

1989

Prudential Capital Group Co. f/k/a Prudential Leasing Company v. John E. Mattson : John E. Mattson v. Key Airlines : Brief of Appellee

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

PRUDENTIAL CAPITAL GROUP CO. f/k/a/ PRUDENTIAL LEASING COMPANY,)	BRIEF OF RESPONDENT AND
)	THIRD-PARTY DEFENDANT,
)	KEY AIRLINES
Plaintiff,)	
)	
vs.)	
)	
JOHN E. MATTSON,)	Case No. 890038-CA
)	
Defendant.)	
<hr/>		
JOHN E. MATTSON,)	No. 14b
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
KEY AIRLINES,)	
)	
Third-Party Defendant.)	

BRIEF OF RESPONDENT AND
THIRD PARTY DEFENDANT, KEY AIRLINES

Appeal from a Judgment of the Third Judicial District
Court in and for Salt Lake County
Honorable J. Dennis Frederick

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NOV 2^U 1989

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

PRUDENTIAL CAPITAL GROUP CO.)	BRIEF OF RESPONDENT AND
f/k/a/ PRUDENTIAL LEASING)	THIRD-PARTY DEFENDANT,
COMPANY,)	KEY AIRLINES
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN E. MATTSON,)	Case No. 890038-CA
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Defendant.)	
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JOHN E. MATTSON,)	No. 14b
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Third-Party Plaintiff,)	
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vs.)	
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Rules of the Utah Court of Appeals, Rule 11(e)(2)

JURISDICTION AND PROCEEDINGS BELOW

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Annotated §78-2a-3(2)(j) (1989 Cumulative Supplement), which states, "The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over: cases transferred to the Court of Appeals from the Supreme Court." The District Court entered a final money judgment in favor of Prudential Capital Group Co., f/k/a Prudential Leasing Company (hereinafter "Prudential"), against appellant John E. Mattson (hereinafter "Mattson"). The judgment also included a dismissal of Mr. Mattson's third party claims against respondent and third party defendant Key Airlines (hereinafter "Key"), with the sole exception of a judgment against Key for property tax reimbursement. The aforesaid judgment is dated October 28, 1988, and the Notice of Appeal filed by Mr. Mattson is dated November 28, 1988.

NATURE OF THE PROCEEDINGS

This is an appeal taken by Mr. Mattson, who leased an aircraft from Prudential and subleased said aircraft to Key. Mr. Mattson does not contest the material breach of his lease agreement with Prudential, but rather focuses on the amount of the judgment in favor of Prudential, and the District Court's order to Key to pay the property taxes directly to Prudential instead of to Mr. Mattson. Mr. Mattson also appeals the District Court's judgment in favor of Key dismissing third party claims of Mr. Mattson.

Thus, Mr. Mattson raises three issues on appeal. This brief will respond only to the third issue which pertains to the District Court's judgment in favor of Key on Mr. Mattson's third party claims.¹

STATUTES AND RULES CITED

Utah Code Annotated §78-2a-3(2)(j):

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over . . . (j) cases transferred to the Court of Appeals from the Supreme Court.

Rules of the Utah Court of Appeals, Rule 11(e)(2):

Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

STATEMENT OF THE CASE

Prudential - Mattson Lease

Appellant Mattson executed a lease agreement ("Lease") on October 17, 1984, with Prudential in which he agreed to lease an aircraft described as a 1982 Cessna Golden Eagle 421C (hereinafter the "Aircraft"). (Findings of Fact No. 4.) The lease transaction between Mr. Mattson and Prudential was structured in such a way

¹ Thus, Key is not addressing the issue of the amount of the judgment rendered in favor of Prudential nor is it addressing the issue of whether the property tax payment should be made directly to Prudential or to Mr. Mattson for reimbursement to Prudential.

that Mr. Mattson in effect purchased the Aircraft with Prudential financing the acquisition. The Lease, among other things, required certain monthly payments, as well as the payment of all property taxes associated with the Aircraft. (Conclusions of Law Nos. 5 and 6; Plaintiff's Exhibit 3.) Mr. Mattson continued to make monthly lease payments to Prudential through October 20, 1986. (Findings of Fact No. 6.)

Key - Mattson Sublease

On October 17, 1984, Mr. Mattson also executed a sublease of the Aircraft with Key (which was the seller of the Aircraft to Prudential) with the sublease term ending on January 1, 1987 ("Sublease"). (Findings of Fact No. 23; Defendant's Exhibit 30.) The Aircraft Sublease with Key contained an integration clause (§14.6) which reads in its entirety as follows:

Entire Agreement: This Lease [the Sublease] contains the entire agreement of the parties with respect to the subject matter hereof, and may be amended or modified only by a writing duly executed by the parties hereto. Neither the Lessor nor Lessee shall be bound by any promise, agreement, undertaking or representation heretofore or hereafter made unless the same is made by instrument in writing, signed by authorized representatives of the Lessee and the Lessor, which instrument expresses by its terms a clear intention to modify this Lease.

Prior to executing the Sublease, Mr. Mattson had been advised by both his accountant and attorney. (Findings of Fact Nos. 19 and 21.) The District Court specifically found that the Sublease, including the aforesaid integration clause and the subleasing term, was clear and unambiguous. (Findings of Fact No. 23; Conclusions of Law Nos. 12 and 13.) The Sublease made no provision of any kind

whatsoever for any renewal or extension of the term beyond January 1, 1987, nor for any Aircraft trade in allowance. (Findings of Fact No. 34; Conclusions of Law No. 14; Defendant's Exhibit 30.)

Mr. Mattson's Tax Motivation and the Sublease Term

The principal motivation for Mr. Mattson entering into the Aircraft transaction was to shelter from taxes a projected large income. (Findings of Fact No. 18.) In order for Mr. Mattson to qualify for the Federal investment tax credit as a sublessor of the Aircraft, a sublease (together with the length of any renewal or extension) had to be for a period of time which was less than half the length of the depreciable life of the Aircraft. (Findings of Fact No. 19.) The depreciable life of the Aircraft for tax purposes was five years. (Findings of Fact No. 19.) Prior to Mr. Mattson's execution of the Sublease with Key, Mr. Mattson was advised by his tax accountant, Ted H. Pierce, of the requirements necessary for Mr. Mattson to legally claim any Federal investment tax credit. (Findings of Fact No. 19.) Thus, with the Aircraft Sublease term ending on January 1, 1987, and with no extension or renewal provision in the Sublease, the Sublease term met the requirement of being less than half of the depreciable life of the Aircraft as required to qualify for the Federal investment tax credit.

Closing - Property Taxes

At the closing when the Sublease was executed, the only modification to the Sublease insisted upon by Mr. Mattson pertained to the payment of property taxes on the Aircraft. (Findings of

Fact Nos. 23, 24 and 33; Conclusions of Law No. 14; Third Party Defendant's Exhibit 13.) The Sublease provided that the payment of property taxes was the responsibility of Mr. Mattson. (Defendant's Exhibit 30.) The modification of this provision was not just a matter of an oral promise or representation, but was set forth in a document executed at the closing by both Mr. Mattson and Keith Nickels of Key. (Findings of Fact No. 24; Third Party Defendant's Exhibit 13.)

Inconsistent Actions of Mr. Mattson After Execution of Sublease

From the closing date until January 27, 1986 (a period of more than one year), no written demand was made by, or on behalf of, Mr. Mattson requesting a re-writing, or modification, of the Sublease to provide for a renewal or extension of the Sublease beyond the term ending January 1, 1987, or to provide for a trade in provision. (Findings of Fact No. 26.) In a letter from Mr. Mattson to Key dated January 27, 1986, (wherein Mr. Mattson sought to correct a typographical error in the first page of the Sublease, to wit that the Sublease term ended January 1, 1987, and not January 1, 1986), Mr. Mattson acknowledged that the Sublease term ended January 1, 1987, and he made no mention whatsoever in his letter about any agreement relative to the renewal or extension of the Sublease or about any trade in provision. (Findings of Fact No. 27; Exhibit 42.)

In a lawsuit filed by Mr. Mattson dated July 30, 1986, (Third Judicial District Court), and in a letter to Key from Mr. Mattson's counsel dated July 31, 1986, a demand is made of Key for the

payment of property taxes relative to the Aircraft, but no mention is made of any claimed right of renewal or extension of the Sublease nor about any trade in allowance. (Findings of Fact No. 28; Exhibits 39 and 40.) The first written statement to Key on behalf of Mr. Mattson relative to any assertion about a renewal or extension of the Sublease was not made until October, 1986, approximately two years after the execution of the integrated Sublease. (Findings of Fact No. 30.)

