SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2011/0584

BETWEEN:

(1) GENERAL AVIATION SERVICES LTD
(2) SYLVANUS ERNEST

Claimants

And

(1) THE DIRECTOR GENERAL OF THE EASTERN CARIBBEAN CIVIL AVIATION AUTHORITY
(2) THE EASTERN CARIBBEAN CIVIL AVIATION AUTHORITY

Defendants

Appearances:
Mr. Alberton Richelieu for the Claimants/ Respondents
Mr. Renee Williams and Mr. Mark Maragh for the Defendants/ Applicants

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2011: 25th October
2012: 25th January

DECISION

[1] BELLE J: This action arises out of an aviation accident or incident involving the First Claimant's/ Respondent's aircraft at the George Charles Airport in Saint Lucia on the 13th day of April, 2011. This was followed by the decision of the First Defendant to prohibit the Claimants from operation any aircraft within the member states of the OECS.

[2] The Claimant filed a Claim Form on June 1st, 2011 seeking, inter alia, certain administrative orders.

[3] On the 25th day of July, 2011 the Claimant/ Respondent obtained injunctive orders against the Defendants. On the 17th day of August, 2011 the Defendants/ Applicants filed an application seeking the discharge of the said injunctive orders.

[4] On the 30th day of August, 2011 the Defendant filed a second application seeking:

(a) A declaration that the Court has no Jurisdiction to try this claim.

(b) That the Fixed Date Claim and Statement of Claim filed herein on 1st June, 2011 be Struck Out.

(c) That service of the Fixed Date Claim and Statement of Claim on the First Defendants be set aside.

(d) Costs

[5] The Applicant/Defendant's grounds were:

A. Failure to serve Notice of Suit as required by Article 28 of the Code of Civil Procedure;

B. Failure to obtain leave for judicial review before filing the Fixed Date Claim Form herein which seeks to quash decisions made by Defendants pursuant to the Civil Aviation Act and Regulations;

C. Failure to effect proper service of the Fixed Date Claim Form and Statement of Claim on the First Defendant in accordance with Part 5 of the Civil Procedure Rules 2000.

[6] In summary then, the Applicants argued in relation to Article 28 that the words of Article 28 of the Code of Civil Procedure (Cap. 243 of the Revised Laws of Saint Lucia 1957) have the effect that the Director General could not be sued for damages for any act done, unless the Claimants had first been given one month's notice of the suit (Writ of Summons).

[7] Article 28 of the Code of Civil Procedure (Cap. 243 etc.) states:

> *"No Public Officer, or other person fulfilling any public duty or function can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any judgement be rendered against him unless notice of such suit has been given him at least one month before the issuing of the Writ of Summons."*

[8] The Applicants argued that this Article applied to this suit because the Claimant had sought damages against the Defendants who were both persons fulfilling a public duty or function. The Claimant had failed to give Notice of the Claim filed on the 1st day of June, 2011 and therefore this claim fell afoul of Article 28.

[9] The Applicants argued that the Court was bound by the decision of Barrow JA in Horace Fraser v The Judicial and Legal Services Commission et al[1].

[10] The Second Defendant was a corporate body and therefore a "Person" contemplated by the Law as was the First Defendant.

[11] Counsel for the Claimant argued that Article 28 is not intended to apply to the matter such as this, since it was a special kind of suit which was "sui generis". Counsel argued that the Court could use its discretion and allow the matter to proceed as if leave had been given. Counsel cited Part 56.6 (1) (4) of the CPR 2000 in support of this contention.

[12] Counsel urged the Court not to follow the decision of Wilkinson J in the Fire Service Association and Shane Felix v Public Service Commission et al. [2]He argued that the Court should consider the decision of George Creque J A as she then was, in Richard Frederick v Comptroller of Customs [3]et al in which it was held that the action against the Comptroller of Customs was not a Civil Proceeding for the purposes of the CPA (Crown Proceedings Act).

[13] The Respondents also argued that the Defendants accepted the Court's Jurisdiction in the case when they acknowledged service of the Claim form. However Part 9.2 of the CPR 2000 addresses this issue. Part 9.2 permits the Defendants/ Applicants to do exactly what they have done i.e. dispute the Court's Jurisdiction after filing the Acknowledgement of Service, which the rule says, must be filed unless Part 9.3 applies and a defence is filed in the circumstances.

