IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA(I) 5

Civil Appeal No 8 of 2022

Between

CSDS Aircraft Sales & Leasing Inc

… *Appellant*

And

Singapore Airlines Limited

… *Respondent*

In the matter of SIC/S 4/2019 (Assessment of Damages No 1 of 2022)

Between

Singapore Airlines Limited

… *Plaintiff*

And

CSDS Aircraft Sales & Leasing Inc

… *Defendant*

GROUNDS OF DECISION

[Damages — Assessment — Valuation of aircraft]
[Evidence — Weight of evidence — Expert opinion evidence]

CSDS Aircraft Sales & Leasing Inc
v
Singapore Airlines Limited

[2023] SGCA(I) 5

Court of Appeal — Civil Appeal No 8 of 2022
Steven Chong JCA and Beverley McLachlin IJ
5 May 2023

19 June 2023

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 This appeal, CA/CAS 8/2022 ("CAS 8"), concerns an award of damages by an International Judge (the "Judge") of the Singapore International Commercial Court (the "SICC") in *Singapore Airlines Ltd v CSDS Aircraft Sales & Leasing Inc* [2022] SGHC(I) 15 (the "Judgment"), following an assessment of damages hearing. The facts of the underlying suit are unremarkable.

2 The appellant, CSDS Aircraft Sales & Leasing Inc ("CSDS") entered into a contract dated 19 September 2018 (the "Agreement") to purchase from the respondent, Singapore Airlines Ltd ("SIA"), a Boeing 777-212 aircraft (the "Aircraft") *without engines* at the price of US$6.5m. CSDS paid the deposit of US$250,000, but failed to make payment of the balance sum of US$6.25m.

Following the trial on liability (as reported in *Singapore Airlines Ltd v CSDS Aircraft Sales & Leasing Inc* [2021] 5 SLR 26), the SICC found that CSDS was in repudiatory breach of contract and this breach was accepted by SIA as bringing the contract to an end on 4 November 2018 (this finding was upheld on appeal in *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Ltd* [2022] 1 SLR 284). Thereafter, the outstanding issue was the assessment of damages for losses consequent upon the breach.

3 It was common ground between the parties that the measure of damages for the repudiatory breach would be the difference between the contract price and the market value of the Aircraft under s 50(3) of the English Sale of Goods Act 1979 (c 54) (UK) (the "SGA 1979"). The key issue before the Judge, and also before us on appeal, pertained to the proper determination of the market value of the Aircraft. The Judge relied on *both* the factual and expert evidence on record to arrive at the market valuation of the Aircraft at US$1.5m (Judgment at [52]).

4 The crux of CSDS' case was that the Judge had erred when he *entirely* disregarded the expert evidence to arrive at his own valuation. As we will explain below, this submission was wrong both factually and as a matter of legal principle. Contrary to CSDS' submission, the Judge did in fact take into account the expert evidence. Further, the assessment of the available evidence does not require the court to undertake a binary exercise in preferring one category of evidence over the other. The weight to be ascribed to any expert evidence is typically fact-sensitive and must necessarily take into account the factual matrix before the court. The court's task is to assess *all* the evidence holistically, both factual and expert evidence, and to ascribe the appropriate weight depending on

the issue, the nature and inherent reliability of the evidence. These principles assume central importance in this appeal.

5 We heard and dismissed CAS 8 on 5 May 2023 with brief grounds. In these detailed grounds, we will expound on the role of the court in evaluating the interaction between factual and expert evidence in relation to the *same* issue concerning valuation, and how they each play a useful role in providing a reality check on the probative weight of the evidence.

The background

The factual evidence underlying the dispute

6 By way of background, SIA is a Singapore company that carries on the business of an international carrier by air, whilst CSDS is a US company carrying on the business of aircraft sales and leasing. Following the finding that CSDS was in repudiatory breach of the Agreement, SIA claimed the following heads of damages:

> (a) the difference in the contract price and the market value of the Aircraft, under s 50(3) of the SGA 1979, which would, it was submitted, allow for a reasonable time for negotiation and conclusion of a substitute sale following acceptance of the repudiation;
>
> (b) parking and maintenance fees from 4 November 2018 until the expiry of that reasonable time; and
>
> (c) marketing, brokerage and legal costs.

