IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(I) 15

Suit No 4 of 2019 (Assessment of Damages 1 of 2022)

Between

Singapore Airlines Limited

… *Plaintiff*

And

CSDS Aircraft Sales &
Leasing Inc

… *Defendant*

JUDGMENT

[Damages – Assessment]

TABLE OF CONTENTS

Singapore Airlines Ltd
v
CSDS Aircraft Sales & Leasing Inc

[2022] SGHC(I) 15

Singapore International Commercial Court — Suit No 4 of 2019 (Assessment of Damages 1 of 2022)
Jeremy Lionel Cooke IJ
10, 11 October 2022

3 November 2022 Judgment reserved.

Jeremy Lionel Cooke IJ:

Introduction

1 This is the assessment of damages following the trial on liability in this matter, which is reported as *Singapore Airlines Ltd v CSDS Aircraft Sales & Leasing Inc* [2021] 5 SLR 26. In that judgement, I held that the defendant was in repudiatory breach of contract on 26 October 2018 and that this breach was accepted by the plaintiff as bringing the contract to an end on 4 November 2018. That judgement was upheld by the Court of Appeal, the decision being reported at *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Ltd* [2022] 1 SLR 284. The contract in question was an aircraft purchase agreement dated 19 September 2018 ("the Aircraft Purchase Agreement") under which the plaintiff agreed to sell, and the defendant agreed to purchase a Boeing 777-212 aircraft ("the Aircraft") without engines for the sum of US$6,500,000. The

defendant paid the deposit of US$250,000 but failed to make payment of the balance of US$6,250,000.

2 The plaintiff claims the following heads of damages:

(a) The difference in the contract price and the market price of the Aircraft, under s 50(3) of the English Sale of Goods Act 1979 (c 54) (UK) ("the Act") which would, it was submitted, allow for reasonable time for negotiation and conclusion of the sale following acceptance of the repudiation;

(b) parking and maintenance fees from 4 November 2018 until the expiry of that reasonable time; and

(c) marketing, brokerage and legal costs associated with any such sale.

3 No such sale of the Aircraft (without engines) in fact took place, despite various efforts on the part of the plaintiff to sell it by issuing Requests for Proposals ("RFPs") on 20 November 2018, 12 March 2019 and in May 2019, and despite attempts to sell its component parts in circumstances where the Aircraft could not fly without passing various tests and obtaining certification which would have cost significant sums of money. Such components would have to be harvested in Singapore, whilst the Changi Airport Group ("the CAG") would not allow the airframe of the Aircraft ("the Airframe") to be disposed of "airside" in Changi Airport.

(a) On the evidence of Mr Cheong Khin Cheong ("Mr Cheong"), the plaintiff's Senior Manager responsible for aircraft sales, the highest bid for the Aircraft that the plaintiff received pursuant to the November

2018 RFP was US$2.1m but this was subsequently reduced or withdrawn for because of the difficulties referred to above which made anything other than a sale of the component parts uneconomic and the Airframe more of a liability than an asset.

(b) Because the CAG expressed an interest in taking the Airframe for training, in exchange for dismantling and disposing of the Airframe at no cost after it had been used, on the condition that the landing gear, windows and doors remained intact for their use in the interim, the plaintiff requested the top three bidders responding to the November 2018 RFP to offer a revised bid for the components of the Aircraft without the Airframe, landing gear, windows and doors. The highest bid received for these components was US$600,000 which the plaintiff considered inadequate, particularly when taking account of the cost to the plaintiff in assisting with the removal of parts.

(c) A further RFP was then issued on 12 March 2019 based on components to be harvested in two phases in 2019. A purchaser could bid for a selected list of components with an option to bid for the landing gear, with the Airframe left intact for CAG. The highest of three bids received was US$1.315 million. However, due to the grounding of all Boeing 737 Max aircraft in Singapore by the Civil Aviation Authority of Singapore ("CAAS") on 12 March 2019, the plaintiff decided not to proceed with negotiations with bidders as it was considering redeploying the Aircraft to meet the operational needs of its sister airlines, SilkAir or Scoot.

(d) In May 2019, whilst considering whether to redeploy the Aircraft, the plaintiff placed public advertisements for the sale of the

Aircraft with the delivery date to be decided, but anticipated to be in 2020, in order to investigate all options. No offers were received.

(e) In August 2019, the plaintiff decided not to proceed with the deployment of the Aircraft to SilkAir and then engaged further with a number of different parties in attempts to sell the Aircraft, all without success.

(f) From November 2019 onwards, without prejudice negotiations took place with the defendant with a view to achieving a settlement of the dispute between them but the parties were unable to reach any agreement.

(g) By October 2020, the plaintiff decided, on concluding that there was no longer any market for the sale of the Aircraft as such, to part out the Aircraft as the only economic course to be adopted.

(h) The Aircraft was parted out in October 2021.

