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(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

AIR INUIT LTD.,	)	Peter Halamandaris
	)	for the applicant/respondent
applicant (respondent),	)	
	)	
- and -	)	Rodney A. Smith
	)	for the respondent/applicant
B/E AEROPSPACE LIMITED	)	
	)	
respondent (applicant).	)	JUDGMENT DELIVERED:
	)	July 30, 2026

LANCHBERY J.

INTRODUCTION

[1] I granted leave to both parties to file summary judgment motions. Air Inuit's motion was for summary judgment and granting the remedy of specific performance.

[2] B/E Aerospace Limited seeks judgment dismissing Air Inuit's action.

FACTUAL BACKGROUND

[3] Air Inuit is an airline company established in 1978. Air Inuit serves 14 coastal villages in Northern Quebec. These remote villages comprise Inuit populations totalling 14,000 people. The communities rely on the delivery of goods, medical transport, community security and passenger transportation.

[4] Air Inuit operates Dash 8-300 aircraft. B/E Aerospace partnered with Air Inuit to build the first and only Dash 8 Large Freight Door ("LFD") conversion kit. This kit, once built, would be the only product of its type. Air Inuit chose B/E Aerospace as it previously provided an LFD kit for a different aircraft type.

[5] On or about December 14, 2016, Air Inuit and B/E Aerospace entered into a Sales Agreement whereby B/E Aerospace would design, certify and manufacture an enlarged cargo door installation for the three Dash 8 aircraft owned by Air Inuit, for a total price of $4,600,000 USD.

[6] Air Inuit alleges that the Sales Agreement set out the following expenses (Section 5.1):

(a) $600,000 – non-recurring engineering for the cargo interior;

(b) $1,900,000 – non-recurring engineering – for the LFDs;

(c) $500,000 - Bombardier Data Licensing Agreement;

(d) $500,000 – first LFD kit; and

(e) $550,000 – second and third LFD kits.

[7] At the time the Sales Agreement was signed, Air Inuit operated three Dash 8-300 aircraft. By the time this dispute arose, Air Inuit only operated two Dash 8-300 aircraft. Air Inuit's position, although it did not operate the third aircraft, it required the third door for risk mitigation in case of any failure of all or part of any LFD kit.

[8] It is Air Inuit's position that if any of its two Dash 8-300 aircraft were out of service for any extended period of time, catastrophic consequences may follow for the 14 Inuit communities it services, requiring a third LFD for either complete installation or for its parts.

LFDs 1 and 2

[9] The ordered production of the LFDs was planned to be installed between October 2016 and February 2017. In fact, the first LFD was installed in or around May 2019.

[10] The second and third LFDs were ordered at the same time and B/E Aerospace provided quotes for those doors on February 18, 2021, and corresponding invoices were dated March 11, 2021. The interior modifications occurred between April and September 2022, and the second LFD was received in July 2022.

Position of B/E Aerospace

[11] B/E acknowledges that it was to produce three LFDs for Air Inuit. Its main argument is its understanding of the Sales Agreement was after three LFD kits were produced it had no further obligation to Air Inuit. If more than three LFD

kits were produced, B/E was free to sell these LFD kits to third parties. If this occurred, Air Inuit would be provided a royalty commission.

[12] B/E's position is that Air Inuit never contracted for production for a third LFD for replacement of one of the existing LFDs, nor that this door could be produced so Air Inuit could disassemble the door for future parts.

[13] B/E Aerospace relies on Section 22 of the Terms and Conditions of the Sales Agreement, which reads in part (Exhibit "E", Affidavit of Casey Van Gorp, Section 5.6):

> Seller will not be liable to Buyer for any failure to meet its obligations due to any cause beyond Seller's reasonable control and not occasioned by its fault or negligence (an "Excusable Delay"). Excusable Delay events may include but are not limited to (i) any acts of any government that would limit the ability for contract performance; (…); (iii) quarantines or regional medical crises; (…); and (vi) unpredictable and unforeseen shortages or inability to obtain materials or components. If an Excusable Delay event causes a Seller delay, then…Seller may cancel that affected Purchase Order with respect to such delayed Products.

Position of Air Inuit

[14] Air Inuit is steadfast in its belief that it contracted for three LFD kits and never received the third kit. Further, the contract did not restrict what Air Inuit did with any of the three kits.