7 Despite various efforts by SIA to resell the Aircraft *without* engines after 4 November 2018, no successful substitute sale was concluded. These were

attempted by way of issuing Requests for Proposals ("RFP") on 20 November 2018, 12 March 2019 and May 2019. The RFPs provided the general specifications, incident history and maintenance status of the Aircraft to prospective purchasers. There were also attempts to sell the component parts of the Aircraft in circumstances where the Aircraft could not fly without passing various tests and obtaining certifications at some expense.

The November 2018 RFP and the revised bid

8 On 29 November 2018, SIA issued an RFP for the sale of the Aircraft without engines by placing a public advertisement on "Aeroconnect" (a web-based aviation marketplace with over 9,000 key commercial contacts), and by sending an RFP to its usual list of 200 or so prospective purchasers (the "November 2018 RFP"). Under the November 2018 RFP, buyers had the option of either (a) ferrying the Aircraft out of Singapore with its own engines, or (b) dismantling the airframe and harvesting the aircraft components.

9 On the evidence of SIA's senior manager responsible for aircraft sales, the highest bid received pursuant to the November 2018 RFP was US$2.1m. However, the party who submitted the bid subsequently informed SIA that it would have to reduce and/or withdraw its bid. This was due to difficulties which made the sale of the Aircraft or its components uneconomic. To elaborate on these difficulties:

(a) By 10 November 2018, even though the Certificate of Airworthiness for the Aircraft continued to be valid, the Aircraft was not allowed to be ferried to another destination while the Aircraft remained under Singapore registration, unless the Aircraft underwent a series of extensive and expensive maintenance checks (which had expired).

(b) As the sale was to be without engines, in order to remove the Aircraft, a purchaser would have to bring in its own engines, utilise its own crew, and then change the registration of the Aircraft. Alternatively, a buyer seeking to harvest the Aircraft for its components would have to dismantle the Aircraft in Singapore and dispose of the airframe after doing so (which would also involve significant costs).

(c) Additionally, the Changi Airport Group ("CAG") did not permit disposal of the airframe at the "airside" at Singapore Changi Airport.

10 Given the circumstances, SIA had to explore alternatives. As it happened, CAG had expressed an interest in taking the Aircraft's airframe for training purposes (on the condition that the landing gear, windows and doors remained intact), in exchange for assisting to dismantle and dispose of the airframe at no cost. This would allow other purchasers to harvest the remaining parts. SIA considered CAG's proposal as being worthwhile to explore. In the circumstances, SIA requested the top three bidders who previously responded to the November 2018 RFP to offer a *revised bid* for the Aircraft components, without the airframe, landing gear, windows and doors. The highest bid for the revised inventory components only amounted to US$600,000, which SIA decided not to pursue as it was inadequate.

The March 2019 RFP

11 A further RFP was then issued on 12 March 2019 based on components to be harvested in two phases in 2019 (the "March 2019 RFP"). Under the March 2019 RFP, a prospective purchaser may harvest a selected list of components, with an option of bidding for the landing gear, but leaving the airframe intact for CAG. SIA sent this RFP to the usual list of prospective

purchasers, comprising some 200 parties. SIA eventually received three bids, and the highest bid was US$1.315m for the components without the airframe.

12 However, SIA did not proceed with this bid as it considered redeploying the Aircraft to meet the operational needs of its sister airlines, SilkAir or Scoot. But if extensions to leases on the other aircrafts could be negotiated for SilkAir or Scoot, then the redeployment of the Aircraft would not be needed – as in fact ultimately proved to be the case.

13 Around May 2019, whilst preserving options, SIA placed public advertisements on "Aeroconnect" and "Airfax" (a publication on the worldwide availability of commercial transport aircraft) for the sale of the Aircraft. While SIA received a few enquiries, no firm offer was made.

Other attempts from August 2019 to October 2020

14 By August 2019, SIA decided not to proceed with the deployment of the Aircraft to its sister airlines. SIA then recontacted the highest bidder for the March 2019 RFP (at US$1.315m) to enquire if it was still interested in pursuing its previous bid. However, the bidder was no longer keen and did not make an offer.

15 Up until October 2019, SIA continued to place public advertisements on "Aeroconnect" and "Airfax", and advertised the Aircraft for sale at aviation trade fairs in Singapore. SIA also engaged with a number of different parties in attempts to sell the Aircraft, but all without success.

16 Between November 2019 and May 2020, as SIA was in settlement discussions with CSDS that involved the delivery of the Aircraft, SIA did not

take steps to sell or advertise the Aircraft in this period whilst it was in active discussions. As it transpired, SIA and CSDS were not eventually able to reach a settlement.

17 Finally, by October 2020, after the discussions with CSDS had come to an end and it appeared that there was no longer any market for the Aircraft (COVID-19 had severely impacted the market by then), SIA decided to part out the Aircraft. Having outlined the factual evidence on record, we turn next to examine the expert evidence.

The expert evidence on the market value of the Aircraft

18 SIA adduced expert evidence from Mr Philip Seymour ("Mr Seymour"), a senior certified aircraft appraiser. Although CSDS attempted to present opposing evidence from its own expert, the expert was eventually not tendered for cross-examination and no reliance could be placed on that expert's report. As a result, the only expert evidence before the court came from Mr Seymour.

19 Mr Seymour provided a valuation of the Aircraft based on information obtained from the International Bureau of Aviation Group Limited ("IBA") which publishes the Aircraft Values Book ("AVB") of various aircrafts, in particular, the market values of B777-200 and B777-200ER aircrafts at various dates:

	August 2018[1]	February 2019[2]	August 2019[3]	February 2020[4]
AVB market value for B777-200 aircraft	US$14.35 million	US$14.02 million	US$14.02 million	US$12.33 million
AVB market value for B777-200ER aircraft	US$21.69 million	US$21.71 million	US$21.71 million	US$17.38 million

20 However, the Aircraft's actual model was a B777-212 aircraft. As only the valuations for B777-200 and B777-200ER aircrafts were available, certain adjustments had to be made. There were two options available for Mr Seymour to arrive at the Aircraft's notional valuation. The first would be to start from the market value of the cheaper B777-200 model and adjust upwards to reach the Aircraft's model (a B777-212 model), and the second is to start from the more expensive B777-200ER model and extrapolate downwards.

21 Mr Seymour adopted the first method. He opined that the Aircraft (a B777-212 model) had specifications that were more similar to those of the B777-200 model than the B777-200ER model because, amongst other reasons, the maximum take-off weight ("MTOW") values were closer. The B777-212 model uses Trent 884 engines with an MTOW of 555,000lbs, which was only 10,000lbs less than the B777-200 model which uses Trent 875 engines. This meant that the notional value of the Aircraft should be derived by using the AVB of the B777-200 model as a starting point given the more suitable comparability.

22 Mr Seymour's valuation methodology for the Aircraft can be broken down into the following steps:

Step	Description	Feb 2019	Aug 2019
1	AVB value of B777-200 aircraft	14.02	14.02
2	Add: MTOW and maintenance standards	*(+1.6)* 15.62	*(+1.38)* 15.4
3	Less: Engines	*(-11.76)* 3.86	*(-11.76)* 3.64
4	Less: Landing gear and "C" check	*(-1.52)* 2.34	*(-1.52)* 2.12
5	Less: Long-term out of use / "on market" distress	*(-0)* 2.34	*(-0.75)* 1.37
6	Less: Practical and pragmatic considerations	*(-0.2)* 2.14	*(-0.2)* 1.17
Value of the Aircraft		**2.14**	**1.17**

(a) Step 1: The AVB market value of a B777-200 aircraft was stated by the IBA to be US$14.02m in both February 2019 and August 2019.

(b) Step 2: Mr Seymour marked up these values by approximately 11% to account for the difference in the MTOW for the Aircraft, which was 10,000lbs higher. He also added a premium for the "better than average" standard of maintenance of the Aircraft. This resulted in a notional market value of the Aircraft *with engines* at US$15.62m in February 2019 and US$15.4m in August 2019.

(c) Step 3: Since the figures included the values of two engines on the notional aircraft (whereas the Aircraft was sold *without engines*), Mr Seymour then deducted the value of two Trent 884 engines found on B777-212 models like the Aircraft (instead of Trent 875 engines found on B777-200 models) to determine the value of the Aircraft without engines. The market value of two Trent 884 engines was US$11.76m in both February 2019 and August 2019. After subtracting these, the

resulting figures were US$3.86m in February 2019 and US$3.64m in August 2019.

(d) Steps 4–6: Various adjustments were made to the Aircraft's valuation to account for specific technical and maintenance factors, and the Aircraft being out of use for a long period, *etc*. The final median point market value as of February 2019 and August 2019 was US$2.14m and US$1.17m respectively (and the mid-point of these figures for May 2019 would have been US$1.66m) (Judgment at [50]).

23 As we will elaborate below, a key point of contention regarding Mr Seymour's valuation methodology was whether he was correct in deducting the value of two Trent 884 engines (found on the B777-212 models like the Aircraft) instead of Trent 875 engines (found on B777-200 models). This matter is further complicated by Mr Seymour's concession at the trial that he could have been mistaken in this regard. Having set out the relevant evidence, we summarise the key findings by the Judge below.

Decision below

24 The Judge assessed the factual evidence, in particular SIA's attempts to sell the Aircraft from November 2018 to October 2020 and the various RFPs issued (Judgment at [18]–[25]). Based on this evidence, the Judge opined that the best offer resulting in a net realisation was the US$1.315m bid from the March 2019 RFP, and that could have been concluded in a period of six months from 4 November 2018 (*ie*, 4 May 2019) (Judgment at [26]–[27]). The six-month period was a reasonable time to conclude a substitute sale of the Aircraft as the market was weak and there were particular difficulties standing in the way of the sale of the Aircraft (Judgment at [47]–[48]).

25 The Judge also considered the expert evidence from Mr Seymour which he found to be objective, careful and conservative (Judgment at [15]), apart from two problematic aspects. The first aspect related to Mr Seymour's concession at the trial that, having utilised the value of a B777-200 model and adjusted it upwards to obtain the notional value for the Aircraft (a B777-212 model), he should have deducted the value of Trent 875 engines rather than Trent 884 engines. The Judge thought that this was a mistaken concession by Mr Seymour (Judgment at [14] and [33]).

26 The second issue related to a missing adjustment in Mr Seymour's calculations regarding the difference between the engine thrust of a B777-200 model at 74,500lbs and that of the Aircraft itself (a B777-212 model) at 85,940lbs (Judgment at [32] and [35]). However, the Judge was unsure how to correct for this differential without expert evidence (Judgment at [36]).

27 Nevertheless, considering both the expert and factual evidence, the Judge concluded that the maximum market price obtainable for the Aircraft before 4 May 2019 was US$1.5m (Judgment at [50]–[52]). Therefore, the consequential damages suffered by SIA amounted to US$4.75m (being the contract price of US$6.5m, less the US$250,000 deposit paid and the US$1.5m market valuation). Lastly, the Judge also awarded the attendant parking and maintenance charges required to store and maintain the Aircraft for inspection by potential buyers for six months amounting to S$233,829.87, and miscellaneous legal costs of US$10,000 (Judgment at [54]–[57]).

The parties' submissions and the issues raised in the appeal

28 CSDS averred that the Judge erred in completely disregarding Mr Seymour's expert evidence and instead the Judge used unsubstantiated

factual evidence to determine the Aircraft's market value. CSDS claimed that the third-party offer of US$1.315m should not be considered because the price at which the seller can resell the goods to a third party is irrelevant. Instead, the Judge should have corrected Mr Seymour's valuation methodology and relied solely on the expert evidence. In particular, the Judge should have concluded that Mr Seymour was indeed mistaken in deducting the value of Trent 884 engines (totalling US$11.76m) instead of Trent 875 engines (totalling US$7.06m), which Mr Seymour had conceded to under cross-examination. Had the Trent 875 engines been deducted instead, along with other adjustments, SIA would not be entitled to any damages as the market value of the Aircraft would have exceeded the purchase price of US$6.5m. Lastly, CSDS disputed the Judge's finding that the Aircraft could only be sold within six months (which CSDS argued should have been three months instead) as the market was not weak, and this had follow-on consequences on the parking and maintenance charges to be paid.