4 Since both parties agreed that there was an available market, once the plaintiff's expert had submitted his report in which he gave his opinion that there was an available market on 4 November 2018 when the plaintiff terminated the contract in consequence of the defendant's repudiatory breach, that factual history might be thought to be largely irrelevant to the dispute between the parties as to the proper measure of damages. It is however, in fact significant in any assessment of the market price of the Aircraft. The best available evidence of the market price, assuming proper marketing, is what actually happened when attempts were made to sell the Aircraft. If a sale had resulted from the plaintiff's efforts, it would (again assuming proper diligence in the sales process) likely establish market value. No such sale did occur, and the parts were sold or

utilised well after any relevant period for assessing the market price of the Aircraft. Nonetheless, offers made will give some indication of likely market value as long as the circumstances are taken into account.

5 It was common ground between the parties that the measure of damages was to be assessed by reference to s 50(3) of the Act, but there was a difference between them as to what that meant in terms of the date to which the court should have regard. Section 50(3) of the Act provides:

> Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods or to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.

6 The plaintiff, relying upon a decision of Gross J (as he then was) in *AerCap Partners I Ltd v Avia Asset Management AB* [2010] EWHC 2431 (Comm) ("*AerCap*"), at [109] in particular, and a passage in *The Golden Victory* [2007] 2 AC 353 ("*The Golden Victory*") at [34], submitted that a seller was entitled to a reasonable time to enter into a substitute sale and that the relevant market price for the purpose of assessing the quantum of recoverable loss was the market price at the expiration of that period. The opinion of the plaintiff's expert was that a period of nine to twelve months constituted such a reasonable period because of the weakness in demand for aircraft of the relevant type in the period following November 2018. The market for used aircraft was not spontaneous and time was required to find a suitable buyer, to obtain offers and negotiate a sale even in a balanced market, but the market at that time was soft.

7 In the interim period before the Aircraft was parted out, the plaintiff incurred maintenance and parking charges for the Aircraft, which it submitted it was entitled to recover as damages up to the expiry of the reasonable time that

it was allowed for the conclusion of a sale. It relied upon the actual figures it had incurred for that period. Additionally, however, the plaintiff sought to recover what were submitted to be standard marketing, brokerage and legal costs on a substitute sale, though such had not actually been incurred.

8 The defendant's case was that the only relevant date for assessment of damages was the date of termination of the contract, namely 4 November 2018 and that, at that stage, the actual value of the Aircraft exceeded the contract value. Alternatively, if the plaintiff was right in saying that the market value should be calculated at a date following a reasonable period in which a substitute sale could be achieved, that period was less than three months. Once again it was said that the actual value of the Aircraft exceeded the contract price at that date. It was also submitted that the parking charges, the maintenance charges, the marketing, brokerage and legal costs were all irrecoverable or alternatively, if recoverable, were unjustified and manifestly excessive.

9 There was no plea by the defendant of any failure to mitigate, which might again be thought to be of limited importance because the basis of the case advanced by the plaintiff was based on market value, but because what actually happened is evidence of the market value and the reasonable expense incurred to realise it, it was open to the defendant to say that the plaintiff had not made adequate efforts to sell the Aircraft and had incurred unnecessary or unrelated expenditure in the course of such efforts that it did make.

The relevant principles of English law

10 The essential principle for which the plaintiff contends, namely that s 50(3) of the Act allows a seller a reasonable period of time to make the substitute sale or establish the market price for the purpose of assessing the

quantum of the recoverable loss, is made good by the authorities to which it refers. No purpose would be served by citing [103]–[117] of the judgement of Gross J (as he then was) in *AerCap*, but he rejected the proposition which is advanced by the defendant in this case. He recorded that it was most unattractive to insist that the damages were limited by reference to a notional market price prevailing when, on the evidence, that price was unobtainable and that "the law of damages seeks to do practical justice". In that case, on the facts, the learned judge was satisfied that the substitute sale agreement which was actually concluded one year after the acceptance of repudiation was the best evidence of the market value available, although he confessed to misgivings about the length of that period. In coming to the conclusion that he did, he relied upon *The Golden Victory* at [17] and [34]. What constitutes a reasonable period will always be a question of fact which will fall to the trier of fact to determine.

11 As to the parking and maintenance charges, no authority directly on point was cited to me but as a matter of principle it appears to me that, if expenditure is required in order to realise a given market price at the end of a reasonable period for the conclusion of the necessary notional sale, those expenses must fall to be taken into account as a necessary concomitant of achieving that market value, with the result that the net market value, after deduction of such expenses, is to be compared with the contract price. The principle holds true whether or not expenses are actually incurred in seeking to mitigate the position and to conclude an actual sale since s 50(3) of the Act proceeds on the basis of a notional sale at a net market value. It is self-evident that only reasonable expenditure could be seen as necessary to achieve such a sale and any expenses actually incurred which were unreasonable or manifestly excessive could not feature in the calculations of loss. Once again, the quantum of any such charges is a matter for the trier of fact.

The nature of the evidence adduced by the parties

12 The plaintiff adduced evidence of fact from its Senior Manager responsible for aircraft sales, Mr Cheong, on what had actually happened, some of which is recorded already in this judgement. Further details appear later, from which it will be apparent that there were peculiar difficulties involved in any substitute sale of the Aircraft by reason of the expiry of its "C check" and the difficulty in selling the Airframe in circumstances where the Aircraft could not fly without huge expenditure on it, and the Airframe could not readily be disposed of at Changi Airport. The plaintiff adduced expert evidence from Mr Philip Seymour ("Mr Seymour"), a well-known certified aircraft appraiser with the International Society of Transport Aircraft Trading, holding the designation of Senior Appraiser Fellow. Two reports were produced by him, the first of which set out his opinion as to the value of the Aircraft and Airframe on November 2018 and setting out the range of costs that would ordinarily be incurred in a substitute sale of such an Airframe, whilst the second enshrined his opinion on the ordinary approach to selling aircraft, the process followed by the plaintiff and the period of time required to ensure that sufficient potential buyers were found and a contract concluded. The expert evidence from Mr Seymour did not rely on any of the factual evidence but proceeded to examine the market value in the abstract by reference to the Aircraft specification and the state of the market at the time.

