

NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
03 CVS 12215

TRADEWINDS AIRLINES, INC.,
TRADEWINDS HOLDINGS, INC.,
and COREOLIS HOLDINGS, INC.,

Third-Party Plaintiffs,

v.

C-S AVIATION SERVICES,

Third-Party Defendant.

FINAL JUDGMENT

{1} This matter came on for trial without a jury based upon the submissions of the parties. The Court, having reviewed the evidence and the arguments of counsel, has determined which parties are entitled to which damages on the default. The two applications for attorneys fees filed pursuant to section 75-16.1 of the North Carolina General Statutes are addressed in a separate order entered contemporaneously with this Final Judgment.

Tuggle, Duggins & Meschan, P.A. by J. Nathan Duggins, III for Third-Party Plaintiff TradeWinds Airlines, Inc.

Smith Moore Leatherwood LLP by Larry B. Sitton and Lisa K. Shortt for Third-Party Plaintiffs TradeWinds Holdings, Inc. and Coreolis Holdings, Inc.

Ellis & Winters LLP by Paul K. Sun, Jr. and Curtis J. Shipley for Third-Party Defendant.

Tennille, Judge.

I.

PROCEDURAL BACKGROUND

{2} In February 2004, Defendants and Third-Party Plaintiffs TradeWinds Airlines, Inc. (“TradeWinds”), TradeWinds Holdings, Inc. (“TradeWinds Holdings”), and Coreolis Holdings, Inc. (“Coreolis”) (collectively, the “TradeWinds Group”) filed

an Amended Third-Party Complaint against C-S Aviation Services (“C-S Aviation”).¹ After C-S Aviation failed to file an answer or otherwise respond to the Amended Third-Party Complaint, the TradeWinds Group filed a motion for entry of default against C-S Aviation, which the Court granted on August 19, 2004.

{3} TradeWinds filed a motion for default judgment against C-S Aviation on April 14, 2008.² C-S Aviation did not appear to challenge the motion for default judgment at the hearing on June 19, 2008. The Court entered a default judgment against C-S Aviation on June 27, 2008, in the amount of \$54,867,872.49 in favor of TradeWinds.³ This judgment was entered almost four years after the original entry of default.

{4} On September 17, 2009, the Court entered an Order on various motions, including the motion of C-S Aviation to set aside the entry of default and default judgment entered in favor of TradeWinds. The Court, in its discretion, denied the motion with respect to the entry of default, but granted the motion with respect to the default judgment. The Court then allowed the parties 140 days to conduct fact discovery on damages.

{5} In May 2010, a six-day hearing on damages was held at the North Carolina Business Court. The Court heard live testimony from Robbie Dexter, Jeffrey Conry, Richard Ressler, George McConnaughey, James Feltman, George Hawkins, Robert Agnew, and Stephen Kalos. C-S Aviation declined to put on live testimony from a corporate representative.

II.

AMENDED THIRD-PARTY COMPLAINT

{6} According to the North Carolina Court of Appeals, “[u]pon entry of default, the defendant will have no further standing to defend on the merits or contest the

¹ The Amended Third-Party Complaint also brought claims against Third-Party Defendants P-G Newco LLC, S-C Newco LLC, Wells Fargo Bank Northwest, N.A., and Does 1–20.

² Coreolis and TradeWinds Holdings did not participate in TradeWinds’s motion for default judgment.

³ This \$54,867,872.49 judgment represented a \$16,326,528.94 damage award for C-S Aviation’s breach, plus treble damages and prejudgment interest.

plaintiff's right to recover." *Luke v. Omega Consulting Group, LC*, 194 N.C. App. 745, 751, 670 S.E.3d 604, 609 (2009). Therefore, in effect, C-S Aviation is deemed to have admitted the allegations of the Amended Third-Party Complaint. *See United Leasing Corp. v. Guthrie*, 192 N.C. App. 623, 630, 666 S.E.2d 504, 509 (2008).

{7} Before setting forth a determination on the amount of damages the parties are entitled to recover on the default, the Court would like to highlight the following allegations from the Amended Third-Party Complaint:

¶ 78: In negotiating the Initial Lease and Restructured Leases, C-S Aviation, as agent for the third-party defendants, made numerous false statements to the TradeWinds Group. Among other things, C-S Aviation represented that: (1) the engines installed on the airplanes had been recently overhauled so that they could be utilized for a minimum of 1700 cycles before it was necessary to overhaul the engines; and (2) the engines had been maintained properly, with routine service and proper replacement of all parts.

¶ 79: The TradeWinds Group reasonably relied on these representations when made. Had the TradeWinds Group known that it was receiving engines that would fail to meet guaranteed performance objectives, it never would have entered into any of the leases at issue. Moreover, had Coreolis known of the misrepresentations, it never would have purchased TradeWinds Holdings in December 2001.

¶ 80: C-S Aviation knew that these representations were false when made. In fact, C-S Aviation knowingly used inferior and substandard parts in its overhaul of the engines and C-S Aviation knew, as a result, that the engines could not possibly perform as promised.

¶ 38: When the engines began to fail, TradeWinds commenced an investigation into the possible reasons for the failures. During this investigation, TradeWinds discovered that C-S Aviation knew before the Aircraft were leased to TradeWinds that it was delivering inferior engines with the Aircraft. In particular, TradeWinds learned, contrary to explicit representations, that C-S Aviation had failed to properly overhaul the engines. Specifically, TradeWinds learned that C-S Aviation had used substandard and inferior parts during the purported overhaul, resulting in engines that would need significant maintenance well short of the 1700 cycles promised.

¶ 98: Among other things, C-S Aviation failed to pay interest on amounts deposited by TradeWinds for maintenance reserves, failed to release reserves to TradeWinds for eligible maintenance events, failed to provide engines that had been maintained to a level so that they would perform for 1700 cycles before requiring an overhaul, and failed to provide TradeWinds with lease rates in accordance with TradeWinds' "most favored nation" status.

¶ 102: C-S Aviation, as agent for and the third-party defendants, has engaged in unfair and/or deceptive acts and practices as defined by the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 et seq. Among other things C-S Aviation engaged in fraudulent inducement of the leases at issue.

III.

DAMAGES

A.

COREOLIS AND TRADEWINDS HOLDINGS

{8} Coreolis and TradeWinds Holdings's maximum investment in TradeWinds was \$11,544,000.00. Coreolis and TradeWinds Holdings lost that amount as a result of the fraudulent inducement by C-S Aviation, as alleged in the Amended Third-Party Complaint. (*See* Am. Third-Party Compl. ¶¶ 77–83.) That investment represents the amount Coreolis and TradeWinds Holdings paid to settle the claims asserted against them and their wholly owned subsidiaries in the underlying Deutsche Bank litigation (i.e., their share of the lease payment differential that TradeWinds was required to pay under the Restated and Amended Lease Agreements in the settlement with Deutsche Bank as Trustee). That monetary investment is the amount of damages they are entitled to recover.

{9} North Carolina law mandates an automatic assessment of treble damages once a violation of the North Carolina Unfair and Deceptive Trade Practices Act is shown. *See* N.C. Gen. Stat. § 75.16 (2009); *see also Marshall v. Miller*, 302 N.C. 539, 547, 276 S.E.2d 397, 402 (1981) ("Absent statutory language making trebling discretionary with the trial judge, we must conclude that the Legislature intended trebling of any damages assessed to be automatic once a violation is shown."). As stated above in paragraph 6, the allegations against C-S Aviation for unfair and

deceptive practices are deemed admitted. Therefore, Coreolis and TradeWinds Holdings's damage amount of \$11,544,000.00 is subject to trebling.

{10} Coreolis and TradeWinds Holdings have failed to prove that they suffered damages attributable to C-S Aviation as a result of the Settlement Agreement covering the lease dispute with Deutsche Bank aside from the sums contributed to satisfy the contractual obligations of TradeWinds in the amount specified above in paragraph 8. The decision of the owners of the stock in TradeWinds to settle on a particular business basis notwithstanding their knowledge of TradeWinds's cash needs and the obvious requirement of refinancing was a business judgment made by Coreolis and TradeWinds Holdings that is not attributable to C-S Aviation.

{11} The evidence with respect to the value of TradeWinds lost by Coreolis and TradeWinds Holdings was unpersuasive on a number of grounds. Coreolis and TradeWinds Holdings made their investment decisions subsequent to their initial investment with full knowledge of all the facts. Their owners and managers were smart, intelligent, sophisticated investors who were knowledgeable about the industry. They had the means to invest in TradeWinds at levels which would have eliminated its cash flow problems. After the settlement, they declined to invest further. That refusal, combined with the inability of TradeWinds to find financing or additional investors, is real-world, unhypothetical evidence of the lack of equity value in TradeWinds at that time.

B.

TRADEWINDS

{12} TradeWinds lost \$16,111,403.00 as a result of the fraudulent inducement by C-S Aviation, as alleged in the Amended Third-Party Complaint. (*See* Am. Third-Party Compl. ¶¶ 77–83.) Those damages fall into the following categories:

Repair Cost for Engines	\$2,693,403.00
Lease Payment Differential	\$6,216,000.00
Other Damages from Engine Failures	\$7,202,000.00
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TOTAL:	\$16,111,403.00

Because the allegations against C-S Aviation for unfair and deceptive acts and practices are deemed admitted, TradeWinds's damage amount of \$16,111,403.00 also is subject to trebling. (*See supra* ¶ 9.)

{13} TradeWinds has failed to prove that its losses attributable to the lease of Canadian aircraft in connection with its ICC Agreement were proximately caused by any fraudulent conduct of C-S Aviation as alleged in the Amended Third-Party Complaint.

IV.

CONCLUSIONS OF LAW

{14} Therefore, based on the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Coreolis and TradeWinds Holdings have and recover Judgment against C-S Aviation in the amount of \$11,544,000.00, subject to trebling, with interest accruing thereon as provided by law.
2. TradeWinds have and recover Judgment against C-S Aviation in the amount of \$16,111,403.00, subject to trebling, with interest accruing thereon as provided by law.

SO ORDERED, this the 26th day of July, 2010.

/s/ Ben F. Tennille
The Honorable Ben F. Tennille
Chief Special Superior Court Judge
for Complex Business Cases