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Expert Evidence  
Not Necessarily  
Superior to Factual  
Evidence

*CSDS Aircraft Sales &  
Leasing Inc v Singapore  
Airlines Limited [2023]*  
SGCA(I) 5

28 June 2023

**LEGAL  
UPDATE**

# In this Update

In *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Limited* [2023] SGCA(I) 5, the Court of Appeal held that, even where there is expert evidence on an issue before the court, it may consider both the factual and expert evidence in arriving at its conclusion, and that the expert evidence is not necessarily superior to the factual evidence.

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## **INTRODUCTION**

In *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Limited* [2023] SGCA(l) 5, the Court of Appeal considered the weight to be accorded to factual and expert evidence in the valuation of an asset. It held that a court is at liberty to decide which class of evidence it prefers and there is no hierarchy of evidence in the determination of the market value of an asset. In so doing, the Court of Appeal agreed that the Singapore International Commercial Court (“**SICC**”) was entitled to ascribe more weight to the factual evidence than the expert evidence and upheld the earlier SICC award of damages to Singapore Airlines.

**Director Kelvin Tan, Associates Darren Yip and Kenneth Kwek** successfully acted for Singapore Airlines before the SICC and the Court of Appeal.

## **BACKGROUND**

CSDS Aircraft Sales & Leasing Inc (“**CSDS**”) entered into an agreement to purchase the airframe of a Boeing 777-212 aircraft (“**Aircraft**”) without engines from Singapore Airlines (“**SIA**”) at a price of USD6.5 million. The sale ultimately fell through when CSDS failed to make full payment of the purchase price.

Following the trial on liability, the SICC found that CSDS was in repudiatory breach of the contract, and that SIA was entitled to terminate the agreement and to damages. The SICC’s decision was upheld on appeal in *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Ltd* [2022] 1 SLR 284.

At the hearing for the assessment of damages, SIA sought damages for the difference in the contract price and the market value of the Aircraft.

The key issue was the proper determination of the market value of the Aircraft.

SIA’s case was that the market value was to be determined after a reasonable time from the acceptance of CSDS’s repudiation to conclude a substitute sale of the Aircraft.

In respect of the market value of the Aircraft at the relevant time, SIA adduced both factual evidence of its efforts to sell the Aircraft and expert evidence from a senior certified aircraft appraiser from the International Bureau of Aviation (“**IBA**”).

The expert opined on the reasonable time for SIA to have entered into a substitute sale of the Aircraft. The expert also opined on the valuation of the Aircraft based on information obtained from IBA’s Aircraft Values Book (“**AVB**”). As SIA’s Aircraft was a bespoke model and had technical specifications that differed from standard B777 aircraft, the expert made adjustments to the book values in the AVB for the B777-200 and B777-200ER aircrafts and valued the Aircraft at USD1.66 million.

## **SICC'S DECISION**

The SICC considered that a six-month period was a reasonable time to conclude a substitute sale of the Aircraft. This was because the market for B777 aircraft was weak and there were particular difficulties with selling the Aircraft without engines, as there would be additional costs in having to transport the Aircraft or to dismantle it for parts.

The SICC found that the best offer for the Aircraft was a USD1.315 million bid received in the course of SIA's attempts to sell the Aircraft and, accounting for the six-month period to negotiate a sale, SIA could have concluded a substitute sale by May 2019.

In assessing the value of the Aircraft at the end of the six-month period, the SICC preferred the factual evidence of the best offer to the expert's evidence based on book values. The SICC started with the best offer for the Aircraft received in March 2019 and made an adjustment to conclude that the market value of the Aircraft as at the end of the six-month in May 2019 was USD1.5 million.

In its appeal against the SICC's award of damages, CSDS argued that the SICC had wrongly found that six months was a reasonable time to sell the Aircraft.

CSDS also argued that the SICC was wrong to take into account the factual evidence of the third-party offer of USD1.315 million in determining the market value of the Aircraft.

CSDS argued that the SICC should have relied solely on the expert's evidence, as modified by his oral evidence in cross-examination.