The Third LFD Kit

[15] There were a number of delays in the production of the LFD kits. These included those identified in paragraph 12 of the Motion Brief filed by B/E Aerospace. There is no disagreement as to the reason for delays, including

delays that were caused with the COVID-19 pandemic and supply chain issues resulting from the pandemic.

[16] It is equally true that those identified delays were accepted by the parties and are not issues at the root of these competing motions.

[17] The third LFD kit was built by B/E Aerospace but was not delivered to Air Inuit. British Antarctic Survey, at the request of a company called Field Aviation, approached B/E Aerospace as Field Aviation was aware of the work B/E Aerospace performed for Air Inuit on the LFD kit. This occurred in 2021.

[18] Air Inuit permitted Field Aviation to visit Air Inuit's facility where the first LFD kit was installed. It was agreed B/E Aerospace could sell an LFD kit to Field Aviation, but it did not impact the requirement to deliver a third LFD kit to Air Inuit as contemplated by the Sales Agreement.

[19] B/E Aerospace's position is the production of the third LFD kit would complete its obligation to Air Inuit.

Position of Air Inuit

[20] Air Inuit maintains it was never provided with the third LFD kit as contemplated by the agreement. Further, by failing to deliver the third LFD it is entitled to summary judgment. Further, as the LFD kits are a unique item, so much so that B/E paid the costs of engineering and the licensing for the LFD kits, it is entitled to summary performance of the third kit.

[21] Air Inuit further maintains that the suggestion by B/E the Sales Agreement was only for three LFD kits which have now been completed is incredible. B/E

Aerospace's suggestion what occurred after the third LFD kit was sold to Field Aviation is not in keeping with the discussions that occurred when it was approached by Field Aviation and B/E Aerospace. Contrary to Mr. Van Gorp's affidavit who suggested he engaged in these discussions, Eddie Lapointe's affidavit confirms discussions were between himself and B/E Aerospace's representative David Vanderzwaag that Air Inuit would receive a third LFD. Further, it was agreed this would not impact the price Air Inuit was to pay for its third LFD even though prices increased since the signing of the Sales Agreement.

[22] Air Inuit submits Section 3 of the Sales Agreement confirms its position:

> Air Inuit shall retain first right of refusal for delivery and acceptance of the first three cargo door kits complete by B/E Aerospace. B/E Aerospace shall not deliver cargo door kits to any other customer until Air Inuit has taken delivery of three complete kits or unless B/E Aerospace has received written notification from Air Inuit that Air Inuit will not take delivery of the second and/or third kit. Such written notification shall be received by B/E Aerospace by no later than sixty (60) days from the milestone STC date for the large cargo kits, absent which notification shall be deemed to have been received to B/E Aerospace by such date.

[23] Further, Section 5.4 of the Sales Agreement states:

> Upon successful development and approval by TCCA of the cargo conversion and large freight door (LFD) described herein, Air Inuit shall be entitled to a commission on future kit sales in **perpetuity (emphasis added).** The commission will apply solely as follow:
>
> 1. (i) $110,000 per sale of a kit by B/E Aerospace include of the LFD (other than a sale to Air Inuit) or
> (ii) 10% commission (calculated based on the kit sale price per cargo conversion kit without LFD, in either case (i) or (ii) until such time as Air Inuit recovers $1,110.000
>
> 2. Thereafter a perpetual 10% commission per kit sold, calculated on the kit sale price, regardless of whether inclusive of LFD (other than a sale to Air Inuit) up to a maximum of $90,000 per kit.

[24] Air Inuit's position is there is no communication, written or oral, where B/E Aerospace is entitled to rely on Section 3 of the Sales Agreement. It was B/E Aerospace that approached Air Inuit about delivering the third LFD to Field Aviation. This discussion never contemplated that Air Inuit would not take delivery of the third LFD it was entitled to receive under the Sales Agreement.