The District Court found that the actions and conduct of Mr. Mattson were inconsistent with his claim against Key relative to any renewal or extension of the Sublease. (Findings of Fact No. 32.) Thus, after hearing all of Mr. Mattson's evidence, the District Court specifically found that there was no binding agreement for Key to renew or extend the Sublease beyond the contractual term ending on January 1, 1987, nor did it find any requirement pertaining to a trade in provision. (Findings of Fact Nos. 20, 23, 24 and 34; Conclusions of Law Nos. 12 and 14; Defendant's Exhibit 30.)

SUMMARY OF THE ARGUMENT

At the conclusion of Mr. Mattson's case (in which Mr. Mattson was a defendant to Prudential's claim and a third party plaintiff against Key), the District Court granted Key's motion and dismissed Mr. Mattson's third party claims against Key, specifically finding that the Sublease term ended January 1, 1987, and found no other agreement of Key to extend the term of the Sublease or with respect

to trade in. Based upon testimony of the witnesses, as well as the exhibits, the District Court properly found a clear, unambiguous and fully integrated Sublease and entered Findings of Fact and Conclusions of Law with respect to the matter. In light of a document having been executed by Mr. Mattson and Mr. Keith Nickels of Key at the closing pertaining to property taxes, the only liability of Key found by the District Court was an amount due for Aircraft property taxes. The appeal record provides no basis for Mr. Mattson to assail the factual findings and legal conclusions of the trial court.

ARGUMENT

I.

THE DISTRICT COURT'S ACTION WAS PROPER WITH RESPECT TO ENTERING JUDGMENT DISMISSING MR. MATTSON'S CLAIMS AGAINST KEY

A. The Findings of Fact and Conclusions of Law Entered by the District Court Support its Judgment and Belie the Argument of Inconsistency Made by Appellant Mattson.

The essence of Mr. Mattson's appeal and argument in his brief is a dispute by him with the factual findings of the trial Court.² In his argument, Mr. Mattson asserts that certain oral representations and promises were made by Key at the closing when the Aircraft Sublease was executed but that the District Court only enforced one of said oral representations, i.e., the alleged oral

²As indicated, supra, Key was not required to go forward with its case at the trial. The District Court ruled in favor of Key by way of motion at the conclusion of Mr. Mattson's case in chief.

representation pertaining to the payment of property taxes. (Mattson's Brief, p. 16 - 17.) The argument is fatally flawed in that the District Court specifically found to the contrary, i.e., that the only change to the Sublease insisted upon by Mr. Mattson at the closing pertained to property taxes and that there was not merely an oral representation or promise but that the understanding with respect to property taxes was set forth in a document signed at the closing.

The District Court's Findings of Fact and Conclusions of Law address the entire matter on which Mr. Mattson bases his appeal. First, the District Court found that the Sublease was clear and unambiguous, including the termination date:

On or about October 17, 1984, in Montana, John E. Mattson executed the Sublease involving Key Airlines relative to the Cessna 421C aircraft. The Sublease, including the integration clause and the length of the term of the said lease of the Cessna aircraft by Key Airlines therein, is clear and unambiguous. The only change or amendment which affected the relationship between Key Airlines and Mr. Mattson pertain to property taxes as set forth in paragraph 24 of these findings of fact. The Sublease was to end on January 1, 1987. (Findings of Fact No. 23.)³ (Emphasis added.)

³The District Court carefully considered all of the evidence as to the negotiations prior to the execution of the Sublease and made specific findings with respect thereto. See, e.g., Findings of Fact Nos. 15, 16, 17, 20, 21, 22, 35 and 36. For example, the District Court went into such detail as considering certain handwritten language in a sublease draft (Defendant's Exhibit 29) which draft pre-dated the final Sublease, and the District Court indicated that the handwritten language did not refer " . . . to any renewal or extension of the basic term of the Sublease . . ." See Findings of Fact No. 22.

In his brief, Mr. Mattson refers to Defendant's Exhibit 10 relative to trade in. This letter (Defendant's Exhibit 10) pre-dates the closing and execution of the Sublease and thus has nothing whatsoever to do with the issue of Mr. Mattson's appeal, i.e., whether there were oral representations or promises at the closing which were not enforced. In any event, this letter is inconsistent with Mr. Mattson's claim that there was to be a renewal or extension of the Sublease as it makes no reference to such and in fact is contrary to any such notion, and the Sublease with its integration clause that was finally

Second, the District Court found that the only change requested at the closing pertained solely to the payment of property taxes, and nothing else, which change was memorialized in writing in a document executed at the closing:

At or about the time of the execution of the Sublease, the only clarification of the Sublease insisted upon by Mr. Mattson pertained to Key Airlines' payment of the property taxes with respect to the Cessna 421C aircraft. A writing with respect to this clarification was executed by Mr. Mattson and Mr. Nickels in Montana, as set forth in Exhibit 13.⁴ (Findings of Fact No. 24; Third Party Defendant's Exhibit 13.) (Emphasis added.)

Thus, after hearing the entirety of Mr. Mattson's evidence through testimony of witnesses and by exhibits, the District Court simply did not agree with Mr. Mattson's claim, nor did it find that there were oral representations or promises at the closing

executed thereafter covered the entire Aircraft relationship with Key and contained no such provision. (Defendant's Exhibit 30.)

Further, as to a letter dated October 3, 1984, (which pre-dates the execution of the Aircraft Sublease by approximately two weeks) referred to by Mr. Mattson in his brief (Defendant's Exhibit 28), the District Court entered a specific finding of fact that the letter ". . . does not contain specific terms or provisions with respect to any new or renewed lease or the obtaining of another aircraft, and with respect to any extension of the original Sublease term, the said letter at best only provides for 'renegotiations'." The District Court, of course, found that thereafter the Sublease was executed and that the Sublease includes an integration clause prohibiting oral changes. (Defendant's Exhibit 30.) The District Court found, in essence, that the document executed at the closing by Mr. Nickels of Key and Mr. Mattson concerning property taxes effected a written change. (Defendant's Exhibit 13.)

⁴ Appellant Mattson did not include a copy of this writing as a part of his brief addendum, nor does he even refer to it anywhere in his brief. Mr. Mattson argues that the property tax matter was only an oral change in order to make the illusory argument that the trial court only partially enforced oral representations or promises made at the closing. The document contradicts his assertion of there being just an oral understanding pertaining to property taxes and is evidence that any substantive matter of concern to Mr. Mattson at the closing relative to the Sublease was put in writing. See Third Party Defendant's Exhibit 13.

modifying the Sublease as to its term, renewal, or as to a trade in of the Aircraft.⁵ Based upon its Findings of Fact, as well as its Conclusions of Law, which specifically cover the issue raised on appeal pertaining to Key, the District Court's judgment was entirely appropriate and consistent, and belies any argument as to partial enforcement of oral representations or promises.⁶

B. The District Court Found that Mr. Mattson's Later Actions Were Inconsistent With His Position.

Not only did the District Court thoughtfully consider the four corners of the Sublease itself, the evidence relative to negotiations, writings and events prior to the closing, as well as events at the time of the execution of the Sublease and the ramifications thereof, but even considered evidence as to Mr. Mattson's post closing actions. The District Court found that Mr. Mattson's actions over a substantial period of time after the Sublease closing were fundamentally inconsistent with the position he advocated at trial. For example, the District Court found that on January 27, 1986 (over a year after the closing), Mr. Mattson provided a letter to Key calling attention to a typographical error

⁵ As further corroboration that there was not an oral representation or promise as to an extension or renewal of the Sublease term, the District Court also found, for example, that "At the time of the execution of the Sublease, Mr. Mattson also executed in Montana an 'Assignment of Lease Rentals' in favor of Prudential Leasing Company, which Assignment covered the rentals to be received by Mr. Mattson from Key Airlines under the Sublease and said Assignment states 'which lease [referring to the Sublease] provides for a rental period of 25 months . . .'" (Findings of Fact No. 24.) Said document makes no reference to any extension, renewal or trade in. (Exhibit 12.)

⁶ The District Court also specifically found that no misrepresentations were made by Key to Mr. Mattson relative to the transaction. (Findings of Fact No. 36.) Further, the Sublease contained an integration clause, supra, p. 3.

in the Sublease and specifically acknowledging that the Sublease term would end January 1, 1987. In said letter Mr. Mattson said nothing about any extension or renewal of the Sublease, nor about any trade in.⁷

The District Court also found that Mr. Mattson's primary motivation for purchasing the Aircraft was to gain certain tax advantages. Pursuant to the investment tax credit requirements as explained to Mr. Mattson by his own accountant, the Sublease could only run for a certain period of time in order for Mr. Mattson to legally qualify for any investment tax credit.⁸

Further, the Court found that in 1986 Mr. Mattson attempted to sell or lease the Aircraft without informing or involving Key at the time. (Findings of Fact No. 29.) It wasn't until about two years after the closing that Mr. Mattson wrote to Key concerning any extension of the Sublease. (Findings of Fact No. 30.) Based upon the evidence presented, the District Court, as the trier of fact, simply found that Mr. Mattson's claims were not well founded and that his post closing actions were contrary to the position he advocated at trial. (Findings of Fact No. 32.)

