

**Ex Parte: Air Seychelles Ltd v Seychelles Civil Aviation Authority
(2008) SLR 93**

Kieran SHAH for the applicant

Order delivered on 26 September 2008 by:

PERERA CJ: The applicant, Air Seychelles Limited, seeks an interim order on Seychelles Civil Aviation Authority (SCAA) prohibiting the deregistering of Boeing 767-204 Aircraft Manufacturers Serial No 24013 from the Seychelles aircraft register, at the instance of XL Airways UK Ltd, or London 27 Ltd or HF Eimskipafelag Islands, and also prohibiting the taking out of Seychelles the said aircraft without paying Air Seychelles the sum of US Dollars 1,173,333.

Mr K B Shah, Attorney-at-Law, supporting the application, relied on the affidavit of Captain David Savy, Chairman of the Board of Directors of Air Seychelles Limited. It is averred that Air Seychelles entered into a sub-sub-lease agreement dated 15 October 2007 relating to the said aircraft, with XL Airways UK, limited for a period ending at the earliest 15 June 2010 with the possibility of extending up to 1 May 2011. However, on 12 September 2008, XL Airways UK Limited went into legal administration, and consequently the said aircraft has grounded since then at the Seychelles International Airport. The applicant has produced a letter dated 8 May 2008 from XL Airways acknowledging receipt of a sum of US dollars 800,000 as a security deposit in terms of the said sub-sub-lease. Further, it is averred that the applicant paid the monthly lease rental of US dollars 400,000 on 8 September 2008 covering the period 10 September to 9 October 2008, but due to the grounding of the plane for the reasons stated above, the applicant has not been able to use the aircraft since 12 September 2008. A copy of the payment advice from Barclays Bank for US dollars 400,000 debited from an Air Seychelles bank account and transferred to XL Airways UK Ltd, has been produced.

It is averred that pursuant to the sub-sub-lease, Air Seychelles had caused the aircraft to be registered in Seychelles with the SCAA, and has executed a deregistration Power of Attorney in favour of XL Airways UK Ltd, HF Eimskipafelag Islands (the head lessor) and London 27 Ltd (the sub-lessor) empowering any one of them to deregister the aircraft from the Seychelles register and to remove the aircraft from Seychelles. In this respect a letter dated 7 November 2007 has been produced, wherein the SCAA had confirmed to those parties that they would not cancel the registration except at their instance.

The applicant avers that the administrator of XL Airways UK Ltd has cancelled the sub-sub-lease, while Air Seychelles is entitled to be reimbursed its security deposit of US dollars 800,000 and the balance of the advanced rental covering the period 12 September to 9 October 2008, being US dollars 373,333, totalling US dollars 1,173,333. The applicant avers that it is in the interests of justice that the SCAA be prohibited from deregistering the aircraft, and allowing it to leave Seychelles without Air Seychelles

being paid the said sum of US dollars 1,173,333. In this respect, they are prepared to negotiate with the administrator, the sub-lessor and the head lessor for a satisfactory resolution of this matter, but are concerned that there is a real likelihood that the aircraft will be deregistered in Seychelles, in which event the administrator may remove the aircraft without making the payment due to Air Seychelles. Hence the application for an interim restraining order on the SCAA.

Section 6 of the Courts Act (Cap 52) vests this Court with equitable powers in all cases where no sufficient legal remedy is available. In that respect, section 4 of that Act provides that this Court may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England. An injunction or a restraining order may be granted in English law even though a plaintiff's legal rights have not as yet been infringed. In such a case, the applicant is described as having obtained the injunction *quia timet* (because he fears) that a wrong will be done to him if the order is not made. In the case of *Redland Bricks Ltd v Morris* [1970] AC 652 Lord Upjohn stated

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to prevent the jurisdiction of the Courts being stultified, equity has invented the *quia timet* action, that is an action for an injunction to prevent an apprehended legal wrong, though none has occurred at present.

The applicant, Air Seychelles Ltd, is in such a situation. Hence, in the absence of a sufficient legal remedy in our law, this Court is empowered to act as a Court of equity and grant the interim restraining order sought.

Accordingly, acting pursuant to sections 4 and 6 of the Courts Act, an order is hereby made prohibiting Seychelles Civil Aviation Authority from deregistering Boeing Aircraft Manufacturers Serial No 24013 from the Seychelles aircraft register at the instance of XL Airways UK Ltd, or London 27 Ltd or HF Eimskipafelag Islands, and from permitting the taking of the said aircraft out of Seychelles without paying Air Seychelles the sum of US dollars 1,173,333, or until this Court makes a further order.

Record: Civil Side No 220 of 2008