29 As against this, SIA submitted that the Judge's decision should be upheld. There was no reason to criticise the Judge's finding that the market value of the Aircraft was US$1.5m as of 4 May 2019 which was arrived at after careful consideration of *both* the factual and expert evidence presented to the court. In doing so, the Judge was entitled to rely on the highest bid from the March 2019 RFP to determine the market value of the Aircraft. Lastly, there was no basis to disturb the Judge's finding that the reasonable time for a substitute sale was within six months, given the weak market and the particular difficulties standing in the way of the sale. As such, there was no basis to challenge the parking and maintenance charges for that six-month period.

30 Based on the parties' respective submissions, the following key issues arose for our determination on appeal:

(a) First, did the Judge err in determining that the market value of the Aircraft was US$1.5m at the time when the substitute sale ought to have been concluded? This question gave rise to related sub-issues:

(i) whether the Judge had wrongly disregarded Mr Seymour's expert evidence;

(ii) whether the third-party offer in the March 2019 RFP should be given due weight in determining the market value of the Aircraft; and

(iii) whether the concession made by Mr Seymour should not have been ignored.

(b) Second, did the Judge err in finding that the reasonable time to conclude a substitute sale of the Aircraft was six months (*ie*, May 2019), and consequently, whether there was any basis to challenge the parking and maintenance fees?

Our decision

31 As indicated above, having reviewed the submissions of the parties, we dismissed CAS 8. We deal with each of the issues raised in turn.

Issue 1: The market valuation of the Aircraft

The court's role in assessing factual and expert evidence, and whether the Judge had wrongly disregarded Mr Seymour's expert evidence

32 The court's determination as to whether it should accept parts of an expert's evidence is guided by considerations of consistency, logic and coherence – and this requires a scrutiny of the expert's methodology and the objective facts which he relied on to arrive at his opinion (*Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased, and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133 at [90]).

33 It is axiomatic that the process of valuing assets is largely fact-sensitive in nature and is typically reliant on expert evidence to assist the court (*Abhilash s/o Kunchian Krishnan v Yeo Hock Huat and another* [2019] 1 SLR 873 ("*Abhilash*") at [3]). 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 taken into account when determining fair market value (*Abhilash* at [76]; *Lim Chong Poon v Chiang Sing Jeong* [2020] SGCA 27 ("*Lim Chong Poon*") at [20]), although such offers would not invariably represent the best evidence under all circumstances.

34 In other words, the court must factor into its analysis all categories of evidence (both factual and expert) when arriving at its conclusion on valuation. These pieces of evidence must be tested against one another, having regard to logic and common sense. For example, in *Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] 3 SLR 140 (at [27]–[29]), the SICC rejected certain assumptions made by the expert in her valuation report

on the value of a production licence as those assumptions did not square with the factual matrix and there was no evidential basis to support them. Thus, the expert's calculations were found to be incorrect and unreliable.

35 Contrary to CSDS' assertions, there is no binary choice to be made in only considering one category of evidence to the exclusion of the other. 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 court should be guided by the particular needs of the case in deciding how to apportion weight between the factual and expert evidence (Tristram Hodgkinson and Mark James, *Expert Evidence: Law and Practice* (Sweet & Maxwell, 5th Ed, 2020) ("*Expert Evidence*") at [12-011]). In doing so, 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 (*Expert Evidence* at [12-010]).

36 In this connection, we disagreed with CSDS' argument that the Judge had *completely disregarded* Mr Seymour's expert evidence when ascertaining the market value of the Aircraft. This is self-evident from the Judge's reasoning (Judgment at [50] and [52]):

> 50 If *regard is had to Mr Seymour's figures* and a market value, *determined in the abstract without reference to what actually happened in the efforts to conclude a sale*, and working on the basis of six months as a reasonable period in which to conclude a sale, it is the date of 4 May 2019 to which attention should be directed. On his conclusions, the value of the Aircraft at February 2019 was between US$1.94m and US$2.34m and at August 2019 was between US$970,000 and US$1.37m. The median point of each range is US$2.14m and US$1.17m. As May is the median point between those dates, a median figure between those figures would be US$1.66m.
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> …

