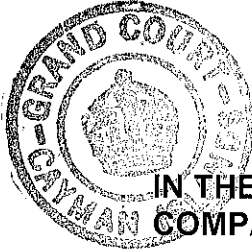


IN THE GRAND COURT OF THE CAYMAN ISLANDS

282  
CAUSE NO: OF 2004

IN THE MATTER OF THE COMPANIES LAW (2003  
REVISION)



AND



IN THE MATTER OF GATX FLIGHTLEASE AIRCRAFT  
COMPANY LTD

---

PETITION

---

TO THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of Flightlease Holdings (Guernsey) Limited (in voluntary liquidation) ("the Petitioner") whose registered office is at Polygon Hall, Le Marchant Street, St Peter Port, Guernsey GY1 4AS (a company registered in Guernsey with company number 33726) shows that:

1. GATX Flightlease Aircraft Company Ltd ("GFAC") was incorporated on 3 September 1999 under the Companies Law of the Cayman Islands as an exempted company.
2. The registered office of GFAC is at the offices of Walkers SPV Limited, Walker House, 87 Mary Street, P.O. Box 908, George Town, Grand Cayman, Cayman Islands.
3. The nominal capital of GFAC is US\$3,000,000,000 divided into 1,500,000,000 Class A shares of US\$1 each and 1,500,000,000 Class B shares of US\$1.00 each. The amount of the issued share capital paid up or credited as paid up appears to be US\$4 consisting of 2 Class A shares and 2 Class B shares.

4. Pursuant to paragraph 4 of the Memorandum of Association of GFAC, the principal objects for which GFAC was established are unrestricted.
5. The following facts and particulars are relied upon in support of the Petition:
  - i) GFAC was incorporated as an equal joint venture between GATX Third Aircraft Corporation ("GATX"), a Delaware corporation, and the Petitioner. The two Class A shares with a par value of US\$1 each are legally and beneficially owned by the Petitioner. GATX is the registered holder of the two Class B shares with a par value of US\$1 each.
  - ii) The Petitioner is a wholly owned subsidiary of Flightlease A.G., a Swiss incorporated company which is in turn part of the SAirGroup, all of which are insolvent. The Petitioner itself is in voluntary winding up in Guernsey, and the liquidators of the Petitioner are Messrs. Stephen John Akers and Nick Stuart Wood, both of Grant Thornton, London.
  - iii) GATX is a wholly owned subsidiary of GATX Financial Corporation, which along with GATX is a corporation organised and existing under the laws of the State of Delaware.
  - iv) Although the Petitioner ostensibly owns only a 50% shareholding in GFAC, with the remaining 50% shareholding owned by GATX, a number of underlying issues arise which modify and affect that position.
  - v) The documents which record the terms on which the joint venture was established are the Members' Agreement of 16 September 1999, as amended and restated on 31 January 2001, and the Memorandum and Articles of Association of GFAC itself (the "Constitution Documents").
  - vi) GFAC was originally a corporate vehicle for placing large aircraft orders with Airbus on behalf of GATX and the Petitioner.
  - vii) In the subsequent operation of GFAC, the parties appear to have caused it to be used for transactions which were not contemplated by the Constitution Documents. In particular, the parties departed from the concept of joint and equal participation.
  - viii) In the terminology of the Members' Agreement, payments in respect of aircraft purchase orders were "Purchase Payments". By clause 4.2:

#### **"4.2 Purchase Payments**

4.2.1 Each Member unconditionally and irrevocably agrees from time to time to make Capital Contributions to the Company in an amount which equals such Member's Percentage Interest of each Purchase Payment...."

The definition of "Capital Contributions" is set out in clause 1:

**"1.1 Defined Terms**

In this Agreement the following terms have the meanings set forth below:

...

**"Capital Contribution"** means, as to each Member, on any date, the sum of all capital contributions made on or prior to such date by such Member in consideration for the issue of Shares in accordance with Clause 4...". (The remainder of the definition is not material to this petition).

ix) By clause 4.4 of the Members' Agreement, the parties further agreed:

**"4.4 Allotment of shares**

Each Capital Contribution shall constitute a subscription for Shares which subscriptions the Members agree shall be made in accordance with the Articles such that \$1 of each such subscription shall be applied in payment for one share at par. Certification of shares is not a requirement under the laws of the Cayman Islands to prove ownership of shares; accordingly the Members agree that ownership of shares will not be evidenced by share certificates. Upon a Capital Contribution becoming due and being paid from time to time, the Manager will notify the Company Directors and Secretary of the number of Shares to be issued to each of the Members, in accordance with the amount of the Capital Contributions required from each such Member. Upon receipt of a Directors' resolution duly authorising the issuance of Shares, the Manager will procure that the Company Secretary shall update the register of members of the Company."

x) Clause 4.5 of the Members' Agreement provided:

**"4.5 Notices**

The Manager agrees with the Members that

...

4.5.2 upon payment by a Member of subscriptions for Shares it will arrange:

(a) for the appropriate entries to be made in the Register of Members and the books of the Company; and

(b) the allotment and issue of such Shares by the Company to such Member.”

- xi) By a further written agreement (the “Dissolution Agreement”) dated 4 October 2001 the Petitioner and GATX recorded their previous agreement “to dissolve their joint venture” and to split responsibility for the aircraft contained in the GFAC Purchase Agreement concluded with Airbus.
- xii) GFAC ceased to carry on business on or about 4<sup>th</sup> October 2001. It is impossible for it ever to resume business, in accordance with the Constitution Documents, at a profit or at all. In consequence thereof, the whole substratum of GFAC is gone.
- xiii) As at 4 October 2001, there were pre-delivery payments totalling US\$227,637,864 on deposit with Airbus in respect of unfulfilled orders placed by GFAC (resulting from orders pursuant to the GFAC Purchase Agreement and other transactions).
- xiv) Of the aggregate sum of US\$227,637,864, the agreed split of responsibility under the Dissolution Agreement treated US\$77,834,754 as being for the account of GATX and the balance of US\$149,803,110 as being for the account of the Petitioner.
- xv) Because of the way in which GFAC was managed, the Petitioner is unable to bring to the attention of the Honourable Court all the details and aspects of the transactions in issue and the documentation both in respect of these transactions and in respect of GFAC’s affairs in general. The management of GFAC was at all material times entrusted to four directors two of whom were nominated and employed by GATX (or associated companies) and two of whom were nominated and employed by Flightlease A .G. but are no longer so employed. No separate books and records appear to the Petitioner’s liquidators to have been maintained although GATX appears to have maintained ledgers for its own purposes. GATX held and controlled the bank account which was used for GFAC’s purposes.
- xvi) It is believed and understood by the Petitioner that because of a separate unilateral agreement reached between GATX and Airbus, GATX’s potential claims as contributory and/or creditor of GFAC are now extinguished in any event save in so far as it may have a residual interest in respect of the two Class B shares of which it is the registered holder.
- xvii) Notwithstanding the agreement between Airbus and GATX referred to in the preceding sub-paragraph of this petition, on the basis of the incomplete information currently available to the Petitioner, the Petitioner has good reasons to believe that GFAC has substantial claims against Airbus, arising out of the above-mentioned dealings to recover all or part of the pre-delivery payments referred in paragraph (xiii) above and/or

damages of substantial amounts for breach of contract arising from wrongful termination by Airbus of the GFAC Purchase Agreement. With the funding referred to in paragraph (xxi) below, a liquidator of GFAC would exercise all the powers available to him to investigate those claims and, if appropriate to do so, pursue or realise them to the best advantage of those interested in the estate of GFAC, including the Petitioner. The Petitioner believes that those claims are likely to be governed by United States law and, if appropriate to do so, to be capable of being pursued in the courts of the United States.

- xviii) GFAC may also be found to have other assets.
- xix) To the extent that the Petitioner's investment in GFAC relates to the funding of pre-delivery payments by GFAC to Airbus pursuant to the Constitution Documents, it constitutes equity participation. *Prima facie*, this equity participation corresponds with the US\$77,834,754 apportioned to GATX under the Dissolution Agreement although the agreed split appears to have been subject to certain further adjustments between GATX and the Petitioner. It is not clear whether the balance constitutes additional equity participation in GFAC by the Petitioner or whether it was debt finance in respect of which the Petitioner is GFAC's creditor but it is either one or the other.
- xx) GFAC has no other material liabilities known to the Petitioner. Whether by way of debt or equity or both, it is reasonable and appropriate to conclude that the Petitioner has the only substantial economic interest in the winding-up of GFAC.
- xxi) The Petitioner is ready, willing and able to fund its nominated liquidators of GFAC to bring such proceedings against Airbus as may be necessary or expedient for the purpose of recovering value for the benefit of all persons having a genuine interest in the winding-up of GFAC (whether as a creditor or as a contributory).
- xxii) The Petitioner is a contributory of GFAC with a tangible interest in its liquidation to the extent that its investment in GFAC constitutes an equity investment. Accordingly, the Petitioner has standing as a contributory to present this petition for winding up.
- xxiii) Further and/or in the alternative, if and in so far as its investment in GFAC constitutes loans to GFAC, the Petitioner is a creditor of GFAC with standing to present this petition in that capacity.
- xxiv) The absence of any material assets, other than its claims against Airbus, has rendered GFAC unable to pay any sums due to the Petitioner, as its creditor, as those sums fall due.

6. Accordingly, if and in so far as GFAC has debts to the Petitioner and/or to any other persons, GFAC is unable to pay its debts.
7. Further and/or in the alternative, GFAC ceased to carry on business on or about 4 October 2001 and accordingly its business has been suspended for more than a whole year.
8. In the circumstances herein set out it is just and equitable that GFAC should be wound up.

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:

1. That GFAC may be wound up by the Court under the provisions of the Companies Law (2003 Revision); and
2. That Stephen John Akers and Nick Stuart Wood and Terry W. Carson (and/or some other fit and proper person) be appointed as Official Liquidators of GFAC and that no security shall be required from them.
3. That any act required by the Companies Law (2003 Revision) or authorised to be done by the Official Liquidators of GFAC may be done by any one of them.
4. That the Official Liquidators of GFAC may exercise the powers listed in section 109 of the Companies Law (2003 Revision) without the sanction or intervention of the Court.
5. That the Official Liquidators shall be remunerated by reference to the time properly spent by them and by their staff in attending to matters arising in the winding up and by the application thereto of the usual hourly rates of Grant Thornton, London.
6. That the remuneration and expenses of the Official Liquidators and their staff be paid out of the assets of GFAC as an expense of the liquidation thereof, such remuneration and expenses to be fixed by the Court (in accordance with paragraph 5 of this prayer) or otherwise fixed in such appropriate manner as the Court may direct.
7. That the costs of and incidental to the petition be an expense of the liquidation of GFAC or otherwise fixed in such appropriate manner as the Court may direct.
8. That such other order may be made as the Court thinks fit.

AND your Petitioner will ever pray etc.

Dated the ~~9<sup>th</sup>~~ day of June 2004

Appleby Spurling Hunter

Appleby Spurling Hunter

NOTE: This petition is intended to be served on GFAC at its registered office at the offices of Walkers SPV Limited, Walker House, 87 Mary Street, P.O. Box 908, George Town, Grand Cayman, Cayman Islands and GATX of Four Embarcadero Center, Suite 2200, San Francisco CA, 94111, United States of America.

INDORSEMENT.

This Petition having been presented to the Grand Court on the \_\_\_\_\_ day of \_\_\_\_\_ 2004 will be heard by a Judge of the Grand Court, George Town, Grand Cayman on 23<sup>rd</sup> July 2004 at 10.00 am or as soon thereafter as the Petition can be heard.

This Petition was presented by Appleby Spurling Hunter, PO Box 190GT, Clifton House, 75 Fort Street, George Town, Grand Cayman, Attorneys-at-Law for the Petitioner.