

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2018/0163

BETWEEN:

NEIL CAVE

SHANE GOODGIE

ERIC WARD

Claimants

and

CARL BURKE

ROBERT LABADIE

(The President and Treasurer respectively of Leeward Island Airline Pilots Association sued on their own behalf and on behalf of all other members of LIALPA except the Claimants)

Defendants

Appearances:

Mr. Satcha Kissoon Attorney for the Claimants

Mr. Justin Simon Q.C and Ms Monique Gordon for the Defendants

2018: June 21

DECISION

- [1] HENRY, J.: The first and second claimants are current employees of LIAT (1974) Ltd. Both are members of the Leeward Islands Airline Pilots Association (LIALPA). The third claimant is a former employee of LIAT and during his employment was a member of LIALPA.
- [2] By Claim Form filed on 6th April 2018 the claimants seek various relief against the current Executive Counsel of LIALPA.

[3] By application filed the same date, the claimants seek the following interim orders pursuant to Part 17 of the Civil Procedure Rules 2000:

- 1) An order enjoining all persons purporting to act as members of the Executive Council of LIALPA, including the named first and second defendants from so acting until further order;
- 2) Until the return date or further order of the court, an Order restraining the defendants in their capacity as trustees or otherwise whether by themselves, their servants, agents and howsoever in any way from disposing of, dealing with or diminishing the value of the following assets whether they are in or outside Antigua and Barbuda, in any way or manner whether by way of issuing cheques, withdrawing cash or otherwise, namely:
 - (a) All monies held on any accounts in the name of Leeward Island Airline Pilots Association;
 - (b) All assets held in the name of the Leeward Island Airline Pilots Association
- 3) An order requiring the defendants to deliver copies of all financial statements for the Leeward Island Airline Pilots Association, audited and unaudited, together with copies of all bank statements for the said Leeward Island Airline Pilots Association for the period 2010 to date of such order to the claimants forthwith.
- 4) An Order setting the action down for a speedy trial
- 5) Costs

[4] The first claimant (Mr Cave) and the defendants were lawfully elected to the Executive Council (the 2016 Council) of LIALPA in September 2016. The first defendant (Mr. Burke) was elected as the President, the first claimant as Vice President and the second defendant as Treasurer. Mr. Cave alleges certain misconduct on the part of Mr. Burke during the currency of the 2016 Council, including persistent refusal to carry out the mandate and follow the directions of the elected Council. Mr. Cave alleges that five of the Council members wrote to Mr. Burke on the 5th May 2017 drawing his attention to their discontent and urging his co-operation. According to him, there were no changes in response.

[5] Notwithstanding the allegations against him, Mr. Burke was, at the August 2017 Annual General Meeting (AGM) re-elected as **President of LIALPA**. **Mr. Cave's term as Vice President was not up** for election, but the second and third claimants were also elected to serve on the Executive Council. The second defendant was also returned as Treasurer as part of the 2017 Council.

[6] According to Mr. Cave, at the August 2017 AGM, Mr. Burke announced to the membership that LIALPA was in financial distress and as such the Council needed to increase the union fees. This seemed to spark some concern, at least on the part of Mr. Cave, of the financial condition of LIALPA. He makes allegations of mismanagement and mis-spending of funds belonging to LIALPA by Mr. Burke. He states that he requested certain financial information which was not provided. According to the claimants, after the 2017 election Mr. Burke continued to act autonomously and without following the mandate of the 2017 Council. In response, the claimants

were among six members who resigned from the 2017 Council by letter dated 13th September 2017.

- [7] Thereafter, the Council members who resigned wrote to the general membership setting out the reasons for their resignation and citing 40 infringements of the mandate of the Council and the Constitution and By-Laws which they allege Mr. Burke had carried out. Mr. Cave asserts that no fresh elections were called and no elections were or have been held in accordance with the Constitution and By-Laws for the vacant seats on the Council. Mr. Burke, he asserts, contrary to the Constitution and By-Laws, has appointed a number of people to the Council to fill the mass vacancies thereby creating a de facto Council. This de facto Council is ultra vires the Constitution of LIALPA and is therefore an invalid Council.
- [8] Mr. Burke, in his affidavit in response, states that the membership of LIALPA consists of 107 pilots, 27 of whom are at the Barbados base. He points out that neither he nor the second defendant have resigned nor have they to date been disciplined as members of the Executive Council for any of the matters listed in Section II, Rule 2.1.13 of the Constitution. He challenges the locus standi of the third claimant to join in bringing this legal action, since as at the date of the filing of the proceedings he did not qualify for membership in LIALPA as per section II, Rule 2.1.
- [9] With regard to the financial statements, he states that the audited financial statement of LIALPA for the years 2011/2012 to 2015/2016 have all been prepared and presented to membership at the **Association's relevant AGM by the then president. Further, the audited Financial Statement for the period up to June 30, 2017 in not completed, but a brief synopsis of LIALPA's financial position** was given by the second defendant at the AGM held on August 14, 2017.
- [10] With regard to the issue of increase in membership fees, the need to increase fees was first raised at an Executive Meeting. No decision has yet been taken as they await the presentation of the audited financial statement for the year **ending June 30, 2017 to assess LIALPA's true financial position**. He denies that he has acted autonomously and improperly as President. The Treasurer has indicated to Mr. Cave where he, as an Executive Council member, can access the financial records that he had requested.
- [11] With regard to his actions after the resignation of the six Council members, he states that he has acted lawfully by invoking section III Rule 3.1.19 and Section VI Rule 6.1.11 of the By Laws at an extraordinary General Meeting of the Association held on September 22, 2017. An Extraordinary meeting of the Association at the Barbados base was called for on October 3, 2017. Notice was sent by email to all members of that base. A number of members turned up sufficient to form a quorum, but refused to hold a formal meeting. All three claimants were present at that meeting.
- [12] Before turning to the application for interim orders, the defendants have raised a preliminary point in regard to the third claimant. The defendants submit that the third claimant has no locus standi to maintain this action. They refer the court to section 1.1.3 of the By-laws which provides that membership ceases when a person is expelled or no longer employed as a commercial pilot. They

therefore conclude that the third claimant's dismissal by LIAT takes him out of membership. Therefore he has no interest in matters of the Association. They seek an order that he be removed as a claimant.

- [13] The Statement of Claim states that the third claimant was at all material times a pilot with the rank of Captain in the employ of LIAT and a Member of LIALPA. In his affidavit in support of the application, Mr. Cave states that the third claimant was until recently a Captain employed at LIAT.
- [14] In fact the third claimant does not deny that he is no longer in the employ of LIAT and was not at the time the action was commenced. He submits instead that the issues raised in the action existed during the existence of his contract and continue to exist even though he has left the Association.
- [15] Part of the claim herein challenges the legality of the present Executive Council and the fitness of its members to continue in office. The claimants are requesting inter alia, a declaration that the current Executive Council exists ultra vires the Constitution and are seeking an order enjoining the members from purporting to act as members of the Executive in the future. Alternatively, they seek an order requiring that LIALPA be dissolved. Item 8 of the Claim Form however, seeks an inquiry **into the use of LIALPA's Funds by the defendants and an account of any such funds found to have been improperly used together with an order requiring the return of such monies.**
- [16] Membership in LIALPA is only available to pilots **employed in the service of LIAT. In the court's** view participation in the decision making of the LIALPA is reserved for members. Having lost membership, the third claimant is no longer entitled to participate in LIALPA or to influence the direction of its future. However, if while the third defendant was a member, he contributed to the funds, in regard to which he is alleging that there has been misuse during his membership in the association, then he would have acquired an interest and therefore has standing to maintain that particular cause of action. The Statement of Claim would need to be amended to indicate clearly those claims being maintained only by the first and second claimants and the nature of the claim in which the third claimant has an interest.
- [17] Accordingly, the application to strike the third claimant is denied on condition that the claim be amended in accordance with the above.

The Application for Interim Orders

- [18] Before an injunction can be granted, the court must be satisfied that:
- 1) The applicant has established a serious issue to be tried;
 - 2) Damages are not an adequate remedy;
 - 3) The balance of convenience lies in favour of granting such relief (that is, the grant of an injunction will do more good than harm; and

