



Neutral Citation Number: [2026] EWHC 831 (Comm)

Case No: CL-2025-000462

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (KBD)

The Rolls Buildings
7 Rolls Building
Fetter Lane, London
EC4A 1NL

Date of hearing: 13 March 2026

Before:

SEAN O’SULLIVAN KC
(Sitting as a Deputy Judge of the High Court)

Between:

SUNBIRD FRANCE 02 SAS
- and -
SPICEJET LIMITED

Claimant

Defendant

THOMAS MUNBY KC & CLEON CATSAMBIS (instructed by **Alius Law**) for the **Claimant**

THE DEFENDANT did not appear and was not represented

Approved Judgment

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SEAN O'SULLIVAN KC :

1. This is the claimant's applications for (1) permission to apply for summary judgment and (2) summary judgment in respect of some of its claims.
2. As I will explain, despite having initially instructed English solicitors to correspond on its behalf, the defendant has never intimated any sort of defence to the claim, nor taken any formal procedural step in response to it. I am satisfied that it has been properly served and has been fully informed of this hearing. It is clear that it has chosen not to participate in these proceedings.
3. This is not a case where adjourning the hearing would offer any possibility of the defendant's further involvement. In those circumstances, I was, and I am, content to proceed with the applications in its absence.
4. I am asked to grant the claimant permission to apply for summary judgment because, although the claimant is entitled to a judgment in default, summary judgment is more readily enforceable in other jurisdictions and especially in India. I am asked to grant summary judgment on the merits on certain of the claims, referred as the rent and maintenance accruals claim, on the basis that those represent straightforward and undisputed claims in debt.
5. I start with the factual background and the Leases. The defendant leased the following three aircraft engines. First, an engine with the serial number 660161 (which I will call "Engine 161") leased pursuant to an engine lease agreement dated 13 June 2019. Second, an engine with the serial number 961925 (which I will call "Engine 925"). That was leased pursuant to a lease agreement dated 27 June 2019. Third, an engine with the serial number 803482 (which I will call "Engine 482"), leased pursuant to a lease agreement dated 24 December 2019. I will call these three lease agreements "the Leases".
6. The Lease for Engine 161 and that for Engine 925 were originally between Team France 01 as lessor and the defendant as lessee. They were both novated to the claimant on about 26 November 2020, at which point the claimant assumed all of the rights and obligations of Team France 01. The Engine 482 Lease was between the claimant and the defendant from the outset.
7. The Leases are in substantially identical terms. So far as material for today's purposes, they contained the following express terms.
8. By clause 7.1, during what is called "the Lease Period", rent was payable monthly in advance on each payment date at the rate specified in schedule 7 to the leases. The monthly rates were as follows: for Engine 161, US\$55,000; for Engine 925, US\$50,000; and for Engine 482, US\$62,000, which was reduced, with effect from 26 March 2021, to US\$45,000.
9. By clause 7.3, the defendant's obligation was to pay rent, maintenance accruals and any other amount, and that obligation was said to be absolute and unconditional, irrespective of any contingency whatsoever, including among other things any right of set off, counterclaim, recoupment or defence. That is obviously very important on a summary judgment application.

10. The "Lease Term" is defined differently in each of the leases, but the details ultimately do not matter. That is because the "Lease Period" is defined as:

"The Lease Term and any period during which the lessee shall have possession of the engine, which for the avoidance of doubt shall include (a) any period in which the Lessee shall have failed to redeliver the Engine to the Lessor in the condition required by this Agreement following expiry of the Lease Term".
11. By clause 8.6, if the defendant: "fails to pay any sum on its due date for payment under this Agreement the Lessee shall pay to the Lessor on demand interest on such sum from the due date up to the date of actual payment (as well as before any relevant judgment) at the Relevant Rate of Interest".
12. The "Relevant Rate of Interest" is a defined term and means: "for amounts due and payable but unpaid 2% per annum above the actual closing three (3) month ICE LIBOR on the first (1st) day in the period in respect of which the Relevant Rate of Interest falls to be determined provided that, if the RBI does not permit payment of default interest at such rate, the default rate will be the highest rate permitted by the RBI". I note that the RBI is an Indian banking authority and there is no suggestion that any rates are not being permitted by it in this case.
13. There is said to be a complexity in that regard because the ICE LIBOR rates ended on 30 September 2024. However, for reasons I will explain in due course, it does not seem to me that that ultimately matters.
14. I should draw attention for completeness to clause 8.7 of the Leases which provides: "All interest under this Agreement shall accrue from day to day and shall be calculated on the basis of the actual days elapsed and a 360 day year".
15. By clause 8.8 of the lease: "[a]ny certificate or determination of the Lessor as to any rate of interest or any other amount payable under this Agreement shall, in the absence of fraud or manifest error, be conclusive and binding on the Lessee, without prejudice to the Lessee's right to dispute such amount or calculation following payment of such amount to the Lessor."
16. By clause 9.3(c), the defendant agreed to pay the claimant: "on demand all reasonable expenses (including legal, court, survey and other costs) incurred by the Lessor [...] in connection with, the enforcement of, or preservation of any rights under, any of the Lease Documents to which it is a party or otherwise in respect of moneys owing by the Lessee [...] under any of the Lease Documents to which it is a party, or in respect of breach by the Lessee of any representation, warranty, covenant, agreement, condition or stipulation therein contained".
17. By clause 12.3, the defendant was obliged, in addition to the rent, to pay what are called 'maintenance accruals', not later than 15 days after the expiry of each accrual period, an accrual period being roughly a calendar month and the accrual periods continuing throughout the Lease Period. Maintenance accruals comprise: 'Engine Off-Wing Restoration Rate per Flight Hour' and 'Engine Life Limited Part Maintenance Accruals'. They are calculated using those two rates

- given in clause 12.3, as uplifted, on the basis of the engine utilisation which is notified by the defendant pursuant to clause 11.2(a).
18. By clause 24.1, the Leases and any non-contractual obligations arising out of or in relation to the Leases are governed by and are to be construed in accordance with the laws of England.
 19. By clause 24.2, the Courts of England shall have: “Exclusive jurisdiction to settle any disputes arising out of or in connection with and any non-contractual obligations arising out of or in connection with the Agreement”. Each party: “irrevocably submits to the jurisdiction of the Courts and waives any objection to the exercise of its jurisdiction”. Clause 24.2 itself refers to “the Courts”, but clause 1.1 makes clear that “the Courts” means “the Courts of competent jurisdiction of England”.
 20. Finally, I note that clause 24.3 provides that the defendant has appointed: “CC Process Agents Limited of First Floor, Buckhurst House, 42-44 Buckhurst Avenue, Sevenoaks, Kent, TN13 1LZ, United Kingdom to receive for it and on its behalf service of process issued out of the Courts in any legal action or proceeding arising out of or in connection with this Agreement and/or any other Lease Documents to which it is a party.”.
 21. Turning then to the facts, the claimant says that, in breach of its obligation under the Leases, the defendant has failed to pay rent for January 2022 (which fell due in December 2021), or any month thereafter, save for one payment of US\$7,088.19 which was received from the defendant on 24 May 2024 in respect of Engine 161. That payment has been applied towards the January 2022 rent. The defendant has also failed to pay maintenance accruals for the period starting in November 2020 or any period thereafter.
 22. As a result of these breaches, on about 21 July 2022, the claimant sent the defendant notices of default and reservations of rights in respect of each engine. I note that the various notices gave statements of the amounts outstanding.
 23. On or around 29 December 2022, the claimant took back possession of Engine 161 and Engine 482. Then, on about 26 July 2023, the claimant took back possession of Engine 925.
 24. The claimant commenced these proceedings on 8 October 2025. I have been provided with evidence about how service of the claim form was effected in paragraphs 6-19 of Ms Taylor of Alius Law’s second witness statement.
 25. Cutting to the chase for today’s purposes, on 31 December 2025, King & Spalding, who were at that point instructed as solicitors on behalf of the defendant, wrote to Alius Law stating that the Kent address which had been given as the address for service in the Leases, had not been the address of CCPA, (i.e. the process agent), since November 2022. They said that address in Kent had been vacant since March 2025. They also informed Alius Law that CCPA’s address for service was now 14 Badgers Walk, Ferndown, Dorset, England BH22 9QF.