[25] On March 12, 2023, Mr. Lapointe, an employee of Air Inuit, corresponded with B/E Aerospace's Mario Mantaci. Mr. Mantaci asked about timeline for delivery of the third LFD. There were discussions as to how delivery would occur, including that the delivery needed to be as a full LFD, and not in bits and pieces to be assembled later. Mr. Mantaci confirmed delivery of a full LFD would occur before the end of Quarter 4 (Q4) of 2023, or Quarter 1 (Q1) of 2024. (Exhibit "E", Busch affidavit, at para. 23, and e-mails in Lapointe affidavit, at para. 6)

[26] On November 14, 2023, Air Inuit followed up regarding the lack of further communication in general, but more particularly, delivery of the third LFD. A substantive response was not provided by B/E Aerospace until March 7, 2024, when it advised manufacturing LFDs does not align with the desired direction for its interior business unit. B/E Aerospace advised it was unable to locate a partner to manufacture the LFDs and financial viability if low. (Exhibits "F" and "K", Busch affidavit, at paras. 25-28)

LAW

[27] In ***Dakota Ojibway Child and Family Services et al v MBH***, 2019 MBCA 91, the court examined the new Court of King's Bench summary judgment rules and the process to be followed (at paras. 84 and 85):

> Manitoba's summary judgment rules were amended by the *Court of Queen's Bench Rules, amendment*, Man Reg 130/2017, which came into force on January 1, 2018, and were further amended in relation to "family proceedings" by the *Court of Queen's Bench Rules, amendment*, Man Reg 170/2018, which came into force on February 1, 2019. The amended rules are very similar to the Ontario summary judgment rules that were considered in *Hryniak*.
>
> The January 1, 2018 amendments to r 20 reflect the culture shift encouraged in *Hryniak*, that is, to change summary judgment from a process intended to "weed out" clearly unmeritorious claims to an alternative method of adjudication (at para 45). In particular, r 20.07(1) requires a judge to grant summary judgment if he or she is satisfied that there is "no genuine issue requiring a trial", whereas the former rule (then r 20.03(1)) required a judge to do so where there was "no genuine issue for trial".

ANALYSIS

[28] I find summary judgment is appropriate for Air Inuit's claim as its evidence established there is no genuine issue requiring a trial. I find that as there were competing summary judgment motions, I reject B/E Aerospace's request for summary judgment as Air Inuit established there is no genuine issue requiring a trial.

[29] The evidence before me is clear that Air Inuit contracted with B/E Aerospace for the production of three LFDs as Section 3 sets out and confirms in the Sales Agreement. Section 3 also sets out that until the three LFDs were produced by

B/E Aerospace for Air Inuit, there were to be no LFDs produced for any other customer. The evidence is clear that Air Inuit ordered the second and third LFD in 2021 in accordance with the payment terms in Section 5 of the Sales Agreement.

[30] Air Inuit's evidence, which I accept, established it never abandoned its order for three LFDs. Further, the sale of a door to Field Aviation was met with the approval of Air Inuit, but at no time did Air Inuit abandon the terms and conditions of the Sales Agreement that B/E Aerospace was to produce the third LFD for it.

[31] The evidence is Air Inuit received a $110,000 commission royalty for the third LFD sold to Field Aviation. Although the LFD produced by B/E Aerospace and sold to Field Aviation was the third LFD produced by date, the Sales Agreement only contemplated a commission to be paid once Air Inuit received three LFDs from B/E Aerospace. I find the evidence establishes the parties themselves functioned as if the LFD sold to Field Aviation was intended to be the fourth LFD, notwithstanding it was the third LFD produced in time. It flows logically that the payment of the $110,000 commission would not be paid to Air Inuit if there was not to be a fourth LFD manufactured.

[32] Further, Section 3 of the Sales Agreement contemplates written notice. In this case, no written communication was ever provided concerning the sale of the LFD to Field Aviation.

[33] The correspondence between Mantaci and Lapointe contemplated delivery of a third LFD to Air Inuit. Air Inuit inquired about delivery in March 2023, and it was only a year later that B/E Aerospace communicated, "it was unable to locate

a partner to manufacture the LFDs and financial viability if low". (Exhibits "F" and "K", Busch affidavit, at paras. 25-28)

[34] B/E Aerospace's evidence is it could terminate the Sales Agreement as it had already delivered the three doors contemplated, and it no longer wanted to produce a third LFD for Air Inuit due to financial viability and/or lack of a partner to perform the work. I reject this evidence as there is no evidence before me the existence of any so called "partner" was present during any production of LFDs prior to 2023.

