

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2018/0280

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTRE INC.

Claimant

and

EASTERN CARIBBEAN CIVIL AVIATION AUTHORITY

Defendant

Appearances:

Mr. Warren Cassell for the Claimant

Mr. Jarid Hewlett holding papers for Dr. David Dorsett for the Defendant.

2019: February 11th, 18th

ORAL JUDGMENT

[1] WILKINSON J.: On 14th June 2018, the Claimant filed its fixed date claim form and affidavit in support. By its fixed date claim the Claimant sought the following relief:

(i) a declaration that the Defendant has not had in place any Board pursuant to articles 10, 11 and 16 of the Eastern Caribbean Civil Aviation Authority Act 2003;

(ii) a declaration that all actions taken by the purported Board since 31st October 2010, are null, void and of no effect.

[2] The affidavit in support was deposed to by Mrs. Grace Norman the manager, director and co-owner of the Claimant. Mrs. Norman deposed that:

1. ...

2. The Eastern Caribbean Civil Aviation Authority (ECCAA), the Respondent herein is a statutory body corporate established pursuant to the Civil Aviation Act No.25 of 2003 and is sued in such capacity.
3. That I am the Manager and Director and Co-owner of the Claimant herein and I am duly authorised to make this affidavit on behalf of the Claimant.
4. That I am a qualified pilot and hold a commercial **pilot's** license issued by the Organisation of Eastern Caribbean States, Directorate of Civil Aviation in September of 1993. I also hold a commercial **pilot's** licence issued by the Federal Aviation Administration of the United States of America in October of 1987. I have in excess of 4,000 hours of flying experience. I also have attained an Executive Master of Business Administration degree from the University of the West Indies in October of 2002.
5. That the Board of the ECCAA carries out the functions of ECCAA.
6. That no Board has been in existence since October 31, 2010.
7. That I am seeking the remedies to be sought out such that:
 - a. A declaration that since 31st October 2010, the defendant has not had in place any Board pursuant to articles 10, 11 and 16 of the Eastern Caribbean Civil Aviation Agreement Act of 2003. (Exhibit B).
 - b. A declaration that all actions taken by the ECCAA and or its purported board since 31st October 2010 are null, void and of no effect.
8. The grounds upon which I am seeking this relief are:
 - (i) It is my belief that the purported board is dysfunctional and non-existent and its actions are of no effect since 31st October, 2010 and I wish the Court to confirm this;
 - (ii) The Court is empowered to make a declaratory order.”

[3] The proceedings were filed by Mrs. Grace Norman on behalf of the Claimant rather than Counsel. Counsel Mr. Cassell filed his notice of acting on 31st January 2019, 11 days before the hearing of **the Defendant's application.**

[4] On 1st October 2018, the Defendant filed an application seeking the following orders:

1. The Respondent/**Claimant's statement of case is struck out.**
2. Costs payable to the Applicant/Defendant be assessed in the sum of \$....

The grounds of the application were:

1. The Claimant has filed proceedings seeking a declaration with respect to the status of the Board of the Defendant on the substantive ground that “It is my belief that the purported Board is dysfunctional and non-existent and its actions are of no effect since 31st October, 2010 and I wish to the **Court to confirm this.**”
2. The purpose of the Court is to resolve real disputes between parties. There is no apparent dispute between the Parties in the instant proceedings. The process of the Court is not to be used as a personal detective to confirm the beliefs of litigants and accordingly the proceedings are an abuse of the process of the Court. Moreover, the Claimant has not disclosed that it has been guided by article 10(9) of the Eastern Caribbean Civil Aviation Agreement Act 2003 to satisfy its enquires as to the status of the **Defendant’s** Board.
3. The Court has the jurisdiction to make a declaration but the claim discloses no circumstances that call for the making of a declaration and accordingly the proceedings constitute an abuse of the process of the Court.
4. Also the Claimant has sought the same declaration in the matter of ANUHCV2014/0037, which matter is still pending before the court.
5. **The Claimant’s statement of case is one that should be struck out having regard to** CPR rule 26.3(1)(c).

