

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV1998/0146

BETWEEN:

COLIN PLUMMER

Claimant

And

CARIB AVIATION LIMITED

Defendant

Appearances:

Ms. E Ann Henry for the Claimant

Ms. Nelleen Murdock Rogers for the Defendant

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2008: March 6, 20

May 2

October 31
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JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **Blenman, J:** This is an assessment of damages pursuant to an order of Court.

[2] **Background**

Mr. Colin Plummer was the owner of a Beechcraft Twin Bonanza Aircraft which, after a series of events, needed to be repaired. He gave it to Carib Aviation Limited (Carib) to be repaired. While in Carib's possession, Hurricane Georges struck Antigua and further damaged the aircraft, which was in Carib's hanger. Mr. Plummer had incurred costs of repairing the aircraft together with that of replacing its parts. He also had to hire a plane

from Carib. After the aircraft was damaged, a dispute arose between the parties in relation to the aircraft. Carib considered that Mr. Plummer had abandoned the aircraft. Mr. Plummer had outstanding monies for Carib and he refused to pay them, saying that the company left the aircraft exposed to the elements and it deteriorated further. He is of the view that Carib is liable to him for the losses he has suffered.

[3] As a result, he brought an action against Carib for the alleged breach of its duties to take care. Carib counterclaimed for its fees, costs of repairs and transportation costs, while disputing that it was in breach of its duties to Mr. Plummer. The matter proceeded to trial on the question of liability, and the Court held that Carib was liable to Mr. Plummer for the damage or loss he sustained after Hurricane Georges, as a consequence of the aircraft being exposed to the elements. Damages were ordered to be assessed.

[4] In relation to the counterclaim, the Court found that Carib was entitled to recover damages from Mr. Plummer to the extent of the sums reasonably and properly incurred by Mr. Plummer, which represents replacement, repair costs together with transportation costs.

[5] The matter proceeded thereafter for the assessment of the damages which saw the parties calling several witnesses and relying on the affidavits and witness statements in support of their respective positions.

[6] **Evidence**

On the assessment, Mr. Colin Plummer, Mr. Lloyd Sheppard and Mr. Pedro M Vasquez gave evidence on behalf of the claimant. On behalf of Carib, Mr. William Norman and Mr. Charles Larrier provided evidence.

[7] **Issues**

The issues that arise for the Court's determination are as follows:

- (a) The quantum of damages to which Mr. Colin Plummer is entitled.
- (b) The amount of damages to which Carib is entitled.

[8] **Claimant's case**

Mr. Plummer contends that before Hurricane Georges struck, the value of the aircraft was US \$168,000. He has relied heavily on the evidence of Mr. Vasquez, the latter who indicated that the replacement cost of a similar aircraft is \$250,000. He says that as a consequence of Hurricane George's damage, the aircraft depreciated in value to US \$156,000.

[9] Mr. Plummer says that post Hurricane Georges, and while Carib had possession of the aircraft, it was further damaged. It is now a write off since the defendant left it exposed to the elements. Accordingly, he says that he is entitled to be compensated for the loss, in the sum of US \$156,000 less the damages the Court awards to the defendant on its counterclaim.

[10] **Defendant's case**

Carib denies that the value of the aircraft was \$156,000. It says that Mr. Plummer bought the aircraft for US\$40,000 several years ago. It contends that the aircraft was valued at US \$32,000 after several years of wear and tear. After Hurricane Georges it was damaged and its value was reduced to US \$7,500. The defendant maintains that after the aircraft was exposed to the elements it had a salvage value of US \$5,000, and says that Mr. Plummer is entitled to be compensated if at all, only to that extent.

[11] Further, the defendant insists that Mr. Plummer is indebted to the company for work done on the aircraft; the cost of Mr. Plummer's journeys between Antigua and St. Maarten; the cost of the engine that the defendant had placed in the aircraft, and costs of reinstating, removing and transporting the engine. Towards this end, Carib says that Mr. Plummer owes the total sum of US \$55,613.