[35] I reject this evidence as any suggestion that as B/E Aerospace only ordered material for three LFDs is a fact that works against its position. The evidence does not suggest the materials necessary to manufacture an LFD kit are no longer available. In fact, as the LFD kits were manufactured from materials confirms these materials are still available to B/E Aerospace. I find aircraft design and manufacture has not deviated from what was produced ten years ago. This confirms B/E Aerospace no longer wishes to perform the Sales Agreement without reason.

[36] The question of B/E Aerospace's financial viability lacks importance as Air Inuit, under the terms of the Sales Agreement, paid for the engineering, licensing, and for the first two LFDs. Although Field Aviation paid for an LFD kit, this kit was never part of the B/E Aerospace Sales Agreement. B/E Aerospace failed to provide any financial information confirming its financial viability. Since 2017,

B/E Aerospace is a division of the larger Collins Aerospace now. Absent financial evidence, the position of B/E Aerospace on finances is rejected by me.

[37] These factual findings permit me to conclude that in 2021, there was an oral agreement that B/E Aerospace would continue to provide Air Inuit with three LFDs notwithstanding delivery of a door to Field Aviation. The absence of any communication after an LFD was delivered to Field Aviation defeat the arguments advanced by B/E Aerospace that it completed the terms of the Sales Agreement.

[38] I find the evidence of Lapointe to be telling as by 2021 prices increased and supply chain issues were roiling the international economy. There is no evidence before me as to the price paid by Field Aviation for the third LFD kit. Mr. Lapointe's evidence that permission to sell the LFD kit to Field Aviation would not impact Air Inuit's price for its third LFD kit is a critical component in why I prefer Lapointe's evidence over that of Van Gorp.

[39] This is confirmed as Mantaci of B/E Aerospace told Air Inuit that the delivery of the third LFD would occur in Q4 of 2023 or Q1 of 2024. Any suggestion the Field Aviation delivery completed the contract is rejected. The evidence before me is until 2024, B/E Aerospace intended to complete the terms of the agreement with Air Inuit.

[40] I considered the termination clauses in the Sales Agreement:

> Section 23 – Termination for Default.
> Except for Buyer's failure to pay invoices when due which shall be governed by Section 9 hereof, if at any time either party shall be in default hereunder and shall fail to remedy such default to the reasonable satisfaction of the other party within thirty (30) days following notice from such other party specifying such default, such other party may terminate this Purchase

> Order by written notice of termination to the defaulting party within ten (10) days following the said thirty (30) days. Either Buyer or Seller may terminate this Purchase Order immediately upon written notice if the other party (1) becomes insolvent; (2) files a voluntary petition in bankruptcy; (3) executes an assignment for the benefit of creditors; (4) is adjudicated a bankrupt or insolvent or a receiver or trustee is appointed for that party; or (5) the other party terminates its existence or ceases to do business. Unless otherwise mutually agreed in writing, any termination of this Purchase Order shall operate as a cancellation of the entire undelivered or unperformed portions of the Purchase Order placed hereunder by Buyer and accepted by Seller prior to the effective date of such termination.
>
> <u>Section 24 – Termination for Convenience</u>.
> Buyer may terminate, for its convenience, this Purchase Order, in whole or in part, by providing written notice to Seller at least one hundred twenty (120) days prior to the scheduled delivery date of a Product. During the period of notice, Seller shall (1) discontinue all work with respect to that portion of the Purchase Order terminated by Buyer, (2) place no additional orders or subcontracts for materials or services as to that part of the work terminated, and (3) take such other reasonable action as may reduce the termination costs due Seller under this Section. In the event Buyer terminates any Purchase Order, in whole or in part, Buyer shall pay to Seller (1) an amount equal to the aggregate purchase price of all Products completed or services performed prior to the effective date of termination whether completed before the giving of such termination notice or completed thereafter prior to the effective date of termination set forth in such termination notice; and (2) all of Seller's termination costs incurred in the production of all uncompleted Products (including, but not limited to, raw materials, fabricated or unfabricated parts, work in process, supplies and other material, labor, unrecovered non-recurring costs, payments to suppliers, general and administrative overhead costs) plus a charge of thirty-five percent (35%), of the entire undelivered or unperformed portions of the Purchase Order placed hereunder by Buyer and accepted by Seller prior to the effective date of such termination, for loss of production capacity and profits. This Section 24 is subject to SOW Section 5.2.4 #4. ***(#4 was a condition to the benefit of Air Inuit and therefore is irrelevant in this case)***

