



## **GKG LAW, P.C. WINS DISMISSAL OF MULTIMILLION DOLLAR SUIT ARISING FROM AIRCRAFT SALES**

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GKG Law, P.C. successfully represented an aircraft seller in a recent case involving the “back-to-back” sales of two Gulfstream jets. After completion of the aircraft sales, the purchaser of those aircraft filed a multimillion dollar lawsuit against the seller alleging that the seller (i) breached its contract with the purchaser, (ii) breached its fiduciary duty to the purchaser, and (iii) engaged in fraud regarding the sale of the aircraft to the purchaser. The United States District Court for the Southern District of New York dismissed the purchaser’s lawsuit based on a motion to dismiss the case filed by GKG Law on behalf of the seller. The case and the basis of the court’s decision are important for aircraft buyers and sellers because they highlight the importance of drafting aircraft purchase and sale documents that accurately reflect the transactions in which the parties are engaged.

In its complaint, the purchaser sought more than \$3 million in compensatory damages and more than \$1.5 million in punitive damages from the seller. The gist of the purchaser’s complaint was that, although the parties entered into purchase agreements with one another for the purchase and sale of the aircraft and those agreements reflected that the seller was selling the aircraft to the purchaser, the parties had an additional oral understanding whereby they agreed that the seller was actually acting as the purchaser’s broker/agent for the purchase of the aircraft from the original seller. The buyer argued that, based on that oral agreement, the seller’s compensation should have been limited to a standard broker’s fee. Therefore, the purchaser argued that the seller was not entitled to the profits it earned from engaging in the “back-to-back” aircraft sales.

GKG Law was successful in dismissing the claims asserted as to the first plane on the ground that the purchase agreement contained a forum selection clause requiring that any litigation arising out of the purchase agreement be brought in Virginia courts, not in the United States District Court for the Southern District of New York where the buyer filed its complaint.

GKG Law then filed a motion to dismiss the purchaser’s claims arising out of the sale of the second aircraft on the grounds that the specific language of the purchase agreement controlled and precluded the purchaser from asserting that the parties had an oral agreement that differed from what the parties had agreed to in writing in the purchase agreement. In its ruling, the court emphasized that the language of the written purchase agreements by and between the parties defined the parties’ relationship, particularly given the specific and precise

language of the merger clause in those agreements, which not only provided that it superseded any and all other agreements between the parties but specifically disclaimed any warranties or representations with respect to the aircraft.

The court's ruling highlights the need for careful drafting of aircraft purchase agreements and all documents relating to the purchase of an aircraft or other transfer of possession of an aircraft, such as a lease agreement. The parties to such agreements must clearly define their roles to mitigate the risk of being sued for purportedly acting in a capacity other than as an aircraft seller/lessor or purchaser/lessee. The need for such precision is heightened in "back-to-back" sales transactions, which may lead to allegations of fraud or breach of fiduciary duty by the "back-to-back" seller and purchaser in the middle of the transactions.

The business aviation attorneys at GKG Law have the knowledge and expertise to work with clients to create purchase and sale documents that clearly define the roles of each party to the transaction and ensure that the documents adequately clarify those roles. Based on their experience handling thousands of aircraft purchase and sale transactions, the business aviation attorneys at GKG Law are also adept at successfully representing clients in cases where any such claims arise.

Please contact us if you would like to discuss these issues further. Brendan Collins may be reached by telephone at (202) 342-6793 or by email at [bcollins@gkglaw.com](mailto:bcollins@gkglaw.com).