[12] **Court's analyses and findings**

The Court has paid particular regard to the very helpful submissions of both learned Counsel and has given deliberate consideration to both the written and documentary evidence adduced.

[13] It is clear to the Court that in order to determine the loss that Mr. Plummer has suffered and the damages to which he is entitled, it is imperative for the Court to ascertain the post Hurricane Georges' value of the aircraft and the depreciation in the value of the aircraft due to being exposed to the elements. Further, the Court is required to determine the salvage value, if any, of the remains. In relation to the counterclaim, the Court will seek to determine whether Mr. Plummer has any outstanding moneys for Carib.

[14] The Court proposes to briefly analyse the evidence adduced and thereafter to assess damages.

[15] **Claimant's evidence**

The Court is of the view that Mr. Vasquez is credible in so far as he stated that the value of the aircraft in good condition "at this time" is US \$168,000. His estimate of the value of the aircraft in its immediate post Hurricane Georges state is US \$156,000. In the Court's respectful view, there is no reliable basis for this latter conclusion. Mr. Vasquez did not examine or assess the aircraft immediately post Hurricane Georges. This is coupled with the uncontroverted evidence that Mr. Plummer bought the aircraft several years before for US \$40,000. In addition, Mr. Vasquez having said that the damage to the aircraft post Hurricane Georges was only external, was forced to resile from that position under intense cross examination and admitted that had he inspected the aircraft, it is likely that the internal damage would have been revealed. Also, he admitted to having seen the aircraft two years after the damage. Further, the Court is of the respectful view that it was difficult for him to be objective, given the fact that he relied on Mr. Plummer's advise on the post Hurricane Georges state of the aircraft (as he quite candidly admitted). Mr. Vasquez's evidence of the post Hurricane Georges value of the aircraft is unreliable and incredible.

[16] Also noteworthy is that fact that Mr. Vasquez's evidence that the value of the aircraft following its deterioration was zero; and this in the face of clear evidence that there are several parts of the aircraft that were not damaged (due to being exposed to the elements). For the most parts, with respect, the Court is of the view that his evidence was unreliable and unhelpful since it could not address the post Hurricane Georges value of the

aircraft, neither was he able to provide a proper approximation of the value of the aircraft after its exposure to the elements.

[17] I now turn to assess Mr. Plummer's evidence. He said that he paid Mr. DeLisle the sum of US \$40,000 because they were friends. He wants the Court to accept that the sum was way below the real price. He relied on Mr. Vasquez's evidence of the replacement cost of a similar aircraft in order to buttress his case. The Court will return very shortly to Mr. Plummer's evidence.

[18] The Court is only able to attach very little weight to Mr. Sheppard's evidence, when he stated that he worked for the defendant company and that he was of the view that the damage to the aircraft as a result of the Hurricane Georges was light, and estimated it was approximately US \$5,544.37. He gave the costs of the repairs also. In the Court's view, his evidence did not advance Mr. Plummer's case in any way since he did not provide the Court with any reliable assistance of the post Hurricane Georges' value of the aircraft. Further, the Court approaches his evidence with caution; he did not strike the Court as entirely independent.

[19] **Defendant's evidence**

The first witness for the defendant is Mr. Norman. Even though he provided evidence on behalf of the defendant, he did not assess the aircraft until 2004. His assessment of the value of the aircraft Pre Hurricane Georges is somewhat reliable and reflective of its value in view of the other evidence including its purchase price. The Court however, approaches his evidence with some amount of caution since he too gave the impression of not being as neutral as he could have been. He puts the value of the aircraft post Hurricane Georges at US \$7,500. This figure is remarkably low and unacceptable.

[20] The next defence witness was Mr. Larrier who disagreed that the value of the aircraft was US \$156,000. He said there was no major modifications or upgrades to the aircraft. This bit of evidence was not controverted and I accept it as true. He further stated that since there were no modifications or upgrades, the aircraft would not have appreciated in value. Mr.

