

# When is a mistaken belief sufficient to render a contract void?

07/06/2018 (Commercial)

In *Triple 7 MSN 27251 Ltd v Azman Air Services Ltd* [2018] EWHC 1348 (Comm) the parties entered into two 5-year aircraft leases in June 2016 in respect of two Boeing 777 airliners. Both parties understood that the defendant airline planned to use the aircraft to transport passengers from Nigeria to Saudi Arabia on the Hajj and Umrah pilgrimages, and that Hajj income was an important component of the defendant's financial projections. In fact, at the time when the lease was signed, the defendant's application for permission to participate in the Hajj airlift for 2016 had been rejected. The rejection had not yet been communicated to the defendant. When it learned of the rejection, the defendant refused to accept delivery of the aircraft and failed to pay rent when it fell due. The claimants accordingly terminated the lease and claimed damages.

The defendant argued that the lease was void for common mistake. That defence was rejected at trial and judgment entered for the claimants on the grounds that (a) the mistake was not sufficiently fundamental to render the contract void and (b) in any event, the contract allocated the risk that the defendant might not get the necessary permissions to the defendant.

In the course of his judgment, the trial judge (Peter Macdonald Eggers QC, sitting as a Deputy) considered the test for common mistake set out by the Court of Appeal in *Great Peace Shipping Ltd v Tsavliris (Salvage) International Ltd* [2003] QB 479. In that case, the Court of Appeal suggested that a contract would only be void for common mistake where performance of the contract is impossible. A number of judges have since remarked that this cannot require literal impossibility, since there will be (and have been) cases where the contract can still be performed in accordance with its literal terms despite the mistake but where the mistake is such as to render that performance so radically different from what the parties intended that it should be treated as void.

The judge suggested that the correct approach is that a common mistake will be such as to render a contract void only if (a) the parties proceeded on the basis of an assumption that was fundamental to the contract and (b) that assumption was wrong in a way that fundamentally or radically altered the contract or its performance.

The judgment appears under external links.

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Stephen Midwinter QC appeared for the claimant, instructed by Elborne Mitchell LLP.

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