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Case No: CL-2022-000467

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 26/07/2024

**Before :**

**CHRISTOPHER HANCOCK KC**

**Between :**

**FW Aviation (Holdings) 1 Limited**

**Claimant**

**- and -**

**VietJet Aviation Joint Stock Company**

**Defendant**

**Robin Lööf and Niamh Cleary** (instructed by **Quinn Emanuel**) for the **Claimant**  
**Alexander Milner KC** (instructed by **Elborne Mitchell LLP**) for the **Defendant**

Hearing dates: 17 May 2024

**JUDGMENT**

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 26<sup>th</sup> July 2024.**

## CHRISTOPHER HANCOCK KC:

### Introduction.

1. In this judgment I deal with the Claimant's (**FWA**) application for relief regarding VietJet's use of proceedings before the People's Court of Hanoi (the **PCH**) challenging the legality of administrative decision-making to interfere with FWA's possession, custody and control over the aircraft the subject of these proceedings (**FWA's Relief Application**).

### The background facts and these proceedings.

2. The underlying proceedings arise out of sub-leases (the **Sub-Lease Agreements**) to the Defendant (**VietJet**) of four aircraft (the **Aircraft**). The Sub-Leases were terminated following VietJet's non-payment of rent (although VietJet disputes the validity of the terminations). The proceedings are brought by FWA as the assignee of the amounts owing under the Sub-Lease Agreements and the right to bring claims under the Sub-Lease Agreements (although VietJet does not admit the validity of the assignments).
3. FWA has been granted the right to possession, custody and control of the Aircraft, which includes the right to export them, and VietJet has been prohibited from interfering with that right, by a Consent Order issued by Mr Justice Bryan on 16 November 2022 (the **Consent Order**). This right and corresponding prohibition have since been confirmed in orders of Mr Justice Waksman on 31 March 2023 (*ex parte*, confirmed unopposed by Mr Richard Salter KC (sitting as a Deputy High Court Judge) on 14 April 2023), and Mr Justice Foxton on 16 February 2024.
4. Following a hearing on 12 April 2024, on 16 April Mr Justice Henshaw ordered a split trial, with a trial on liability listed for 4-14 June, and certain issues relating to quantum being held over to a second trial.

### Events in Vietnam.

5. The factual account set out below is derived mainly from the skeleton argument of FWA and the statements of Mr Baker summarised therein. I should emphasise, however, that VietJet does not accept the inferences which FWA seek to derive from some of those facts, although I understand many of the facts themselves to be undisputed.

### *The Shareholder Proceedings in Vietnam.*

6. Proceedings pending before the PCH challenge the lawfulness under Vietnamese law of the Civil Aviation Authority of Vietnam's (the **CAAV**) decisions to deregister the Aircraft from the Vietnamese register of aircraft (the **Deregistration Decisions**; the **Shareholder Proceedings**). The Deregistration Decisions were taken at the request of FWA exercising its rights under the Sub-Lease Agreements, and with a view to exporting them to be placed on the international leasing market.
7. The initial set of Shareholder Proceedings were initiated by a VietJet minority shareholder, Singapore-incorporated Silva Star Capital PTE. LTD. (**Silva Star**), on 17 February 2022. Silva Star also applied for, and on 23 February 2023 obtained, a

preliminary injunction to suspend the Deregistration Decisions. FWA points out that this was the day after a meeting between VietJet, FWA, and the CAAV, and a matter of hours after FWA informed VietJet that it would seek to export the Aircraft imminently.