13 The defendant served evidence from Mr Sriyantha Benedict Sirimanne ("Mr Sirimanne"), its President, in the form of a 32-page Affidavit of Evidence-in-Chief ("AEIC") dated 3 October 2022. The majority of that affidavit consisted of argument and statements of opinion. It amounted to the presentation of the defendant's case rather than either a witness' statement of fact or an objective expert report. Objection was taken to it by the plaintiff but,

regardless of any issues of admissibility, any weight which might have been attached to it was minimal and the evidence of fact therein was extremely limited and unsupported or insufficiently supported by the documentation exhibited to it. On the second day of the hearing, counsel for the defendant informed the court that Mr Sirimanne would not be tendered for cross-examination and accepted that, in those circumstances, no reliance could be placed on his evidence which had been used in part, as the basis to cross-examine Mr Seymour.

14 In the result, the court had expert and factual evidence from the plaintiff alone and I would need good reason to depart from that evidence, save where there was some inconsistency or an obvious failure in logic. Mr Cheong's evidence could not be gainsaid. Mr Seymour's expertise is well-known and his integrity and independence are unquestioned. The defendant's case, as displayed by Mr Sirimanne in his AEIC, was put to Mr Seymour who maintained his opinions, save in one respect where he conceded, in cross-examination, that, having used the value of a Boeing 777-200 ("777-200") and adjusted it to obtain a value for the Aircraft by reference to its different specification, he should have deducted the value of a standard 777-200 engine from the value thus obtained in order to arrive at the value of the Airframe. As a matter of logic, it appeared to me that he was mistaken in making this concession and that the relevant error, if there was one, in his first report was to have failed fully to take into account the difference in the value of the Aircraft's engine and that of the 777-200 in order to arrive at the value of the Aircraft with its engines intact, before subtracting the value of its actual engines to arrive at the value of the Airframe. The question arises as to the extent of that error, and if and how it can be corrected to arrive at a more accurate valuation.

15 Apart from two aspects of his evidence (with his frank admission that he was hindered by not having a corresponding expert appointed by the defendant with whom such issues could be debated and considered) I considered his evidence to be objective, careful, measured, helpful and essentially conservative in its conclusions as to market value. The first such aspect is that which I have just mentioned, the consequences of which are unknown. The second relates to the reasonable time allowed for the sale of the Aircraft where he considered that a period of nine to twelve months was appropriate. In this respect, it appeared to me that he did not give any weight to what actually happened when the plaintiff set about selling the Aircraft, from which I derive the conclusion that it would not have taken as long as that. I also conclude that the price obtainable would have been less than the figure at which he arrived in the relevant period and *a fortiori* if that figure had to be corrected for the apparent error previously mentioned.

16 Otherwise, despite detailed and extensive cross-examination, Mr Seymour saw no reason to change the views expressed in his two reports. I am not, of course, bound to accept his evidence in every respect and do not do so because, as I have indicated, on the factual evidence available, I find that the Aircraft could have been sold in a period less than nine to twelve months, whilst accepting that it is inevitable that some time would have been taken to achieve any sale. It is the price that was obtainable at the end of a reasonable period which constitutes the relevant market value as at the date of termination and on the basis of the factual evidence, I come to a conclusion which differs from his. Because I consider that the Aircraft could have been sold in less than nine months, for the reasons which appear later in this judgment, I do not need to refer to any figures beyond August 2019 in this judgment.

The evidence of fact

17 I have summarised the effect of the evidence of the attempts by the plaintiff to sell the Aircraft without engines earlier in this judgment. On the basis of this evidence, I reject any suggestion that inadequate efforts were made to sell the Aircraft or to explore all options available to maximise its value to the plaintiff. Mr Cheong was a reliable witness who expanded on his AEIC in cross-examination and re-examination as he was invited to do by counsel for the defendant, explaining the basis for the actions of the plaintiff as set out therein.

18 The factual history, as set out in the AEIC of Mr Cheong, shows that the plaintiff took all reasonable steps to obtain a substitute sale in November 2018. The plaintiff issued an RFP by placing a public advertisement on "Aeroconnect" and by sending an RFP to its usual list of 200 or so prospective purchasers. It had previously, in July 2018, issued an RFP to a similar list of prospective purchasers before awarding the sale of the Aircraft to the defendant in September 2018.

19 Under the November 2018 RFP, a prospective purchaser had the option of either ferrying the Aircraft out of Singapore with its own engines or dismantling the Airframe and harvesting the aircraft components. The highest bid received however was only US$2.1m and the parties who submitted bids subsequently informed the plaintiff that they would have to reduce and/or withdraw their bids, before any question of a letter of intent or a formal sales and purchase agreement could be negotiated. In fact, by 10 November 2018, even though the Certificate of Airworthiness issued by the CAAS continued to be valid, the Aircraft was not allowed to be ferried to another destination whilst it remained under Singapore registration without undergoing a series of extensive and expensive maintenance checks which were due in accordance

with its maintenance schedule. As the sale was to be without engines, in order to remove the Aircraft, a purchaser would have to bring in its own engines, utilise its own crew and change the registration of the Aircraft. Alternatively, any buyer seeking to harvest the Aircraft for its components would have to dismantle the Aircraft in Singapore and would have to dispose of the Airframe after doing so. The CAG would not, however, allow the Airframe to be disposed of "airside" at Changi Airport.

20 In those circumstances, with no extant bids, the plaintiff explored the possibility of the arrangement referred to earlier with CAG, in which CAG wished to make use of the Airframe, with its landing gear, doors and windows intact and was prepared to take on the expense of disposing of them after making use of them. This would allow purchasers to harvest the other parts. The plaintiff requested the top three bidders responding to the November 2018 RFP to offer a revised bid for the components of the Aircraft without the Airframe, landing gear, windows and doors. The highest November bidder at US$2.1m came up with a bid of US$450,000 and a lower bidder at US$1.55m produced the highest bid for these components at US$600,000 on the premise that the plaintiff would help it salvage the parts and free them from the obligation to dismantle the Airframe. The plaintiff considered this inadequate, particularly when taking account of the cost to the plaintiff in assisting with the removal of parts, which could have been as much as S$500,000.

21 I have already referred to the March 2019 RFP for bids for parts to be harvested in two phases in 2019, to tie in with the CAG proposal. The RFP which was sent to the usual list of some 200 prospective purchasers resulted in only three bids, the highest of which was US$1.315m for the components without the Airframe. Mr Cheong said that the plaintiff did not proceed with this bidder because consideration was then being given to redeploying the

Aircraft to meet the operational needs of one of two sister airlines, because of issues relating to other aircraft. This would have involved reactivating the Aircraft at a cost of a sum of the order of S$6m, involving not just "C checks", but "A checks" and, because of the Aircraft's age, zonal and structural inspection/tasks. If extensions to leases on other aircraft could be negotiated this would not be needed, as in fact ultimately proved to be the case. Thus, whilst preserving options, in May 2019, a further attempt was made for a sale by placing advertisements on Aeroconnect and "Airfax" with an anticipated delivery date in 2020. Although a few enquiries were received there were no offers.

22 On deciding not to proceed with the deployment of the Aircraft to its sister airline, the plaintiff enquired of the highest bidder in March 2019, of Odyssey Air Finance, of World Wide Charter, of EFTEC UK, Turbo Resources and AJW Group, of Aerospace Assets and AerSale, with continuing public advertisements on Aeroconnect and Airfax and at aviation trade fairs in Singapore, all without any positive response.

23 It was put to Mr Cheong that the plaintiff did not make serious efforts to sell the Aircraft or parts but in my judgment, the situation which had been brought about by the repudiatory breach of the defendant meant that no purchaser was likely to be found at a price exceeding US$2.1m (as the responses to the November 2018 RFP ultimately showed) who would either come in with its own engines to fly the Aircraft out with the necessary change of registration and all that was associated with that, or would purchase the Aircraft including the Airframe for dismantling and harvesting its parts on the ground in Singapore, with the responsibility of somehow disposing of the Airframe itself. The efforts to overcome this problem with the proposal from CAG represented

an imaginative attempt to resolve it, but they came to nothing for the reasons given.

24 Mr Cheong said in his AEIC that the only bid that the plaintiff had received for the Aircraft after November 2019 was for its sale with engines but that was at a price which would not cover the cost to make the engines on the Aircraft serviceable to meet the terms of the bidder's offer. He was not cross-examined on that.

25 The plaintiff concluded in October 2020 that there was no market for the Aircraft any longer, COVID-19 having, by this time impacted severely on the market. The decision was taken to part out the Aircraft. Parting out eventually took place in October 2021.

26 On the basis of this evidence, there were no viable offers received for the Aircraft without engines (the subject of the September 2018 purchase by the defendant) as a whole, at any stage after November 2018. The bid for US$2.1m in response to the November 2018 RFP came to nothing because of the problems outlined in moving the Aircraft from Singapore and/or the problems of harvesting parts in Singapore and disposing of the Airframe. The only viable bids for parts thereafter were bids of US$600,000 and US$1.315m. The parties agreed that there was an available market but because of the particular situation of the Aircraft, the market price was bound to be much lower than for an aircraft of the same specification with unexpired certificates which would enable it to be flown.

27 I conclude on this evidence that whilst a sale could possibly have been achieved of the Aircraft on the basis of negotiating on one of these offers, the price obtainable and the cost to the plaintiff in either assisting in harvesting

parts, or disposing of the Airframe would have resulted in a net realisation based only on the offer received of US$1.315m, after some negotiation, with CAG disposing of the Airframe. That could have been concluded in a period of six months from 4 November 2018.

28 It is in the light of this evidence and conclusion that I approach the expert evidence of Mr Seymour who did not base his conclusions on this history but upon his understanding and investigations of the market in order to arrive at a market value as at 4 November 2018.

