Are Diminution in Value Damages Recoverable? Your Contract May Control

Amundsen Davis Aerospace Alert
August 19, 2016

When an aircraft is involved in a crash or is otherwise damaged, its value drastically plummets. The theory being that even with repairs to bring the aircraft back to airworthy condition, once-damaged goods are really not the same as the pre-damaged goods. In the aviation arena, this loss for aircraft owners is frequently significant. Thus, litigation arises when parties dispute whether or not this diminution in value may be recouped, and if so, how much.

The Eighth Circuit recently furthered the line of cases that focus on the express contract terms in making that determination. In *Gosiger Inc. v. Elliott Aviation Inc*, the court upheld the lower court's decision denying a King Air B200 owner diminution in value damages. Gosiger contracted with Elliot for maintenance services and installation of a new avionics suite. Elliot damaged the right wing of Gosinger's King Air while servicing the plane on the ground. Elliott made the necessary repairs in accordance with the aircraft manufacturer's recommendation and offered to pay Gosiger $9,000 for diminution in value damages. The parties signed a Return to Service Agreement to allow Gosiger to utilize the aircraft while the parties negotiated a settlement for Elliott's negligence. Gosiger sought in excess of $300,000 for the value loss. Ultimately, the parties could not agree on a settlement amount, thus prompting Gosiger to sue. Elliott moved for summary judgment arguing that the Specification Agreement does not allow diminution in value damages. The lower court agreed with Elliott and Gosiger appealed.

Looking to the Specification Agreement, the Eighth Circuit found that contrary to Gosiger's position, the Responsibilities section is not ambiguous and does not conflict with the Limitations of Liability section. Instead, a reasonable interpretation of the contract as a whole shows that even though Elliott was responsible for "**all** claims, [...] losses, damages, costs and expenses which arise on the ground out of Elliott Aviation's negligence," such liability is unambiguously limited in the latter section to "repair or replacement" and expressly disallows "diminution in value." In addition, the court found that Elliott's conduct in obtaining insurance coverage of and offering to pay diminution in value damages to Gosiger prior to this lawsuit were not a waiver of its rights under the Limitations of Liability section. Therefore, the court held that Elliott could not be held liable for such damages under the Specification Agreement.

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Similarly, the court held that Elliott was not obligated to pay diminution in value damages under the terms of the Return to Service Agreement. Rather, Elliott's offer to pay for diminution in value to the aircraft was expressly conditioned on allowing Gosiger time to evaluate the offer. Also, the payment was only required if the parties came to an acceptable settlement. Because the parties failed to agree on an amount, the court found no obligation on Elliott for the alleged damages under the Return to Service Agreement.

Overall, the lesson from this case is clear – the terms of your contract seal your fate when it comes to diminution in value damages. Questions still remain as to what happens where these damages arise outside the terms of a contract. However, for now, the Eighth Circuit has cemented the need for parties to make sure contract terms exhibit their intent for handling any potential diminution in value arising from damage to an aircraft.

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