8. FWA then say that inquiries revealed financial links between Silva Star and both VietJet and its then Managing Director and current CEO, Dr. Dinh Viet Phuong (**Dr Phuong**).
9. On 8, 9, and 13 March 2023, three other VietJet minority shareholders (two Vietnamese legal entities and one individual; the **Replacement Shareholder Claimants**) brought claims for identical relief before the PCH.
10. On 13 March 2023, Quinn Emanuel (**QE**), FWA's solicitors, wrote to Herbert Smith Freehills (**HSF**), VietJet's then solicitors, stating that Silva Star was beneficially owned and controlled by another of VietJet's most senior representatives, namely its then CEO and current Chairwoman, Madam Nguyen Thi Phuong Thao (**Madam Thao**). On 17 March 2023, the Replacement Shareholder Claimants applied for a preliminary injunction to suspend the Deregistration Decisions.
11. On 21 March 2023, Silva Star applied to discontinue its claim. The PCH consolidated the claims brought by the Replacement Shareholder Claimants with Silva Star's, and also effectively replaced the preliminary injunction granted to Silva Star with a practically identical one as requested by the Replacement Shareholder Claimants. Only then did the PCH remove Silva Star as a claimant (it remains an interested party). The preliminary injunction granted to Silva Star was discharged on 23 March 2023.
12. Following the withdrawal of the one individual claimant (she is now also an interested party), the Shareholder Proceedings are being pursued by the two legal entities: Mango Vietnam Trading JSC (**Mango**), and Universal Land Vietnam Real Estate Company Limited (**Universal Land**).
13. FWA considered that these procedural developments disclosed that VietJet had procured the Shareholder Proceedings with a view to frustrating FWA's right to possession, custody and control of the Aircraft under the Orders of this Court. On 31 March 2023, FWA brought proceedings to commit VietJet for contempt of court (the **Contempt Application**). The Contempt Application is pending.
14. Following service of the Contempt Application on VietJet, on 4 April 2023 the preliminary injunction granted at the application of the Replacement Shareholder Claimants was discharged and the Shareholder Proceedings appeared to go dormant.

#### *The ECoA Correspondence*

15. FWA contends that, from that point, VietJet's efforts shifted to seeking to influence the CAAV and the Vietnamese Customs Authority (the **VCA**) so that they would not provide the necessary documentation and approvals for FWA's export of the Aircraft.
16. These efforts centred on VietJet's contention that export of the Aircraft required an Export Certificate of Airworthiness (**ECoA**) from the CAAV, and that the CAAV was unable to issue an ECoA because, following deregistration, it no longer had jurisdiction over the Aircraft.

17. VietJet's correspondence with the CAAV and the VCA on the subject of the ECoA (the **ECoA Correspondence**) was only recently discovered. FWA contends that the circumstances of the discovery are strongly suggestive of an effort by VietJet to hide it from FWA and the Court. VietJet had previously been ordered to disclose correspondence with, in particular, the CAAV and the VCA up to and including 7 August 2023; following a hearing on 10 May 2024, Mr Justice Picken ordered VietJet to disclose any such correspondence up to and including 4 January 2024.
18. On 9 October 2023, the CAAV issued the necessary document equivalent to an ECoA for one of the Aircraft (the **8577 Aircraft**) and thereby approved it for export. On 25 December, a similar ECoA-equivalent document was issued with respect to another of the Aircraft (the **8906 Aircraft**).
19. On 4 March 2024, FWA received oral confirmation from the VCA that the 8906 Aircraft was in principle cleared for export. The 8906 Aircraft was flown to Ho Chi Minh City on the expectation that it would be exported the following day.