Mr Seymour's methodology of valuation

29 Mr Seymour's evidence was that the International Bureau of Aviation Group Limited ("IBA") publishes the Aircraft Values Book ("AVB") in February and August of each year and the Engine Values Book ("EVB") in June each year. Both of the publications use a half-life condition as the basis of valuation but as very few aircraft are actually in such a theoretical condition, adjustments fall to be made to accord with their actual condition.

30 Mr Seymour drew attention to the differences between the Aircraft (being a Boeing 777-212) and a 777-200 and a Boeing 777-200 ER ("777-200 ER"). It was plain from the table that he produced that the Aircraft's specifications, as set out in the Aircraft Purchase Agreement and as otherwise known, were more akin to that of a 777-200 than a 777-200 ER. He accepted that there were two ways of deriving the value of the Aircraft: either by adjusting the value upwards from a 777-200 to allow for the higher specification of the Aircraft or by adjusting the value downwards from that of a 777-200 ER to allow for the lower specification. He chose the former as a method because, although the Airframe shared commonality with the 777-200 ER, the 777-200

and the Boeing 777-300 ("777-300"), to all of which he referred as "Boeing 777 First-Generation aircraft" of a similar kind, the configuration of the Aircraft was more directly comparable to the 777-200 configuration because the engine thrust, the Specific Maximum Take-Off Weight ("MTOW") and the higher number of cycles were closer to it than to the 777-200 ER. He therefore increased the AVB market value of the Aircraft to take account of the differences.

31 He accepted that it was possible to arrive at a valuation by taking the 777-200 ER AVB value and adjusting that downwards to arrive at an appropriate valuation of the Aircraft by reference to the differences between it and the standard 777-200 ER, but he thought it more logical to start from the 777-200 configuration which was closer to that of the Aircraft. The same basic methodology would however be applicable.

32 He added approximately 11% from the AVB market value of a 777-200 to take into account the difference in the MTOW for the Aircraft. That percentage was not the subject of challenge but amounted to US$1.56m which the defendant said was inadequate to account for the difference in engine thrust. He added a premium of US$0.25m because the Aircraft would be seen to have been maintained to a better than average standard by the plaintiff in accordance with its maintenance procedures. What he did not do was expressly to take account of the increased engine thrust of the Aircraft as compared with a 777-200, the difference being one of 11,440lbs (the difference between 85,940lbs and 74,500lbs). With a starting point in August 2018, February 2019 and August 2019 of US$14.35m, US$14.02m and US$14.02m respectively, he assessed the half-life complete Aircraft market value to be US$16.24m, US$15.62m and US$15.4m at each of those dates.

33 The next step in his valuation was to remove the value of the actual engines on the Aircraft, the Rolls Royce Trent 884 engines, from those figures. It was put to him in cross-examination that he should have, because he had used the 777-200 as a comparison, deducted the value of the engines in the 777-200 (the Trent 875 engines) to arrive at the value of the Airframe. As already indicated, this made no sense to me. The effect of what he did was to take the market value of a half-life Trent 884 engine (two of which were on the Aircraft), as per the EVB at June 2018 and June 2019, being the nearest relevant dates, as US$12.32m and US$11.76m on the respective dates, and deduct those figures from the half-life complete Aircraft market values to arrive at figures for the half-life market value for the Airframe of US$3.92m, US$3.86m and US$3.64m respectively.

34 If Mr Seymour had started with the 777-200 ER figure as at August 2018 and made deductions from it for the lesser MTOW by reference to the differential between the 777-200 ER MTOW and the Aircraft MTOW, he would have started with a value of US$21.69m and reduced the figure by some 87% of the difference between that figure and the figure of US$14.35m, which is US$6.38m, resulting in a figure of US$15.31m instead of the starting point of US$16.24m, which he derived by starting with the 777-200 value and adjusting upwards. The figures for February 2019 and August 2019 would be subject to similar adjustment with not dissimilar results, leading to a lower starting point figure for each than those used by Mr Seymour. In my judgment, Mr Seymour was right to start from the nearest comparable specification to make adjustments.

35 As already indicated, however there would appear to be a missing element in Mr Seymour's calculations, namely an adjustment for the difference between the engine thrust of the 777-200 and that of the Aircraft itself. The

plaintiff argued based on passages in Mr Seymour's evidence that the difference in thrust was essentially accounted for in the adjustment for the difference in MTOW since it was inevitable that greater engine power would be needed to achieve the greater MTOW, and the engine model was indicative of the engine thrust. Thus, inherent in his calculations of the MTOW difference, was the difference in engine thrust. There is some force in that, but the two are not, it seems to me, entirely coextensive. Elsewhere he said, at one point, that the different rating of the engine between one model and another was worth in the order of US$1m per engine. How that differential was to be applied in conjunction with the differential in MTOW was not explored in the evidence and it may or may not have any real significance. The remark was a somewhat off the cuff comment upon which no great weight should be placed, whilst the defendant drew attention to the difference in value between the 777-200 and the 777-200 ER in the AVB and the engine differential values in the EVB.