[5] The application was supported by the affidavit of Mr. Donald Mc Phail, the Director General. Therein Mr. McPhail deposed that:-

“....

[4] **I am the Authority’s Director General. In full accordance with the provisions of** article 10(3) of the Eastern Caribbean Civil Aviation Agreement Act 2003, I will say that, as the Director General, I serve as the Chief Executive Officer of the Authority and I am in charge of and responsible to the Board for the implementation of the policy and day-to-day administration and management of the Authority. In light of the foregoing, I verily say that I am a fit and proper person to make this affidavit for and on behalf of the Authority.

[5] **I also make this affidavit in opposition to the Claimant’s application for the first hearing** of the matter to be dealt with as the trial of the action. I also depose this affidavit in support **of the Authority’s counter application that the Claimant’s statement of case be struck out.**

[6] The Claimant has filed proceedings seeking (1) a declaration that the Authority has not had in place any Board pursuant to articles 10, 11 and 16 of the Eastern Caribbean Civil Aviation Agreement Act of 2003 and (2) a declaration that all actions taken by the purported Board since 31st October, 2010 are null, void and of no effect.

[7] I am aware that it is the purpose of the Court is to resolve real disputes between parties. There is nothing arising from **the Claimant's** statement of case (should say "affidavit") in this matter which shows that there is any dispute between the Claimant and the Defendant. I do not know it to be the purpose of the Court to allow its process to be used as a fishing expedition to confirm / satisfy a **litigant's belief**.

[8] From my reading of **Claimant's** statement of case, there is no disclosure of any circumstances which should move this Court to make the declarations requested by the Claimant or at all.

[9] If the Claimant wants to determine the status of the **Defendant's** Board of Directors it should make proper inquiries of the relevant authorities. **The Claimant's** statement of case wholly fails to disclose that it has made proper inquiries of the relevant authorities.

[10] **The Claimant's** statement of case also fails to disclose that it has had regard, or any proper regard, to article 10(9) of the Eastern Caribbean Civil Aviation Agreement Act 2003 so as to satisfy any query it may have as to the status and composition of the **Defendant's** Board of Directors.

[11] Moreover, the declaration that the Claimant seeks in this case is the same declaration that it seeks in the matter of ANUHCV2014/0037 brought against the Defendant, which matter is still pending determination by this Court. A copy of **the Claimant's** statement of case in ANUHCV2014/0037 is attached as Exhibit DM1.

[12] In the circumstances, the prosecution of the instant case whilst the 2014 matter is still pending constitutes an abuse of the process of the Court.

[13] In the circumstances, the Defendant ask that **the Claimant's** statement of case be struck out as an abuse of the process of the Court."

[6] The Claimant filed on 5th October 2018, a document titled "Reply in Opposition to the Respondent's Application to Strike out". It appears to be in reply to the Defendant's affidavit and submissions.

Submissions of Counsel for the Defendant

[7] Counsel for the Defendant submitted that the Defendant relied on its submissions filed to support its application. He stated that the Defendant had grounded its application on 5 grounds as set out in the application.

[8] The first issue he said was **standing**. **In the Claimant's affidavit there** was no evidence to support the application sought. In its reply submissions to the application, there was reference made to the

Public Bodies Management and Accountability Act and a copy of same was exhibited to the said submissions. He said that despite his best efforts, he could not find this Act as a part of the laws of Antigua and Barbuda.

- [9] The Court during the hearing and immediately upon the issue being raised, consulted the Consolidated Index 2015 of the Laws of Antigua and Barbuda and could not find that Act listed as a law at Antigua and Barbuda. The Consolidated Index was passed to Counsel for the Claimant. He had no response to the issue of the unknown Act at Antigua and Barbuda.
- [10] The Court will therefore have no regard to any matters which seeks support from the Public Bodies Management and Accountability Act.
- [11] Continuing with submissions on the first issue, Counsel for the Defendant said that for the Claimant to proceed it would have to present something in its affidavit in support of the fixed date claim which indicates that the Defendant had carried out some action or made some decision which aggrieves it and so gives rise to a cause of action recognized in law. The affidavit of the Claimant makes no such claim.
- [12] The second issue Counsel said was that even if the Court finds that the Claimant had standing, and which the Defendant says that it does not, the evidence on which the Claimant relies for its claim to succeed **is wholly insufficient. The Claimant's entire** claim is based on 2 grounds (i) the Court is entitled to make a declaratory order, and this in the **Defendant's** view was not a ground, and (ii) the most important ground on which the Claimant relied was paragraph 8 clause (1) where **the Claimant's deponent Mrs. Norman says: "The grounds upon which it is seeking relief are (i) it is my belief that the purported board is dysfunctional and non-existent and its actions are of no effect since 31st October 2010, and I wish the court to confirm this."** This Counsel said was not evidence proving the claim. Counsel said that it was trite law that he who asserts must prove.
- [13] Counsel submitted that the Claimant was in essence asking the Court to go and find out if the Board was in place and that was not the function of a Court.
- [14] Counsel submitted that the Claimant had also sought to shift the burden of proof that the Claimant prove its claim unto the Defendant. This was not how the legal process worked. It was the Claimant to prove its case and satisfy the Court that it was entitled to the relief sought. This the Claimant has not done.
- [15] Counsel submitted that the fixed date claim form procedure unlike the ordinary claim form, gave the Claimant the option of filing evidence by way of an affidavit instead of a statement of claim. The Claimant having exercised the option to file an affidavit instead of a statement of claim then all of **the Claimant's evidence to support the fixed date claim was** presently before the Court.
- [16] **On the Claimant's evidence before the Court, the Defendant was of the view that the Claimant had** not presented the Court with any evidence on which the Court could grant the declarations sought.

- [17] A final point was that the Claimant was also seeking a decision from the Court on this very issue as already raised in ANUHCv2014/0037 Grace Norman trading as Antigua Flight Training Center, Norman Aviation Flight Training Center v. Eastern Caribbean Civil Aviation Authority – its amended fixed date claim form seeks several declarations whereby the Claimant seeks to nullify **the certain actions taken by the Board. The Defendant's position is that if the Court is deciding** whether or not actions taken by the Board were valid or null, the legal standing of the Board was a live issue in that suit.
- [18] **Counsel submitted that in reply to the Defendant's position that the Claimant made a number of** allegations on its reply submissions. First, it said at paragraph 5 of the rebuttal submissions that the matter was struck out for an abuse of process, understanding that the appeals were dismissed but there was no Court order striking out ANUHCv 2014/0046. Secondly, in reply the Claimant at clause 4 said there was no trial date set and an application to withdraw had been filed.
- [19] Counsel submitted that in this regard, the Court was well aware that past a certain stage in civil proceedings, the Court must grant permission to withdraw a claim. **And as per the Claimant's own** evidence, the matter had gone to the Court of Appeal and the Privy Council.
- [20] So in all the circumstances, even if there is filed an application to withdraw, it would be up to **Court's discretion and if permission were granted, there would be** the matter of costs.
- [21] Counsel submitted that in any event, there was no order that the Defendant was aware of disposing of ANUHCv2014/0037. Therefore it was **the Defendant's position that the issue in that** suit about the status of the Board, was a live one, and the Claimant could not start fresh proceedings on the same issue which was awaiting determination. Therefore the present suit was an abuse of process.

Submissions of Counsel for the Claimant in response

- [22] Counsel for the Claimant appeared to have abandoned the submissions filed in reply on 5th October 2018, save for a brief reference to ANUHCv2014/0037.
- [23] In regard to ANUHCv2014/0037 Counsel without reference to any affidavit sought to state his instructions on the issue and which was going to be evidence from the Bar table. Counsel for the Defendant objected. The Court upheld the objection. Counsel then said that there was no pending decision in the suit.
- [24] Counsel for the Claimant then stated that in ANUHCv2014/0037 there were several issues before the Court. The Court reminded Counsel that it mattered not that there were several issues before

the Court, the issue was that one of them raised the issue of the legality or lack thereof of the **Board's** action. This was the point of Counsel for the Defendant.