- 4) The applicant is able to compensate the respondent for any loss which such injunction may cause him in the event that it is later adjudged that the injunction ought not to have been granted¹.
- [19] The thrust of the claimants' argument is that there is no lawful Executive Council. According to the claimants the existing council is de jure and not de facto. They, in essence, challenge the procedure by which certain appointments were made following the resignation of the 6 council members.
- [20] The highest governing body of the Association is the assembly at the Annual General Meeting. The primary function of the AGM is to review the work of the Association over the past year, establish policy for the coming year and elect Officers.
- [21] The Executive Council is the second highest governing body of the Association and has the authority to govern the affairs of the Association in accordance with its Constitution and By-Laws and enact policy.
- [22] Pursuant to section 3.1.6 of the Constitution the Executive Council consists of 8 members: The president, Vice President, Secretary Treasurer, plus two members elected from each base of operations and shall be elected as prescribed in the By-Laws
- [23] The By-Laws set the quorum for meetings of the Executive Council at four members. Section 6.1.11 of the By-laws addresses the issue of vacancies. It provides that in the event of a vacancy arising in the Executive Council for whatever reason, the vacancy shall be filled in the manner prescribed in Section III of the By-Laws. In the interim, the Executive Council may appoint a temporary replacement. Section III sets out the Election process. Executive Council Members are usually elected at Annual General Meetings.
- [24] With the resignation of six of the eight members of the Council, no quorum was possible so that no action could be taken to appoint temporary replacement until elections could be held. An Extraordinary General Meeting was therefore held on 27th September 2017 pursuant to section 6.1.16. of the By-Laws. On the Agenda was the appointment of an interim Executive Council and guidelines/scope of the interim Council.
- [25] The Minutes of that Extraordinary Meeting records that two motions were voted: the first was a motion by R. Singh. He proposed that the floor accept an immediate posting of two temporary members for appointment to the Council in order for the Council to function. In addition, with immediate effect, a process for bi-elections shall commence to be completed in no more than 28 days from that date. He further proposed that the temporary Council, make no decisions on behalf of LIALPA membership, until guided by the floor in decision. The motion was seconded and put to a vote. The record indicates 18 members voted in favour, 1 against and 2 members abstained.

¹ American Cyanamid Co, v Ethicon Ltd [1975] AC 396

- [26] By the second motion R. Singh proposed that the two members should be one from Antigua and the other from Barbados. C. Burke then suggested that two be appointed in Antigua and two more from Barbados. G. Howell and R. Singh were then nominated as the temporary interim members by G. Williams. This was seconded by L. Lake and then voted on. 15 members voted in favour; 1 against; and 2 abstained.
- [27] An Extraordinary General Meeting was notified to take place on October 3, 2017 in Barbados. It is accepted that the meeting did not take place because although members were present, they did not accept the president as duly elected.
- [28] A further Extraordinary general Meeting was held in Antigua on 22nd November 2017 for the purpose of Bi-elections. E. Henry was elected as Vice President. In addition two representatives of the Antigua base were elected. However, vacant positions remained for secretary and for the representatives of the Barbados base.
- [29] A second Extraordinary General Meeting was called in Barbados on 30th January 2018 for the purpose of selecting representatives for that base. No selections were made as all persons nominated declined. No election could take place
- [30] **The applicants' position is that nothing has happened** since January 2018. There needed to have been further action, maybe another Extraordinary General Meeting. However, they have not arrived at a full executive. Furthermore, under the laws there is no provision for them to spend money. One of the problems highlighted is that there is a person acting as a president who has received request from a member on the basis of his statement that the Association is in financial distress, but nothing happens. The applicants submit that the balance of convenience leans heavily in favour of an interim injunction. Until the matter is resolved, there must be something put in place.

Discussion and Conclusions

- [31] There have been serious allegations levied against the first defendant by the claimants of not only misconduct in the running of the Council; non-compliance with his duties as president but in mismanaging of the finances including trust funds. Especially grievous are allegation that issues have been raised about Mr. Burke spending money belonging to LIALPA for personal reasons. **These complaints by the applicants date back to the first defendant's service on the 2016 Council.** Allegations have also been made against the Treasurer including failure to properly undertake his responsibility for the preparation and presentation of the audited financial reports for LIALPA. In fact Mr Cave expresses concerns about spending going back to 2012, even before Mr Burke's tenure as President.
- [32] Section 2.1.13 of the Constitution deals with discipline of Members of the Association. Sections 2.1.20 and 2.1.21 specifically deal with discipline of members of the Executive Council. They provide:

2.1.20 If a minimum of ten percent of the Membership is dissatisfied with the performance of a Member of the Executive Council, a written report containing the facts and charges shall be submitted to the Executive Council, who shall recommend what action shall be taken, if any.

2.1.21 Removal of a Member from the Executive shall be by a two-thirds vote at a General Meeting, at which the affected Member should have a right to defend himself. Voting shall be by ballot as prescribed in the By-laws.