⁷ The January 27, 1986, letter from Mr. Mattson included the statement "Also, you will refer to the handwritten aircraft lease document with notations in the handwriting of your employee N. K. Nickels which clearly shows a termination date of January 1, 1987." (Exhibit 42.) (Emphasis added.)

⁸ Whether or not Mr. Mattson ultimately received any investment tax credit advantage is immaterial. At the time of the transaction, he projected a large income needing sheltering thus motivating him to purchase the Aircraft, and a schedule was included in his 1984 Federal income tax return so that investment tax credit evidence was established for tax carry forward purposes. See, e.g., Findings of Fact Nos. 18, 19 and 31.

C. There is no Basis to Disturb the Trial Court's Findings of Fact.

Since the District Court entered findings of fact directly addressing the issue raised by Mr. Mattson's appeal, Mr. Mattson must challenge the trial court's evidentiary findings and in so doing shoulders a heavy burden. It is clear under Utah law that the findings of fact of the trial court are indulged the presumption of correctness:

With respect to these matters, we take as our starting point the trial court's findings and not Erickson's recitation of the facts. To mount a successful attack on the trial court's findings of fact, an appellant must marshal all the evidence in support of the trial court's findings and then demonstrate that even viewing it in the light most favorable to the court below, the evidence is insufficient to support the findings. See, e.g., Charlton v. Hackett, 11 Utah 2d 389, 390, 360 P.2d 176 (1961); Hutcheson v. Gleave, Utah, 632 P.2d 815 (1981); Kohler v. Garden City, Utah, 639 P.2d 162, 165 (1981); Hal Taylor Associates v. UnionAmerica, Inc., Utah, 657 P.2d 743 (1982).

Scharf v. BMG Corporation, 700 P.2d 1068, 1070 (Utah 1985).

Not only is the appellate court required to review the evidence in the light most supportive of the trial court's findings, but also " . . . all the inferences that can reasonably be drawn therefrom in a light most supportive of the trial court's findings." Horton v. Horton, 695 P.2d 102, 106 (Utah 1984). See also, e.g., Harline v. Campbell., 728 P.2d 980, 982 (Utah 1986); First Security Bank v. Wright., 521 P.2d 563, 567 (Utah 1974); Tolman Construction Company, Inc. v. Myton Water Association, 563 P.2d 780, 782 (Utah 1977). Mr. Mattson has not, and cannot, in any

sense even begin to meet the required burden in order to assail a finding of fact of the trial court.

D. Mr. Mattson Chose Not To Provide the Required Record So As To Even Reach the Threshold To Raise a Challenge To Any Finding of Fact or Conclusion of Law.

In addition to the customary burden of an appellant who attempts to attack a finding of fact, supra, in order to even begin to shoulder the burden, the appellant is required to provide a transcript. After several extensions of time, Mr. Mattson elected not to do so. Rule 11(e)(2), Rules of the Utah Court of Appeals, states the following:

If the appellant intends to urge on appeal that a finding or a conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. (Emphasis added.)

The cited Rule uses the mandatory "shall" with respect to the transcript of evidence. The rule does not indicate that a transcript is required just for evidence that appellant perceives supports his position in assailing a finding or a conclusion, but it must be a transcript of all evidence, whether or not favorable to the appellant's view.

This rule has particular substantive, and not just procedural, application to this appeal. The essence of Mr. Mattson's appeal is that oral representations or promises were supposedly made at the Sublease closing affecting the term of the Sublease and/or trade in of the Aircraft. The District Court did not so find, and,

as the trier of fact, found just to the contrary, supra.⁹ (Findings of Fact Nos. 23 and 24.) Without providing a transcript of the trial testimony, there is no bona fide way for an appellant to contest the trial court's findings because the appellant has failed to provide the trial record of any oral testimony of any alleged oral conversation.

CONCLUSION

Appellant Mattson's appeal on the issue herein involving Key is without merit. The District Court carefully and thoroughly considered the evidence and properly entered findings of fact, conclusions of law and a judgment with respect thereto. The action of the trial court should be sustained.

RESPECTFULLY SUBMITTED this 20th day of November, 1989.

ROGERS, MACKEY, PRICE,
ANDERSON & CANNON


Gifford W. Price

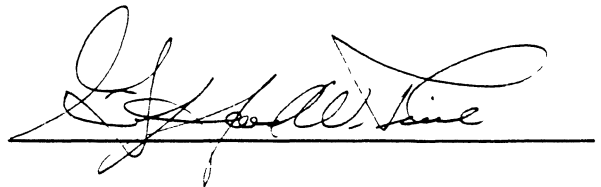
⁹Even if, arguendo, the District Court had found there was any such oral conversation, it nevertheless concluded that there was an integrated Sublease which Sublease contained a disclaimer as to oral representations and agreements, supra. Further, the District Court also concluded that the statute of frauds (Utah Code Ann. §25-5-4(1)) would be applicable to any alleged oral conversations modifying the Sublease term or pertaining to trade in (which oral agreements the District Court, of course, found did not even take place). (Findings of Fact Nos. 23, 24, 34; Conclusions of Law Nos. 12, 13, 14 and 15.)

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of November, 1989, I caused to be mailed four (4) true and correct copies of the foregoing BRIEF OF RESPONDENT AND THIRD PARTY DEFENDANT, KEY AIRLINES, by placing same in the United States mail, postage prepaid thereon, to each of the following as addressed below:

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A handwritten signature in cursive script, appearing to read "J. Bruce Reading", is written over a horizontal line.

ADDENDUM

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

PRUDENTIAL CAPITAL GROUP CO.)
f/k/a PRUDENTIAL LEASING)
COMPANY)

Plaintiff,)

vs.)

JOHN E. MATTSON,)

Defendant.)

JOHN E. MATTSON,)

Third-Party Plaintiff,)

vs.)

KEY AIRLINES,)

Third-Party Defendant.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. C87 870
(Judge J. Dennis Frederick)

* * * * *

The above matter came on regularly for trial before the
Court on September 6 and 7, 1988. Marlon L. Bates of Morgan,

Scalley & Reading appeared on behalf of the plaintiff, Prudential Capital Group Co., f/k/a Prudential Leasing Company; Denver Snuffer, Jr. of Maddox & Snuffer, appeared on behalf of the defendant and third-party plaintiff, John E. Mattson; and Gifford W. Price of Callister, Duncan & Nebeker appeared on behalf of third-party defendant, Key Airlines. The Court, having before it the record, including the pleadings, having received testimony of witnesses and exhibits, hereby enters its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff is a corporation authorized to transact business within the State of Utah.
2. Defendant is an individual residing in the State of Utah.
3. Defendant received counsel on the terms of that certain Lease Agreement with plaintiff which was identified at trial as Exhibit 3 (hereinafter the "Lease") from an attorney and a certified public accountant and understood the terms and conditions contained therein.

4. On October 17, 1984, defendant signed the Lease and intended to be bound by its terms.

5. On October 19, 1984, plaintiff signed the Lease and intended to be bound by its terms.

6. Defendant made monthly Lease payments in the amount of Eleven Thousand Four Hundred Fifty-eight and 40/100 Dollars (\$11,458.40) to plaintiff through October 20, 1986.

7. Defendant has made no monthly Lease payment to plaintiff since October 20, 1986.

8. Defendant did not stop making monthly Lease payments because of anything plaintiff did or failed to do.

9. Plaintiff paid the sum of Nine Thousand Six Hundred Fifty-eight and 46/100 Dollars (\$9,658.46) for 1985 property taxes assessed against the aircraft leased under the Lease.

10. Plaintiff paid the sum of Nine Thousand Five Hundred Forty-two and 02/100 Dollars (\$9,542.02) for 1986 property taxes assessed against the aircraft leased under the Lease.

11. Defendant has not reimbursed plaintiff for the 1985 and 1986 property taxes described in paragraphs 9 and 10 above.

12. Defendant paid plaintiff Thirty-four Thousand and no/100 Dollars (\$34,000.00) as a security deposit on the Lease.

13. Defendant assisted plaintiff in the sale of the aircraft leased under the Lease. In January of 1987, the aircraft was sold for Two Hundred Fifty-nine Thousand Seven Hundred Seventy-two and no/100 Dollars (\$259,772.00), which sum was received by plaintiff.

