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Attorneys for Defendant

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

<p>N888JK LIMITED, Plaintiff, - against - EQUIOM (ISLE OF MAN) LIMITED AS TRUSTEE OF ANAP AIRCRAFT OWNERSHIP TRUST, Defendant.</p>
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INDEX NO. 652122/2020

**ANSWER WITH AFFIRMATIVE
 DEFENSES AND COUNTERCLAIM**

Defendant Equiom (Isle of Man) Limited, as Trustee of ANAP Aircraft Ownership Trust (“Defendant” or “Equiom”), for its answer to Plaintiff N888JK Limited’s (“Plaintiff” or “N888JK”) Complaint (“Complaint”) in the above-captioned proceeding states as follows:

1. Defendant admits that Plaintiff purports to seek a declaration that it has the right to receive the Deposit, denies that Plaintiff is entitled to receive such a declaration or the Deposit, and otherwise denies the allegations set forth in paragraph 1 of the Complaint.
2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 2 of the Complaint.

3. Defendant admits that it is an Isle of Man corporation and the Trustee for the ANAP Aircraft Ownership Trust. Defendant otherwise denies the allegations in paragraph 3 of the Complaint.

4. Defendant admits that, under the terms of the parties' Used Aircraft Purchase Agreement, any proceeding must be brought exclusively in the courts of New York. To the extent Plaintiff alleges the contents of the document cited in paragraph 4 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 4 to the extent that they are inconsistent with the contents of the document.

5. Defendant admits that the parties entered into a Used Aircraft Purchase Agreement (the "Agreement"), dated December 30, 2019, and respectfully refers the Court to that Agreement for its terms. Defendant otherwise denies the allegations in paragraph 5 of the Complaint.

6. To the extent Plaintiff alleges the contents of the document cited in paragraph 6 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 6 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 6 of the Complaint.

7. Defendant admits that it paid an Initial Deposit of \$500,000 towards the Purchase Price of the Aircraft to the Escrow Agent, Insured Aircraft Title Service, LLC. To the extent Plaintiff alleges the contents of the document cited in paragraph 7 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 7 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 7 of the Complaint.

8. To the extent Plaintiff alleges the contents of the document cited in paragraph 8 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 8

to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 8 of the Complaint.

9. To the extent Plaintiff alleges the contents of the document cited in paragraph 9 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 9 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 9 of the Complaint.

10. To the extent Plaintiff alleges the contents of the document cited in paragraph 10 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 10 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 10 of the Complaint.

11. To the extent Plaintiff alleges the contents of the document cited in paragraph 11 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 11 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 11 of the Complaint.

12. To the extent Plaintiff alleges the contents of the document cited in paragraph 12 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 12 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 12 of the Complaint.

13. To the extent Plaintiff alleges the contents of the document cited in paragraph 13 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 13 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 13 of the Complaint.

14. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 14 of the Complaint.

15. Defendant admits that it signed the Pre-Purchase Inspection Acceptance Notice, in which Defendant preliminarily accepted the condition of the Aircraft subject to the Closing and Delivery Conditions outlined in Articles 7 and 8 and all other conditions and requirements in the Agreement, and further provided Plaintiff with a list of items discovered during its preliminary visual inspection of the Aircraft that Defendant considered to be discrepancies. To the extent Plaintiff alleges the contents of the documents cited in paragraph 15 of the Complaint, the documents speak for themselves and Defendant denies the allegations in paragraph 15 to the extent that they are inconsistent with the contents of the documents. Defendant otherwise denies the allegations in paragraph 15 of the Complaint.

16. Defendant admits that it received an email from Plaintiff's sales agent at Duncan Aviation on January 14, 2020, requesting to revise the Pre-Purchase Inspection Acceptance Notice on behalf of Plaintiff and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 16 of the Complaint.

17. Defendant admits that Plaintiff unilaterally revised the Pre-Purchase Inspection Acceptance Notice. To the extent Plaintiff alleges the contents of the documents cited in paragraph 17 of the Complaint, the documents speak for themselves and Defendant denies the allegations in paragraph 17 to the extent that they are inconsistent with the contents of the documents. Defendant otherwise denies the allegations in paragraph 17 of the Complaint.

18. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint regarding communications with the Escrow Agent. Defendant otherwise denies the allegations in paragraph 18 of the Complaint.

19. To the extent Plaintiff alleges the contents of the document cited in paragraph 19 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 19 to the extent that they are inconsistent with the contents of the document. Defendant denies that the Aircraft being certified for Return to Service was the only condition precedent to allow the Closing to proceed. Defendant otherwise admits the allegations in paragraph 19 of the Complaint.

20. Defendant admits that Plaintiff's sales agent at Duncan Aviation indicated the Return to Service Date for the Aircraft would be March 7, 2020, and a test flight would occur on the morning of March 9, 2020, with subsequent confirmation of the Delivery and Closing assuming all conditions were satisfied. Defendant otherwise denies the allegations in paragraph 20 of the Complaint.

21. Defendant admits that the parties agreed to schedule a test flight on March 9, 2020 and otherwise denies the allegations in paragraph 21 of the Complaint.

22. Defendant denies the allegations in paragraph 22 of the Complaint.

23. Defendant admits that on March 5, 2020, Plaintiff canceled the test flight originally scheduled for March 9, 2020, and otherwise denies the allegations in paragraph 23 of the Complaint.

24. Defendant admits that the parties agreed that Closing would take place on March 13, 2020, and otherwise denies the allegations in paragraph 24 of the Complaint.

25. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 25 of the Complaint.

26. Defendant admits that it received an email dated March 14, 2020, from Plaintiff's sales agent at Duncan Aviation, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 26 of the Complaint.

27. Defendant admits that on March 14, 2020, it sent an email to Plaintiff invoking the Force Majeure clause of the Agreement due to circumstances surrounding the COVID-19 pandemic, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 27 of the Complaint.

28. To the extent Plaintiff alleges the contents of the document cited in paragraph 28 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 28 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 28 of the Complaint.

29. To the extent Plaintiff alleges the contents of the document cited in paragraph 29 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 29 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 29 of the Complaint.

30. Defendant admits that, on March 17, 2020, Defendant sent Plaintiff an email regarding its invocation of Force Majeure, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 30 of the Complaint.

31. To the extent Plaintiff alleges the contents of the document cited in paragraph 31 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph

31 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 31 of the Complaint.

32. Defendant denies the allegations in paragraph 32 of the Complaint.

33. Defendant denies the allegations in paragraph 33 of the Complaint.

34. Defendant admits that it received an email dated March 17, 2020, from Plaintiff, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 34 of the Complaint.

35. Defendant admits that it received an email dated March 17, 2020, from Plaintiff, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 35 of the Complaint.

36. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 36 of the Complaint.

37. Defendant admits that it received an email dated March 18, 2020, from Plaintiff, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 37 of the Complaint.

38. Defendant admits that it received an email dated March 20, 2020, from Plaintiff, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 38 of the Complaint.

39. Defendant denies the allegations in paragraph 39 of the Complaint.

40. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 40 of the Complaint.

41. Defendant admits that, on March 23, 2020, Defendant's counsel sent Plaintiff a letter reiterating that the coronavirus pandemic and resulting government travel restrictions constitute Force Majeure Events under the Agreement, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 41 of the Complaint.

42. To the extent Plaintiff alleges the contents of the document cited in paragraph 42 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 42 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 42 of the Complaint.

43. Defendant admits that it received an email dated March 24, 2020, from Plaintiff, and respectfully refers the Court to that email for the contents thereof. Defendant otherwise denies the allegations in paragraph 43 of the Complaint.

44. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 44 of the Complaint.

45. Defendant admits that the transaction did not close due to Force Majeure. To the extent Plaintiff alleges the contents of the document cited in paragraph 45 of the Complaint, the document speaks for itself and Defendant denies the allegations in paragraph 45 to the extent that they are inconsistent with the contents of the document. Defendant otherwise denies the allegations in paragraph 45 of the Complaint.

46. Defendant admits that it received a letter dated March 26, 2020, from Plaintiff's counsel purporting to provide notice of default, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 46 of the Complaint.

47. Defendant admits that, on March 31, 2020, Defendant's counsel responded to Plaintiff's counsel's March 26, 2020 letter, refuting Plaintiff's claim that Defendant had defaulted under the Agreement, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 47 of the Complaint.

48. Defendant denies the allegations in paragraph 48 of the Complaint.

49. Defendant admits that it received a letter dated April 8, 2020, from Plaintiff's counsel, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 49 of the Complaint.

50. Defendant admits that, on April 14, 2020, Defendant's counsel responded to Plaintiff's counsel's April 8, 2020 letter, refuting Plaintiff's claim that Defendant had defaulted under the Agreement, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 50 of the Complaint.

51. Defendant denies the allegations in paragraph 51 of the Complaint.

52. Defendant denies the allegations in paragraph 52 of the Complaint.

53. Defendant admits that it received a letter dated April 17, 2020, from Plaintiff's counsel purporting to terminate the Agreement, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 53 of the Complaint.

54. Defendant admits that, on April 22, 2020, Defendant's counsel sent Plaintiff's counsel a letter disputing Plaintiff's position that Defendant defaulted under the Agreement, and respectfully refers the Court to that letter for the contents thereof. Defendant otherwise denies the allegations in paragraph 54 of the Complaint.

AS AND FOR A FIRST CAUSE OF ACTION

55. Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 54 of the Complaint as though fully set forth herein.

56. Defendant admits that Plaintiff asserts that it is entitled to the Initial Deposit, but denies that Plaintiff is so entitled, and otherwise denies the allegations in paragraph 56 of the Complaint.

57. Defendant admits that it is entitled to the return of the Initial Deposit, and otherwise denies the allegations in paragraph 57 of the Complaint.

58. Defendant admits that a controversy exists as to the parties' rights under the Agreement, denies that Plaintiff is entitled to the Initial Deposit or the declaration it seeks, and otherwise denies the allegations in paragraph 58 of the Complaint.

Answering the "Wherefore" Paragraph of the Complaint, Defendant denies that Plaintiff is entitled to any part of the judgment or declaration requested and/or the damages sought; denies that it breached the Agreement; denies that Plaintiff is entitled to the Initial Deposit as liquidated or other damages; and denies that Plaintiff is entitled to any attorneys' fees and costs in pursuing this matter.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. By designating these matters as "defenses," Defendant does not suggest either that Plaintiff does not bear the burden of proof as to such matters or that such matters are not elements that Plaintiff must establish in order to make out a prima facie case against Defendant. Defendant reserves the right to amend this Answer to assert

other and further defenses when and if, in the course of its investigation or preparation for trial, it becomes appropriate.

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's cause of action in the Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that any nonperformance or breach of the Agreement is excused by reason of force majeure.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff failed to act with reasonable diligence to avoid the losses claimed in the Complaint and to mitigate damages, and, therefore, any recovery against Defendant should be barred or reduced accordingly.

FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, by the terms of the Agreement.

EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, because it failed to satisfy a necessary condition.

NINTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claim is barred, in whole or in part, by the doctrine of impossibility.

TENTH AFFIRMATIVE DEFENSE

Defendant alleges any recovery against Defendant should be barred because it would unjustly enrich Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant reserves the right the raise additional defenses and to supplement those asserted herein upon further analysis and discovery of further information regarding Plaintiff's claims.

DEFENDANT'S COUNTERCLAIM

For its Counterclaim against Plaintiff, Defendant alleges as follows:

The Parties

59. Equiom (Isle of Man) Limited is an Isle of Man corporation which is the Trustee for the ANAP Aircraft Ownership Trust with a registered address of Jubilee Buildings, Victoria Street, Douglas, Isle of Man, IM1 2SH.

60. Upon information and belief, N888JK Limited is a British Virgin Islands corporation.

Background

61. Equiom and N888JK entered into a Used Aircraft Purchase Agreement, dated December 30, 2019.

62. Section 25 of the Agreement states that “[i]n addition to any other remedies provided under this Agreement, the prevailing party shall be entitled to recover its legal fees and costs in any action brought to enforce a claim under this Agreement or to interpret a term under this Agreement.”

FIRST COUNTERCLAIM
(Attorneys’ Fees)

63. Equiom repeats and realleges the allegations set forth in paragraphs 59 through 62 as though fully set forth herein.

64. Under Section 25 of the Agreement, the prevailing party in a proceeding to enforce a claim or interpret a term under the Agreement is entitled to an award of its attorneys’ fees and costs.

65. Equiom has already expended sums for its attorneys’ fees and costs in defending against N888JK’s cause of action.

66. Equiom will incur additional attorneys’ fees and costs to defend against N888JK’s cause of action.

67. As a result of the foregoing, Equiom is entitled to an award of its attorneys’ fees and costs in an amount to be determined by the Court, pursuant to Section 25 of the Agreement.

WHEREFORE, having fully answered, Defendant respectfully requests entry of judgment:

- (a) against Plaintiff and in favor of Defendant on the Cause of Action;

- (b) dismissing with prejudice all claims against Defendant;
- (c) awarding Defendant the cost of defending this action, including costs and disbursements,
- (d) on the Counterclaim, its attorneys' fees and expenses, pursuant to the Agreement, in an amount to be determined by the Court; and
- (e) granting such other and further relief as the Court may deem just and proper.

Dated: July 22, 2020
New York, New York

NORTON ROSE FULBRIGHT US LLP

By: /s/ Judith A. Archer

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