Larrier opined that the aircraft was unserviceable both before and after Hurricane Georges. The Court does not accept that the aircraft was not airworthy or that it was in an unserviceable condition. Neither was it in good condition. The Court notes that Mr. Larrier took up employment with the defendant between January and March 2006 and he inspected the aircraft the week of the 30th May 2006, nearly 10 years after the commencement of the suit. His information was obtained from the perusal of the company's record; the Court ought to be slow to act on his evidence which is inconsistent with the other reliable evidence.

[21] The Court must state that it is noteworthy that none of the witnesses, who testified, either on behalf of the claimant or on behalf of the defendant, inspected the aircraft immediately before or after Hurricane Georges. Therefore, none of the witnesses, in the Court's view, can accurately state the value of the aircraft either before or after Hurricane Georges struck. Of greater significance, none of the witnesses inspected the aircraft immediately after it was left on the runway after Hurricane Georges. Neither was any proper or timely assessment of the aircraft carried out immediately after it was left exposed to the elements. Accordingly, no reliable evidence was presented as to what was the post Hurricane Georges value of the aircraft, and more so, the final value of the aircraft after it was left exposed to the elements. It seems to the Court that neither the claimant nor the defendant sought to give the Court an objective assessment. In fact, the Court is of the view that each side stretched the post Hurricane Georges value of the aircraft in manner to benefit its case.

[22] Be that as it may, the Court has to do its best in an effort to resolve the matter in a fair manner. It is clear that the aircraft had problems before Hurricane Georges and several parts had to be repaired and/or replaced. After the Hurricane Georges, it sustained more damage including to its nose cone; its tail; its nose gear; the left propeller and left gear.

[23] Mr. Plummer is of the view that the Court should not utilise the sum of US \$40,000 as the purchase price of the aircraft. Had he wished the Court to utilise a figure other than the US \$40,000, he should have led credible evidence to show that the value of the aircraft at the

time of purchase, in 1993, was in excess of \$US 40,000. Also, one would have thought that it was essential for the claimant to provide an accurate estimate of the value of the aircraft just after Hurricane Georges, and the value of the aircraft after it was deemed abandoned by Carib, and left exposed to the elements. None of this was done. Instead, as stated earlier, he sought to rely on Mr. Vasquez's evidence in order to prove his claim. However, with respect, Mr. Vasquez's evidence was neither credible nor reliable on the two important matters referred to here, both of which are essential to the Court's determination of the matter.

[24] As stated earlier, the fact that Mr. Vasquez sought to opine as to the value of the aircraft in its immediate post Hurricane Georges damaged state, without actually examining it, has given the Court cause for pause. Further, Mr. Vasquez in his assessment relied primarily on photographs and did not examine the aircraft. He says that he formed the view that the post Hurricane Georges value was US \$156,000 since the damaged suffered was external. Also, he formed the view that the scrap value of the aircraft was zero. During cross examination, as stated earlier, he was forced to concede that a detail internal examination of the aircraft after the passage of Hurricane Georges may have revealed more substantial damage than he had stated.

[25] Let me say straight away, that the evidence adduced by Mr. Plummer did not assist the Court much in determining the value of the aircraft post Hurricane Georges. The Court is far from satisfied that when the claimant purchased the aircraft in 1993 for US \$40,000 that was not its correct value. Mr. Plummer has failed to lead any credible evidence to the contrary. The Court has no alternative other than to use the sum of US \$40,000 as the cost of the aircraft, which was 30 years old at the time of purchase. There is no basis for the Court to conclude that the aircraft had appreciated in value by the time Hurricane Georges struck. There is no doubt, based on the evidence adduced by both parties that the aircraft had depreciated in value by the time of Hurricane Georges.