> 52 In the circumstances and doing the best that I can on the evidence, *both expert and factual*, and bearing in mind that the burden of proof rests on the plaintiff, in my judgement the maximum price which could have been obtained at any stage before 4 May 2019 was US$1.5m, representing an uplift from the bid of US$1.315m for parts which was made in March 2019. That is *not too different from Mr Seymour's conclusion for that date* albeit made with a missing element in his computation. At the end of the day, *it is the factual evidence which must be decisive here, allowing only for a bit of latitude because of the uncertainties of the situation and taking into account Mr Seymour's evidence*.
>
> [emphasis added]

As observed, the Judge first referred to Mr Seymour's estimated market value of the Aircraft as of May 2019 (by taking the midpoint of the February and August 2019 figures), which was US$1.66m. The Judge noted that this figure was determined *in the abstract* without reference to what actually happened. Thereafter, the Judge considered holistically all facets of the evidence, both expert and factual, and concluded that the maximum market value obtainable was US$1.5m which "represented an uplift from the bid of US$1.315m" in the March 2019 RFP and this was "not too different from Mr Seymour's conclusion for that date". Thus, the Judge did not turn a Nelsonian eye to the expert evidence. Rather, the Judge merely decided to *ascribe more weight* to the March 2019 RFP bid (which he was entitled to do) when he found that "it is the factual evidence which must be decisive", but also "taking into account Mr Seymour's evidence".

37 Therefore, the question then is whether the Judge erred in giving more weight to the third-party offer, which we now address.

Whether the third-party offer in the March 2019 RFP should be given due weight in determining the market value of the Aircraft

38 In determining the market value of an asset, the actual price at which the seller has resold the asset to a third party at a later date after the buyer's repudiation may be treated as evidence of the market value *where it is difficult to assess* (James Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) ("*McGregor on Damages*") at [25-121]; *Chitty on Contracts* vol 2 (Hugh G Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) ("*Chitty on Contracts*") at [46-380]). In *AerCap Partners I Ltd v Avia Asset Management AB* [2010] EWHC 2431 (Comm), in relation to a dispute concerning the sale of two Boeing aircrafts, the seller was held to be entitled to the difference between the contract price and the substantially lower price at which it actually resold the aircrafts many months after the buyer's contractual repudiation. This was on the basis that the resale price constituted good evidence of the market value, and no other available market had appeared until the time of the resale (at [115] and [117]). The same principles apply to third-party offers, *ie*, that they may provide informational value as to the fair market value of an asset, though not having determinative weight (*Abhilash* at [73]). The aggrieved seller may be able to establish proof of the market value by "seeking several offers for the goods from prospective buyers with a view to accepting the best price obtainable" (*Chitty on Contracts* at [46-380], footnote 1709) and these include "the price of an offer not yet crystalised into a contract" (*McGregor on Damages* at [25-121], footnote 547).

39 The present appeal deals squarely with a situation where it was difficult to ascertain the market value of the asset in question, and thus reference to third-party offers was relevant. It is pertinent to highlight the unique conditions in relation to the sale of the Aircraft. It was to be sold *without* engines. This, as the

evidence has borne out, created enormous difficulties in attracting prospective offers given the substantial costs associated with ferrying the Aircraft out of Singapore or in dismantling it for parts (see above at [9]). Indeed, a higher bid was initially made pursuant to the November 2018 RFP at US$2.1m, but that was later withdrawn shortly after due to the aforementioned impediments which made the transaction uneconomic.

40 Further, as the Judge correctly found, although there was an available market for the Aircraft, the market was comparatively soft and first-generation Boeing aircrafts were proving difficult to sell (Judgment at [44] and [46]). This was supported by the objective factual evidence. After multiple rounds of RFPs issued by SIA and various public advertisements issued over a span of two years (see above at [8]–[15]), there was only one serious and viable offer on the table – the March 2019 RFP bid for $1.315m. This was a tangible and real offer that should be given due regard as it was genuine, made at arm's length, and was not speculative or conditional (*Abhilash* at [76]; *Lim Chong Poon* at [20]). Instead, it was only by reason of SIA's *own conduct*, in not proceeding with the March 2019 RFP bid when considering the redeployment of the Aircraft (see above at [12]), that the offer had lapsed.