[25] Counsel for the Claimant then proceeded to say that as the Claimant filed the suit without the benefit of Counsel, the proceedings fell under CPR 2000 Part 56 which provides an accelerated **process over normal proceedings. The Claimant therefore would have the Court's obligation to** hear the matter speedily. That the Claimant was entitled to bring the matter before the Court with a view to withdrawing the said issue in previous matters.

[26] The Court inquired of Counsel as to which rule he was relying on in Part 56 because he was grounding his submissions on the fact that Mrs. Norman acted in person. The Court stated that Part 56 dealt with judicial review proceedings, and there was no application on the file seeking leave to file judicial review proceedings. The Court said that such being the situation, the matter did not fall for consideration under Part 56.

[27] Counsel for the Claimant then said that the Court ought to take into account that Mrs. Norman acted in person and take into account the overriding objective. And if the Court was so minded to strike out the claim then the Court should ask itself whether or not the Claimant could cure the technical breach. Counsel referred to a number of authorities which he unfortunately did not share with the Court. The citations hereunder and quotations are as Counsel stated then to the Court.

[28] Counsel cited Wooding CJ in Baptiste v. Supersad 1967 12 WIR 140 p. 144 and which he said was cited in the Montserrat case of Kevin Weste et al v. Shamrock Industries Ltd. by Redhead J:

"The law is not a game nor is it an arena. It is the function and duty of a judge to see that justice is done as far as may be according to the parties."

He said that Redhead J also said in that case that the attainment of true justice is **"over the highway of reality and not through the alley of technicalities."**

[29] Counsel submitted that the overriding objective says that in dealing with a case justly, there must be ensured equal footing. The Claimant says that though some defects, as the CCJ in 2006 or thereabout Saunders J in CCJ CD 2 of 2006 G Watson v. Fernandes at paragraph 39 said:

"Courts exist to do justice between litigants, through the balance of interest, an individual litigant against the interest of litigants as a whole. Justice is not served by depriving parties of the ability to have their cases decided on the merit because of a technical procedure breach committed by their attorney. With the greatest of respect to the court below we disagree that anything in the rules suggest that there is a time limit on the court's ability to excuse non-compliance with the rules or permit to be remedied if the interest of justice so required. The Court retains that jurisdiction at all times."

- [30] Counsel for the Claimant submitted that the Claimant was saying that barring the other reason of res judicata, if the Court was so mindful, the Court can permit the Claimant who now has an attorney to amend its affidavit especially given that there is nothing coming from the Defendant on the matter. There was no response, barely an acknowledgment of service.
- [31] Counsel urged the Court not to strike out the claim as the cases say that such a draconian measure should be of last resort. The issue as to whether or not the Board exist is a serious one and has implications for the entire Region. Therefore the application should be refused.

Reply submissions of the Defendant

- [32] **Counsel for the Defendant said that the Claimant's submissions did not even attempt to address the Court on the Claimant's standing – locus standi.** Nor was there an attempt to address the Court on the lack of evidence.
- [33] Counsel said that Counsel for the Claimant referred to a touching quote dealing with the highway of realities and not through the alley of technicalities. He said that he wholly agreed with Counsel on **this point. But what the Defendant has described to the Court as the issues facing the Claimant's claim** i.e. standing, lack of evidence, abuse of process – these are not mere technicalities. They were serious realities.
- [34] Counsel said that the first point Counsel for the Claimant did address was that of res judicata and abuse of process. If he recalled what was said in regard to ANUHCV 2014/0037 – he said that the Claimant was not seeking the same thing its present suit. Counsel referred the Court to paragraph 8 of ANUHCV 2014/0037.
- [35] **Counsel said that the main thrust of Counsel for the Claimant's submissions was that the claim was** filed by the person of Mrs. Norman, and so the Claimant should be given some leeway to amend now that it had Counsel.
- [36] He said that as indicated to the Court earlier, the serious deficiencies that befall the **Claimant's claim** are not mere technicalities that can be remedied by a simple amendment. An amendment **would fundamentally change the nature of the Claimant's claim.**
- [37] Counsel said that justice must operate both ways. And so it would be unfair for the Defendant who has been faced with the first claim. **The Defendant's position** was that it would be manifestly unfair for the Defendant who had prepared its case based on the claim before it and had put together the strike out application based on the claim before it, to have all that effort put aside to allow the Claimant to bring a proper claim.

