, in the sum of US\$1,992,779.06. I shall deal with the issue of how to approach that range in the figures below.
- d. So far as Engine 381 is concerned, at the time of Redelivery it had completed 9,740 Flight Hours and 4,320 Cycles. When this is compared to the MTBR calculation performed by Mr Bull, Engine 381 had just 3,104 Flight Hours and 3,178 Cycles left until the next EPR shop visit and therefore did not comply with the Redelivery Conditions. On the evidence, which I accept, in order to remedy this, Engine 381 would need an EPR shop visit which on the evidence would have cost between US\$3,114,305 and US\$4,318,213. Once again, SpiceJet is entitled to the benefit of the Supplemental Rent accrued for the purposes of an EPR shop visit for Engine 381, in the sum of US\$1,336,791.17.
- e. Paragraph 3(c) requires SpiceJet to perform a borescope inspection of the Engines immediately prior to Redelivery. SpiceJet admits that no such inspection took place, but contends that a borescope inspection on 18 May 2021 was sufficient to comply with this in respect of Engine 380. However, self-evidently that is not an inspection immediately prior to Redelivery. I am satisfied that the cost of such an inspection, as supported by an invoice, is US\$10,197 and that this is the cost of rectifying this defect in the Redelivery Conditions.

Item 25 of Appendix 2

29. This item relates to the APU, a small turbine engine located in the lower tail section of the Aircraft which is used to provide pressurised air to start the engines and for air conditioning and electrical power.
30. Paragraph 8 of Schedule 13 Part B provides:

“The APU shall have just completed a borescope inspection and shall meet all air outputs and temperature limitations under load in accordance with the Manufacturer's Maintenance Manual, and any defects discovered in such inspection, which exceed the APU manufacturer's in-service limits, shall be corrected at Lessee's expense; and the APU will be serviceable and have not more than 3,000 APU Operating Hours since previous off-wing shop visit (hot section inspection or overhaul) and not less than 3,500 APU Operating Hours and 3,500 APU Cycles (whichever is applicable) to the first Life Limited Part restriction. APU Life Limited Parts will be supported by certification documentation necessary to demonstrate traceability back to birth.”
31. I accept Mr Bull's evidence that the APU had operated 6,047 hours since its last shop visit and therefore did not meet the requirements with respect to utilisation. I also accept his evidence that the APU was in any event unserviceable as several blades were found with missing pieces and tears outside the limits of the Aircraft Maintenance Manual; several areas had continuous

circumferential cracks on the inner transition liner, and three of the first stage stator vanes were noted with complete burn through of the aerofoil, outside of AMM limits. Mr Bull explained the serious consequences of these defects in his report and in his oral evidence.

32. SpiceJet has not denied that it is in breach of this Redelivery Conditions in these respects but queries whether GASL has actually carried out this work. However, the loss is constituted by the poor condition of the APU, and the cost of repair reflects the quantification of that loss, whether the work is undertaken or not.
33. Mr Bull has estimated that the actual cost of the APU work necessary to comply with the Redelivery Conditions is between US\$334,000 and US\$386,000, based on two estimates obtained by GASL which were placed in evidence. I accept that these are reasonable figures.
34. I now turn to the RMPA claim, which arises from clause 7.2 of the Lease. This provides that SpiceJet will make RMPA payments pursuant to Schedule 12 on the Redelivery Date. These payments are designed to compensate GASL for SpiceJet's usage of the Aircraft during the lease term since the last major overhaul of each component in respect of which RMPA payments are made. The Lease also provides for the Lessee to pay Supplemental Rent which is accumulated by the Lessor and then applied to repay the Lessee for any qualifying maintenance event. In determining the RMPAs payable, it is necessary to determine the extent to which the actual costs are greater, or less, than Supplemental Rent paid in respect of that maintenance event.
35. The calculations of the RMPA payments are set out in full in section 7 of Mr Bull's report. Mr Bull concludes that the effect of the calculations is that a net payment is due from SpiceJet to GASL of US\$2,184,168.37, which is broken down as follows:

EPRs:	US\$1,667,910.45 due to GASL
Engine Limited Life Parts:	US\$890,915.72 due to GASL
Landing gear:	US\$2,682.38 due to SpiceJet
Airframe checks:	US\$67,364.57 due to SpiceJet
APU PR:	US\$304,610.85 due to SpiceJet.

36. I accept Mr Bull's evidence as to these calculations.

The FAR Part 121 Compliance Costs Claim

37. Item 2 of Appendix 2 is a claim arising from paragraph 1(b) of Schedule 13 Part B, which provides that:
- “On the Redelivery Date... the Aircraft will... have installed the full complement of systems, equipment, parts, accessories, furnishings and loose equipment as normally installed in the Aircraft for continued regular airline service operating within limits specified in the Manufacturer's Maintenance Manual and functioning in accordance with their intended use and in compliance with operations under FAR 121 equipment standards.”
38. Federal Aviation Regulation Part 121 (**FAR Part 121**) stipulates the operating requirements for domestic, flag and supplemental operations. GASL alleges that three heads of cost are necessary to comply with the requirements of FAR Part 121.

39. First, the installation of a Nitrogen Generation System (**NGS**), which is designed to remove oxygen from ambient air which is inducted into the centre fuel tank. The system separates the nitrogen to produce a low-oxygen environment, to reduce flammability in the centre fuel tank. A regulatory requirement for this was introduced as a result of a number of aircraft fuel tank explosions. SpiceJet has accepted that the Aircraft did not comply with the applicable parts of FAR 121 with respect to the installation of a NGS but contends that GASL could have identified a cheaper method of compliance. However, I accept Mr Bull's evidence that the applicable FAR Part 121 regulations as in force prior to the Return Date refer to what is termed the Fuel Tank Flammability Reduction which mandates the installation of a Flammability Reduction Means or an Ignition Mitigation Means. I also accept Mr Bull's evidence that installation of the AerSafe system would have been sufficient to comply with the FAR 121 requirements, and that this would have cost US\$240,000.
40. Second, the installation of an Automatic Dependent Surveillance-Broadcast (**ADS-B**) system, which allows an aircraft to determine its location via satellite navigation or other sensors and transmit its location so that it can be tracked. I accept Mr Bull's evidence that the FAA regulatory requirements applicable in relation to the ADS-B required compliance prior to the Redelivery Date. SpiceJet does not suggest that it complied with this requirement, although it queries the cost of compliance. GASL has presented invoices totalling US\$520,033.48 for compliance with FAR 121 in respect of the ADS-B, which include US\$172,833.48 for engineering, US\$344,950 for the parts and US\$2,250 for labour. Mr Bull's evidence is that these amounts are reasonable. I accept that evidence.
41. Finally, the cost of a Designated Airworthiness Representative (**DAR**) to provide the necessary FAR Part 121 compliance documentation for which GASL claims US\$7,650 for the use of a DAR to procure the necessary compliance. SpiceJet alleges that US\$5,000 is sufficient. Mr Bull expresses no view on this. Subject to the effect of clause 8.7 of the Lease. The difference between the two figures is relatively small, and I am satisfied that they both fall within a reasonable range.

Pre-delivery Maintenance costs

42. Items 4 and 20 of Appendix 2 (which include within them items 1, 3, 9, 10, 15, 22, 24 and 26) concern pre-delivery maintenance costs.
43. GASL claims US\$425,000 for item 4, the costs of a "C" check, relying on Schedule 13 Part B paragraph 1(d) which provides:

"On the Redelivery Date... the Aircraft will... have immediately prior to Delivery completed a block 'C' Check so that all structural, systems, zonal and CPCP Airframe inspections falling due within the next following 3,500 Flight Hours and 3,500 Cycles and 18 months of operation in accordance with the Lessee's Maintenance Program and the Manufacturer's Maintenance Planning Document, have been accomplished."

44. A "C" check is a group (or block) of maintenance tasks performed in accordance with the Aircraft Maintenance Program. SpiceJet does not dispute the fact that it did not carry out a "C" check on the Aircraft immediately prior to Redelivery. GASL carried out a "C" check a year after Redelivery for which it has produced invoices of US\$1.72 million. However, I accept Mr Bull's

evidence that this went beyond what was required by the Lease, and that the reasonable costs of a compliant “C” check is approximately US\$225,000. Mr Bull said that additional costs would be incurred for defects to be remedied as part of the usual programme of inspection and maintenance in the sum of a further US\$200,000. I accept that evidence.