36 If a simplistic approach were adopted to this comment, the effect of this on his calculations, taking the engine half-life for two engines, , as it appears to me, might be to increase the value of the Aircraft vis-à-vis the 777-200 by a further US$1m from US$14.35m in August 2019 and US$14.02m in February and August 2019 to US$15.35m in August 2019 and US$15.02m on each of the later dates before embarking on the further adjustments set out below. I have no confidence in this calculation of the extra million US dollars because it is not soundly based on any considered expert evidence but calculated by me on the basis of a comment made in evidence that was not fully considered by Mr Seymour. It also ignores the extent of the overlap between the engine thrust and the MTOW and, on Mr Seymour's evidence, I have no doubt that, from a commercial perspective it is the MTOW which is of significance. Whatever the rights and wrongs of that calculation, there does seem to me to be a missing

element in Mr Seymour's own calculation, the extent of which, significant or insignificant is not capable of assessment by the court.

37 Whilst the defendant submitted that the plaintiff, on whom the burden of proof lay to establish its loss, had failed, on this basis to prove its case, the reality is that the plaintiff has clearly suffered a substantial loss in being unable to sell the Aircraft for the contractual sum agreed by the defendant in the Aircraft Purchase Agreement of 19 September 2018, as is apparent from Mr Cheong's evidence, and the only issue is how to quantify that loss by reference to s 50(3) of the Act, in circumstances where a claim could have been pursued on the basis of the factual evidence under s 50(2) of the Act.

38 Mr Seymour then made further adjustments to the half-life airframe values to determine the market value of the Airframe itself, by taking into account its specific aircraft technical and maintenance status.

(a) He made an adjustment of US$1.02m on account of the low landing gear life of 10%, as compared with the half-life upon which the notional valuation had proceeded. The typical full overhaul cost of a 777 landing gear, he said, was just over US$2m and there were only 18 months of the landing gear's ten-year life remaining, running from October 2018 to April 2020. In practice he said that meant that the landing gear had very limited value. As a matter of mathematics, if the cost is taken as US$2m and depreciation is spread over ten years on a straight-line reducing basis, the half-life value of the landing gear would be approximately U$1.24m and its value at 18 months before expiry, approximately US$300,000. On this basis the difference of US$1.02m is a reasonable deduction to make.

(b) He made an adjustment of US$0.5m because the "C Check" had expired in September 2018 and the cost of a typical "C Check" of a similar aircraft is approximately US$1m. The adjustment from half- life to no life is therefore half of the cost of such a check. That, too, is a reasonable deduction. The evidence of Mr Cheong was that if all the necessary checks were done and all the work effected to make the Aircraft operational, a much higher figure would be involved.

(c) Mr Seymour made a further adjustment on account of the Aircraft being out of use for a long period of time from August 2019 onwards because he expected that the longer the Aircraft remained unsold, the more the asking price and number of buyers' offers would reduce. Moreover, there was an increasing risk of a buyer finding technical problems and an increasing proximity to maintenance requirements. Because I take the view, on the fact evidence, that if any sale was to occur, it would happen before August 2019, this deduction does not arise.

39 The effect of Mr Seymour's assessment and calculations is that the value of the Airframe at August 2018 was US$2.4m, at February 2019 was US$2.34m and at August 2019 was US$1.37m, but subject to a further downward adjustment.

40 He took the view that there were additional factors which would reduce the value yet further. The major factor relied on was a ground handling incident at Changi Airport when the right-hand wing of a 777-300 which was being towed struck the tail cone of the Aircraft. This required replacement of the entire "Section 48 after fuselage segment (non-pressurised)" as well as replacement of the "nose wheel well sidewalls" which are pressurised. The damage was

rectified by the "Boeing AOG" team, which issued a "FAA Form 337" classifying the repair as "Major". The repair performed was a "Cat A" repair, that is, a permanent repair without any further supplemental inspections. Mr Seymour took the view that some purchasers, particularly those interested in the "part out" market would use the incidents to negotiate a lower price. The history of the Aircraft would thus drive down the price obtainable. He suggested a further discount, about which I am dubious, on the basis that a buyer would consider additional expenditure in terms of branding and external livery, but this would be the case in every purchase of a second-hand aircraft.

41 In his experience, he considered that the value of the Airframe was therefore somewhat lower than the figure arrived at by calculation and settled on a range of US$2m–US$2.4m as at 4 November 2018, with a range of US$1.94m–US$2.34m at February 2019 and US$970,000–US$1.37m at August 2019. If these figures are adjusted to take account of the different engine thrust of the Aircraft vis-à-vis the 777-200, in the simplistic manner I have outlined above, those figures would be increased by US$1m each.

The evidence as to the state of the market

42 On the basis of Mr Seymour's evidence, there was an available market in November 2018, including an overall desire, albeit weak, for good quality used aircraft and aircraft suitable for parting out to provide spares for other aircraft. There was evidence that similar aircraft were being transacted at the time and there was a demand for spares, but the market was soft and a reasonable period for selling the Airframe would be nine to twelve months. In reaching this conclusion, Mr Seymour considered various factors and market indices that showed a relatively weak demand for the 777-200/777-200 ER/777-300 aircraft

in the period following November 2018. He relied on a comparison of the rates of stored/parked aircraft for the First-Generation Boeing 777 against the other types of aircraft, the size and diversity of the operator base for that generation and the volume and availability of that generation for sale and the type of sale which actually took place in the relevant period. Quite apart from the softness of the market, as he saw it, he stated that even in a balanced market, it takes time to find a suitable buyer for used aircraft and the buying process takes time to reach the market, gain offers and arrange inspection of the aircraft and its records. If aircraft are sold more quickly than nine to twelve months, the prices achieved may be considerably lower than expected.

