

additional amounts to various outside technical experts who had been dispatched to the return location.

3. This lawsuit seeks to hold American accountable for its wrongdoing.

PARTIES

4. Plaintiff Wells Fargo Bank is a national banking association chartered under the laws of the United States of America that maintains its principal office in Salt Lake City, Utah. Wells Fargo appears as plaintiff not in its individual capacity, but solely as the Owner Trustee under certain relevant lease agreements as described herein.

5. Defendant American is a Delaware corporation with a principal place of business in Fort Worth, Texas.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter because the parties submitted to the jurisdiction of this Court by agreement, and pursuant to 28 U.S.C. § 1332(a), as plaintiff and defendant are citizens of different states and the amount in controversy exceeds \$75,000.

7. Venue is proper in this District by agreement of the parties.

FACTUAL BACKGROUND

8. The property at issue in this case consists of three Boeing aircraft bearing U.S. Registration Numbers N374AA (“N374AA”), N7375A (“N7375A”) and N376AN (“N376AN”) (individually and collectively, the “Aircraft”).

9. In connection with American’s bankruptcy in or around 2011, American rejected its contractual lease obligations for the Aircraft and negotiated new leases to achieve its targeted savings.

10. Following American's rejection of the leases, the secured lenders foreclosed upon the Aircraft and transferred ownership of the Aircraft into three separate trusts (the "Trusts"), with Wells Fargo, not in its individual capacity, but as the Owner Trustee under each of three respective trust agreements (the "Trust Agreements").

11. Concurrent with the execution of the Trust Agreements, the Aircraft were re-leased to American pursuant to three lease agreements (collectively, the "Lease Agreements" and, together with the associated Lease Supplements, the "Leases") as follows: (i) a certain Lease Agreement (N374AA) dated as of July 11, 2013 (the "N374AA Lease Agreement"), between Wells Fargo as Owner Trustee and American, for the lease of N374AA, as amended from time to time; (ii) a certain Lease Agreement (N7375A) dated as of July 10, 2013 (the "N7375A Lease Agreement"), between Wells Fargo as Owner Trustee and American, for the lease of N7375A, as amended from time to time; and (iii) a certain Lease Agreement (N376AN) dated as of July 18, 2013 (the "N376AN Lease Agreement"), between Wells Fargo as Owner Trustee and American, for the lease of N376AN, as amended from time to time.

12. The parties to each respective Lease and Trust Agreement were, in turn, subject to a corresponding participation agreement (the "Participation Agreements") setting forth the parties' respective rights and obligations to one another.

13. The Participation Agreements were integral to the Leases and the Owner Trustee would not have entered into the Leases without the protections and assurances included within the Participation Agreements. Indeed, each Lease Agreement and Participation Agreement explicitly defines the Operative Documents relating to each Lease as consisting of: the Lease Agreement; the Lease Supplement; the Trust Agreement; and the Participation Agreement.

14. Each of the Leases required, *inter alia*, that American return the respective Aircraft on or before the expiration of the Lease term.

15. The N374AA Lease Agreement, as amended, ended by its terms on October 30, 2017, but American did not return N374AA until December 18, 2017, forty-nine (49) calendar days after the expiration of the term.

16. The N7375A Lease Agreement ended by its terms on July 16, 2017, but American did not return N7375A until August 30, 2017, forty-five (45) calendar days after the expiration of the term.

17. The N376AN Lease Agreement, as amended, ended by its terms on October 31, 2017, but American did not return N376AN until November 2, 2017, two (2) calendar days after the expiration of the term.

18. In each case, American's failure to return the respective Aircraft in a timely manner was solely the fault of American, and not the fault of Owner Trustee.

19. American's obligation to pay rent for any period during which it retained possession of the Aircraft is memorialized by the fact that the Leases granted American the one-time unilateral right to extend the lease term.

20. American chose not to exercise its unilateral lease term extension rights, but determined that it needed to retain possession of two Aircraft beyond their scheduled lease terms. Accordingly, with respect to both N374AA and N376AN, American did request, and was granted by the Owner Trustee, an extension to the Lease term, which extensions included payment of rental fees to Owner Trustee. The lease term extensions make clear that American understood that to the extent it needed to retain the Aircraft beyond the term of the Leases, it would need to compensate the Owner Trustee.

21. Despite the two bilateral lease term extensions that were sought and provided, upon information and belief American significantly miscalculated how much additional time it would need to prepare the aircraft for return. American determined that it would need to retain the Aircraft for some periods of time beyond the Lease terms (as extended). Yet rather than seek further extensions (for which it would need to pay Owner Trustee a reasonable rental rate), American simply retained possession of the Aircraft beyond the revised lease terms without providing any compensation to Owner Trustee.

