

SAINT LUCIA

IN THE COURT OF APPEAL

SAINT LUCIA CIVIL APPEAL NO.1 OF 2002

BETWEEN:

FELICIA ANDRINA GEORGE

Appellant

and

EAGLE AIR SERVICES

Respondent

Before:

The Hon. Mr. Adrian Saunders
The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal

Appearances:

The Appellant in person
Ms. Delia Daniel for the Respondent

2004: October 19;
November 1.

JUDGMENT

[1] **SAUNDERS, C.J. [AG.]:** This case arises out of very unfortunate circumstances. The Appellant, Ms. Felicia George, was the common law spouse of Hughes William, deceased. The couple had five children together. The youngest, named after his Dad, in fact never set eyes on his father. He was born a few weeks after his father tragically perished in a plane crash. Following the crash, Ms. George commenced this action, as Administratrix of the Estate of the deceased, seeking damages for the benefit of the estate. Her case was dismissed in the Court below and she has appealed to this Court.

- [2] The deceased had been employed as a mechanic with the defendant company, Eagle Air Services. On 12th July, 1990 the deceased boarded an aircraft owned by the company bound for Union Island, St. Vincent and the Grenadines. The only other person on the plane was the pilot. The plane crashed in Union Island killing both occupants.
- [3] Ms. George commenced the suit in July, 1993. The Statement of Claim discloses the basis of the action as the negligence of the pilot as servant or agent of Eagle Air Services. The particulars of negligence pleaded all relate to allegedly negligent acts of the pilot. It was said that he had mishandled the aircraft and that he had failed to conduct a standard approach to the Union Island runway. In their Defence Eagle Air Services denied the allegations of negligence. They pleaded that the aircraft was airworthy and in good condition at the time of the crash; that the deceased had boarded the aircraft on a joy ride which was not sanctioned by them nor had they knowledge of it beforehand; that the pilot was not authorised to permit the deceased this “gratuitous ride”; and that they had no knowledge that the aircraft at the material time was under the control of the particular pilot.
- [4] The trial came on for hearing before Madame Justice d’Auvergne on 2nd May, 1996. At the outset, Counsel for Ms. George alluded to an official report on the circumstances of the accident. This report had been prepared by Mr. E. A. Phillips, then OECS Director of Civil Aviation and Inspector of Accidents. As the report was only then being served on Counsel for Eagle Air, the parties agreed to an adjournment of the matter.
- [5] The suit came back before the Court on 13th January, 1997. The mother of the deceased and Mrs. George gave evidence and were cross-examined. In the course of the examination-in-chief of Ms. George, her Counsel requested an adjournment in order formally to produce the Civil Aviation Report in evidence. Counsel stated that the report “needs to be produced in Court but the other side wishes this to be done in a formal way. Not disposed to allow it to be put into

evidence by consent". By consent, the matter was then stood over to 27th January, 1997. A series of adjournments then followed and on 12th July, 1999 a formal order was made that the Accident Report be served on the defendant and that there be an exchange of documents on or before 30th July, 1999.

- [6] On the 25th September, 2000, the matter continued. Ms. George resumed her examination-in-chief and was cross-examined at length. The case for Ms. George was closed after she had given evidence. At this stage of the case it would have been open to Counsel for Eagle Air Services to make a submission that there was no case to answer. There was not a scintilla of evidence given either by Ms. George or the mother of the deceased to establish any negligence on the part of the defendant. In truth, outside of what they had read in the report, these witnesses had no clue themselves as to the cause of the crash. They could only testify that the deceased was on the plane when it crashed and that he was instantly killed.
- [7] The General Manager of Eagle Air Services gave evidence. Among the matters he deposed to in evidence, he said that he was not aware that the deceased had boarded and taken off on the fatal flight. According to him, the deceased was not authorised so to do and he did not and could not have done so in the course of his duties. The Manager did concede however that the deceased could only have come onto the plane with the permission of the pilot. The General Manager was the only Defence witness.
- [8] The case was adjourned for Closing Addresses of Counsel to take place on 6th November, 2000. Counsel for the defendant, Mr. Larcher, first addressed. He highlighted the fact that no evidence of negligence had been adduced. Counsel for Ms. George, in his address, attempted to refer to the contents of the Accident Report as if the same had been admitted into evidence. Mr. Larcher objected to all references to the report. There was a debate over the status of the Report. Was it an exhibit in the case or was it not admitted into evidence?

- [9] The case was again adjourned and on the resumption on 30th November, 2000, Counsel for Ms. George seemed to have appreciated that the report was not in evidence because he formally moved to have the Court admit it. Mr. Larcher maintained that, in the absence of consent on his part, the report could not be put into evidence and that the writer of the report should be present to tender the report and subject himself to cross-examination on its contents.
- [10] In a considered judgment, the learned trial Judge ruled in favour of Mr. Larcher and dismissed the case on the ground that no negligence had been made out on the evidence. I can see no reason to fault the Judge's reasoning. The report could not have been admitted into evidence at that eleventh hour and in the absence of the maker, unless of course Mr. Larcher had consented to its admission. The claimant had been forewarned as early as 13th January, 1997 that the defendants were "not disposed to allow it to be put into evidence by consent". In the absence of the report there simply was no evidence of negligence to support the particulars contained in the pleadings.
- [11] In order to bring finality to these proceedings we have dealt with this appeal on its merits. Ms. George, who was unrepresented, had also placed before us an application for judgment on admissions. This application could not succeed because in any event, Eagle Air had never admitted liability in this matter. Their lawyers and agents had communicated with Ms. George about the possibility of an out-of-court settlement of this matter but all the correspondence was written without prejudice to their legal rights. In all the circumstances it is our view that the trial Judge was right to dismiss this case and we too must dismiss the appeal. Like

the learned trial Judge, we will decline to award costs against Ms. George.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal