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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ALIKA ROGERS, Plaintiff and Appellant, v. BELL HELICOPTER TEXTRON, INC., Defendant and Respondent.	C061943 (Super. Ct. No. 06AS02842) MODIFICATION OF OPINION AND DENIAL OF PETITION FOR REHEARING (NO CHANGE IN JUDGMENT)

THE COURT:

The opinion of this court filed June 4, 2010, in the above entitled case is modified as follows:

In the DISCUSSION section, beginning with the paragraph that starts in the middle of page 7 with "*Caldwell* supports . . . ," delete all of the remaining text in that section, to the bottom of page 10 (immediately preceding DISPOSITION) and insert in its place the following:

Contrary to Rogers's argument, Bell suggests that a maintenance manual cannot be distinguished from a flight manual under the reasoning in *Caldwell* because "[federal] regulations

governing general aviation aircraft make[] clear that a detailed maintenance manual is a critical part of the manufacturer's product." Just as federal regulations require that a flight manual must be furnished with each helicopter (14 C.F.R. § 27.1581(a) (2009)), Bell asserts that federal regulations require "[t]he manufacturer [to] provide a copy of the maintenance manual to the aircraft's owner." The federal regulation Bell cites, however, has no application here. Specifically, that regulation states, "The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller *for which application was made after January 28, 1981*, shall furnish at least one set of complete Instructions for Continued Airworthiness [i.e., a maintenance manual], to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later." (14 C.F.R. § 21.50(b) (2009), italics added.) Since the application for a type certificate for the helicopter here had to have been made long before January 28, 1981, because the helicopter began operating in 1951 and the maintenance manual was not issued until 1969, the regulation had no application.[2]

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[2] The Federal Aviation Administration has a multi-step certification process for aircraft design and production, the first step being type certification. (*United States v. Varig Airlines* (1984) 467 U.S. 797, 804-805 [81 L.Ed.2d 660, 668-669]; *Gatx/Airlog Co. v. U.S.* (9th Cir. 2002) 286 F.3d 1168, 1171.) To obtain type certification, the applicant

In a petition for rehearing, Bell contends for the first time that "at all times relevant" -- not just since 1981 -- "the governing [federal] regulations required rotorcraft manufacturers to provide maintenance manuals as a requirement for type certification." Consequently, Bell argues, "the maintenance manual at issue is . . . similar . . . to the flight manual found by . . . the Ninth Circuit to be an aircraft 'part.'"

On the record before us, however, it is far from clear that a maintenance manual was ever delivered, or had to be delivered, with *this* helicopter. Noting that "[t]he helicopter at issue in this action was manufactured in the early 1950's,"[3] Bell contends it was subject to Part 06 of the Civil Air Regulations, which was promulgated in 1946 and which governed the eligibility

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must submit "[i]nstructions for continued air worthiness" (14 C.F.R. § 21.24(a)(2)(iii)(2009)) in the form of a manual or manuals (14 C.F.R. § 27, appendix A, § A27.2(a)) containing a "[r]otocraft maintenance manual or section" (where appropriate) and "[m]aintenance instructions" (14 C.F.R. § 27, appendix A, § A27.3(a), (b)).

However, a maintenance manual is not necessary for maintaining an aircraft's airworthiness under Federal Aviation Administration regulations, as the regulations allow for "other methods, techniques, and practices" aside from those in the manufacturer's maintenance manual when a "person perform[s] maintenance, alteration, or preventative maintenance on an aircraft." (14 C.F.R. § 43.13 (2009).)

[3] There is no actual *evidence* in the record of when this helicopter was manufactured. In its trial brief, however, Bell asserted that the helicopter "was 54 years old at the time of the accident," which occurred in 2005. (AA 20) Assuming the truth of that assertion, the helicopter was manufactured around 1951.

of rotorcraft for type and airworthiness certificates until 1956. (11 Fed. Reg. 6963-6969 (June 22, 1946).) Section 06.60 of those regulations provided that "[a] flight manual shall be provided in the rotorcraft by which the operating personnel are informed of all operation limitations and information necessary for its safe operation. *The manual shall include information essential to the proper maintenance of the rotorcraft.*"[4] (*Id.* at p. 6969, italics added.)

As Bell admits, however, this regulation did not necessarily apply to military helicopters, because the regulations provided that "[r]equirements of the U.S. Army or Navy, with respect to airworthiness found by the Administrator to provide an equivalent standard of safety, may be accepted in lieu of the requirements set forth in this part." (11 Fed. Reg. 6963 [§ 06.00(b)].) This is significant here because, at oral argument, Bell's attorney admitted the helicopter at issue "was a military helicopter" that was "converted to general aviation." Accordingly, we cannot determine on the record before us whether Part 06 of the Civil Air Regulations ever actually applied to this helicopter.

Evidence Bell offered in support of its motion in limine on the statute of repose indicates the helicopter "was a general aviation aircraft as it was certified by the Federal Aviation

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[4] Bell notes that beginning in 1956, federal regulations required a maintenance manual *and* a flight manual. (21 Fed. Reg. 10291 (Dec. 22, 1956).)

Administration and issued registration number N16356 on May 11, 1967." Assuming this was the date when the helicopter was converted from military to general aviation use, we still cannot determine whether this helicopter was ever delivered to anyone with a maintenance manual in it. This is especially so because the manual Rogers contends was defective "was first issued in 1969" -- two years *after* the helicopter was apparently certified for general aviation use. Moreover, there is no evidence in the record that this 1969 manual was issued to replace an existing manual that had, at some point in the past, been provided with the helicopter.

Despite all of the uncertainty about whether any federal regulation ever required this helicopter to be delivered with a maintenance manual in it, we will assume for the sake of argument that such a regulation *did* exist and that, at some point, this helicopter *was* delivered with the required maintenance manual. We will also assume that the 1969 manual was issued to replace that original manual. Even assuming these facts, however, we conclude the manual was not a "part" of the helicopter for purposes of the Act.

Of primary significance to us in reaching this conclusion is that there does not appear to be any legal requirement that the owner or operator of a helicopter keep the maintenance manual that was delivered with the helicopter (or that was issued to replace that original manual) *on or with* the helicopter.

At least three cases have asserted there *is* such a requirement with respect to *flight* manuals, but we do not find this to be true. In *Colgan Air, Inc. v. Raytheon Aircraft Co.* (4th Cir. 2007) 507 F.3d 270, in distinguishing maintenance manuals from flight manuals the court asserted that "[federal] regulations require a flight manual to be onboard the aircraft. See 14 C.F.R. §§ 121.133, 121.139 (2007)." (*Colgan Air*, at p. 277.) The regulations the court cited, however, do not deal with the "flight manual" that must be furnished by the manufacturer to obtain a type certification. Rather, those regulations deal with air carriers that must "prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting [their] operations." (14 C.F.R. § 121.133 (2009).) It is appropriate parts of *this* manual that must be "carr[ied] . . . on each airplane" when the "certificate holder [is] conducting supplemental operations . . . away from the principal base of operations." (14 C.F.R. § 121.139 (2009).)

In *Moyer v. Teledyne Cont'l Motors, Inc.* (Pa. Super. Ct. 2009) 979 A.2d 336, the court relied on a decision of the Washington Court of Appeals -- *Burton v. Twin Commander Aircraft, LLC* (2009) 148 Wash.App. 606 -- for the proposition that "'federal regulations . . . require the flight manual to be onboard the aircraft.'" (*Moyer*, at p. 346.) In turn, *Burton* cited the opinion in *Caldwell v. Engstrom Helicopter Corp.*, *supra*, 230 F.3d at page 1155, for that proposition, asserting that in *Caldwell* "the court cited and relied on the federal

regulations that require the flight manual to be onboard the aircraft." (*Burton*, at p. 617.) But *Caldwell* did not cite or rely on any such regulation. The only regulation cited in *Caldwell* merely specifies that "[a] Rotorcraft Flight Manual must be furnished with each rotorcraft . . . ." (*Caldwell*, at p. 1157, citing 14 C.F.R. § 27.1581(a)(2) (2000).)

Nevertheless, whatever the case may be with a flight manual, Bell does not argue that there is any federal requirement that a maintenance manual be maintained on board an aircraft, including the helicopter at issue here. (RB 18) Thus, as Rogers argues, a maintenance manual does not have to be "with . . . or even near the airplane/helicopter" to which it relates.

A second significant point for our purposes is that there is no legal requirement that the maintenance manual provided with an aircraft actually be used in the maintenance of that aircraft. Federal regulations provide that "[e]ach person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, *or other methods, techniques, and practices acceptable to the Administrator* . . . ." (14 C.F.R. § 43.13(a), italics added.) Bell asserts "it is unusual for the FAA to approve alternate maintenance procedures," but Bell offers no evidence or authority in support of that assertion.

What that leaves us with is the question of whether a maintenance manual that need not be maintained on or even near the aircraft to which it relates, and which need not necessarily be used in performing maintenance on the aircraft, can reasonably be deemed a "part" of the aircraft for purposes of the Act. We conclude the answer is "no." Adverting to the common understanding of the word "part" as an "essential portion" or "integral element" of a greater whole, we do not believe a maintenance manual that need not be near an aircraft or used for the maintenance of that aircraft can reasonably be deemed an "essential portion" or "integral element" of that aircraft. In our view, this conclusion comports with the common sense notion that a book that tells you how to fix an item is not itself a "part" of that item.

While we acknowledge the purpose of the Act was to "ameliorate the impact of long-tail liability on a declining American aviation industry" (*Pridgen v. Parker Hannifin Corp.* (Pa. 2007) 916 A.2d 619, 622), we must still adhere to the words of the statute (*California Forestry Assn. v. California Fish & Game Commission*, *supra*, 156 Cal.App.4th at p. 1545). By selecting the words it did, Congress chose to limit the applicability of the Act to "the components, systems, subassemblies, and other parts of such aircraft." (§ 3(3).) If, as Bell contends, Congress wanted the Act to encompass things like the maintenance manual here, it could have written the Act to reach all items related to the aircraft. It did not.

Our holding is consistent with those from other courts that have considered similar issues. (See, e.g., *Colgan Air, Inc. v. Raytheon Aircraft Co.*, *supra*, 507 F.3d at p. 278 [district court erred in concluding as a matter of law a maintenance manual was part of an aircraft]; *Alter v. Bell Helicopter Textron, Inc.* (S.D. Tex. 1996) 944 F.Supp. 531, 538 [a maintenance manual was not a part originally in or added to the aircraft and a revision to a manual was not a replacement part that started a new limitations period under the Act]; *Moyer v. Teledyne Cont'l Motors, Inc.*, *supra*, 979 A.2d at p. 344 [a service bulletin that instructed on revised maintenance procedures was not the equivalent of a flight manual for purposes of the Act].)

As the trial court here excluded any evidence of the allegedly defective maintenance manual ruling it was a part of the helicopter, Rogers was unable to present her theory of the case. Having found that the maintenance manual was not a part of the helicopter, we reverse the judgment against her.

The petition for rehearing is denied. This modification does not affect the judgment.

BY THE COURT:

BLEASE, Acting P. J.

ROBIE, J.

CANTIL-SAKAUYE, J.