14. On February 20, 1987, plaintiff terminated said Lease and accelerated all monthly payments due thereunder.

15. On or about September 19, 1984, John E. Mattson executed a "Retail Purchase Order" with Key Airlines relative to a Cessna 421C (Golden Eagle III) aircraft. Among other things, said Retail Purchase Order provided for only two contingencies, i.e., "acceptable financing" and "acceptable 27 mo leaseback with Key".

16. With respect to said Retail Purchase Order executed on or about September 19, 1984, Mr. Mattson also made a \$10,000.00 refundable deposit with Key Airlines by way of personal check. No other payment was made to Key Airlines with respect to the Cessna 421C aircraft prior to the execution of the Aircraft Lease between John E. Mattson and Key Airlines on or about October 17, 1984, (Exhibit 30) (hereinafter "Sublease").

17. A "Proposal and Cash Flow Analysis on N2724L" typed on Key Airlines stationery and a "Capital Recovery Guide" from Key Airlines, which information was received by Mr. Mattson prior to his execution of the Sublease, refers to a 27 month aircraft lease.

18. The principal motivation of Mr. Mattson in entering into the Cessna 421C aircraft transaction involving Key Airlines was to shelter from taxes a projected large income. Along this line, Mr. Mattson wanted to qualify for the investment tax credit with respect to the Cessna 421C aircraft along with the right to depreciate the aircraft.

19. In order for Mr. Mattson as a non-corporate lessor to legally claim the investment tax credit, among other things,

the Sublease together with any alleged renewal or extension thereof had to be less than half the depreciable life of the aircraft, which depreciable life for the aircraft for tax purposes was five years. Mr. Mattson's own Certified Public Accountant, Ted H. Pierce, with whom he consulted with respect to the aircraft transaction involving Key Airlines, advised Mr. Mattson of the requirements necessary for Mr. Mattson to legally claim the investment tax credit as a non-corporate lessor, including the aforesaid limitation with respect to the length of the lease term. The ITC requirements were explained to Mr. Mattson by Mr. Pierce prior to Mr. Mattson's execution of the Sublease.

20. A letter dated October 3, 1984, from Mr. N. Keith Nickels to John E. Mattson does not contain specific terms or provisions with respect to any new or renewed lease or the obtaining of another aircraft, and with respect to any extension of the original Sublease term, the said letter at best only provides for "renegotiation".

21. Although Mr. Mattson's attorney advised him not to execute a lease with Key Airlines where the length of the lease obligation from Key Airlines to Mr. Mattson was shorter in

duration than Mr. Mattson's obligation to Prudential Leasing Company on Mr. Mattson's Lease with Prudential, Mr. Mattson did not heed the advice of his attorney.

22. The Court is not persuaded that the hand-written language at the bottom of page 4 of Exhibit 29 is referring to any renewal or extension of the basic term of the Sublease, particularly in light of the language which states "for the duration of this Lease" which reference to "Lease" appears to apply to the Sublease.

23. On or about October 17, 1984, in Montana, John E. Mattson executed the Sublease involving Key Airlines relative to the Cessna 421C aircraft. The Sublease, including the integration clause and the length of the term of the said lease of the Cessna aircraft by Key Airlines therein, is clear and unambiguous. The only change or amendment which affected the relationship between Key Airlines and Mr. Mattson pertained to property taxes as set forth in paragraph 24 of these Findings of Fact. The Sublease was to end on January 1, 1987.

24. At or about the time of the execution of the Sublease, the only clarification of the Sublease insisted upon by Mr.

Mattson pertained to Key Airlines' payment of the property taxes with respect to the Cessna 421C aircraft. A writing with respect to this clarification was executed by Mr. Mattson and Mr. Nickels in Montana, as set forth in Exhibit 13. At the time of the execution of the Sublease, Mr. Mattson also executed in Montana an "Assignment of Lease Rentals" in favor of Prudential Leasing Company, which assignment covered the rentals to be received by Mr. Mattson from Key Airlines under the Sublease and said assignment states "which lease [referring to the Sublease] provides for a rental period of 25 months . . .".

25. After his return from Montana, Mr. Mattson made out a check dated October 19, 1984, payable to Prudential Leasing Company in the amount of \$45,458.40, which check represented a security deposit and first payment.

26. After the arrangements were made for the payment of the security deposit and the first payment, Mr. Mattson had no other material discussion concerning the Sublease until spring or summer of 1985, when he met with Mr. N. Keith Nickels after Mr. Nickels had been terminated by Key Airlines, in which discussion Mr. Mattson was told by Mr. Nickels that there

likely wouldn't be a re-lease of the Cessna 421C aircraft by Key Airlines and Mr. Nickels suggested that Mr. Mattson consider what to do with the aircraft. Throughout 1985, there was no written demand made by or on behalf of Mr. Mattson to Key Airlines for any modification of the Sublease nor was any written demand made on Key Airlines by Mr. Mattson relative to the renewal or extension of the Sublease during said time period.

27. A letter was provided to Key Airlines by Mr. Mattson dated January 27, 1986, wherein, among other things, Mr. Mattson sought to correct a typographical error on the first page in the term of the Sublease, to wit, that the term ended January 1, 1987, and not January 1, 1986, but yet the said letter made no mention of any kind whatsoever about the Sublease term going beyond 27 months or about any renewal or extension thereof.

28. A complaint dated July 30, 1986, in the Third Judicial District Court of Salt Lake County, State of Utah, showing John E. Mattson d/b/a John Mattson & Company as the plaintiff and Key Airlines Incorporated as the defendant makes no mention of a renewal or a releasing of the Cessna aircraft by Key

Airlines. A letter written on behalf of Mr. Mattson by legal counsel dated July 31, 1986, which makes a certain demand relative to property taxes as related to the Cessna 421C aircraft makes no mention of any releasing or renewal by Key Airlines of the Cessna 421C aircraft.

29. During the summer or fall of 1986, Mr. Mattson undertook certain activity relative to the sale or lease of the Cessna 421C aircraft, other than to or with Key Airlines, with there being no evidence that Key Airlines was informed at the time of such activity by Mr. Mattson.

30. The first written statement to Key Airlines on behalf of Mr. Mattson with respect to any renewal or releasing of the Cessna 421C aircraft by Key Airlines was not made until October, 1986, approximately two years after Mr. Mattson executed the Sublease.

31. In Mr. Mattson's 1984 federal income tax return, a schedule was included setting forth the basis for the investment tax credit relative to the Cessna 421C aircraft thereby documenting it for carry forward purposes. The 1986 federal income tax return of Mr. Mattson also makes reference to the ITC relative to the Cessna 421C aircraft.

32. The actions and conduct of Mr. John E. Mattson are inconsistent with his claims made against Key Airlines in this action and thus are not persuasive.

33. Key did agree to modify its agreement with Mr. Mattson only to the extent to reflect Key's responsibility for the property taxes relative to the Cessna 421C aircraft, as opposed to that being the responsibility of Mr. Mattson, which property taxes in accordance with Exhibit 8 in these proceedings amount to \$19,200.98.

34. There was no binding agreement for Key Airlines to re-lease the Cessna aircraft or renew the Sublease beyond the term ending on January 1, 1987.

35. No collusion existed between Key Airlines and Prudential Leasing Company relative to Mr. Mattson being a "strawman" or with respect to any purported fraud or misrepresentation.

36. The Court is not persuaded that any fraud or misrepresentation existed as between Key Airlines and Mr. Mattson relative to the Cessna 421C transaction.

CONCLUSIONS OF LAW

1. This court has general and in personam jurisdiction over the parties.
2. Venue in this Court is proper.
3. The Lease between plaintiff and defendant which was identified at trial as Exhibit 3 is valid and binding according to its terms.
4. The Lease contains a clear and unambiguous integrative clause which is fully enforceable to prohibit parol evidence from modifying or altering the terms of said Lease as provided for in Titles 70A-2-209(2) and 25-5-4(1) of the Utah Code.
5. The Lease required defendant to make 82 monthly rental payments of Eleven Thousand Four Hundred Fifty-eight and 40/100 Dollars (\$11,458.40) per month plus one payment of Three Hundred Forty Thousand and no/100 Dollars (\$340,000.00).
6. The Lease required defendant to pay all property taxes associated with the Lease, reasonable attorney's fees and court

costs incurred in connection with a breach of the Lease, late fees on rental payments more than five days late and interest at the rate of twenty-four percent (24%) per annum on all unpaid monthly rental payments.

7. The Lease was materially breached by defendant when defendant stopped making the monthly Lease payments and did not reimburse plaintiff for 1985 and 1986 property taxes.

8. The Lease was properly terminated and the monthly Lease payments were properly accelerated by plaintiff on February 20, 1987.

