

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2025/0370

IN THE MATTER OF Caribbean Airport Services Ltd. (In Liquidation)

AND

IN THE MATTER OF the Companies Act, No. 18 of 1995

AND

IN THE MATTER OF an Application by a Court Appointed Liquidator for Directions

BETWEEN:

IAN MASSIAH

(as Liquidator of Caribbean Airport Services Ltd.)

Claimant / Applicant

AND

AMERIJET INTERNATIONAL AIRLINES INC.

First Defendant / Respondent

AND

CARIBBEAN AIRLINES LIMITED

Second Defendant / Respondent

Appearances:

Ms. Jillana Blackstock with Ms. Stacy Richards for the Claimant/Applicant

Ms. C. Debra Burnette for the First Defendant/Respondent

Mr. Michael Koeiman for the Second Defendant/Respondent

2025: December 4th;
2026: January 30th.

JUDGMENT

Introduction

[1] **WILLIAMS, J.:** This is an application by the claimant, in his capacity as Liquidator of Caribbean Airport Services Ltd. ("CAS"), seeking directions of the Court pursuant

to the **Companies Act**.¹ The application concerns the proper classification of certain monies held by CAS at the commencement of its liquidation and standing to the credit of the first and second defendants.

- [2] The first defendant Amerijet is a cargo operator which provides air cargo services primarily between the Caribbean and the United States of America. The second defendant Caribbean Airlines Ltd. is an international airline with headquarters in Trinidad and Tobago.

Background

- [3] CAS is a ground handling company which was ordered wound up by order of this Court made on 6th February 2025. Prior to liquidation, CAS provided ground handling, cargo handling, sales and collection services to the defendants pursuant to IATA Standard Ground Handling Agreements and associated annexes.
- [4] Under those arrangements, CAS was authorised to collect monies from customers in respect of cargo and other services attributable to the defendants. The collected sums were subject to reconciliation, after which CAS deducted agreed commissions and charges and remitted the net balances to the respective carriers.
- [5] At the date of liquidation, an aggregate sum of EC\$513,527.34 was identified as potentially attributable to the defendants. That sum was placed into a separate account pending determination of these proceedings.

Issue

- [6] The sole issue is whether the monies collected and held by CAS on behalf of the Defendants were held on trust or whether they form part of the liquidation estate?

Discussion

- [7] It is trite law that property held on trust by a company does not form part of the company's assets in liquidation, the liquidator taking such property subject to the trust. As Lord Millett observed in **Twinsectra Ltd. v. Yardley**², trust property "does not become part of the bankrupt's estate available for distribution".
- [8] The difficulty in cases of this nature lies in determining whether, on the facts, a trust relationship arose. This requires careful attention to the parties' intentions, objectively ascertained. In **Bailey v Angove's Pty Ltd.**³ Lord Neuberger explained the distinction between a duty to account and a trust in the following terms:

¹ Act No. 18 of 1995

² [2002] 2 AC 164

³ [2016] UKSC 47 at paragraph 18

“An agent has a duty to account to his principal for money received on his behalf. It is, however, well established that the duty does not necessarily give rise to a trust of the money in the agent’s hands. Whether it does so depends on the intentions of the parties derived from the contract, or in some cases from their conduct.”

- [9] The Court must therefore examine the contractual terms and the parties’ course of dealing to determine whether CAS was intended to hold the monies beneficially or merely as custodian pending remittance.

Agency and Trust

- [10] It is common ground that CAS acted as agent for the Defendants in collecting monies. Agency alone, however, does not automatically give rise to a trust. In **Henry v Hammond**⁴ Channell J drew the classic distinction between trust and debt:

“It is clear that if the terms upon which the person receives the money are that he is bound to keep it separate, either in a bank or elsewhere, and to hand that money so kept as a separate fund to the person entitled to it, then he is a trustee of that money and must hand it over to the person who is his cestui que trust. If on the other hand he is not bound to keep the money separate, but is entitled to mix it with his own money and deal with it as he pleases, and when called upon to hand over an equivalent sum of money, then, in my opinion, he is not a trustee of the money, but merely a debtor. All the authorities seem to me to be consistent with that statement of the law.

- [11] In this regard, the Liquidator places reliance on the absence of segregated trust accounts and on evidence that remittances were sometimes delayed. Whilst these are relevant considerations, they are not determinative.