43 At paragraph 6.6 of his first report, Mr Seymour set out a table of similar aircraft which were advertised and made available for sale but remained unsold for periods in excess of six months. The year of build of all of these aircraft varied between 1997 and 2005 but, of course, there were no details of price or condition of the aircraft in question. Four 777-200 ERs had taken over six months to sell between October 2018 and April 2020; seven 777-200 ERs had taken over 12 months to sell in the period April 2019–April 2020 and one in the period October 2018–October 2019, whilst two 777-200 ERs had taken in excess of 18 months to sell between October 2018 and April 2020. The engine size varied but most of these had Trent 892 or 884 engines, the same or superior in power to that in the Aircraft.

44 In succeeding paragraphs, he referred to the percentage of Boeing 777 First-Generation aircraft which were parked or stored. In October 2018 it was 16% of the approximately 500 of such aircraft which had been delivered. This compares with 11% for the "Wide-body Fleet" and the "Overall Passenger Fleet". The figures were not very different in April 2019 although there was a slight increase to 12.5% for the Overall Passenger Fleet and by October 2019

the figure for the Boeing 777 First-Generation aircraft was 18%, as compared with much the same figures for the other two categories as before. Whilst this does not, in itself, demonstrate a further weakening of the market, it does on the evidence show a comparatively soft market because, on Mr Seymour's evidence, the storage/parking of any percentage in excess of 5% to 10% of aircraft delivered presents a wide range of options available to any buyer.

45 Whilst the absolute numbers for the operator base for the 777-200 ER shrunk between October 2018 and March 2020, the number of operators for the 777-200 and 777-300 remained relatively stable, but the latter remained a niche asset with a small operator base. A good number of the operators were single aircraft operators only and the key issue was the number of aircraft in actual operation, the number being retired as reaching the end of their useful life and being replaced by more recent models and the numbers in storage and their impact on the market. The predominant sales activity between August 2015 and December 2019 for First-Generation Boeing 777 in the secondary market was aircraft being sold off lease. The volume of sales increased between 2013 and 2019, consistent with the retirement of such aircraft in the same period, with planes reaching 15 years or more. A good number of such assets sold off lease would find their way into the hands of parting out companies which, in Mr Seymour's view was clear when looking at the graphs for sales of leases in conjunction with those being retired.

46 There were 15 First-Generation Boeing 777s available for sale (as opposed to the five available for sale or lease or "ACMI lease") in October 2018, according to Airfax publications (the industry accepted source for availability). The comparable figures in April 2019 were seven for sale and eight for sale or lease or ACMI lease. By October 2019 there were eight for sale as compared with six for sale or lease or ACMI lease. There was thus a level of consistency

when it came to availability of First-Generation Boeing 777s but this did not show any increase in demand after October 2018 and there were a number of aircraft which featured in each of the lists between October 2018 and April 2020 and were therefore proving difficult to sell.

The reasonable time to conclude a sale and the price obtainable

47 I am satisfied on this evidence that the market was weak although not noticeably softening in the period after November 2018. What cannot be shown by reference to the statistics is that a sale at that time would necessarily take nine to twelve months. The fact that a good number of aircraft were on the market for periods in excess of six months at around that time shows that the market was slow and that, depending no doubt on the condition of the aircraft in question, a sale may well not have been achieved in that time. Mr Seymour's experience is not to be dismissed when he offers his assessment that nine to twelve months is a reasonable period to allow for such a sale.

48 However, what is key in any sale between a willing seller and a willing buyer is not just the state of the market but the condition and circumstance of the individual item for sale. Here, as is clear from Mr Cheong's evidence, there were particular difficulties standing in the way of a sale of the Aircraft, Airframe and component parts. On the basis of his evidence, it would seem that a sale of parts of the Aircraft could have been concluded following the March 2019 RFP in the sum of US$1.315m within six months. From that point onwards the focus was as much on alternative use of the Aircraft as on sale because of the obvious barriers to such sale and as time went by, the difficulties were only bound to increase with the age and continued parking of the Aircraft.

49 Even if account is taken of the withdrawn bid of US$2.1m on 29 November 2018 for the Airframe, as well as US$1.315m for parts in March 2019, there is no way that I can see that any willing buyer would have been prepared to pay a figure significantly over US$1.315m for the whole or parts of the subject Aircraft without engines. The repudiatory refusal of the defendant to pay for the Aircraft had put the plaintiff in an unenviable position and it was entirely due to its actions, that the problem arose with the expiry of its "C check" and corresponding inability to fly so as to ferry the Airframe elsewhere without huge expense. I am left with the conclusion that a sale could have been achieved of parts of the Aircraft for US$1.315m within six months, with the possibility of achieving a higher negotiated figure.