9. Plaintiff is entitled to a judgment against defendant in the amount of Nine Hundred Seventy-nine Thousand Six Hundred Two and 74/100 Dollars (\$979,602.74) representing the amount prayed for by plaintiff in that certain Itemization of Damages which was admitted in evidence at trial as Exhibit 8, less the 1985 and 1986 property taxes paid for by plaintiff. The above-described judgment represents the damages resulting from defendant's breach of the Lease as prescribed by the terms of the Lease and is itemized as follows:

Unmade Lease Payments (58 months @ \$11,458.40)	\$664,587.
Guaranteed Residual	340,000.
Late charges	5,156.
Attorney's Fees	17,079.
Court Costs	90.
Interest on Unmade Lease Payments: (Feb. 20, 1987 to Sept. 5, 1988 564 days @ 24% interest as provided for in ¶ 17 of said Lease) (\$664,587.20 x 24% ÷ 365 x 564 days)	<u>246,461.</u>
Total Gross Damages	\$1,273,374.
Less Sale of Aircraft	-259,772.
Less Security Deposit	<u>- 34,000.</u>
Total Net Damages	\$979,602.

10. Plaintiff is entitled to an order of this Court requiring the third-party defendant to pay directly to plaintiff the sum of Nineteen Thousand Two Hundred and 48/100 Dollars (\$19,200.48) representing the property taxes paid by plaintiff in 1985 and 1986.

11. There is no evidence of any collusion between plaintiff and third-party defendant.

12. The Sublease between Key Airlines and John E. Mattson (Exhibit 30) is clear and unambiguous, and integrated, and controls the relationship between Key Airlines and John E. Mattson.

13. The integration clause of the Sublease is clear and unambiguous.

14. The only change or amendment which affected the relationship between Key Airlines and Mr. Mattson referred to in paragraphs 12 and 13 of these Conclusions of Law pertained only to the subject of property taxes relative to the Cessna 421C aircraft, with Key Airlines having responsibility for said property taxes.

15. The statute of frauds, Utah Code Ann. § 25-5-4(1), is applicable to matters between Key Airlines and Mr. Mattson, including but not necessarily limited to, any such with respect to indemnity, Sublease extension, renewal or any matter extending the Sublease beyond the term of the Sublease which Sublease term ended on January 1, 1987.

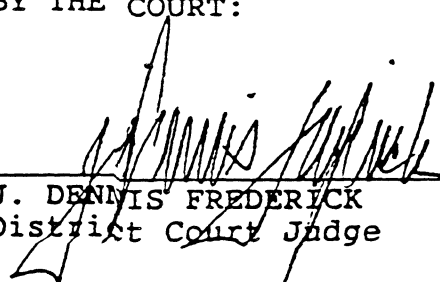
16. Defendant and third-party plaintiff, John E. Mattson, did not sustain his burden with respect to his claims as against Key Airlines, whether based on indemnity or otherwise, under either the standard of clear and convincing evidence or preponderance of the evidence. The burden of third-party plaintiff was not sustained even though the Court allowed much

parol evidence to be received, including such pertaining to the Sublease, its execution and integration. The only exception to the foregoing in this paragraph 16 is the matter of property taxes as referred to in paragraph 14 of these Conclusions of Law.

17. Defendant and third-party plaintiff John E. Mattson has no claim for relief or cause of action by way of his third-party complaint as against Key Airlines so as to entitle Mr. Mattson to any relief with the sole exception of the payment of property taxes relative to the Cessna 421C aircraft as set forth in paragraph 14 of these Conclusions of Law.

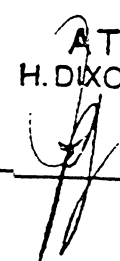
DATED: Oct 25th, 1988.

BY THE COURT:

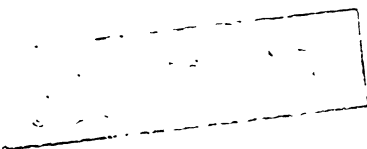


J. DENNIS FREDERICK
District Court Judge

ATTEST
H. DIXON HINDLEY
Clerk

By  _____
Deputy Clerk

6986P



FILED NO. 87-870 PRICE
SALT LAKE COUNTY, UTAH

MORGAN, SCALLEY & READING
MARLON L. BATES, Utah State Bar No. 4794
261 East 300 South
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

OCT 26 1988

H. Dixon H. Price, Clerk of the Court
By [Signature] Deputy Clerk

Attorneys for Plaintiff

CALLISTER, DUNCAN & NEBEKER
GIFFORD W. PRICE, Utah State Bar No. 2647
Suite 800 - Kennecott Building
Salt Lake City, Utah 84133
Telephone: (801) 530-7300

Attorneys for Third-Party Defendant, Key Airlines

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

2143516
10-31-88 8:00 A.M.

PRUDENTIAL CAPITAL GROUP CO.)
f/k/a PRUDENTIAL LEASING)
COMPANY)

Plaintiff,)

vs.)

JOHN E. MATTSON,)

Defendant.)

JOHN E. MATTSON,)

Third-Party Plaintiff,)

vs.)

KEY AIRLINES,)

Third-Party Defendant.)

JUDGMENT

Civil No. C87 870
(Judge J. Dennis Frederick)

* * * * *

The above matter came on regularly for trial before the Court on September 6 and 7, 1988. Marlon L. Bates of Morgan,

Scalley & Reading appeared on behalf of the plaintiff, Prudential Capital Group Co., f/k/a Prudential Leasing Company; Denver Snuffer, Jr. of Maddox & Snuffer, appeared on behalf of the defendant and third-party plaintiff, John E. Mattson; and Gifford W. Price of Callister, Duncan & Nebeker appeared on behalf of third-party defendant, Key Airlines. The Court, having before it the record, including the pleadings, having received testimony of witnesses and exhibits, and based upon its Findings of Fact and Conclusions of Law of even date herewith and for good cause appearing, hereby

ORDERS, ADJUDGES AND DECREES that:

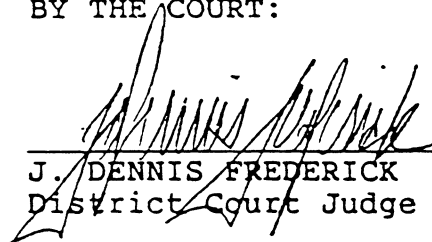
1. Prudential Capital Group Co., f/k/a Prudential Leasing Company, is awarded judgment against the defendant John E. Mattson of \$715,970.80, plus pre-judgment interest of \$246,461.69, plus attorney's fees of \$17,079.00, plus costs of \$90.75 (a total of \$979,602.24).

2. The counterclaim of John E. Mattson against the plaintiff, Prudential Capital Group Co., f/k/a Prudential Leasing Company, is hereby dismissed, with prejudice, there being no claim for relief.

3. The third-party complaint of John E. Mattson against third-party defendant, Key Airlines, is hereby dismissed with prejudice, there being no claim for relief, with the sole exception that Key Airlines is hereby ordered to pay Prudential Capital Group Co., f/k/a Prudential Leasing Company, the sum of \$19,200.98 as a reimbursement of property taxes relative to the Cessna 421C aircraft.


DATED: Oct 28th, 1988.

BY THE COURT:



J. DENNIS FREDERICK
District Court Judge

6992P

ATTEST
H. DIXON HINDLEY
Clerk
By  _____
Deputy Clerk

AIRCRAFT LEASE

(TO BE USED FOR AIRCRAFT ON NOT MORE THAN 12,500 POUNDS, MAXIMUM CERTIFICATED TAKEOFF WEIGHT.)

This AIRCRAFT LEASE ("Lease") is entered into the 1 day of December 1984, by and between John E. Mattson & Co. whose address is 36 So. State Street Suite 1200, SLC, Utah 84111 ("Lessor") and KEY AIRLINES, INCORPORATED, SALT LAKE CITY, UTAH ("Lessee").

RECITALS

A. Lessor is the owner in fee simple of the following aircraft (The "Aircraft").

Make and Model: Cessna Golden Eagle III 421C

Serial Number: 421C1237

Registration Number: N2724L

The Aircraft is equipped with standard accessories and equipment specified by the manufacturer for such model aircraft and optional equipment as attached on attachment number "A".

B. Lessor is entitled to lease the Aircraft and desires to lease the Aircraft, and Lessee desires to hire the Aircraft, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the rentals, covenants and agreements herein set forth, Lessor and Lessee covenant and agree as follows:

1. Term: Lessor hereby leases the Aircraft to Lessee, and Lessee hereby hires the Aircraft from Lessor, for a term commencing on December 1, 1984, and ending on January 1, 1986, unless terminated earlier in accordance with the terms and provisions hereof.

2. Delivery: The Aircraft will be delivered to Lessee at Bozman Montana, at the commencement of this Lease. At the time of delivery, the Aircraft shall be airworthy as determined in accordance with Federal Aviation Administration ("FAA") standards, and shall have a valid FAA Certificate of Airworthiness with no outstanding Airworthiness Directives to be accomplished. Lessee will return the Aircraft to Lessor at the termination of this Lease, at Salt Lake City, International Airport, in the same condition the Aircraft was in when received, reasonable wear and tear of ordinary use excepted, absent damage or destruction of the Aircraft by reason of an event described in Section 12 hereof.



3. Lessee's Use of Aircraft: Lessee shall have the right to sublease the Aircraft from time to time to other persons or entities on such terms and conditions as Lessee shall determine in its sole discretion.

4. Rent: During the period of this lease agreement, Lessee shall pay to Lessor the sum of Twelve Thousand Three Hundred Forty Three Dollars and No Cents (\$12,343.00) less note payment of One Thousand Three Hundred Sixty Two Dollars and Eighty Cents (\$1,362.80) per month which rent shall be payable on the first day of each month. During the first 25 months, Lessor will also be paid an additional 150 per hour for all hours over 500 within a 12 month period.

5. Maintenance: During the term of this Lease, Lessee shall, at the expense of Lessor, maintain the Aircraft in accordance with all applicable requirements of the FAA and other governmental authorities having jurisdiction over aviation matters. Without limiting the foregoing, Lessee shall, provide or arrange for, and schedule, maintenance, repairs, storage, overhauls, and inspections, as required to keep and maintain the Aircraft in an airworthy condition for its intended use and operation. These expenses will be paid by a Service Contract of \$1,500 per month, billed monthly to Lessor.

6. Pilot: Lessee represents that any person who pilots the Aircraft will meet all requirements established by applicable laws and governmental rules, regulations or orders and the terms of all applicable insurance policies maintained by Lessee.

7. Lessor's Right to Inspect: Lessee agrees that Lessor may inspect the Aircraft and the flight logs and maintenance records for the Aircraft at all reasonable times during the term of this Lease.

8. Records: During the term of this Lease, Lessee shall keep accurate, complete and current records as required by the FAA and any other governmental authority respecting all flights and maintenance of the Aircraft.

9. Compliance with Laws: During the term of this Lease, Lessee shall obey and comply with all of the applicable laws, rules, regulations and requirements of federal, state and local authorities of the United States and of other governments having authority over the Aircraft.

10. Insurance

10.1 During the Term of Lease: Lessee shall, at Lessor's expense, procure and maintain in full force and effect for the entire period of this Lease, a policy or policies of insurance providing the following coverage with respect to the Aircraft: public liability insurance covering personal injury and property damage with limits of coverage not less than Fifty Million Dollars (\$50,000,000.00) for all claims arising out of any one accident or occurrence, and insurance covering damage to or destruction of the Aircraft with limits of coverage sufficient to reflect the stipulated loss value of the Aircraft. Lessee shall not operate, or knowingly permit the operation of the Aircraft in any geographical area or for any purpose excluded from coverage of any insurance policy required to be maintained by Lessee pursuant to this Lease. Lessee may maintain, at Lessee's expense, additional coverages or coverage in excess of the limits indicated above. The insurance will be billed to Lessor at the sum of Five Hundred Dollars and No Cents (\$500.00) per month.

10.2 Policy Provisions: Any policies of insurance required to be purchased in accordance with this Lease, (i) shall name Lessor and its successors, assigns, mortgages or lien holders as additional insureds and loss payees as their respective interests may appear, (ii) shall provide that in respect to Lessor and each additional insured the insurance shall not be invalidated by any action or inaction of Lessee or any other person (other than of Lessor or such additional insured as the case may be) and shall insure Lessor and each additional insured regardless of any breach of the policy conditions by Lessee; (iii) shall waive any right of subrogation against Lessor and each additional insured; and (iv) shall provide 30 days written notice by insurers to Lessor of cancellation, lapse or any reduction in scope or amount of coverage of such insurance.

10.3 Risk of Loss: Risk of loss or damage with respect to the Aircraft during the term of this Lease subsequent to delivery of the Aircraft to Lessee and prior to its return to Lessor (except with respect to any use thereof by Lessor during the term of this Lease) shall be borne by Lessee, Lessor acknowledges that, in the event Lessor leases the Aircraft from Lessee and uses the Aircraft for commercial operations other than for the benefit of Lessee, the insurance provided for in this Section 10 may be subject to cancellation. Lessor agrees that Lessee shall have no responsibility for any loss or damage to the Aircraft if such insurance is cancelled by reason of such use of the Aircraft.

11. Alterations: Except as may be required for Air Ambulance operations and the repair and maintenance of the Aircraft provided for in Section 5, Lessee shall not make any changes or alterations in the Aircraft or its equipment or accessories without obtaining the consent of Lessor.

12. Excusable Delays: Neither party shall be liable to the other for any failure of or delay in observing any term, or provision of this Lease to the extent such failure or delay is due to acts of God or the public enemy; civil war, insurrection or riot; severely inclement weather or calamity caused thereby; fire, explosions or serious accidents; governmental priorities or allocations; strikes or labor disputes; inability to obtain materials, accessories, equipment or parts for the Aircraft from the manufacturers thereof; damage to or destruction of the Aircraft due to any such cause, or any other failure or delay beyond such party reasonable control.

13. Termination:

13.1 For the duration of this Lease, Lessee agrees to continue this Lease without interruption unless aircraft becomes unavailable due to action of Lessor. Non-accessability of aircraft to Lessee due to such action of Lessor shall terminate Lease immediately.

13.2 For Default: In the event of default by either party, the other party may terminate this Lease upon ten days notice to such party. For the purposes of this paragraph, a default shall consist of the failure of a party to perform any of the obligations imposed upon such party pursuant to the terms of this Lease and the continuation of such failure for three days after receipt of notice of such default from the other party.

13.3 For Excusable Delay: Upon ten days notice to the other party, either party may terminate this Lease in the event of a delay that is excusable under the terms of Section 12 and that is likely to prevent performance of either party hereunder for a period of more than 30 days.

13.4 Rights Upon Termination: Upon termination of this Lease, Lessee shall deliver the Aircraft to Lessor in accordance with the provisions of Section 2. Thereupon, all further obligations of the parties hereto shall cease; provided, however, that each party shall be entitled to payment of all amounts due or payable with respect to the period prior to return of the Aircraft to Lessor.

14. Miscellaneous:

14.1 Notices: All notices and other communications shall be given orally or in writing; provided, however, that any oral notice or other communication shall be confirmed promptly in writing. Any written notice or other communication shall be sent by mail, telex, telegram, or personal delivery. All notices and other communications mailed hereunder shall be sent by prepaid certified mail, return receipt requested, and shall be deemed given on the third business day after deposited in the United States Mail, properly addressed to the respective party in such address as each party shall furnish to the other at the time of execution hereof or from time to time thereafter.

14.2 Governing Law: This Lease shall be governed by and construed in accordance with the laws of the State of Utah.

14.3 Taxes and Fees: Lessee shall pay as they may fall due, any use taxes or license fees. Lessor shall pay any property taxes or other charges that now or during the term of this Lease are imposed by any governmental agency with respect to the ownership of the Aircraft, except taxes imposed upon Lessee with respect to income taxes, if any, derived by Lessee through use of the Aircraft.

14.4 Binding Effect: This Lease shall be binding upon the respective heirs, successors and assigns of the parties hereto.

14.5 No Waiver: A waiver of any breach or failure to enforce any of the terms or conditions of this Lease shall not affect, limit or waive a party's rights hereunder at any time to insist upon strict compliance thereafter with every other item or condition of this Lease.

14.6 Enforceability: This Lease shall be enforceable against the parties with respect to the subject matter hereof, and may be amended or modified only by a writing duly executed by the parties hereto. Neither the Lessor nor Lessee shall be bound by any promise, agreement, undertaking or representation heretofore or hereafter made unless the same is made by instrument in writing, signed by authorized representatives of the Lessee and the Lessor, which instrument expresses by its terms a clear intention to modify this Lease.

14.7 Descriptive Headings: All descriptive headings inserted in this Lease are for the convenience of the parties only and shall not affect the interpretation of any term hereof.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written. This Lease supersedes and makes void any previous agreement, oral or written, concerning the Aircraft.