*The Shareholder Proceedings – Round 2*

20. The Shareholder Proceedings were then, apparently, revived. A letter from the Judge in the Shareholder Proceedings to the CAAV and the VCA, sent after business hours in the evening of 4 March 2024, sought information on the import and export procedures for the Aircraft. This letter, it is said, caused the customs authorities immediately to suspend the export approval process.
21. The CAAV and the VCA responded to the PCH on 12 and 27 March 2024, respectively. On 3 April 2024, FWA was then again informed by the VCA that the 8906 Aircraft was in principle cleared for export subject to final inspection. The next day Mango applied to the PCH for on-site inspection of the Aircraft. Following Mango's application:
  - (1) on 15 April 2024, the PCH made a request to the People's Court of Ho Chi Minh City (the **PCHCMC**) for it to carry out an on-site inspection and appraisal of the two Aircraft located at an airport in Ho Chi Minh City (the **8906 and 8937 Aircraft**) within 30 days of the date of receipt of the request (the **PCH Request**), and
  - (2) on 22 April 2024, the PCH ordered an on-site inspection and appraisal of the two Aircraft located at an airport in Hanoi (the **8577 and 8592 Aircraft**) at 9 a.m. (Vietnam time) on 20 May 2024 (the **Inspection Order**).
22. The evidence before me from FWA's Vietnamese lawyer was that these inspections were not relevant to any issue to be decided by the PCH in the Shareholder Proceedings. However, I understand that the practical effect of the PCH Request and Inspection Order is to ground the Aircraft, as interference with the inspections ordered is prohibited, violations being subject to criminal prosecution.
23. Shortly before the hearing before me, I was informed that these inspections had been postponed *sine die*. However, FWA submitted that this application remained urgent (it having been fixed on an expedited basis because of the pendency of the inspections) because until these inspections took place, if the shareholder proceedings remained on foot, this would lead to the aircraft being stuck in Vietnam.

*Police denunciation in support of the Shareholder Proceedings*

24. On 13 May 2024 police attended the offices of FWA's Vietnamese legal representatives, Tilleke & Gibbins (**T&G**), seeking to interview one of its associates following a denunciation made on behalf of one of the original Replacement Shareholder Claimants, Ms Nguyen Thi Thu Phuong, on 21 April 2024.
25. FWA contends that the denunciation of the T&G associate and the resulting police investigation are clearly linked to the Shareholder Proceedings:
  - (1) as noted above, the denunciation of the T&G associate in question was made on behalf of the one individual of the original Replacement Shareholder Claimants, Ms. Nguyen Thi Thu Phuong;
  - (2) Ms. Phuong made the denunciation in her capacity as shareholder of VietJet, apparently in the context of a dispute with FWA;
  - (3) press reports in the days preceding the police visit to T&G emphasised the connection between the police investigation and the subject-matter of the Shareholder Proceedings;
  - (4) the law firm which submitted the denunciation on behalf of Ms. Phuong submitted the PCH Request and Inspection Order to the VCA; and
  - (5) the nature of requests made of T&G by the CAAV in June 2023 following police enquiries of the CAAV suggests that material obtained by the police from the CAAV was passed onto Ms. Phuong.
26. FWA submitted that the nature and timing of, as well as the publicity given to Ms. Phuong's denunciation of the T&G associate to the police, was further evidence that VietJet is seeking to instrumentalise Vietnamese judicial proceedings, as well as news media, to thwart FWA's exercise of its rights over the Aircraft.

**Other matters in the current proceedings.**

*VietJet's uncooperative approach to disclosure in relation to the Shareholder Proceedings*

27. Model C Requests 6 and 7 in the Amended Disclosure Review Document (the **Amended DRD**) clearly envisaged the interrogation of mobile devices used by VietJet staff, and in particular by Madam Thao and Dr Phuong.
28. Despite having accepted this at the disclosure guidance hearing before Mr Justice Foxton on 10 November 2023 (the **DG Hearing**) and since, VietJet was evasive in its responses (or lack thereof) to subsequent requests from QE for information on their approach to mobile devices. VietJet has now confirmed that it has not collected any custodians' personal e-mail accounts or mobile devices. VietJet has apparently simply informed its solicitors (HSF as well as its current solicitors, Elborne Mitchell) that the custodians confirmed that their personal e-mail accounts and devices contain no relevant documents. This appears to have been accepted without any independent verification.
29. A single prominent example clearly demonstrates that this stance has left a clear evidential gap. It is documented that Silva Star acted on instructions from or on behalf

of Madam Thao, yet no disclosure on this issue has apparently resulted from searches of her VietJet e-mail account. It is safe to assume that communications relevant to such instructions would have been retrievable from Madam Thao's personal e-mail account(s) and / or mobile devices. There are also, at the very least, serious grounds to believe that an interrogation of Madam Thao and / or Dr Phuong's personal devices would have revealed correspondence between them and the Replacement Shareholder Claimants. This was the very reason why Mr Justice Foxton ordered disclosure of documents from their mobile devices.