26. On 7 January 2026, the claimant through Alius Law served the claim form, the particulars of claim, this application, and accompanying documents, by first class post on CCPA's new Dorset address.
27. By a letter dated 19 January 2026, King & Spalding stated among other things that:

“Our client is prepared to adopt a pragmatic approach and we therefore confirm that SpiceJet is willing to treat the Dorset service as valid service, with a deemed service date of 9 January 2026”.
28. I have no reason to doubt that King & Spalding was fully authorised to give that confirmation on behalf of the defendant. That confirmation would prevent the defendant now from arguing that it was not served with the present proceedings. However, if it matters, I am also satisfied that service on CCPA at their current Dorset address was good service on the defendant. That proposition is established by *TWC Aviation Capital Limited v SpiceJet Limited* [2024] 3 WLUK 262. That is another case involving this same defendant failing to pay rent, where Mr Justice Foxton (at [11] and [12]) said that: “service at the current address of the agent named in the lease is good service on SpiceJet” because “it is the agent who you authorise to accept service, and that the appointment does do not limit their authority to accept service to a particular address where they may happen to operate at a particular point in time”.
29. I am told that, for the purposes of listing the present hearing, a Ms Wong of King & Spalding gave dates to avoid for Thomas Sprange KC of that firm. However, in the event, King & Spalding were not instructed by the defendant to file any acknowledgement of service or to participate in this hearing.
30. In the absence of the participation or any acknowledgement of service (which was due by 23 January 2026), on 27 February 2026, Alius Law sent a letter to the defendant directly by email enclosing a draft hearing bundle index for comment.
31. As of today, the defendant has still not filed any acknowledgement of service. No evidence in answer to the application for summary judgment has been filed.
32. I have been shown a series of more recent emails and letters to the defendant showing that these applications, the evidence for them, then the bundle and the skeleton, were all sent to the defendant in advance of this hearing. The defendant has been kept fully informed, but as I have already indicated, has chosen not to participate. King & Spalding has made clear that it is no longer instructed.
33. Accordingly, the defendant has had every opportunity to participate and be heard, but has simply chosen not to do so. This hearing was even listed for the convenience of its then Counsel. The defendant has been provided with all of the documents. There is nothing more that needs to be said in that regard.

34. Turning then to the legal framework, in terms of permission to apply for summary judgment, CPR 24.4.1 provides that:

“A claimant may not apply for summary judgment until the defendant against whom the application is made has filed an acknowledgement of service or a defence, unless:

- a) The court gives permission, or
- b) A rule or Practice Direction states otherwise”.

35. In *The European Union & The European Investment Bank v The Syrian Arab Republic* [2018] EWHC 1712 (Comm), Mr Justice Bryan provided the following guidance (at [61]):

“(i) The purposes of the rule are to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings - see *Citicorp Trustee Company v Al-Sanea* [2017] EWHC 2845 (Comm) at [59] and to protect a defendant who wishes to challenge the court’s jurisdiction from having to engage on the merits pending such application - see *Speed Investments v Formula One Holdings* [2005] 1 WLR 1233 and *Trafigura Beheer BV v Rembrandt Limited* [2017] EWHC 3100 (Comm) at [14].

ii) Generally, permission should be granted only where the court is satisfied that the claim has been validly served and that the court has jurisdiction to hear it - see *Phillips v Avena* [2005] EWHC 3333 (Ch) at [22] – [23]; *Citicorp Trustee Company v Al-Sanea* at [46] and *Trafigura Beheer BV v Rembrandt* at [13]. As was said in *Citicorp Trustee Company v Al-Sanea*, once those conditions are met there is generally no reason why the court should prevent a claimant with a legitimate claim from seeking summary judgment.

iii) The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment, is a proper reason for seeking permission under CPR 24.4.1 - see for example *Trafigura Beheer BV v Rembrandt Limited* at [10] and *BOC Aviation Limited v Kingfisher Airlines Limited* [2018] EWHC 194 (Comm) at [4]”.