[26] The Court uses the sum of US \$40,000 as the starting value. Adjustments must be made for the depreciation of the aircraft, both as a consequence of wear and tear and the

damage caused by Hurricane Georges. The Court is not of the view that the replacement value for a similar aircraft of US \$250,000 is an appropriate figure to be utilised, taking into consideration that the aircraft was damaged by Hurricane Georges at a time when it was 35 years old. To put another way, the Court is far from persuaded that the value could have been in excess of US \$40,000, at the time Hurricane Georges struck. Given its age and the amount of repairs and numerous difficulties that the aircraft endured, I fail to accept that it was valued at US \$168,000. Even though Mr. Plummer tried to persuade the Court that the post Hurricane Georges value of the aircraft was US \$156,000, as stated earlier, I do not find his evidence to be credible nor reliable. (There is no doubt that aircrafts like any mechanical equipment depreciates in value). In the case at bar, I am fortified in my view based on the abundance of evidence, that several parts of the aircraft had to be changed or repaired over different periods of time; these include the replacement of windows; repairing the engine, replacing the crank shaft.

[27] In view of the totality of evidence, the Court is of the considered view that the value of the aircraft prior to Hurricane Georges is assessed at US \$35,000. However, I do not accept that the estimated value of the aircraft after Hurricane Georges in 1998 was US \$7,500. There is credible evidence that several parts of the aircraft were not damaged as a result of the hurricane.

[28] Taking into account the damage the aircraft sustained as a result of Hurricane Georges, it is reasonable to assess the damage at US \$10,000. Accordingly, the post Hurricane Georges value of the aircraft is assessed at US \$25,000. After it was left exposed to the elements, it further depreciated in value by US \$20,000. Accordingly, Mr. Plummer is entitled to be compensated by Carib for the loss he suffered to the extent of US \$20,000. The salvage value of US \$5,000 is accepted as correct.

[29] Carib is therefore liable to compensate Mr. Plummer for his loss he suffered as a result of the aircraft being exposed to the elements in the sum of a US \$ 20,000.

[30] By way of counterclaim, Carib claimed damages to the extent of US \$52,241.00. At the trial, the Court held that in principle, “Mr. Plummer was liable for the charges listed at paragraph 26 (a-d). These are as follows:

- (a) US \$18,768 for transportation costs between Antigua and St. Maarten 22nd May – 31st December 1996;
- (b) US \$12,269 for work done on the aircraft as shown in account dated 31st December 1996;
- (c) US \$17,721 paid to Mattituck in respect of work done on the engine of the aircraft and;
- (d) US \$13,483 being the cost of transporting and reinstating the engine.

The trial Court stated further that it was for Carib to prove that the detailed charges were proper and reasonable”.

[31] At the assessment, Carib relied on the evidence of Mr. Larrier in order to prove its entitlement to recover from the sums stated above. Based on the evidence adduced, it is clear that Carib has proved, on a balance of probability, that Mr. Plummer is liable to compensate the company for the costs incurred. The Court has no doubt that the records the defendant has produced reflect these costs, which Mr. Plummer has failed to liquidate. The Court is fortified in this view based on its acceptance of Mr. Larrier’s evidence on this aspect of the matter, as reliable and credible. Mr. Plummer did not successfully challenge the accuracy of the documentary evidence; the Court accords substantial weight to the defendant’s documentary and oral evidence on this aspect of the case.

[32] In view of the above premises, the Court is of the view that Mr. Plummer is indebted to Carib in the sum of US \$52,241.

[33] **Conclusion**

The Court gives judgment for Mr. Colin Plummer against Carib Aviation Ltd. Damages are awarded in the sum of US \$20,000.

[34] On the counterclaim, judgment is given in favour of Carib Aviation Ltd. against Mr. Colin Plummer. Damages are awarded in the sum of US \$52,241.

[35] The Court gratefully acknowledges the assistance of both learned Counsel.

Louise Esther Blenman
High Court Judge