30. VietJet belatedly agreed to send requests to Madam Thao and Dr. Phuong in similar terms to the requests that were ordered in *Phones4U Ltd (in administration) v EE Ltd and ors* [2021] EWCA Civ 116. Copies of these requests (dated 8 March 2024) were provided to FWA's solicitors on 11 March 2024. However, as of today, neither Madam Thao nor Dr. Phuong has, I am told, responded to these requests.
31. Finally, before I leave the factual account, I should make reference to two things.
  - (1) The first is a letter belatedly produced by VietJet. In that letter, which is on its face dated 22 May 2023, VietJet appears to have asked Mango to consider withdrawing its proceedings, and indicated that the matter was being adequately dealt with in England. FWA suggested that I should treat this letter with some caution, but did not go so far as to suggest it was forged or produced for the purposes of this application.
  - (2) The second is the fact that, as I have noted, the inspections which were said to make this application urgent have now been adjourned *sine die*.

### **The relief sought**

32. *Paragraph 1.1.* would prohibit the supply of materials in support of the Replacement Shareholder Claimants' position. Silva Star's application was supported by materials which could only have come from VietJet.
33. *Paragraph 1.2.* would prohibit VietJet from in any way financing the Shareholder Proceedings. This arises primarily out of the fact that the Replacement Shareholder Claimants are represented by a law firm, Vietthink, which has a long relationship with VietJet.
34. *Paragraphs 1.3. and 1.4.* would prohibit VietJet from questioning FWA's right to possession, custody and control of the Aircraft either in exchanges with Vietnamese governmental or administrative bodies, or in statements destined for public consumption. The Deregistration Decisions were taken with the ostensible official support of VietJet communicated to the CAAV by letter dated 14 December 2022. Despite this, the ECoA Correspondence seeks to undermine FWA's rights following the deregistration of the Aircraft. In addition, press reports strongly suggest that VietJet continues to issue statements questioning FWA's right to possession, custody and control of the Aircraft, and / or asserting that the Vietnamese courts are competent to resolve disputes arising under the Sub-Lease Agreements.
  - (1) In considering Paragraphs 1.3. and 1.4. of the Draft Order, the Court should have regard to section 12(3) of the Human Rights Act 1998.

- (2) In light of the available evidence, FWA is likely to be able to establish that statements on behalf of VietJet to Vietnamese governmental or administrative bodies, in particular the CAAV and the VCA, as well as Vietnamese press were steps taken in violation of FWA's right to possession, custody and control of the Aircraft.
  - (3) The relief sought is therefore justified in the particular circumstances of this case: *Cream Holdings Ltd v Banerjee* [2005] 1 A.C. 253, at [20]-[22] (per Lord Nicholls).
35. *Paragraphs 1.5. and 2* would require VietJet to send a letter to the Replacement Shareholder Claimants in similar terms to the one it sent to Silva Star on 4 March 2023, and prohibits VietJet from adopting a contrary position in any judicial or arbitral proceedings.
  36. *Paragraph 3* would prohibit VietJet from lending any assistance to the on-site inspections of the Aircraft requested or ordered by the PCH.
  37. *Paragraph 4* would require VietJet to ensure that FWA has notice of any final hearing in the Shareholder Proceedings.

#### VietJet's Submissions

38. VietJet opposes the application, putting forward the following seven reasons.
39. First, the factual and evidential foundation for the application is very weak. The application is avowedly based on FWA's purported "suspicion" that VietJet procured Mango to apply for the inspection orders. However, there is no evidence that it did so, and all VietJet's key management personnel, including Madam Thao and Dr. Phuong, have stated that it did not.
40. It is not likely that VietJet is behind the application: in particular, (in contrast to the application made in 2023 by Silva Star) there is no connection between VietJet and Mango in terms of ownership/management, other than the fact of Mango being a minority shareholder in VietJet. The natural inference is therefore that Mango is acting independently in its own interests as a shareholder, not at the behest of VietJet or its management. The only actual fact relied on by FWA to establish VietJet's involvement is that Mango is represented by a law firm called Vietthink (one of whose associates, a Mr Le, is said to be a director of Mango), and Vietthink has previously claimed to have worked for VietJet. There is nothing in this point, however: Vietthink has not been instructed by VietJet since 2017, and it has never retained Mr Le (if indeed he is the same person).
41. Otherwise, FWA relies on the fact that Mango's application was made shortly before the 8906 aircraft was due to be exported from Vietnam. But FWA has made no secret of the fact that it intends shortly to export the 8906 aircraft; and the aircraft's movements are publicly visible on various websites. There is no reason to think VietJet had any knowledge of these matters which was unavailable to its shareholders or other interested parties.

42. FWA's most recent evidence served on 15 May is largely devoted to an apparent criminal complaint made by a different shareholder in VietJet called Ms Phuong (who was also previously a claimant in the Vietnamese proceedings). As with Mango's application, however, there is no evidence, and no reason to infer, that this was instigated by VietJet, as opposed to Ms Phuong acting in her own interests, and it therefore takes matters no further.
43. Secondly, the primary purpose of the FWA's Relief Application is to obtain "*the cancellation of the orders for on-site inspection*" issued by the PCH. It was on that basis that FWA sought an urgent listing of the application, claiming that "*the on-site inspections are now the only thing preventing the export of the flight-ready Aircraft*". However, this purpose cannot realistically be achieved, and anyway does not justify an injunction. One set of inspections is due to take place on Monday 20 May, while the other may already have taken place (or, if it has not, will take place imminently). There is no realistic prospect that VietJet could indirectly procure the cancellation of the inspection orders before, or anyway appreciably before, the inspections are carried out.
44. If and insofar as the inspections delay the export of the aircraft, the only potential loss identified in FWA's evidence is the cost of keeping the aircraft in flight-ready condition for an additional period. That can be readily compensated in damages. (Indeed it is surprising that FWA is complaining about delay to export at all, given that it opposed the adjournment of the trial specifically on the basis that it had allegedly been told by the Vietnamese authorities that the aircraft would not be allowed to leave Vietnam until these proceedings concluded, such that the issue of title to the aircraft needed to be resolved without delay.)
45. Thirdly, the mandatory order sought is inappropriate – indeed there is strictly no jurisdiction to grant it – because FWA has no right to require VietJet to take positive steps to procure or facilitate the export of the aircraft from Vietnam, as opposed to refraining from interfering with FWA's right to export them. This distinction is clear from two previous decisions of this Court. The first is Mr Justice Bright's ruling on a previous application by FWA, in which FWA sought an order that VietJet "*take all steps required to procure for the Claimant the export and physical transfer of the Aircraft*". Mr Justice Bright dismissed that application in its entirety as "*misconceived*". The second was Mr Justice Foxton's ruling dated 16 February 2024, where he held that it was "*seriously arguable*" that FWA had a right to prevent VietJet from taking steps to interfere with the export of the aircraft, but expressly drew a distinction between an order which was limited to enforcing that right and an order "*which imposes mandatory obligations on the defendant*" in relation to the export.
46. Fourthly, the mandatory element of the injunction is also inappropriate in principle for the additional reason that it would amount to an interference with proceedings in a foreign court, between parties who are strangers to these proceedings. In particular, ordering VietJet to copy its request that the proceedings be discontinued to the Vietnamese courts – no doubt with the intention of directly influencing the Vietnamese court – is contrary to comity, and as such unjustifiable.
47. Fifthly, and separately from any interference with the Vietnamese courts, it would be wrong in any event to order VietJet to send a letter to Mango in the prescribed terms. "Compelled speech" of this kind engages Article 10 ECHR (*Lee v Ashers* [2020] AC 413 at [52]-[53]), to which the Court must "*have particular regard*" (Human Rights



Act 1998, s.12(4)). Just as the Court cannot restrain publication of statements before trial unless it is satisfied that the applicant is “likely to establish” that publication should not be allowed (s.12(3) HRA),<sup>1</sup> it similarly ought not to compel the expression of opinions which the respondent may not genuinely hold, unless the applicant is “likely” to establish that it is entitled to require such a statement to be made. That is not the case here: indeed it is not even seriously arguable that FWA has a legal right to require VietJet to write to its shareholders expressing the opinions set out in the draft order.