I respectfully endorse and adopt this approach.

36. In terms of the test for summary judgment, CPR 24.3 provides as follows:

“The court may give summary judgment against a defendant on the whole of the claim or a particular issue if:

- a) It considers the party has no real prospects of succeeding on the defence or issue, and
- b) There is no other compelling reason why the case or issue should be disposed of at trial”.

37. Detailed guidance on that test was set out by Mr Justice Lewison in *Easyair v Opal Telecom* [2009] EWHC 339 at [15]:

“As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:

i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91 ;

ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if

the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

Again, I will obviously apply carefully that guidance.

38. In terms of permission to apply for summary judgment, as I have said, I am guided by the case of *The European Union & The European Investment Bank* that what I need to consider is (in effect) whether:
- i) The claim has been validly served;
 - ii) The court has jurisdiction to hear the claim, and
 - iii) There is a good reason to grant permission.
39. As to valid service, I have already made clear that I am fully satisfied that there was proper service of the claim form, particulars of claim, application and accompanying documents on 9 January 2026, when the claimant served them on CCPA’s Dorset address. I am cemented in that belief by the fact that it was confirmed on the defendant’s behalf by its then solicitors.
40. As to jurisdiction, clause 24.2 of the Leases expressly provides that the Courts of England have exclusive jurisdiction in respect of any disputes arising out of or in connection with the Leases. The defendant irrevocably submits to the jurisdiction of the English Court and waives any objection to that jurisdiction. That being so, I can see no sensible basis on which the defendant could contest jurisdiction in this case. The position really could not be clearer. This Court has exclusive jurisdiction in relation to any claims under the Leases.
41. As to good reason, the defendant seeks summary judgment rather than obtaining judgment in default because the claimant believes that the defendant has assets in India, being an airline domiciled in India, and the claimant is advised by its lawyers in India that, in order to enforce an English judgment, it is necessary to obtain a judgment on the merits. It follows that summary judgment would be more easily enforceable than a default judgment. That is because section 13 of the Indian Code of Civil Procedure 1908 treats decisions on the merits differently from other decisions. What follows will be a decision on the merits of the claimant’s claim.
42. For those reasons, I grant permission for the application for summary judgment and I will now proceed to consider the same.

43. The claimant's case is that the defendant has failed to pay rent and the maintenance accruals for the Engines when they fell due. The claimant seeks summary judgment in the amount of US\$7,959,235.24, made up as follows.
- i) In respect of Engine 161, US\$652,911.81 in rent for the period from 20 December 2021 to 29 December 2022, the latter being the date on which the claimant took possession of Engine 161. Plus US\$1,668,991.30 in maintenance accruals for the period from 15 December 2020 to 29 December 2022.
 - ii) In respect of Engine 482, the figures are US\$135,000 in rent for the period from 27 December 2021 to 25 March 2022, that being the end of the Lease Term. Then US\$405,000 in rent for the period from 26 March 2022 to 29 December 2022, the latter being the date when the claimant took possession of Engine 482, and therefore the end of the Lease Period. Also US\$1,256,897.55 in maintenance accruals for the period from 15 December 2020 to 25 March 2022 and US\$448,028.58 in maintenance accruals for the period from 26 March 2022 to 29 December 2022.
 - iii) Finally in respect of Engine 925, US\$300,000 in rent for the period from 3 January 2022 to 1 July 2022, that being the end of the Lease term, and then US\$550,000 in rent for the period from 2 July 2022 to 26 July 2023, being the date when the claimant took possession of Engine 925, and therefore the end of the Lease Period. US\$1,666,556.52 in maintenance accruals for the period from 15 December 2020 to 1 July 2021 and US\$875,849.48 in maintenance accruals for the period from 2 July 2021 to 26 July 2023.
44. All of these figures are explained, and set out, in the evidence of Ms Taylor of Alius Law, to which there is no challenge. There is a limit to what the Court can, or indeed should, do to check the arithmetic. However, I have carefully examined the schedules that were provided as part of Ms Taylor's evidence.
45. The rent is simply a product of the number of days and, as far as I can tell from looking at the schedules, those values appear to have all been arrived at in an appropriate way. The evidence is that the values for maintenance accruals in the invoices were calculated by reference to engine utilisation reports produced by the defendant itself. I have not seen the underlying calculations, but I have seen the invoices that were sent to the defendant at the time (but not paid). These appear to show calculations in the form envisaged by the Leases. There is no answer to any of those.
46. The short point is that these are all claims in debt. There is no dispute about the contract terms, and there is unchallenged witness evidence that the rent and the maintenance accruals have been properly charged and have not been paid. If that is correct, there can be no defence to the claim. If the defendant had any points to make about the detail of the arithmetic, it needed to acknowledge service, participate in this hearing, and explain its objections.
47. Moreover, in addition to the wording of the Leases making clear that there is no scope for set off or the like, by reason of clause 8.8 of the Leases, the claimant's

