

## Airplane purchase and sale agreements can save a load of money if negotiated correctly

A recent case in federal court illustrates the lengthy time and high expenses that can be associated with an airplane buyer's breach of contract and breach of warranty claims, and how the best way for airplane buyers and sellers to control these costs is to tailor the airplane purchase and sale agreement with detailed dispute resolution and pre-purchase inspection provisions.

Often breach of contract claims and breach of warranty claims arising from airplane purchases require expert testimony to prove whether or not the airplane was delivered in a condition that conformed with the purchase and sale agreement as well as applicable warranties. Litigation is expensive enough when just disputed facts arise concerning the terms and conditions of the transaction, jurisdiction, venue, and enforceability of the contract generally.

However, when the breach of contract claims refer or relate to the actual condition of the airplane or some component thereof, this triggers the need for experts to explain to the fact finder how or why the airplane itself does not conform to the contract or the warranty. These experts can be expensive. Another common issue is which parties are or may be held liable for the alleged nonconforming condition of the airplane or breach of a warranty obligation.

In the recent federal case, the plaintiff airplane owner filed breach of contract and breach of warranty claims against various defendants, including the airplane seller and other parties involved with the production, maintenance, and delivery of the airplane. Some 100 unnamed John Doe defendants of an airplane design company were also haled in.

After several years, and prior to the due date for the trial calendar, the federal trial judge dismissed the action administratively and ordered that the case would not be "reopened" until the Plaintiff was "prepared for trial" before a jury. The Plaintiff airplane owner then filed documents indicating the Plaintiff was ready for trial. Various defendants moved to dismiss the action with prejudice because of the

time that had passed and the failure of the airplane owner to get the case ready for trial in a timely manner. The judge denied the motion and ordered that the case be reopened and put on the trial



calendar. Thus the airplane owner dodged a bullet and was able to at least get the case back on the court's radar so the case could be reached on the merits and not dismissed on a procedural ground. Here is the rub: the federal trial court generally has broad discretion to dismiss a case due to the plaintiff's unreasonable delay in readying the case for trial. If the trial court in this case would have dismissed the case upon the defendant's motion, that would have been the end to the airplane owner's case, even if he otherwise had valid claims for breach of contract or breach of warranty. The plaintiff has the burden to get his or her case ready for trial. Without a clear purchase and sale agreement, the breach of warranty and breach of contract claims were subject to the discovery and pre-trial obligations applicable to federal court and were almost dismissed.

There was arguably a better way to handle the airplane buyer's claims. One way was to obtain a proper pre-trial order for a "complex" case giving more time to get the airplane warranty experts lined up before trial. Another way was the airplane purchase and sale agreement in that case could have included express stipulations as to the agreed dispute resolution process, the experts and forum to use, pre-trial neutral review, and pre-purchase inspections that would have narrowed both the issues and method for resolution of those issues, saving a load of time and money for buyer and seller. Buyers and sellers should look to the latter option for limiting costs if a contract or warranty dispute arises after the airplane is delivered.

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