John E. Mattson
("Lessor")
BY: J. E. Mattson
TITLE: _____

KEY AIRLINES, INCORPORATED
("Lessee")
BY: [Signature]
TITLE: President

ADDRESS: 36 South State Suite 1200 Salt Lake City, Utah
Salt Lake City UTAH

TELEPHONE: 801- _____

TELEPHONE: 801-537-2805

NEW AIRLINES

41 Lake City International Airport
P Box A14F 22065
41 Lake City, Utah 84122
01) 539-2805/VATS (800) 453-5780
41 388311

ATTACHMENT "A"

N2724L

1982 COLDEN EAGLE III 421C

S/N 421C1237

EXTERIOR: ALLOVER VESTAL WHITE, MAJOR STRIPE COPPER BROWN
ACCENT STRIPE BERBER TAN

INTERIOR: INSTALL 425 TYPE TAILORING ON PASSENGER SEATS ONLY
UPHOLSTER PASSENGER SEATS PRIMARY, SECONDARY AND SHROUD IN
CP-GOLD
UPHOLSTER CREW SEATS INSERTS & TRIM IN CP-GOLD
SIDE PANELS FW-GOLD, GOLD FOLKWEAVE FABRIC
CARPET WITH CARPET RUNNERS ROMAN COIN BY REGENCY COURT
SEAT BELTS, DARK GOLD
SEATING ARRANGEMENT OPTION 1

EQUIPMENT: N# PLACECARD INSTALLED ON INSTRUMENT PANEL (REGISTRATION IN TEMP.
PAINT)
FLITEPHONE III RADIO TELEPHONE (COCKPIT CONTROL)
2nd 800 TRANSPONDER
RDR-160 COLOR RADAR (EXCH)
CLOCK DIGITAL LED READOUT ELECTRONIC (EXCH)
HOUR METER CABIN HEATER
INDICATOR TRUE AIRSPEED LH (EXCH)
TACHOMETER SYNCHRONOUS (EXCH)
AIR CONDITIONING OR VENTILATING FAN OUTLETS
CONVERTER 110 VOLT
DE-ICE SYSTEM CERTIFIED FOR FLT IN ICING CONDITIONS
DOOR ACCESS AVIONICS BAY
FIRE DETECTION & EXTINGUISHING SYSTEM (NACELLE)
FUEL FLOW GAUGE & MANAGEMENT COMPUTER
FUEL SYSTEM WING LOCKER LH ONLY
FUEL, LOW LEVEL WARNING SYSTEM
HARNES INERTIA REEL SHOULDER LH & RH (EXCH)
LIGHTS COURTESY (NACELLE AND NOSE BAGGAGE)
LIGHT ICE DETECTION RH
LIGHTING ELECTROLUMINESCENT
LOCK RUDDER CUST
OXYGEN SYSTEM 11 CU FT.
POLISHED SPINNER
WINDOWS INNER PANE TINTED

N2724L

1982 GOLDEN EAGLE III 421C

S/N 421C1237

EQUIPMENT CONTINUED:

FLIGHT DECK DIVIDER & PRIVACY CURTAIN
FASTEN SEAT BELT & OXYGEN SIGNS & CLOCK
REFRESHMENT CENTER FWD W/CASSETTE STEREO
SEAT VERTICAL & TILTING ADJUSTABLE, PILOT & COPILOT
STORAGE DRAWER NO.3 AFT, NO. 6 FWD FACING SEAT
STORAGE RACK, JEPPIE CHART
TABLE EXECUTIVE LH & RH
TOILET WITH AFT DIVIDER AND PRIVACY CURTAIN

LIST PRICE: \$681,462.02

January 27, 1986

Key Airlines
Salt Lake International Airport
P.O. Box AMF 22065
Salt Lake City, UT 84122

ATTN: Brent Wiseman,
President

Dear Mr. Wiseman:

In response to correspondence from Mr. Rob Wankier of your office regarding my leaseback agreement with Key Airlines, I would like to clarify the points of our agreement and correct some misconceptions you have regarding it.

1. The lease ending date of January 1, 1986 is a typographical error. This is clearly explained further on the stated agreement with specific reference to page two, paragraph four which indentifies the length of the lease period. Enclosed you will also find a copy of my retail purchase order signed by myself and your representatives Verl W. Addison and N.K. Nickels specifically making my purchase contingent upon an "acceptable 27 mo. leaseback with Key".

Also, you will refer to the handwritten aircraft lease document with notations in the handwriting of your employee N.K. Nickels which clearly shows a termination date of January 1, 1987.

Finally, you will also find a copy of "Assignment of Lease Rentals" agreement executed by myself in behalf of Prudential Capital Group Co., assigning Key Airlines leaseback rental payments for the term of the lease.

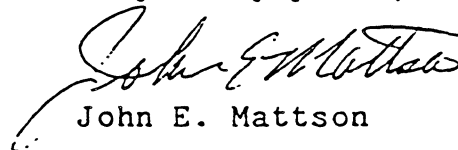


Exhibit: 15 Date: 11-13-87
Witness: John Mattson
ERNEST M. SANCHEZ: SP/CSR

2. Regarding "Pay-off on promissory note" item as found in Mr. Wankier's letter, let me refer you to the enclosed copy of "Promissory Note" signed by myself and dated October 16, 1984. The note is self explanatory and clearly relates that "payments on this note are to be deducted from the lease payments paid to Mr. John Mattson for use of N2724L on a monthly basis".
3. Regarding "Maintenance and insurance" item in Mr. Wankier's letter let me state that, it was clearly understood at the inception of this leaseback agreement that for IRS purposes I would be billed on a monthly basis for any owing maintenance and insurance fees. Key Airlines followed our agreement and I was billed for several months upon receipt of which, I promptly remitted payment. I have not been billed as agreed since last July. It also is my understanding that Key's charter program was discontinued at that same time. Consequently, my assumption of non-use of my aircraft and the lack of billing for any maintenance needs leads me to believe that no maintenance fee is owing.

I look forward to the continuation of our leaseback agreement and will be expecting receipt of your check on or before February 1st, so I can make my payment to Prudential as promised.

Very truly yours,



John E. Mattson

cc: Robert S. Wankier
Andy Barfuss, Prudential Capital Group

also, enclosed copy of letter from Robert S. Wankier, for your reference.



Salt Lake City International Airport
 P.O. Box A.M.F. 22065
 Salt Lake City, Utah 84122
 (801) 539-2805/WATS (800) 453-5780
 Telex 388311

John Mattson-UDI
 124 So. 6th East
 Salt Lake City, Utah

Dear John,

We would like to thank you for the use of your aircraft during the last thirteen months. As you can see from the lease agreement cover page, the lease expired on January 1st, 1986.


In reviewing the lease we have found various expenses that are due Key Airlines that have not been paid. As stated in the agreement the lessor was to reimburse Key Airlines \$ 1,500.00 a month for maintenance and \$ 500.00 a month for insurance. Our records indicate we have only received six months of reimbursements leaving seven months unpaid. In addition, as of December 31, 1985 there was \$ 16,353.70 still owing on the promissory note dated October 16, 1984. We also paid a lease payment for the month January 1986 in error. This of course will have to be refunded.

To recap the following is due and payable to Key Airlines.

Maintenance and insurance	\$ 14,000.00
Pay-off on promissory note	16,353.70
Overpayment of lease	<u>12,343.00</u>
	<u>\$ 42,696.70</u>

Your prompt remittance will be appreciated.

Sincerely,


 Robert S. Wankier
 Manager FBO Finance

Enclosure

RE AIR PURCHASE ORDER

(CESSNA MULTI-ENGINE PISTON AIRCRAFT)

Purchaser's Name John E. Mattar Date 9-19-84
 Address 232 W. 500 S. AN FOK Dealer's Name Key Airlines Inc
 City and State Utah 84003 Address Salt Lake City Utah

I, the undersigned Purchaser, hereby enter my order for a Cessna Aircraft as detailed below with the above named Dealer. I recognize my order is with my Dealer and that The Cessna Aircraft Company ("Cessna") is not a party to this Agreement and has no liability thereunder except for its warranty set forth on the reverse side hereof. The attached deposit of \$ 10,000 is to apply against the total purchase price. I agree to complete this Agreement, accept delivery of the aircraft at _____ within 10 days after notification that the aircraft is ready for delivery, and pay the balance of the purchase price or make financial arrangements satisfactory to Dealer at the time of delivery, subject to the terms set forth below and the terms, conditions, warranty and limitations of liability printed on the reverse side of this Purchase Order.