determination of the amount due: “shall, in the absence of fraud or manifest error, be conclusive and binding on the defendant”. In the case of *Sara & Hossein Asset Holdings v Blacks Outdoor Retail* [2023] UKSC 2, the Supreme Court recently addressed an example of a term which provided for a certificate to be conclusive, at least until payment is made, to ensure prompt payment. The term was found to be fully enforceable and effective. It seems to me that is exactly what clause 8.8 is intended to achieve. If the claimant has certified a figure, then, in the absence of fraud or manifest error, that sum must be paid. If the defendant wants to pay and then argue about whether the certified figure has been correctly calculated, it can do so.

48. That is a further reason why I am satisfied that there can be no realistic defence to any of these figures. It is simply impossible to see how the various terms about there being no right to set off, and for payment of the sum certified, could be overcome by any defence.
49. I turn finally to its interest. Here there is a minor wrinkle. The way in which the claim was originally presented does not seem to me to be in accordance with the terms of the Lease. That does seem to me to be an error that I can see on the face of the schedules, and it is therefore something which I have to take into account when I give my judgment.
50. The way in which I understand the Lease to operate is that the definition of “Relevant Rate of Interest” provides for the interest rate to be set by reference to the LIBOR rate on the first day in the period for which this default interest falls to be paid. That period, as set out in clause 8.6, will be the period from the due date up to the date of actual payment.
51. I do not accept the submission that, because clause 8.7 provides for interest to accrue day to day, each period under clause 8.6 consists of a single day, such that each Relevant Rate of Interest is applicable for a single day. It seems to me that that is not a sensible reading of those provisions.
52. I accept that it is slightly odd to use a LIBOR rate, which changes day by day, but then apply the same rate over a prolonged period by reference to the rate on the date that happens to be the first day of the default period. However, this is a default interest provision. Perhaps the expectation was that the interest would not run for very long before payment was made. If so, I can see why a simplified approach, using the LIBOR rate on the first day of that period of default, might be preferred.
53. That topic having been canvassed in submissions, Mr Munby KC, leading counsel for the claimant, made clear that he was not instructed to object further to my suggested reading of the interest provisions. He indicated that the claimant would go away and recalculate the values in accordance with the foregoing conclusion.
54. It seems to me that that is the proper way forward. It has the happy side effect that one does not need to get into complexities about the ICE LIBOR rate coming to an end in 2024. Instead, a single rate can simply be set for each of

these outstanding sums by reference to date of the first day of the relevant period. The same rate can then be run from that date until payment.

55. I have indicated that I am content for that calculation to be provided to me in due course. The claimant should provide me with a schedule which shows what has been done. Then those figures can be included in the order embodying this judgment.
56. Subject to that recalculation of interest, I find that the defendant has no real prospect of successfully defending the rent and maintenance accruals claims, or interest thereon (at least if calculated in the way that I have indicated). I therefore award summary judgment in those sums.
57. For completeness I observe that the claimant is not currently seeking summary judgment in respect of (i) additional rent pursuant to clause 18.4(b) of the Leases, (ii) repair costs on Engine 482, (iii) lost income in relation to Engine 482 and (iv) other alleged expenses incurred in repossessing and storing the Engines. Those claims will all need to continue for present purposes, on the basis that they are not as straightforward as the matters with which I have been asked to deal today.

(This Judgment has been approved by the Judge.)

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