45. SpiceJet has contended that this aspect of the Redelivery Conditions was satisfied because a “C” check was carried out on 22 December 2018. However, self-evidently this was not performed “immediately prior to Delivery”. SpiceJet also puts GASL to proof of the costs of the “C” check but has offered no evidence to answer Mr Bull’s evidence.
46. Item 20 concerns cabin interior refurbishment, for which GASL claims US\$400,000. This claim arises from paragraph 6(b) of Schedule 13 Part B, which provides that:

“On the Redelivery date, the Aircraft interior including cockpit, main cabin and cargo compartments shall have been maintained in accordance with Lessee’s Maintenance Program without deviation or waiver and shall have been fully refurbished in accordance with Lessee’s major interior refurbishment or overhaul standards specification (or in the absence of such documentation and policy, in conformance with major airline standards) at an interval of no less than each Airframe structural check.”

47. Mr Bull gave evidence that he carried out a detailed examination of the cabin, flight deck and cargo holds, and that the condition of the cabin and flight deck was “one of the worst I have seen in relation to an ‘in service’ aircraft which had been presented for redelivery. It was clear that the interior of the Aircraft had been neglected over a period of many months and likely years.” That assessment is fully supported by the photographs he took. I accept Mr Bull’s estimate of \$400,000 to repair this item.

The Aircraft Painting Costs claim

48. Item 6 of Appendix 2 concerns the costs of painting the Aircraft, for which GASL claims US\$150,000. This claim arises from paragraph 1(g) of Schedule 13 Part B, which provides that:

“On the Redelivery Date... the Aircraft will... be rubbed down and scuff sanded, or stripped if more than two previous subsequent rub down and scuff sanding have been accomplished, and painted in such external livery as advised by the Lessor. Such painting will be accomplished in such a manner as to result in uniformly smooth and cosmetically acceptable aerodynamic surfaces on the fuselage, doors, wings, nacelles and empennage have all signs and decals clean, secure and legible.”

49. Mr Bull gave evidence that the Aircraft had not been repainted as required by the Redelivery Condition, and SpiceJet do not appear to dispute that this was the position. It suggests that the repainting costs are US\$90,000. GASL produced an invoice of US\$186,663 for this item. Mr Bull has adjusted this figure to allow for the fact that it is likely to have included repainting which went beyond that required to meet the Redelivery Conditions. I accept Mr Bull’s evidence that US\$150,000 is a reasonable figure.

The Aircraft Recovery Claim Costs

50. Item 28 of Appendix 2 concerns the costs of aircraft recovery, for which GASL claims US\$450,234.49. This item arises from clauses 19.2(d), 19.2(e), 20.3 and 23.3(a)(ii) of the Lease, pursuant to which SpiceJet agreed to pay GASL's expenses (including legal fees) which GASL might suffer or incur as a result of the Aircraft not being in the Redelivery Condition, and/or which GASL sustained or incurred directly or indirectly as a result of an Event of Default, and/or which GASL incurred in respect of the enforcement or preservation of GASL's rights under the Lease, or in respect of the repossession of the Aircraft.
51. This claim has been supported by invoices which were put in evidence and which Mr Bull has examined. I accept his evidence that US\$450,234.02 is recoverable in respect of these costs.

Certification of the sums due

52. Clause 8.7 of the Lease provides:

“Any certificate or determination as to any rate of interest ... or as to any other amount payable under this Agreement shall, in the absence of manifest error, be conclusive and binding on Sublessee”.

53. GASL has relied upon this provision to certify the amount of its claim in an amount which (a) takes the higher figure when Mr Bull's evidence supports a range; and (b) its own figure in the one instance when Mr Bull gives no evidence. The issue is whether it is entitled to do so.
54. I have considered whether it could be argued that clause 8.7 is limited to claims in debt and not damages. However, pursuant to clause 19.2(d) and (e), SpiceJet is required to indemnify GASL, in the event of non-compliance with the Redelivery Conditions, against the cost of putting the Aircraft into the condition required by the Lease and any losses GASL might suffer or incur by reason of the Aircraft not being in such condition. The amounts claimed by GASL fall within clauses 19.2(d) and (e) and therefore clearly constitute “any other amount payable under this Agreement”.
55. I am not persuaded that there is any manifest error in the amount which GASL has certified. Where figures fall within a range of reasonable costs, there can be no manifest error in using one of those figures rather than another. It follows that GASL is entitled to judgment in the amount certified, US\$8,490,312.39, together with interest and costs. I will provide the parties with an opportunity to address the court on any consequential matters which arise.