- [12] In **Air Canada v M & L Travel Ltd.**⁵ the Supreme Court of Canada rejected the argument that commingling of funds necessarily precludes a trust by stating:

“In conclusion, it is well established that the nature of the relationship between the parties is a matter of intention. In the present case, the relationship of trust is further evidenced by the express prohibition restricting the use of the funds, and the supervision and control of the carrier over the financial dealings of M & L. Since there is clear evidence of intention to create a trust in the agreement between M & L and the respondent airline, the absence of a prohibition on the commingling of funds is not determinative, although it may be a factor to be taken into account by the trial judge, as it was here.

⁴ [1913] 2 KB 515, 516

⁵ (1993) 3 LRC 510 at 521

[13] The Court in that case placed particular emphasis on restrictions on the use of the funds and the airline's rights of supervision and audit. Similarly, in **Re ILG Travel Ltd.**⁶ the English High Court upheld the existence of a trust notwithstanding administrative commingling, observing that commercial convenience may explain the absence of segregation without negating custodial intent.

[14] As Millett LJ explained in **Paragon Finance plc v Thakerar**⁷ :

"It is fundamental to the existence of a trust that the trustee is bound to keep the trust property separate from his own and apply it exclusively for the benefit of his beneficiary. Any right on the defendant to mix the money with his own and use it for his own cash flow would be inconsistent with the existence of a trust."

[15] The focus must therefore be on whether CAS enjoyed a right of free disposal of the funds and not on whether the funds were held separately or not.

The First Defendant

[16] At this point it is necessary to examine the contentions of each defendant. Mr. John Hagan the first defendant's Vice President of Shared Services in his affidavit evidence outlines as follows:

1. CAS provided ground handling services (freight handling, warehouse storage, push-back, flight handling) and operated a payment-collection facility for Amerijet's cargo shipments.
2. Funds collected by CAS from Amerijet's customers were not for CAS's own benefit; they were remitted to Amerijet as agreed. CAS did not have permission to use these funds for other purposes.
3. When payments were made locally by CAS on Amerijet's behalf, CAS provided details and proof to Amerijet's accounts payable department. Amerijet would then transmit AP vouchers, which allowed the net amount to be deducted from the funds collected.
4. After the authorized deduction for any amounts owed by Amerijet to CAS, the net funds were wired to Amerijet.
5. The arrangement continued until March 2025, when remittances ceased. A ledger shows total funds held by CAS of US\$176,996.17, with reconciliations leading to a sum of US\$143,602.89.

⁶ [1995] 2 BCLC 128 at 157

⁷ [1999] 1 All ER 400 at 416

[17] The first defendant relies on the authority of **BarclaysBank plc v Quistclose Investments Ltd**⁸ in support of its submission that the funds held by CAS are held on trust. In that case Quistclose advanced money to a company for the sole purpose of paying a specific dividend. The company deposited the funds in an account for that purpose. However, before the dividend was paid the company went insolvent. Quistclose sought priority to recover the funds on the basis that these funds were held on trust.

[18] The House of Lords outlined the relevant principles to identify circumstances in which what has become known as Quistclose trust exists. These may be summarized as follows:

1. Where money is advanced for a specific purpose, and not to become part of the recipient's general assets, equity may impose a trust over the money.
2. Although legal title to the money may pass to the recipient, the beneficial interest does not. It is retained by the lender unless and until the specified purpose is carried out.
3. If the stated purpose fails or is not carried out, the money is held on a resulting trust for the lender and must be returned.
4. A Quistclose trust can arise by implication from the circumstances, especially where the purpose is clearly defined; and the recipient is not free to use the money as they wish.
5. Because the money is not part of the borrower's general assets, it is not available to creditors on insolvency.
6. Placing the money in a separate account strongly supports a Quistclose trust, but lack of segregation is not fatal if the intention is otherwise clear.
7. The decisive question is whether the parties intended the money to be at the free disposal of the recipient. If not, a trust is likely to arise.

⁸ [1968] 3 All ER 651

[19] The application of these principles in relation to the first defendant will be examined shortly. The court will now go on to examine the contentions of the second defendant Caribbean Airlines Limited (CAL).

The Second Defendant

[20] The affidavit evidence of Mr Amral Mohammed Senior Accounting Assistant (Accounts Receivable) in the Finance Department of the second defendant states that the relationship between CAS and CAL was governed by a Standard Ground Handling Agreement effective 1 February 2024. Pursuant to that agreement, CAS acted as CAL's ground handling and sales agent in Antigua. According to him, CAS issued second defendant's airwaybills, sold its services, and collected freight and ticket revenues strictly on its behalf. CAS earned only an agreed commission and approved charges and had no proprietary interest in the revenues collected beyond those entitlements.

[21] Ownership of the monies collected never passed to CAS; after deduction of commission and authorised charges, CAS was obliged to remit the balance to the second defendant. Mr Mohammed further deposes that the agreement conferred on CAL rights of review and audit over CAS's records relating to the second defendant's operations and funds, reinforcing the limited and custodial nature of CAS's role.

[22] Mr Mohammed's evidence further establishes that the operational and accounting practice between the parties was consistent with that contractual framework. The monies collected by CAS were held temporarily pending monthly reconciliation and were thereafter transferred to the second defendant within the reporting cycle. He states that CAS had no discretion to deploy those funds for its own purposes and that both parties consistently treated the monies as the second defendant's property. The second defendant's accounting records recorded the sums as receivables due from CAS, while CAS regularly accounted for collections, commissions, and net balances. He explains that the introduction of a contra (set-off) arrangement during the COVID-19 period was a practical payment mechanism only and did not alter the underlying ownership of the funds, which remained for the benefit of the second defendant.

[23] The second Defendant therefore contends that the relationship constituted a bare express trust. In this regard the second defendant relies on the case of **Stein v Jaffe**⁹ where the High Court of England and Wales carried out an extensive review of the authorities. At paragraph 72 of the decision the court outlined as follows:

“The trust would also be a bare trust, being a relationship where (i) the nominee or bare trustee holds property on behalf of a (usually single) beneficial owner; (ii) the nominee or bare trustee has no active powers of investment, other than to deal with the relevant asset as instructed by the beneficial owner; and (iii) save where it would be illegal to do so, the nominee or bare trustee must deal with the asset as instructed by the beneficial owner: Kazakhstan Kagazy plc v Zhunus [2021] EWHC 3462 (Comm) at [273].

[24] The second defendant submits that the above requirements of an express trust are satisfied in this instance.

Application

[25] The above-principles will now be applied to the circumstances of each defendant. In terms of the first defendant. Under the agreement between the first defendant and CAS, CAS was entitled to deduct and apply funds collected on first defendant's behalf only after the completion, verification, and approval of the procedure described by John Hagan in his first affidavit.¹⁰ This by itself is inconsistent with any assertion that CAS had a right of free disposal of the said funds.

[26] Although the funds were not kept separately the authorities of **Air Canada v. M & L Travel Ltd** and **Quistclose** itself make it clear that lack of separation itself is not determinative. In this case any use of the funds by CAS for its own purposes were clearly not authorized by the first defendant. Accordingly, I find that these funds collected by CAS on behalf of the first defendant are held on trust subject to reconciliation to determine any amounts properly due to CAS.

⁹ [2025] EWHC 2334 (Ch) Judgment dated September 19th 2025

¹⁰ Affidavit of John Hagan filed 29th September 2025 at paragraph 6

[27] In the case of the second defendant, I accept the affidavit evidence of Mr. Amral Mohammed that CAS did not treat the monies collected on behalf of the Defendants as its own income, but as funds held pending reconciliation and remittance subject to agreed deductions. Further the second defendant retained the right to review CAS's accounts as part of their arrangement. I further accept Mr. Mohammed's explanation that a contra arrangement was set up during the Covid-19 pandemic period between the parties to facilitate payments.

[28] These features are consistent with the "supervision and control" identified by the Supreme Court of Canada in **Air Canada v M & L Travel Ltd**¹¹ as indicative of a trust relationship. Thus, I similarly find that these funds collected by CAS on behalf of the second defendant are held on trust subject to subject to reconciliation to determine any amounts properly due to CAS.

Costs

[29] The defendants have been successful and would therefore be generally entitled to costs. However, as the preceding analysis demonstrates the issue of whether funds are trust property or form part of the liquidation estate is a fact-sensitive exercise. The Liquidator therefore acted properly in seeking the court's guidance on this issue. In the circumstances each party should bear their own costs.

Order

[30] The court therefore orders as follows:

1. It is declared that the funds collected and held by Caribbean Airport Services on behalf of the defendants were held on trust and do not form part of the liquidation estate of Caribbean Airport Services Ltd.
2. The claimant shall, out of the funds presently held which have been declared as being held on trust for the defendants, pay to the defendants

¹¹ (1993) 3 LRC 510 at 521

the sums due to them as agreed or as determined in accordance with paragraph 3 below.

3. If the amount payable to any defendant is not agreed between the parties within thirty (30) days of this order, the said sums shall be retained in the existing separate bank account pending determination of the proper amount by the Court.
4. Upon agreement or determination of the proper amount payable to a defendant, the claimant shall make payment to that defendant within fourteen days (14) days thereafter.
5. No order as to costs.
6. The claimant shall have carriage of this order.

Rene Williams
High Court Judge

By The Court

Registrar