41 Under such circumstances, where there was a concrete and serious offer to purchase the Aircraft in question (in contrast to a hypothetical sale), in the absence of good reason not to give weight to such evidence, the third-party offer should represent the most cogent evidence of the market value of the Aircraft. This was effectively the Judge's finding (Judgment at [52]), when he found the factual evidence to be "decisive". This was particularly the case when there was scant demand for an Aircraft *without engines* that could not be easily transported out of Singapore, which was why the sale was so difficult to consummate. Apart

from making general submissions that SIA could have achieved a better offer, no objective evidence was led by CSDS that the Aircraft could have been sold at a price significantly above the March 2019 RFP bid. This is especially so in this case where CSDS had taken the position at the trial that the March 2019 RFP bid should have been taken up by SIA as it was "a good deal". Hence, the Judge did not err in considering the third-party offer of US$1.315m as a basis for determining the Aircraft's market value.

42 Where there is both expert and factual evidence before the court in relation to the same issue on asset valuation, the Judge should evaluate the probative weight of both categories to determine whether any adjustments need to be made to best reflect the market value. In this way, the factual evidence would play a useful role in furnishing a reality check on the expert evidence (see above at [34]). Here, the March 2019 RFP bid was US$1.315m, while the median point market valuation by Mr Seymour for May 2019 was US$1.66m. We observe that these figures were remarkably close to one another, suggesting that Mr Seymour's valuation at US$1.66m was not unfounded or divorced from reality.

43 The Judge also applied an uplift from the US$1.315m bid to reach the US$1.5m figure taking into account "the uncertainties of the situation" (Judgment at [52]). It should be highlighted that this uplift was *to the advantage* of CSDS as it would mean a *lower* computation of damages. We also observe that the figure of US$1.5m would approximate the arithmetic mean of US$1.315m and US$1.66m, which is derived from both factual and expert evidence. We thus saw no reason to disturb the market valuation of US$1.5m.

44 Lastly, with regard to the missing adjustment in Mr Seymour's expert evidence pertaining to the difference between the engine thrust of a B777-200 model and that of the Aircraft (see above at [26]), this was in fact the reason why the Judge was chary not to place *complete* reliance on Mr Seymour's evidence (Judgment at [36] and [51]), which we agreed with. Ultimately, it bears mention that while there was sound logic adopted by Mr Seymour in his methodology, his valuation was based on an *extrapolation* of the market value of a similar B777-200 aircraft. Therein lies the inherent inadequacies in placing complete reliance. Nonetheless, as discussed earlier, the expert evidence still served a valuable function in providing a cross-check on the March 2019 RFP bid. We found that the Judge had adequately given weight to both sources of evidence in arriving at the eventual valuation.

Whether the concession made by Mr Seymour should not have been ignored

45 The other issue raised by CSDS concerned the Judge's decision to disregard Mr Seymour's concession at the trial that he had made a mistake in deducting the value of B777-212 engines instead of B777-200 engines at Step 3 of the valuation methodology (see above at [22(c)]), *ie*, deducting the value of the Trent 884 engines rather than the Trent 875 engines.

46 We begin by setting out the context of this concession. During cross-examination, it was put to Mr Seymour that "if you choose to start with the 200 non-extended range [*ie*, the B777-200 model] then it is proper for you to use the Trent 875 engines instead". In response, Mr Seymour said "I think -- yeah, I think that's fair." The Judge then questioned Mr Seymour again about this alleged error in his calculations. Mr Seymour confirmed that he had made an error and responded by clarifying the following:

> A: … What I did was I took the value of the 884 engine which was fitted and removed that from the calculation.
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> …
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> A: … With hindsight, as it was pointed out to me under cross-examination, I should have deducted the Trent 875 value, that engine value, from my starting point; not the Trent 884 and up. From what I understand now, that would have led to a higher value of the aircraft because there would have been a lower deduction for the engine value.

47 However, the Judge disagreed that Mr Seymour was necessarily wrong, and opined that his original methodology in deducting the Trent 884 engines was correct:

> Court: Why would you do that if the notional value you have arrived at for this plane, by reference to 200, is the starting point? You have arrived at a notional value for this plane by taking account of the difference in MTOW, and so on, and then when you are taking the engines out of that notional value for this plane, you should take out the engines that are on this plane; not the engines that would be on the other plane …
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> …
>
> Court: … You were cross-examined and essentially you thought you were wrong in that approach. I am suggesting maybe you weren't wrong in the first place …

There was no further re-examination by SIA's counsel on this point due to the intervention by the Judge, where doubt was expressed over Mr Seymour's concession.