Conclusion as to value at 4 November 2018 based on a price obtainable between March and August 2019

50 If regard is had to Mr Seymour's figures and a market value, determined in the abstract without reference to what actually happened in the efforts to conclude a sale, and working on the basis of six months as a reasonable period in which to conclude a sale, it is the date of 4 May 2019 to which attention should be directed. On his conclusions, the value of the Aircraft at February 2019 was between US$1.94m and US$2.34m and at August 2019 was between US$970,000 and US$1.37m. The median point of each range is US$2.14m and US$1.17m. As May is the median point between those dates, a median figure between those figures would be US$1.66m.

51 If an adjustment is made to Mr Seymour's figures for the apparent error to which I have drawn attention to, the figure is increased by US$1m to produce a figure of US$2.66m which is so far adrift of the reality of what could be achieved by the plaintiff at any stage that I cannot place any reliance on it.

52 In the circumstances and doing the best that I can on the evidence, both expert and factual, and bearing in mind that the burden of proof rests on the plaintiff, in my judgement the maximum price which could have been obtained at any stage before 4 May 2019 was US$1.5m, representing an uplift from the bid of US$1.315m for parts which was made in March 2019. That is not too different from Mr Seymour's conclusion for that date albeit made with a missing element in his computation. At the end of the day, it is the factual evidence which must be decisive here, allowing only for a bit of latitude because of the uncertainties of the situation and taking into account Mr Seymour's evidence

53 The effect of this is that the damages suffered, taking account of the differential between the contract and market value, is US$4.75m, being the contract price of US$6.5m less the US$250,000 deposit paid, less US$1.5m, to which sum, the costs necessarily incurred to realise that value must be added.

Parking and maintenance charges

54 The plaintiff claims S$536,460.40 for parking charges incurred in the 12 months following termination and S$52,665.32 in respect of the maintenance charges for the same period. As I have determined that the Aircraft would have been sold within six months, that is, by 4 May 2019, the charges cannot extend beyond that date. Such charges, if reasonably incurred as costs involved in making a substitute sale are recoverable, and it is clear that both sets of charges would have to be incurred if a sale was to go ahead. The Aircraft would have to be kept somewhere available for inspection by buyers and would have to be maintained in a presentable condition for inspection by a potential buyer and kept in some sort of working order, since otherwise it would deteriorate and thus further diminish the prospects of any sale. I can see no legitimate basis for any challenge in principle to either set of charges and the evidence of Mr Cheong

demonstrated that the plaintiff had no option but to incur such charges, with no realistic possibility of storage elsewhere.

55 The only issue therefore is whether such charges were reasonable. The defendant draws attention to the fact that the parking charges imposed by CAG are based on the time spent in a parking stand and that there is an increasing multiplier (up to a maximum of ten times) to a daily rate the longer an aircraft remains there. This is said to be manifestly unreasonable. The plaintiff points out that over a period of a year the charges are only 22% higher than those imposed in Miami on the defendant on which it relies. If the charges are limited to the period from 4 November 2018 to 4 May 2019, they total S$189,912.00 which works out at approximately S$1,000 per day which is not excessive. I conclude that this sum is a reasonable expense of the sale and is to be taken into account when assessing the damages suffered by the plaintiff.

56 As to maintenance charges, I cannot see how these can be challenged. The defendant says such maintenance was unnecessary but Mr Seymour's evidence was that it was required for the purposes of sale and the figure involved is unexceptional for the relevant six-month period. That figure is S$43,917.87 and it, too, falls to be taken into account in assessing the damage suffered.

Marketing fees, brokerage and legal fees

57 Whilst such sums might ordinarily be incurred in the context of a sale, the evidence was that the plaintiff would not incur marketing or brokerage fees and the sum claimed of US$100,000 is not therefore recoverable. Given the complications which would have arisen on any sale, I accept that US$10,000 would readily be incurred in legal costs in order to realise the market value and I allow that sum as a necessary cost of achieving that end.

Conclusion

58 In the circumstances and for the above reasons, the plaintiff is entitled to recover damages calculated as follows:

Calculation	Sum
Contract price less deposit paid	US$6.5m – US$250,000 = US$6.25m
Less market value of the Aircraft at 4 November 2018 based on the price obtainable at 4 May 2019, *ie*, US$1.5m	US$6.25m – US$1.5m = US$4.75m
Loss	**US$4.75m**
Plus costs incurred in realising that price, *ie*, S$233,829.87	US$4.75m + S$233,829.87
Plus legal costs incurred in realising that price, *ie* US$10,000	US$4.75m + S$233,829.87 + US$10,000 = US$4.76m + S$233,829.87
Total	**US$4.76m + S$233,829.87**

59 The plaintiff is entitled to interest on the US dollars and Singapore dollars sums (*ie*, US$4.76m + S$233,829.87) from 4 May 2019 to the date of this judgment at the rate of 5.33%.

60 Costs must follow the event, and the plaintiff, which has made a substantial recovery is entitled to its reasonable costs, to be subject of detailed assessment, if not agreed.

Jeremy Lionel Cooke
International Judge

Tan Teck San Kelvin, Choy Wai Kit Victor and Yip Ting Yuan Darren (Drew & Napier LLC) for the plaintiff;
Shobna Chandran, Thaddaeus Aaron Tan Yong Zhong and Yong Manling Jasmine (Tan Rajah & Cheah) for the defendant.