22. During the time periods in which American wrongfully retained possession of the Aircraft, the Trusts were unable to realize any residual value from such Aircraft, such as rental value.

23. Additionally, FAA regulations require onsite recordkeeping and monitoring of commercial aircraft, which expenses typically are borne by the owners of such aircraft. For the Aircraft, Owner Trustee utilized an independent contractor to comply with these regulations, and for which it was responsible for per diem pay, food, lodging, transportation and other costs. As a result of American's delay in returning the Aircraft under the terms of the Leases, the Trusts were forced to incur additional outside contractor fees of approximately \$100,000.

24. By letter dated December 18, 2017, the Trusts demanded payment from American in the amount of \$883,334.00, representing the rental value of the Aircraft (as specified in the Leases) during the holdover period, plus reimbursement for \$100,000 in additional independent contractor charges incurred by the Trusts.

25. American has failed and refused to remit payment of these amounts.

AS AND FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

26. Owner Trustee repeats and realleges the foregoing paragraphs as if fully set forth herein.

27. The Leases are valid and enforceable contracts between Owner Trustee and American, for which good and sufficient consideration was exchanged and received, respectively.

28. Owner Trustee fully performed its obligations under the Leases.

29. American materially breached the Leases by, among other things, retaining the Aircraft following the expiration of the respective Lease periods.

30. American's actions have damaged the Trusts and/or enriched American in an amount to be proven at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(INDEMNIFICATION)

31. Owner Trustee repeats and realleges the foregoing paragraphs as if fully set forth herein.

32. The Participation Agreements are valid and enforceable contracts between, *inter alia*, Owner Trustee and American, for which good and sufficient consideration was exchanged and received, respectively.

33. Each Participation Agreement obligates American to indemnify, *inter alia*, Owner Trustee (as specifically distinguished from Wells Fargo in its individual capacity) against "...any and all liabilities, obligations, losses, damages, penalties, claims, actions or suits of whatsoever kind and nature... which may be imposed on, incurred by, suffered by, or asserted against" it, and further provides that such obligation shall survive the termination of the Lease Agreements.

34. Owner Trustee fully performed its obligations under the Participation Agreements.

35. By withholding return of the Aircraft following expiration of the term of the Leases, American unlawfully deprived the Trusts of funds or other business opportunities that they were entitled to.

36. Accordingly, Owner Trustee is entitled to indemnification for such damages in an amount to be proven at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(CONVERSION)

37. Owner Trustee repeats and realleges the foregoing paragraphs as if fully set forth herein.

38. During the relevant period, American possessed and/or controlled the Aircraft.

39. Upon the respective Lease term expirations, Owner Trustee had a superior right to possession of the Aircraft.

40. Despite Owner Trustee's superior right to possession, and demand for the return, of the Aircraft, American intentionally retained possession of the Aircraft to the exclusion of Owner Trustee's rights.

41. By withholding return of the Aircraft following expiration of the term of the Leases, American unlawfully deprived the Trusts of funds or other business opportunities that they were entitled to and/or has enriched itself.

42. The Trusts have been damaged in an amount to be proven at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

43. Owner Trustee repeats and realleges the foregoing paragraphs as if fully set forth herein.

44. Upon information and belief, American derived substantial value from the Aircraft by withholding them from Owner Trustee following expiration of the term of the Leases.

45. It would be inequitable to permit American to enjoy the benefit of its retention of the Aircraft during the holdover period without paying for it.

JURY DEMAND

46. Plaintiff demands a trial by jury on all claims and issues that may be so tried.

WHEREFORE, Plaintiff requests that this Court grant the following relief:

A) Enter judgment against American on the First Count alleged herein, awarding Owner Trustee damages in an amount to be proven at trial, plus interest accrued and continuing to accrue thereon;

B) Enter judgment against American on the Second Count alleged herein, awarding Owner Trustee damages in an amount to be proven at trial, plus interest accrued and continuing to accrue thereon;

C) Enter judgment against American on the Third Count alleged herein, awarding Owner Trustee damages in an amount to be proven at trial, plus interest accrued and continuing to accrue thereon;

D) Enter judgment against American on the Fourth Count alleged herein, awarding Owner Trustee damages in an amount to be proven at trial, plus interest accrued and continuing to accrue thereon;

C) Awarding Owner Trustee its attorneys' fees and other costs incurred in connection with this action; and

D) Such other and further relief as the Court might deem just and proper.

Dated: New York, New York
June 18, 2018

Respectfully submitted:



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