48 In our assessment, the Judge was entitled to reject Mr Seymour's mistaken concession.

49 First, there is no rule of law that the court must unquestioningly accept the unchallenged evidence of any witness, even for expert witnesses. The task of the court remains substantially the same – to evaluate the evidence in the

context of the factual matrix for its inherent reliability, content credibility and coherence (*Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76]). The court should carefully consider the factual or other premises on which the expert based his opinion, and should examine the correctness of the expert's premises and reasoning process (*Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [23]). Although a 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 (see, for *eg*, *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [62]–[64]).

50 If the evidence of the expert does not make sense, it is entirely open to the court to disregard it just like any other inherently tenuous or questionable evidence. This should be contrasted with other cases such as *Lo Sook Ling Adela v Au Mei Yin Christina and another* [2002] 1 SLR(R) 326, where the court was found to have wrongly rejected the views of an expert without any sound grounds, concerning a scientific issue outside the learnings of the court (at [48]).

51 Second, and flowing from the above, the Judge was thus entitled to find that Mr Seymour was mistaken in making the concession as that was an obvious *non sequitur* (Judgment at [14]). As explained by the Judge (see above at [47]), it would defy logic for Mr Seymour to deduct the value of the two cheaper Trent 875 engines found on the B777-200 model *after* marking up the value of the B777-200 aircraft (*ie*, Step 2 of the calculations, see above at [22(b)]) to arrive at the more expensive model of the Aircraft, a B777-212 model, that would notionally possess *Trent 884 engines*.

52 Third, and circling back to the point that the factual evidence serves a valuable function in providing a reality check on the expert evidence (see above at [42]), if Mr Seymour's concession was given effect to by the Judge, then the market value of the Aircraft would have been in excess of US$6m (as there would be a lower deduction of US$7.06m instead of US$11.76m). This would bear no resemblance whatsoever with the reality that after multiple rounds of issuing RFPs to more than 200 potential buyers over a period of two years, these efforts only attracted the highest viable offer of US$1.315m.

53 Therefore, in the light of the objective evidence before the court, we found that the Judge did not err in rejecting Mr Seymour's concession at the trial. Consequently, we affirmed the Judge's findings on the market value of the Aircraft at US$1.5m based on Mr Seymour's original valuation in his expert report, examined in tandem with the factual evidence.

Issue 2: The reasonable time to conclude a substitute sale of the Aircraft

54 Next, we also found that there was no reason to disturb the Judge's finding that the reasonable time to conclude the substitute sale of the Aircraft would be six months from 4 November 2018.

55 It is crucial to underscore that the market value of the Aircraft determined by the Judge was partly premised on the March 2019 RFP bid of $1.315m (which was at least four months *after* the Agreement ended on 4 November 2018). Once that bid is utilised as the reference point to assess the reasonable time for sale, it is untenable to suggest otherwise that a substitute sale could have been concluded within three months (*ie*, even before March 2019). We agreed with the Judge that after affording some buffer time for negotiations (Judgment at [27]), the March 2019 RFP bid could have been

converted into a successful sale within a period of six months from 4 November 2019.

56 In that vein, once the Judge's finding was upheld as to the reasonable time to conclude the substitute sale, CSDS' arguments in challenging the award for six months of parking and maintenance fees (instead of three months) would fall away.

Conclusion

57 For the abovementioned reasons, the appeal in CAS 8 was accordingly dismissed. We ordered costs in favour of SIA fixed at $100,000 inclusive of disbursements which was in line with the respective parties' costs submissions, and that the usual consequential orders applied.

Steven Chong
Justice of the Court of Appeal

Beverley McLachlin
International Judge

Shobna Chandran, Yong Manling Jasmine, Thaddaeus Aaron Tan and Marissa Daisy Decruz (Tan Rajah & Cheah) for the appellant;
Tan Teck San Kelvin, Yip Ting Yuan Darren and Kenneth Kwek Junjie (Drew & Napier LLC) for the respondent.