White Brown, & Tan Exterior Color: _____ Interior Color: Gold Leather

INFORMATION ABOUT AIRCRAFT TO BE TRADED IN:
 1. Make: None
 2. Model: _____
 3. Serial No.: _____
 Remarks: _____

AIRCRAFT	PRICE	
	Dollars	C
Model/Serial Number: <u>421C-1237</u>		
Registration Number: <u>N 2724L</u>		
Optional Equipment (See Accessory Price List) <u>See attached Equipment List</u>		

AMOUNT TO BE FINANCED:
\$681,462.00

Contingency -
Acceptable Financing -

THE UNDERSIGNED PURCHASER AGREES THAT HE HAS READ THE TERMS, CONDITIONS, WARRANTY AND LIMITATIONS OF LIABILITY SET OUT ON THE REVERSE SIDE HEREOF AND THAT THE SAME ARE INCLUDED IN AND ARE A PART OF THIS PURCHASE ORDER ALL AS SET FORTH ON THE FACE HEREOF. TO AVOID CONFUSION OR MISUNDERSTANDING, PURCHASER RECOGNIZES THAT DEALER MARKETING THE AIRCRAFT PRODUCTS HEREUNDER IS AN INDEPENDENT BUSINESS ORGANIZATION AND NOT CESSNA'S AGENT AND CESSNA HAS NO RESPONSIBILITY FOR DEALER'S REPRESENTATION OR OTHER ACTS.

Acceptable 27mo leaseback with Ke

John E. Mattar
 PURCHASER'S SIGNATURE

M-K. Nubels
 DEALER SALESMAN'S SIGNATURE

Insurance Coverage:
 Kind: _____
 Effective Date: _____
 Name of Insurance Company: _____

NAME IN WHICH NEW AIRCRAFT SHOULD BE REGISTERED

 NAME WHICH TRADE-IN REGISTRATION CARRIES

Price with accessories and equipment	<u>681,462</u>
Gas, oil and delivery cost	<u>INC</u>
State and local taxes, if any	<u>INC</u>
License, transfer and registration fee	<u>INC</u>
TOTAL PURCHASE PRICE	<u>681,462</u>

ACCEPTED BY:
Ken W. Addison
 SIGNATURE OF DEALER
 ADDRESS OF DEALER
9-20-84
 DATE OF ACCEPTANCE
 EXPECTED DELIVERY DATE

Cash deposit with this order	<u>10,000</u>	<u>00</u>
Trade value of used aircraft	<u>None</u>	
TOTAL CREDIT TO PURCHASE PRICE	<u>10,000</u>	<u>00</u>
BALANCE DUE	<u>671,462</u>	

11

WORK COPY

AIRCRAFT LEASE

(TO BE USED FOR AIRCRAFT ON NOT MORE THAN 12,500 POUNDS, MAXIMUM CERTIFICATED TAKEOFF WEIGHT.)

This AIRCRAFT LEASE ("Lease") is entered into the 1 day of Dec 1984, by and between John Mattson whose address is _____ ("Lessor") and KEY AIRLINES, INCORPORATED, SALT LAKE CITY, UTAH ("Lessee").

RECITALS

A. Lessor is the owner in fee simple of the following aircraft (The "Aircraft").

Make and Model: _____
Serial Number: _____
Registration Number: _____

The Aircraft is equipped with standard accessories and equipment specified by the manufacturer for such model aircraft and optional equipment as attached on attachment number _____.

B. Lessor is entitled to lease the Aircraft and desires to lease the Aircraft, and Lessee desires to hire the Aircraft, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the rentals, covenants and agreements herein set forth, Lessor and Lessee covenant and agree as follows:

1. Term: Lessor hereby leases the Aircraft to Lessee, and Lessee hereby hires the Aircraft from Lessor, for a term commencing on Dec 1, 1984, and ending on Jan 1, 1987, unless terminated earlier in accordance with the terms and provisions hereof.

2. Delivery: The Aircraft will be delivered to Lessee at Salt Lake City, at the commencement of this Lease. At the time of delivery, the Aircraft shall be airworthy as determined in accordance with Federal Aviation Administration ("FAA") standards, and shall have a valid FAA Certificate of Airworthiness with no outstanding Airworthiness Directives to be accomplished. Lessee will return the Aircraft to Lessor at the termination of this Lease, at _____, in the same condition the Aircraft was in when received, reasonable wear and tear of ordinary use excepted, absent damage or destruction of the Aircraft by reason of an event described in Section 12 hereof.

PROMISSORY NOTE

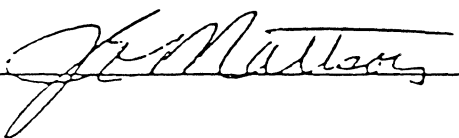
FOR VALUE RECEIVED the undersigned promises to pay to the order of KEY AIRLINES, INCORPORATED, at Salt Lake City, Utah, the sum of THIRTY FOUR THOUSAND SEVENTY DOLLARS AND TEN CENTS (\$34,070.10) in lawful money of the United States and payments are to be made as set forth hereinafter.

Commencing January 1, 1985, monthly payments of ONE THOUSAND THREE HUNDRED SIXTY TWO DOLLARS AND EIGHTY CENTS (\$1,362.80) are to be made and continuing on the same day of each month thereafter for 25 months (said 25 months includes the January 1, 1985 payment) and on the date of said last monthly payment any outstanding amount of principal. This note is to cover advance made to Mr. John Mattson deposited in his name to Key Capital.

If the holder deems it self insecure, or if default be made in any payment when due, time being the essence thereof, then the entire unpaid balance, with interest, shall at the election of the holder hereof, and without notice of said election, at once become due and payable.

In the event of default of any payment as provided for herein, the undersigned agrees to pay the holder hereof collection costs, including reasonable attorney's fees and legal expenses in addition to all other sums due hereunder. The undersigned and any endorser, surety and guarantor hereby waive presentment for payment, demand, protest, notice of protest and of nonpayment and of dishonor, and consent to extension of time, renewals, waivers or modifications without notice.

This note is signed October 16, 1984, to be effective so as to cover the indebtedness of the undersigned commencing October 16, 1984. Payments on this note are to be deducted from the Lease payments paid to Mr. John Mattson for use of N2724L on a monthly Basis.

By 
Its _____

The undersigned certifies that the tangible personal property under lease from ^{John E. Mattson (N.K.)} ~~PRUDENTIAL LEASING COMPANY~~ is exempt from Use Tax for the following reasons:

+ Property Tax
OK

I (We) further agree to hold ^{John E. Mattson (N.K.)} ~~PRUDENTIAL LEASING COMPANY~~ safe and harmless for my (our) failure to properly report or subsequently pay such taxes in the event that the property referred above is determined to be "not exempt" from Use Tax by any appropriate taxing authority.

I (We) agree to reimburse ^{John E. Mattson (N.K.)} ~~PRUDENTIAL LEASING COMPANY~~ for any and all costs and expenses incurred by reason of my (our) failure to properly comply with the appropriate tax law applicable to the leased equipment.

TAX EXEMPTION # _____ STATE _____

LESSEE: ^{Key Airlines Inc.} ~~John E. Mattson~~

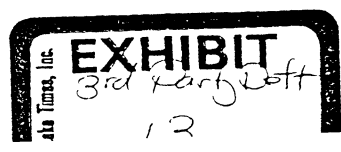
By: M. K. Nickel

Its: Sales Dept

Date: October 17, 1984

Depo Ex 5
C. Abney

N. Nickels
2-5-88



ASSIGNMENT OF LEASE RENTALS

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, the undersigned JOHN E. MATTSON, hereinafter referred to as "Assignor", hereby transfers, sets over and assigns to PRUDENTIAL LEASING COMPANY, hereinafter referred to as "Prudential", all rentals and monies now due or hereafter to become due under that certain Lease Agreement dated Oct 17 - 84, by and between the undersigned as lessor, and KEY AIRLINES, as Lessee, which lease provides for a rental period of 25 months with rents payable monthly as more expressly set forth in said Lease, a copy of which is attached hereto.

Assignor hereby constitutes and appoints Prudential its true, lawful and irrevocable attorney, to demand, receive and enforce payment and to give receipts, releases and satisfactions and to sue for all sums payable under the terms of said Lease either in the name of Assignor or in the name of Prudential, with the same force and effect as Assignor could do if this Assignment had not been made.

Assignor represents and warrants to Prudential that it has not heretofore alienated or assigned any of its right or interest in the above-described Lease.

Nothing herein contained shall be construed to impose upon Prudential any of the obligations of Assignor under said Lease.

Assignor hereby agrees that should default be made in the payment of rentals or other monies due, or to become due, from the Lessee under said Lease, Prudential may, at its option, without demand upon or notice to Assignor, declare the entire balance remaining unpaid on Assignor's obligation or obligations secured by this Assignment immediately due and payable..

This Assignment is irrevocable and shall remain in full force and effect until and unless it is released in writing by Prudential.

Dated this 17 day of Oct, 1984.

JOHN E. MATTSON

By: *John E. Mattson*

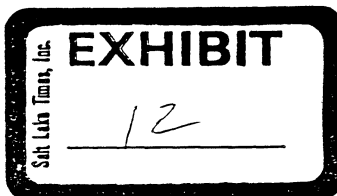


Exhibit: 10 Date: 11-13-87
Witness: John E. Mattson
ERNEST M. SANCHEZ: RPR/CSR