- [33] No evidence has been submitted by the claimants that they have sought to have recourse to the internal procedures available to them in dealing with their dissatisfaction with the performance of the first and second defendants. Although some of the complaints date back to the tenure of the first defendant on the 2016 Council, not only has he not been disciplined but he was returned as President of the Council in 2017 by the general membership. Council for the defendants point out that at the September 2017 Extraordinary General Meeting, a letter signed by the six disgruntled Council Members was circulated to the membership. Attached to the letter were 40 alleged infringements carried out by the first defendant. The applicants had an opportunity to get 10% of membership and for a vote to be sought so that 2/3 of members could remove him from office. This was not accomplished. There is no record that the applicants were able to convince 10% of members of some or any of the same allegations that are being made in this application.
- [34] The application before the court suffers from a lack of supporting evidence necessary to satisfy the **court that the balance of convenience lies in favour of granting the injunction. In fact in the court's** view the grant of the injunction would do more harm than good. Two important points can be gleaned from the decisions taken at the Extraordinary General Meeting of 27th September: firstly, the membership desired the Executive Council to continue to function with a quorum until a resolution to the issues could be reached and secondly, the Council put in place, would have the oversight of and be guided by the floor in its decision making, including decisions as to financial matters. To grant the injunction requested would amount to the court countermanding the directives duly voted by the membership. Based on the evidence, the court is not satisfied that it ought to take such action at this time.
- [35] The allegations of mismanagement of Association funds have not been supported by evidence. Furthermore, the court is not satisfied that the current Executive Council is de jure and its actions ultra vires. Having found itself in circumstances where it did not have a quorum, it sought direction from the governing body by resort to an Extraordinary General Meeting. That assembly gave instructions that have been substantially complied with. Efforts were made to have the representatives from the Barbados base selected. That the process did not result in such selection certainly cannot be laid at the feet of the Executive Council. Lastly, the Annual General Meeting of the Association is held between July and September each year. In a short space of time all of the matters complained of can be put before the highest governing body of the Association.

Accordingly, the application for interim orders will be refused. Those points regarding the financials upon which the parties have reached agreement, will be reduced to a consent order of the court.

[36] Accordingly, the application is disposed of as follows:

- 1) The application for interim orders enjoining all persons purporting to act as members of the Executive Council of LIALPA, including the first and second named defendants until further order and restraining defendants in their capacity as trustees or otherwise whether by themselves, their servants, agents, and howsoever in any way from disposing of, dealing with or diminishing the value of certain assets or in any way issuing cheques, withdrawing cash or otherwise dealing with the assets of LIALPA is denied.
- 2) With regard to the request for an order requiring the defendants to deliver copies of certain financial statements and bank statements, the parties have reached agreement as follows:
 - a) The First and Second defendant shall provide to claimant audited financials for the years July 2012 -30 June 2013, July 2013- 30 June 2014, July 2014 – 30 June 2015 on or before 4:30pm 9th May 2018 by depositing copies thereof at the claimants address for service.
 - b) The First and Second Defendant shall write to RBC located at High Street, St. Johns and to Republic Bank Barbados Ltd located at the Sir Grantly Adams Airport, Christ Church Barbados on or before Wednesday 9th May 2018 to enquire about the cost and length of time it will take to obtain from the bank, Bank Statements for LIALPA for the period 1st July, 2012 through 30 June 2017.
 - c) The Claimants shall bear all financial costs associated with the production of the Bank Statements referred to in item 2 above.
 - d) Upon receipt of the response, the defendant will seek the approval of the Claimant then make the requests to the Bank for the said Statement along with payment of the costs from the claimant.
 - e) Upon receipt of the said Statements from the Bank, the defendants will serve copies of the said Statements at the Claimant's address for service within 10 days.
 - f) All parties and accountants to sign Confidentiality Agreement regarding the Bank Statement.
- 3) The application for an order that the third claimant be removed as a claimant is denied. The claimants are to file and serve an Amended Claim and Statement of

Claim in accordance with the above on or before 12th July 2018. The defendants are to file and serve their defence within 21 days of service of the Amended pleadings. Reply if necessary, within 14 days of service.

- 4) Thereafter, the matter is to be listed before the Master for case management.
- 5) Cost to the defendants in the sum of \$7,500.

Clare Henry
High Court Judge

By the Court

Registrar