In his expert report, the expert had marked up the book valuation of a similar aircraft, the B777-200 (with engines), to account for the fact that the Aircraft would usually have more powerful engines than those in the B777-200. Since the Aircraft was to be sold without engines, the expert in his report deducted the value of the engines mounted on the Aircraft to arrive at the value of the Aircraft without engines.

Under cross-examination, the expert agreed with a suggestion that he should have deducted the lower value of the engines usually found on a standard B777-200 aircraft rather than the higher value of the actual, more powerful engines usually found on the Aircraft. This was inconsistent with the expert report and, if accepted, would have meant that the valuation of the Aircraft was more than the contract price.

## **COURT OF APPEAL'S DECISION**

The Court of Appeal disagreed with CSDS's arguments. It found no reason to disturb the SICC's finding that a six-month period was a reasonable time for SIA to conclude a substitute sale. The Court of Appeal noted that the

SICC relied on factual evidence of the third-party offer made four months after the termination of the contract as the reference point to assess the reasonable time for sale.

In respect of the determination of the market value of the Aircraft, the Court of Appeal held that the court is not required to make a binary choice in only considering one category of evidence to the exclusion of the other. The court is at liberty to decide which class of evidence it prefers, and there is no hierarchy of evidence on particular issues including the determination of the market value of an asset.

Ultimately, the weight to be ascribed to each category of evidence depends on the issue in question, the nature of the evidence and its inherent reliability. The different pieces of evidence must be tested against one another, having regard to logic and common sense.

## KEYPOINT

*The court is at liberty to decide which class of evidence it prefers, and there is no hierarchy of evidence on particular issues including the determination of the market value of an asset.*

The Court of Appeal observed that it was self-evident from the SICC's judgment that it did not disregard the expert's evidence. The SICC had in fact considered the expert's evidence but found it useful to also factor the factual evidence of the actual offers that SIA had received in response to its requests for proposals. The SICC was entitled to ascribe more weight to the factual evidence of the actual offers that SIA received, and to use the expert's valuation as a cross-check against the factual evidence.

The Court of Appeal affirmed the principle that evidence of a genuine third-party offer to acquire an asset, made at arm's length and which is not speculative or conditional, may be considered when determining the market value of the asset.

In this case, the USD1.315 million offer was a concrete and serious offer to purchase the Aircraft and, in the absence of good reason not to give weight to such evidence, the third-party offer represented the most cogent evidence of the Aircraft's market value.

## KEYPOINT

*Evidence of a genuine third-party offer to acquire an asset, made at arm's length and which is not speculative or conditional should be considered when determining fair market value.*

In respect of CSDS's attempt to capitalise on the expert witness's answer in cross examination, the Court of Appeal held that the SICC was entitled to disregard the concession as it was an obvious *non sequitur*. There is no rule that a court must unquestioningly accept the unchallenged evidence of any witness, even for expert witnesses. Although the court will give weight to a concession extracted from the cross-examination of an expert, the court must still apply its mind as to the conclusions to be drawn from the concession made and must examine the correctness of the expert's premises and reasoning process.

The Court of Appeal agreed with the SICC that, having marked up the AVB book values of the standard B777-200 aircraft to account for the specifications of the Aircraft, it would defy logic to deduct the value of the less powerful engines found on the standard B777 model as opposed to the value of the more powerful engines found on the Aircraft to determine the market value of the Aircraft without engines. If the concession were accepted, it would result in a valuation which would bear no resemblance whatsoever to the reality that the best viable offer that SIA received following its multiple requests for proposals to numerous potential buyers.

## **COMMENTARY**

The Court of Appeal's decision provides important clarification that there is no set hierarchy of evidence on particular issues. The fact that expert opinion on an issue is before a court does not mean that it is superior to factual evidence in assisting the court to arrive at its findings. This flows from the broader principle that the court is not bound to unquestioningly accept the evidence of any witness, including that of an expert, especially where the evidence relates to a subject matter that is not outside the learning of the court. The courts are at liberty to prefer any class of evidence having regard to the issue in question, nature of evidence and its inherent reliability.

Therefore, even where parties intend to adduce expert evidence, it is important to consider whether there is factual, real world evidence that provides a more compelling basis for the court to decide an issue. This may be the case particularly where the subject of the dispute is unique, and expert analysis that applies more general data or other information may not constitute the best evidence.

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