[41] It is noteworthy B/E Aerospace relies on Section 22 of the Terms and Conditions of the agreement in support of its position that due to delays such as the COVID-19 pandemic, supply chain disruptions, shortages of parts and materials, cost inflation within the aerospace industry, that it had only procured enough parts and materials to manufacture three LFDs. However, in its

termination letter to Air Inuit, it only mentions lack of a partner and its financial position. And further, none of these issues were identified by Mantaci when he stated production of the third LFD would commence in Q4 of 2023 or Q1 of 2024.

[42] It is only after commencement of this litigation did B/E Aerospace raise Section 22 of the Terms and Conditions. If B/E Aerospace only procured parts for the manufacture of three LFD kits, one would expect this would be communicated to Air Inuit when the third LFD was sold to Field Aviation. Although Van Gorp was not cross-examined on this point, I find there is no evidence confirming there is no supplier for the parts comprising an LFD kit cannot be obtained.

[43] Turning to B/E Aerospace's argument on limitation of liability, Section 19 of the Sales Agreement reads (pp. 15 and 16):

> THE PRICE ALLOCABLE IN THIS AGREEMENT TO ANY PRODUCT ALLEGED TO BE THE CAUSE OF ANY LOSS OR DAMAGE TO BUYSER SHALL BE THE CEILING LIMIT OF SELLER'S LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS, OF WHETHER LIABILITY IS FOUNDING IN THE FAILURE TO USE THE APPROPRIATE LEVEL OF CARE, BREACH OF CONTRACT, WARRANTY, OR STRICT LIABILITY WHETHER ARISING OUT OF OR IN CONNECTION WITH (1) THIS AGREEMENT OR (2) THE DESIGN MANUFACTURE, DELIVERY, SALE, REPAIR, REPLACEMENT OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR USE EVEN IF INFORMED OF THE POSSIBILILTY OF SUCH DAMAGES, THESE EXCLUSIONS OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THESE TERMS.

[44] A key consideration for me was the Sales Agreement contained the following provision:

> **5.3 Intellectual Property Rights**
> All inventions, all inventions(SIC), technologies, know-how, processes, programs, discoveries, improvements, devices, products designs,

> prototypes, samples, models, technical information drawing, software, and bills of material, and all patents, copyrights, trade secret rights and other intellectual property rights created or developed under this Agreement shall be solely owned by B/E Aerospace ("the Agreement IP"). Air Inuit agrees to execute and deliver any additional documents necessary for B/E Aerospace to perfect or evidence B/E Aerospace's ownership of the Agreement IP or to enable B/E Aerospace to secure rights of copyright or letters patent in B/E Aerospace's name.

[45] B/E Aerospace submits that the above clause would limit its damages payable to Air Inuit in these circumstances. I disagree. The plain meaning of this clause was to limit liability for design or production failures. I reject this reasoning based on the plain meaning of the terms. For these reasons, I am satisfied on the evidence on motion that B/E Aerospace breached the terms of the agreement. There is no genuine issue requiring a trial.

DAMAGES

[46] What remains is the question of whether I should grant the equitable remedy of specific performance, or whether financial damages are the more appropriate remedy.

[47] B/E Aerospace cited ***Ukrainian Greek Orthodox Church of Canada v. Independent Bnay Abraham Sick Benefit***, 1959 CanLII 437 (MB CA) (pp. 369-70):

> Under s. 148(1), s. 69, and s. 2(1) (cl) of the Real Property Act the defendant Association has priority by reason of its caveat No. 169556: McKillop & Benjafield v. Alexander, supra.
>
> However, there are other substantial grounds on which the appeal should be allowed. The plaintiff is asking for specific performance, which is equitable relief.
>
> "The remedy is special and extraordinary in its character, and the Court has a discretion to grant it, or to leave the parties to their rights at law.

The discretion of a Court exercising equitable jurisdiction is, however, not an arbitrary or capricious discretion; it is a discretion to be exercised on fixed principles in accordance with the previous authorities. It is not simply a question of what the individual judge thinks is fair or reasonable; the exercise of his discretion must be judicial. If the contract is valid in form and has been made between competent parties and is unobjectionable in its nature and circumstances, specific performance is in effect granted as a matter of course, even though the judge may think it involves hardship. The mere existence, however, of a valid contract is not in itself enough to bring about the interference of the Court; the conduct of the plaintiff, such as delay, acquiescence, breach on his part, or some other circumstance outside the contract, may render it inequitable to enforce it, or the contract itself may, for example, on the ground of misdescription, be such that the Court will refuse to enforce it. It is on grounds of this nature that the Court exercises its discretion:" 31 Hats., 2nd ed., pp. 329-30, para. 360.

"Mistake may be in equity a ground for resisting specific performance of a contract, whether the mistake is that of both parties or of the defendant only.

"The common error of both parties to a contract as to the substance of the transaction is a ground for refusing specific performance altogether": 31 Hals., 2nd ed., p. 378, paras. 432, 433.

"Mistake may be a ground for refusing specific performance of a contract, either where the mistake is in the expression of the contract in writing, or where the mistake is one of fact and made by the defendant only. In a case of the latter kind, however, there must have been reasonable excuse for the mistake, and the plaintiff may be given the option either of having a decree for specific performance in accordance with the view of the defendant or of having his action dismissed": 23 Hals., 2nd ed., p. 156, para. 225.

"The Court will not generally exercise its extraordinary power in compelling a specific performance, where to do so would necessitate a breach of trust or of a prior contract with a third person, or would compel a person to do what he is not lawfully competent to do, even though at the time of contract the act might have been lawful,—partly, as it seems, on the ground of the unfairness and illegal taint of such a contract in itself, and partly of the hardship to which it would expose the person forced to execute it. The plaintiff `must also,' said Lord Redesdale, `chew that, in seeking the performance, he does not call upon the other party to do an act which he is not lawfully competent to do; for, if he does, a consequence is produced that quite passes by the object of the Court in exercising the jurisdiction, which is to do more complete justice": Fry on Specific Performance, 6th ed., p. 194, para. 407.

[48] B/E Aerospace argues that specific performance remedies are almost exclusively those of real property disputes. The basic argument is that real property has unique characteristics which may prevent substitution of another property no matter the value.

[49] The facts of this case eliminate any question there was a mistake in what was contracted. There is no third party involved in this dispute. Field Aviation cannot be such a party as Air Inuit is not asking for the return of the third LFD.

[50] What occurred was that B/E Aerospace unilaterally determined it was not prepared to continue to provide LFDs to Air Inuit, contrary to the terms of the Sales Agreement.

[51] If I were to grant specific performance, I understand it is an extraordinary equitable remedy. All the case law cited by B/E Aerospace on its face would lend itself to rejecting specific performance.

[52] I ask myself, are there unique facts in this case that are distinguishable from every specific performance where the subject is not real property? Further, will a monetary remedy suffice in these circumstances?

[53] This may be the most unique set of facts in any specific performance action. At the time the Sales Agreement was entered into no other company anywhere in the world produced LFD kits for conversion and installation into Dash 8-300 aircraft. This remains true today.

[54] Air Inuit paid for the engineering necessary as well as the licensing requirements so LFD kits could be produced and installed into Dash 8-300 aircraft.

[55] By the terms of the Sales Agreement, B/E Aerospace retained all rights to the intellectual property associated with the production of LFDs for Dash 8-300 aircraft, including the rights to apply for patents. (Section 5.3 of the Sales Agreement)

[56] As B/E Aerospace was acquired by Collins Aerospace a year after the Sales Agreement was entered into, there is no evidence B/E Aerospace, a division of Collins Aerospace, does not possess the special skill and knowledge to manufacture LFDs in general, but the requisite skill and knowledge to manufacture LFDs for the Dash 8-300 aircraft.

[57] B/E Aerospace, after its 2024 termination, offered to service the existing two LFDs to keep Air Inuit operating the Dash 8-300 aircraft. I find if B/E Aerospace could continue to provide parts confirms that it could still produce a full LFD as those parts would form part of a new LFD kit.

[58] On November 30, 2023, B/E Aerospace stated that it no longer possessed the skillset or capacity required to manufacture the LFD kit and that it had been seeking a strategic partner to assist with manufacturing the kits without any success. (Affidavit of Casey Van Gorp, paras. 30-31; Motion Brief, paragraph 23)

[59] The third LFD kit manufactured by B/E Aerospace was delivered to Field Aviation in April 2021. Seven months after delivery of the third LFD kit, without any evidence to support its position, B/E Aerospace no longer possessed the skillset or capacity to manufacture the LFD kit. I find this evidence to be incredible as in March 2023 Air Inuit inquired about its third door and was told the door could

be delivered in Q4 of 2023 or Q1 of 2024. I find B/E Aerospace never stated its Sales Agreement with Air Inuit was at an end once the LFD was delivered to Field Aviation.

[60] I find there has been no evidence advanced by B/E Aerospace that ordering specific performance would "necessitate a breach of trust" or a "prior contract with a third person", or "performing the contract would expose B/E Aerospace to undue hardship" or B/E Aerospace would not be performing "an illegal act" if it manufactured the LFD kit, an act B/E Aerospace is "not competent to perform". At best, B/E Aerospace's argument amounts to inconvenience.

[61] B/E Aerospace's argument that damages are limited to a total amount of $550,000 also confirms specific performance to be the only available remedy. I reject this argument as the Sales Agreement addressed liability for negligence claims, not if it unilaterally cancelled the Sales Agreement.

[62] Air Inuit has already paid B/E Aerospace a total of $4,100,000 USD toward the $4,600,000 total price. Air Inuit will still owe B/E Aerospace $500,000 when the third LFD is delivered. Any claim of hardship is rejected by me.

[63] I find that damages are totally insufficient to address the failure of B/E Aerospace to manufacture the three LFDs contracted for Air Inuit.

[64] Under these circumstances, I order B/E Aerospace to specifically perform its 2016 Sales Agreement with Air Inuit and manufacture the third LFD kit for a Dash 8-300 at the earliest opportunity as B/E Aerospace is the only provider

capable of doing so. B/E Aerospace's offer to continue to support Air Inuit's LFD conversion program for the LFDs shall continue unabated.

[65] I also find Air Inuit may not be currently using its third Dash 8-300 aircraft, but the 2016 Sales Agreement did not specify any condition its three Dash 8-300 aircraft were to operate indefinitely.

[66] I reject B/E Aerospace's argument that ordering specific performance would require constant judicial supervision for a lengthy period of time, or additional legal actions. The production of one LFD to satisfy the terms of the Sales Agreement is not onerous given the size and complexity of B/E Aerospace and its controlling interest.

[67] The remedy of specific performance is itself distinguishable from real property cases as the LFD kit in question has characteristics equal or potentially more unique than real property. In 2016, B/E Aerospace undertook to produce an LFD kit that had not been engineered or approved by Transport Canadian Civil Aviation, and the two LFDs produced for Air Inuit and the one LFD kit for Field Aviation are the only LFD kits ever produced. B/E Aerospace is the only company capable of successfully producing an LFD kit for the Dash 8-300 aircraft as it controls all the intellectual property. Further, Air Inuit paid for the creation of the intellectual property but has no control over it.

[68] The LFD in question was designed for use in a specific environment of Northern Canada; an environment where harsh conditions exist. The fact Field

Aviation operated a Dash 8-300 retrofitted with an LFD kit in Antarctica supports this finding.

[69] The fact is the LFD conversion kits were intended to service Indigenous communities in Canada's North which B/E Aerospace was aware at the time it entered into the Sales Agreement. Specific performance, an equitable remedy, is the only solution in these unique fact circumstances.

CONCLUSION

[70] I hereby grant Air Inuit's motion for summary judgment. I dismiss B/E Aerospace's motion for summary judgment. I further order that B/E Aerospace shall specifically perform the outstanding terms of the 2016 Sales Agreement by manufacturing or causing to be manufactured, the third LFD to the standard of the previous LFDs.

[71] Further, I order that B/E Aerospace shall produce a production schedule no later than 90 days from the date of this judgment. Air Inuit shall arrange a further hearing before me if a production schedule is not agreed.

[72] Tariff IV Costs are awarded to Air Inuit. If amounts cannot be agreed, they may be spoken to.

_________________________________ J.