48. Sixthly, the inappropriateness of FWA proceeding in this way, as well as the lack of necessity for an injunction, is particularly clear when one takes into account that FWA has failed to exercise its right to seek the cancellation of the inspection orders directly in Vietnam. FWA is an “interested party” in the Vietnamese proceedings and, according to its own evidence of Vietnamese law, had the right to file a complaint against the inspection orders within 10 days from their receipt. FWA has provided no explanation for why it did not avail itself of this remedy if, as it contends, the inspection orders are unjustified and “*redundant*”. In circumstances where FWA has elected not to try to have the orders discharged by the obvious and direct route, there is no reason for this Court to come to its assistance through the indirect route of an injunction against VietJet.
49. Seventhly, the prohibitory orders at paragraphs 1.4 and 1.5 of the draft order go much further than could possibly be legitimate, insofar as they would prevent VietJet from making any statements questioning FWA’s right to possession etc. of the aircraft. While it is correct that FWA is entitled to possession of the aircraft under the December 2022 Consent Order, that is expressly without prejudice to VietJet’s case at trial, which is that the aircraft leases have not been validly terminated such that VietJet, and not FWA, is entitled to possession (and that in the alternative it should be granted possession by way of relief from forfeiture). Plainly there should be no question of FWA being granted any injunctive relief which would restrict VietJet’s ability either (i) to advance its case in these proceedings, or (ii) to make accurate statements about these proceedings in any other forum.
50. During the course of the hearing and afterwards, the ambit of the dispute between the parties was narrowed. In response to my query following the hearing, the following clarification was given by VietJet.
  - (1) VietJet does not oppose paragraphs 1.1-1.2 of the Draft (on the basis that these orders require only a serious issue to be tried, and will cause no real inconvenience to VietJet).
  - (2) VietJet opposes paragraph 1.3 on the basis that it has not been shown that it is “likely” that it has ever expressed or will express support for the Replacement Shareholder Claimants. However, if that jurisdictional threshold is crossed, VietJet does not oppose this order.
  - (3) VietJet opposes paragraphs 1.4 and 1.5 because (i) it has not been shown that it is “likely” that it has acted or will act contrary to the Consent Order in the manner described, such that there is no jurisdiction to make the order; and because (ii) the

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<sup>1</sup> This generally means that the applicant must show that it is more likely than not it will succeed on the relevant issue at the trial: *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 at [22].

order as drafted would inappropriately prohibit VietJet from putting its case in these proceedings, or from making accurate statements about these proceedings (though the latter problem could conceivably be addressed by revising the drafting). Further, if paragraph 2 of the order is not granted, the drafting would need to be amended to reflect this also.

- (4) VietJet opposes the mandatory order in paragraph 2.
- (5) VietJet does not oppose paragraph 3 (for the same reasons as apply to paragraphs 1.1 and 1.2 (point 1 above)).

Discussion and conclusions.