- [38] Counsel said that he noted the reference to the overriding objective. His view was that the Claimant has not a case. It would not be in keeping with the overriding objective to allow the Claimant to bring a whole new case because it has “messed up” this one. Especially given the fact that the Claimant had already filed a claim for this relief since 2014 in ANUHCV2014/0037.
- [39] **Counsel said that he noted that Counsel for the Claimant had sought to portray the Claimant’s director, Mrs. Norman as a clueless lay person but given the Claimant’s own evidence, the previous matter had reached the privy council and so Mrs. Norman either had access to legal advice or she was more than capable than she seemed.**
- [40] In all the circumstances, the Defendant maintains that the claim should be struck out and the Defendant awarded costs.

The Law

- [41] The Civil Procedure Rules rule 26.3 (1) provides:

“26.3(1) In addition to any other power under these Rules the court may strike out a statement of case or a part thereof if it appears to the court that -

(a) ...

(b) ...

(c) the statement of case or the part to be struck out is an abuse of process of the court or, is likely to obstruct the just disposal of the proceedings; or

(d) ...

- [42] On rule 26.3(1) in Baldwin Spencer v. The Attorney General of Antigua and Barbuda et al¹ the Court of Appeal explained that the approach is not a factual investigation on the truth of the pleadings, but whether taken at its highest there is disclosed a cause of action. Byron JA said:

“This summary procedure should only be used in clear obvious cases, which it can be seen on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. The court is not concerned at this stage with the truth or otherwise of the pleadings.”

- [43] In the early days of CPR 1998 in the United Kingdom, in McPhilemy v. Times Newspapers Ltd.² Lord Woolf MR gave guidance upon the statements of case (and the Court dares to add similarly

¹ Antigua & Barbuda Civil Appeal No.20A of 1997

² [1999] 3 AER 775, p.792-793.

where an affidavit is used to support a fixed date claim instead of a statement of claim) under the CPR 1998 regime when he said:

“The need for extensive pleading including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of the **party’s witness statements, will make the detail of the nature of the case the other side has** to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of **the case of the pleader.**”

[44] The Defendant is a body established pursuant to article 3 of The Eastern Caribbean Civil Aviation Agreement Act. 2003. The preamble of the Act states that there was an agreement made on 21st October 2003, between the Governments of Antigua and Barbuda, Grenada, Saint Christopher and Nevis, Saint Lucia and Saint Vincent. These States desired to promote aviation by establishing an autonomous regional regulatory organization for the purpose of regulating civil aviation and fostering competitiveness in the aviation industry in the Eastern Caribbean and for harmonizing the application of the standards and recommended practices adopted by the International Civil Aviation Organization and to the extent practicable with neighbouring Caribbean States. Pursuant to article 3, the Defendant is a body corporate, having a perpetual succession.

[45] The purpose and functions of the Defendant are set out at articles 4 and 11 and they include amongst others the regulation of matters relating to civil aviation, safety and security in the participating States. Article 11 provides for the functions of the Board. It states:

“The functions of the Board shall include –

- (a) approval of annual work plans and budgets of the ECCAA;
- (b) approval of appointments for senior management;
- (c) approval of borrowing and lending.

The Council of Ministers may allocate additional functions to the Board.”