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[1] Civil Appeal No.3 of 2005

[2] SLUHCV 2009/0762

[3] HCVAP 2008/037

[14] It seems to me however, that the issue at hand is not an action under the Crown Proceedings Act since neither the Civil Aviation Authority nor the Director General of the Authority can be described as the Crown or servants of the Crown. Instead they are protected by Article 28 which speaks to persons performing public duties.

[15] In relation to the failure to seek leave to file a Claim for Judicial Review, I am also of the view that the Respondent's Counsel is not applying Part 56.(1) and (4) of the CPR 2000 correctly. These rules deal with the discretion to permit the action to continue as if an Application for Judicial Review has been made.

[16] The Part states:

> (1) *This rule applies where a Claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting the claim are such that the only or main relief is an administrative order.*
>
> *(2) The Court may at any stage direct that the claim is to proceed by way of an application for an administrative order.*
>
> *(3) If the appropriate administrative order would be for judicial review, the Court may give leave for the matter to proceed as if an application has been made under Rule 56.3.*
>
> *(4) If the Court makes and order under Paragraph (2), it must give such directions as are necessary to enable the claim to proceed under this part.*

[17] There are a number of issues to be considered before these rules can be applied to this case.

[18] Firstly, the Claimant did not issue a claim simply for damages or some relief other than an administrative order. The Claimant purported to issue a claim seeking a declaration that the Defendants had breached the Rule of Natural Justice and an order quashing the decision prohibiting the Claimants from operating any aircraft. These are orders which fall under the heading of Judicial Review.

[19] The Claimant also sought damages for loss of income and damages to be assessed. It would therefore be incorrect to state that the only or main relief in the Claim was an administrative order and the Claimant sought only damages. It is clear that the administrative order was always central to the claim and the damages were consequential to the administrative acts challenged.

[20] Part 56.1 (1) of the CPR 2000 defines "Administrative Order" which could include a constitutional motion, application for declarations, and applications for judicial review, or an application under an enactment or common law to quash an order etc.

[21] Judicial Review is defined in Part 56.1 (3) which states:

> *"the term "judicial review" includes the remedies (whether by way of writ or order) of –*
>
> *(a) certiorari, for quashing unlawful acts;*
>
> *(b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and.*
>
> *(c) prohibition, for prohibiting unlawful acts"*

[22] It is therefore obvious that many scenarios could apply in the circumstances. But the case must have been one started as an action for damages or some relief other than an administrative order if Part 56 .6 of the CPR 2000 is to apply. The words of that rule cannot apply to this claim. Leave should therefore have been sought prior to filing the Claim in this matter which was clearly one for an administrative order from the outset.

[23] This is sufficient to strike out those aspects of the claim seeking administrative orders. However since the damages flow from the administrative orders sought, the entire claim would have to be struck out.

[24] It could be argued that this is a mere irregular procedure which could be corrected by the Court pursuant to Part 26.9 of the CPR 2000. However, I am of the view that seeking leave to proceed would have given the Court an opportunity to do a number of things which could have been done in this case to avoid a law suit altogether. For example, when one

seeks leave to make a claim for judicial review along with interim relief, the application must be heard inter parties. An opportunity for resolution would have arisen at that point. See Part 56.4 of the CPR 2000. The failure to seek leave is therefore not just a slight irregularity which can be overcome by case management.

[25] With regard to Article 28, I am of the view that it can have very negative and possibly unjust consequences where the Claimant is seeking urgent relief as in this case. However, the Court is bound by the decision in Horace Fraser v The Judicial and Legal Services Commission et al but only in relation to the relief sought for damages. The Article seems to permit an action for declarations which of course may have to follow the rules under Part 56. of the CPR 2000.

[26] I do not find it necessary to make a decision on the service of the Claim Form since the other decisions bring the matter to an end.

[27] In the final analysis it means that the Claimant is unable to pursue a suit for damages as a consequence of the Defendants' acts. The entire suit therefore comes to nothing and is accordingly dismissed along with all orders following there from.

[28] The Defendants are awarded their costs in the matter to be assessed if not agreed.

Francis H V Belle
High Court Judge