

## Permissive forum selection clause binds guarantors of aircraft security agreement.

An Aircraft Security Agreement on a \$3M loan had a permissive forum selection clause that stuck in a recent federal case. The result was that the personal guarantors on the note who were in Pennsylvania were haled into a federal court in Oregon. Not good for the personal guarantors who were wanting the case to be heard in Pennsylvania.

In that case, a bank loaned about \$3M to an LLC. The loan was secured by an Aircraft Security Agreement. The Aircraft Security Agreement was signed by the LLC as well as members of the LLC who personally guaranteed the note. The LLC defaulted on the loan and the bank brought suit in Oregon to collect the debt against the LLC and the guarantors. Wanting nothing to do with Oregon, the LLC and individual guarantors answered the complaint and filed a motion to transfer the action under a federal statute to Pennsylvania.

The federal statute generally provides that a federal court may transfer a case to another court if it finds doing so would be for the "convenience of the parties and witnesses" and in the interest of justice. According to the LLC and guarantors, the bank's lawsuit for breach of the \$3M loan agreement should be heard in Pennsylvania, where three other lawsuits relating to the airplanes that secured the loan were already pending. The federal court in Oregon disagreed, and opted instead to enforce a permissive forum selection clause that provided the bank "may" choose to sue in Oregon to enforce the loan documents.

In reaching its' decision, the federal court pointed up that all the parties agreed to and signed the note and accompanying Aircraft Security Agreement that clearly had the forum selection clause. The LLC argued, however, that the forum selection clause was not mandatory, i.e., it did not *require* the bank to sue in Oregon but merely gave that option. Therefore, according to the LLC, the federal court had discretion to override the decision of the bank to actually file suit in Oregon if another forum was more convenient or required in the interests of justice. Not so, said the court.

The federal judge rejected this argument, and held that both permissive and mandatory forum selection clauses would be upheld and bind the parties to that forum generally.



This was not good for the LLC and guarantors in the case because they were already allegedly in fault on the \$3M loan, had other litigation on the airplanes pending in Pennsylvania relating to losses in their charter business, and now had to litigate on two fronts, on opposite sides of the continent. The ruling meant much more expense.

Litigation costs and time required to litigate are almost always key factors in deciding how to handle a case. Companies and individuals may want to consider what may appear to be innocuous provisions in Aircraft Security Agreements relating to venue and choice of law where the chosen forum could have adverse effects to the ability to defend or prosecute rights in the Aircraft Security Agreement.

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