- 51. As will be apparent from my outline above, the extent of the disagreement between the parties is now less than it was.
- 52. In deciding what Order I should make, I have taken into account the arguments put forward by VietJet as summarised above.
- 53. Before turning to the individual paragraphs of the Order, I set out some preliminary comments.
  - (1) First, I do not think that I can derive anything from the lack of documentation produced by Madame Thao and Dr Phuong. As I understand it, those individuals were asked to provide documentation in line with the jurisdiction established by the *Phones4U* case. That case decides that the Court can order a party to request production of documents which are not within its control. Here, that has been done. If the third party chooses not to comply with that request, then I do not think this can justify relief against the party. Of course, if the documents are in fact within the party's control, that would be different; and I say nothing in relation to the drawing of inferences at trial from the absence of documentation, which would be a matter for the trial judge.
  - (2) Secondly, I bear in mind that there is a clear distinction, as Mr Justice Foxton indicated, between a prohibitory order and a mandatory one. The latter is more difficult to justify than the former.
  - (3) Thirdly, because the inspections have been adjourned, in my judgment the focus of this application has switched to the shareholder proceedings themselves. I take the view that there is force in the point that comity requires that I should be slow to take steps which interfere unduly with foreign proceedings. I give this consideration some weight, but limited weight, since all the order sought would do is to ask the Court to note VietJet's position.
  - (4) Fourthly, I have been very conscious of the pendency of the contempt proceedings. In my judgment, it would be wrong for me to take any step which would pre-empt that application.
- 54. Dealing with each of the paragraphs of the proposed Order in turn, I have concluded as follows in relation to paragraph 1.
  - (1) In my view, the orders in paragraph 1.1 and 1.2 of the Order are justified. The

provision of finance and documents may be covered already by the orders of previous judges, but I have concluded that there would be utility in making this clear. I am reinforced in this view by the message from VietJet quoted above.

- (2) Turning to paragraph 1.3, which deals with expression of support for the Replacement Shareholder Claimants, in my judgment this may also come within the prohibitions imposed by earlier judges. Applying the test of likelihood, I have formed the view that the relevant question is whether, if such support was expressed, this would run counter to the orders already made by this Court. I have concluded that it would and therefore grant this order.
  - (3) I do not however consider that the order in paragraph 1.4 is justified, particularly in the light of my conclusion in relation to paragraph 1.3 and the terms of the existing orders. I am particularly conscious that there are contempt proceedings outstanding, and I take the view that it would be undesirable for me to express any views on matters relevant to these proceedings, which, in my view, would include the matters addressed in paragraph 1.4. I am also conscious that this order engages human rights considerations.
  - (4) As to paragraph 1.5, in my view this order is too widely expressed, since it might inhibit the right of VietJet to put its case in these proceedings. I would be prepared to consider a redrafted order with wording which makes clear that the order is not to inhibit VietJet's right to put its case.
55. I turn to the order requested under paragraph 2. This is a request for a mandatory injunction, requiring VietJet to write to the claimants in the Vietnamese Replacement claims asking them to withdraw their claims. VietJet objected to this order, in particular, because it was phrased in mandatory terms. They argued that I was being asked to go further than earlier judges, and that I should not exercise my discretion in this regard. They also (in addition to the points I have set out above) relied on the fact that they had written to Mango, albeit not in the terms which FWA seek, with no apparent result, such that the grant of an injunction would lack utility.
56. I have concluded that I should not grant this relief, for a number of reasons.
- (1) Firstly, I agree with Mr Justice Bright and Mr Justice Foxton that there is a significant difference between negative relief – which FWA already has – and positive relief. Negative relief supports contractual rights, whereas positive relief goes beyond this in a material respect.
  - (2) Secondly, as I said, I am wary of doing anything which may impact on the contempt proceedings. Those are not before me, and I would not wish to do anything to interfere or prejudice those.
  - (3) Whilst I place limited weight on this, I consider that considerations of comity come into play. In my view, Vietnamese proceedings are a matter for the local courts.
  - (4) I bear in mind that VietJet has already written to Mango, with, it would seem, no result. In my view, this does suggest a lack of utility in making the orders requested. Although the letter relied on by VietJet was produced late in the day, I am not prepared to ignore it or conclude that it is forged.

- (5) The trial is now only some two weeks away. When judgment is given, the position as between these parties will be clear. In my judgment, the trial judge will be in a much better position to determine the appropriate steps to be taken to give effect to his judgment.
57. Finally, in relation to paragraph 3, VietJet did not oppose this and I therefore grant this.
58. I would be grateful if the parties could prepare an Order giving effect to this judgment.