Findings and Analysis

- [46] To commence, it is important to note, as Counsel for the Defendant said, the Claimant filed its fixed date claim form supported by an affidavit as opposed to a statement of claim and which would have been naturally followed on by a witness statement. Therefore, as Counsel for the Defendant rightly said, the entirety of the Claimant's case by way of fixed date claim, supported by affidavit – its evidence, was before the Court.
- [47] **Bearing in mind that the Claimant's entire case was already before the Court, the Defendant, after filling its acknowledgement of service on 30th July 2018, and therein signaling an intention to defend the claim filed an application to strike out the claim as being an abuse of process. To the Court's mind, this was the correct approach to save the Court's time and save costs, if the Defendant held the view that the claim was an abuse of process.**
- [48] **Reverting now to the Claimant's claim.** The Claimant speaks of "all actions taken by the purported Board since 31st October 2010", but fails to identify a single action in either its fixed date claim or affidavit in support. This alone is an abuse of process. **It is not the Court's duty to make inquiries of the Defendant as to what duties were that of the Board and what duties did the Board fail to carry out. It is the Claimant's duty to set out such allegations.**
- [49] As seen, article 11 provides for the functions of the Board and which are (a) approve annual work plans and budget (no doubt prepared under the direction of the Director General), (b) approve appointments for senior management, and (c) approve borrowing and lending. It is also provided that the Council of Ministers may allocate additional functions for the Board. As stated prior, not a single item has been identified by the Claimant **as the Board's duty** and which has been breached.
- [50] Even if the Court was prepared to give a pass on the paltry state of the fixed date claim, the affidavit in support must rise to the occasion per Lord Woolf in *Mc Philemy v. Times Newspapers Ltd*. It simply does not rise to the occasion as it states not a single activity carried out by the Board that is to be questioned or alleged that some other person was purporting to carry out on behalf of the Board.
- [51] Actions prescribed by the Act which are for the Board cannot of course be carried out otherwise but there is nothing in the Act stating that the Defendant ceases to operate even if there is no Board. **While this would not be a satisfactory situation, the Defendant's operations** do not grind to a halt. There is the Director General who is charged with managing the Defendant. Indeed paragraph 5 of the **Claimant's** affidavit in support of its fixed date claim states that the Board carries out the functions of the Defendant. This is not at all an accurate statement.
- [52] Counsel for the Claimant submitted that the issue before the Court was a technical breach. The Court is afraid that it must strongly disagree. The issue is one of substantive failure – failure to define the paramount **of the Claimant's case against the Defendant. A technical breach might be** a procedural failure such as failure to file an affidavit of service to show that a claim had been served on a particular date and time. In those circumstances, the Court could if satisfied on the reasons for failure to file such an affidavit, give an opportunity to file an affidavit of service.

[53] On what is before the Court and relying on Baldwin Spencer v. The Attorney General of Antigua and Barbuda, taken at its highest, it discloses no cause of action and so ought to be struck out as an abuse of process.

[54] From another point of view, even if the Court were prepared to give a pass on the paltry state of the fixed date claim and affidavit in support, the Court believes that the Claimant is caught by ANUHCV2014/0037 Grace Norman T/A Antigua Flight Training Center & Anr. V. Eastern Caribbean Civil Aviation Authority – amended fixed date claim. In ANUHCV2014/0037 the Court observes the relief sought at prayer 8 **is stated as “A Declaration that according to the Eastern Caribbean Civil Aviation Agreement Act of 2003 Article 11 “The functions of the Board shall include ... (b) approval of appointments of senior management”; that since November 1, 2010, that the Board of Directors of ECCAA has ceased to function – there has been no functioning Board of Directors; that the position of Director of Flight Safety Department is void. And the relief at prayer 14 seeks a declaration that “... since November 1, 2010, that the Board of Directors of ECCAA has ceased to function – there has been no functioning Board of Directors.”** These prayers clearly relate to the same period in the present suit and in the same way query the legality or lack thereof **of the Defendant’s Board.**

[55] It has been long understood that it is an abuse of process for a party to file more than 1 suit duplication claim and relief sought. This is an abuse of process.

[56] **Court’s order:-**

1. **The Claimant’s fixed date claim is struck out** for being an abuse of process of the Court.
2. The Defendant is awarded \$1000.00 on its application and the Claimant is to pay same within 21 days.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar

