

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2014/0037

In the Matter of an Application for an Order of Certiorari and Mandamus

and

**In the Matter of a Decision of the Eastern Caribbean Civil Aviation Authority on December 10th 2013
to prohibit the First-named Applicant from flying its aeroplanes at the V.C. Bird International
Airport.**

and

**In the Matter of a Decision of the Eastern Caribbean Civil Aviation Authority on November 04th 2013
not to renew the First-named Applicants Aircraft Maintenance Engineer's License which expired on
October 20th 2013**

and

**In the Matter of a Failure of the Eastern Caribbean Civil Aviation Authority to Consider the
Applicants' submitted and resubmitted request of January 2005 and July 27th 2011 respectively to
be granted Aviation Training Organization Level 1 status**

BETWEEN:

**GRACE NORMAN trading as ANTIGUA FLIGHT TRAINING CENTER
NORMAN AVIATION FLIGHT TRAINING ACADEMY INC.**

Applicants

-and-

EASTERN CARIBBEAN CIVIL AVIATION AUTHORITY

Respondent

APPEARANCES:

Mr. Lawrence Daniels for the Applicants
Dr. David Dorsett for the Respondent

2024: February 19th
June 27th

DECISION

- [1] **DRYSDALE, J.:** The matter before the court is a claim made pursuant to Part 56.7 of the CPR 2000 for Administrative Orders against the Respondent for the arbitrary and unreasonable use of its statutory authority in relation to decisions made which concern the Applicants.

Background

- [2] Pursuant to CPR 56 the Applicants filed an application for leave to institute an action for judicial review. Leave was granted by order of the court dated 23rd January 2014 and the Applicants filed a Fixed Date Claim seeking several reliefs. The Applicants initially sought fourteen (14) substantive items of relief. At the hearing of the application for judicial review held on 19th February 2024 the Applicants agreed that seven (7) of the items of relief claimed should be struck out. Those that remain for the court's determination are as follows:
- a. An Order of Certiorari to quash the December 10th 2013, decision of the Respondent to prohibit the First-Named Applicant from flying its aero planes at the V.C. Bird International Airport.
 - b. A Declaration that the said prohibition was unreasonable and unlawful in all the circumstances.
 - c. A Declaration that the imposition by the Respondent on the First-Named Applicant of a fine of US\$250,000.00 in conjunction with the said prohibition was made in bad faith and was unreasonable and unlawful.
 - d. 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 for senior management": that since November 1, 2020, 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.
 - e. A Declaration that the Respondent's handling of the application of the Second-Named Applicant for the Approved Training Organization, Level 1 status in January 2005 and as re-submitted by the First-Named Applicant on July 27th, 2011, was negligent in all the circumstances.
 - f. A Declaration that the Respondent's allied decision of 2005 to ban the Second-Named Applicant from advertising its business as a Flying School was unreasonable and unlawful in all the circumstances.

- g. An Order of Mandamus for the Compensation of Damages caused by the Respondents for the arbitrary and unreasonable use of its statutory authority in relation to its Decisions concerning the Applicants.
 - h. Such further relief as the Court may think just and proper in all the circumstances.
 - i. Damages.
 - j. Costs.
- [3] The First Applicant is the Manager and owner of the Antigua Flight Training Centre (an unincorporated entity), she is also the co-owner of the Second Applicant. The Antigua Flight Training Centre is the owner of two (2) small aero planes and was established for the purpose of providing flight training and related services. The Second Applicant is a locally registered educational institution which provides instruction for persons wishing to qualify as private and commercial pilots.
- [4] The Applicants take issue with a number of decisions made by the Respondent's Director General in relation to the First Respondent's aircraft. They complain that the Respondent has banned their aircraft from flying and has imposed a fine of US\$250,000.00 for conducting flights after the ban was implemented, they say both decisions are unreasonable.
- [5] The Second Applicant complains that it was prohibited from advertising its business even though it is registered to offer classes to persons desirous of becoming pilots. The Second Applicant also says that the Respondent handled its application to become an Approved Training Organization ("ATO") negligently.
- [6] Both Applicants say that the Respondent is operating contrary to the provisions of the Eastern Caribbean Civil Aviation Agreement Act No. 24 of 2003 as it mandates that the Respondent must have a Board of Directors in place before it can make decisions which affect the Applicants.
- [7] The Respondent is a body corporate which was established by a regional agreement between OECS Member States to regulate civil aviation. The Respondent says that it is the only entity which can approve an institution to be a flight school at which persons are trained to fly.
- [8] The Respondent further says that the First Applicant's planes were grounded as there was no maintenance arrangement in existence for the aircraft and as a result there was no guarantee of the continued airworthiness of the said aircraft.
- [9] As for the Second Applicant's application to become an ATO the Respondent says that it was unable to deal with the application in January 2005 as it was being audited at that time by the Federal Aviation Administration and the Respondent's resources were concentrated on the audit process.

The First Applicant was aware of this. Additionally, the Respondents say that the Applicants were aware that certain pertinent documentation was needed to process the ATO application and that the Applicants never submitted the required documents. The Respondent also says that the ban on the Second Applicant was instituted as it was advertising itself as carrying on the business of an ATO when it was not registered to operate in that capacity.

[10] Having set out these facts, the broad issues to be resolved are whether the Respondent has acted unreasonably in grounding the First Applicant's planes and banning the Second Applicant's advertisement of its business, and whether the Respondent's treatment of the Second Applicant's ATO application was negligent.

Submissions The Applicants

[11] Counsel for the Applicants, Mr. Daniels, submits that under the Eastern Caribbean Civil Aviation Agreement Act No. 24 of 2003 the Respondent is mandated by law to have a Board of Directors appointed before any decision can be taken that may affect the Applicants.

[12] Counsel argues that the ECCAA has no functioning Board of Directors as mandated by Articles 10 and 11 of the Act and as a result the position of the Director General of ECCAA is called into question.

[13] Further due to the decisions taken by the Respondent against the Applicants counsel argues that the Applicants have suffered damages in the sum of US\$1,192,513,907.00.

[14] As it relates to the decision the ECCAA took to ground the First Applicant's aircrafts counsel says that the letter containing the decision was not addressed to either of the Applicants and that the Applicants were not given a hearing on the same consistent with the rules of natural justice.

[15] Counsel relies on **Associated Provincial Picture Houses Ltd. v Wednesbury Corp**¹ in support of his contention that the decision of the Respondent to ground the aircraft is so perverse that no reasonable body which properly directed itself as to the law to be applied could have reached such a decision.

[16] Counsel also addressed the issue of the Respondent prohibiting the Second Applicant from advertising its business when it had a right to do so. He argues that the Second Applicant had a right to advertise as it is not an ATO and therefore did not infringe the advertising limitations under the Civil Aviation Regulations Part 3.1.2.7.

¹ [1948] 1 KB 223

The Respondent

- [17] Counsel for the Respondent, Dr. Dorsett, notes that the Applicants initially sought fourteen (14) substantive items of relief and that at the hearing of the application for judicial review, the Applicants agreed that seven (7) of the items of relief sought should be struck out. He argues that the remaining items of relief should similarly be struck out.
- [18] In relation to the requests for an order of certiorari and the declaration that the prohibition from flight was unreasonable, counsel says that the First Applicant is not the registered owner of the aircraft and therefore cannot complain that they were restricted from flight. He says that Norman Aviation Ltd is the true owner of the aircraft and that company having its own legal personality is the entity that has a legal interest in the aircraft. Counsel says that the First Applicant has no locus standi to claim the relief sought having regard to the fact that she has no legally protected interest in the aircraft.
- [19] Further counsel argues that the First Applicant violated Regulation 3.1.2.1 of the Civil Aviation (Flight Safety) Regulations 2019 having advertised her business as doing the business of an ATO when no ATO Certificate has been issued in her favor. Counsel says that Regulation 89(d) empowers the Respondent to enforce the Regulations by preventing the offending entity from flying its aircraft, in the circumstances counsel says that the Respondent's actions were appropriate.
- [20] As it relates to the fine counsel says that there is no sound or acceptable evidence that a fine was imposed on the First Applicant, he also says that there is no evidence that the Respondent is seeking to enforce a fine which is a telltale sign that no fine was issued.
- [21] In response to the Applicants' complaint that the Respondent has no Board of Directors counsel's position is that judicial review is a means by which decisions of public authorities are challenged to ensure that they act lawfully, he says that the declaration sought does not relate to a decision taken by the Respondent and that it should not be granted.
- [22] As for the Applicants' claim of negligence counsel says that the present action is not one in negligence, additionally counsel argues that at its highest the alleged negligence occurred in 2011 some 13 years ago and the Statute of Limitations would bar any such action at this time.
- [23] Finally, counsel says that an order for damages would be wholly inappropriate as the Applicants' witnesses were ineffective in their presentation of any satisfactory evidence to ground a claim for damages. He says no wrong has been done to the Applicants and that the claim for damages is massively opportunistic. Counsel says an order for costs should be made against the Applicants as they have acted unreasonably and have used the court as an instrument of harassment seeking US\$1,192,513,907.00 in damages.

Issues

[24] Having set out the case of the parties I find the following to be the issues for determination:

- i. Whether the Respondent must have a Board of Directors in place for its Director General to make decisions concerning the Applicants.
- ii. Whether the Respondent's decision of 10th December 2013 to prohibit the First Applicant from flying its aero planes was unreasonable.
- iii. Whether the Respondent's decision to prohibit the Second Applicant from advertising its business was unreasonable.
- iv. Whether the Respondent handled the Second Applicant's application to become an Approved Training Organization negligently.
- v. Whether the Respondent's actions have caused the Applicants to suffer loss in the amount of USD\$1,192,513,907.00.

Law and Analysis

Whether the Respondent must have a Board of Directors in place for its Director General to make decisions concerning the Applicants.

[25] Before turning to the substance of this claim I will address the issue raised by the Applicants regarding the validity of the decisions taken by the Director General in circumstances where the ECCAA has no functioning Board of Directors.

[26] **The Eastern Caribbean Civil Aviation Agreement Act No. 24 of 2003** at Articles 10 and 11 states as follows:

"ARTICLE 10

Board of Directors of the Eastern Caribbean Civil Aviation Authority

(1) The powers of the ECCAA shall, subject to the powers of the Authority of Heads of Government, be vested in a Board of Directors.

(2) There shall be a Director General who shall be appointed by the Authority of Heads of Government for a period not exceeding five years and shall be eligible for re-appointment.

(3) The Director General shall serve as the Chief Executive Officer of the Authority to be in charge of and responsible to the Board for the implementation of the policy and day-to-day administration and management of the Authority.

(4) The Board of Directors shall comprise of -

- a) One Director appointed by each of the Participating States for a term of three years and shall be eligible for re-appointment at the expiration of such term;
- b) the Director General who shall be an ex-officio member with no voting rights.

(5) A Director appointed to fill a vacancy shall hold office for the un-expired term of his predecessor.

(6) The persons appointed to serve on the Board by the Participating States shall be persons of recognised standing and experience in aviation matters or in any one of the following areas-

- a) law;
- b) accountancy;
- c) commerce and industry;
- d) economics.

(7) The Directors shall elect a chairperson and a deputy chairperson for such period as they may determine.

(8) The Directors shall be paid such allowance for attendance at meetings as may be determined by the Authority of Heads of Government on the recommendation by the Board.

(9) The appointment of all Directors, including the chairperson and termination of any such appointment shall be published in the Official Gazette of the Participating States.

ARTICLE 11 Functions of the Board

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.”

[27] Counsel for the Applicants has relied on these Articles to support his argument that where no functioning Board is in place the position of the Director General is void. This court having read the provisions cannot agree. Article 10 provides that the Director General is appointed by the Authority of the Heads of Government and that the Director General is to serve on ECCAA's Board of Directors.

[28] Article 10(3) speaks to the Director General's duty to implement policy and the daily administration and management of the ECCAA which goes contrary to counsel's argument that the Director is unable to act without a Board. In the circumstances the finding of the court is that there is nothing in the Act which suggests that the Director General is appointed by or must act under the authority of the Board of Directors.

[29] I would further assert that even if there was substance to counsel's argument, it would not have impacted the current claim. This is because judicial review focuses on the decisions made by the decision-maker. This principle was clearly considered in the case of **James v Ministry of Education**², where the court needed to ascertain who had canceled the claimant's scholarship. After thorough deliberation, the court concluded that the Ministry of Education acted only as the messenger of the decision, not the decision-maker, which in this instance was the Cabinet of Ministers. Consequently, the claimant failed to convince the court that the Ministry was the decision-making authority subject to judicial review. Similarly, in this instance, the decision-making process subject to judicial review pertains to a decision by the Director-General, not the Board of Directors. Therefore, the declaration sought in relation to the Board of Directors does not relate to any decision taken by the Respondent.

Whether the Respondent's decision of 10th December 2013 to prohibit the First Applicant from flying its aero planes was unreasonable.

[30] First, I wish to address the submission raised by Dr. Dorsett that the First Applicant has no standing in this matter as the planes grounded belong to an entity called Norman Aviation Ltd. I have seen a letter dated 4th November 2013 sent to the First Applicant by the Respondent wherein the Respondent states "Our previous correspondence incorrectly referred to Norman Aviation Ltd. This was due to the fact that until 3rd October 2012 Norman Aviation Ltd was the registered owner of the...aircraft registered as V2-LFT and V2-LFD". In another letter dated 10th December 2013 from the Respondent to the Chief Air Traffic Services the Respondent says "Antigua Flight Training Centre is the owner of the following aircraft....V2-LFT...V2-LFD."

[31] In light of the foregoing, I find that the First Applicant is the owner of the aircraft and therefore has standing in this matter. I now turn to the substantive issue.

² SLUHCV2006/0005

[32] In the **Adams v Commissioner of Police et al**³ case the court reiterated the principle of Wednesbury unreasonableness in the following manner:

“The formula test for unreasonableness on the part of decision-makers is often as expressed in Wednesbury, that is, whether the decision is so unreasonable that no reasonable decision-maker could come to it. On this ground of review, the court is concerned with whether the power under which the decision maker acts has been improperly exercised or insufficiently justified. In considering unreasonableness, the court is not confined to simply examining the process by which the decision maker came to the decision, but must consider the substance of the decision itself to see whether the criticism of it is justified. The court must still, however, be careful not to substitute its own exercise of discretion for that which was exercised by the decision maker: **Regina v Secretary of State ex p Brind**. The test is whether the decision is such that it falls within the range of reasonable views open to the decision maker: **Secretary of State for Education and Science v Tameside Metropolitan Borough Council**.”

[33] In essence, the principle alerts us that the examination should focus on whether the decision maker’s power was improperly used or not adequately supported. The inquiry into unreasonableness encompasses not only the decision-making process but also the substance of the decision itself, to verify if the critique is justified. The court, however, should be mindful not to encroach upon the decision maker’s prerogative by substituting its own judgment. The fundamental test is to determine if the decision was within the realm of reasonable choices available to the decision maker.

[34] Having established the concept of Wednesbury unreasonableness, I now address the current case. The Applicants contend that the Respondent’s decision is unreasonable to the extent of Wednesbury unreasonableness, suggesting it is so flawed that no logical authority, properly informed about the applicable law, could have arrived at such a determination. However, these claims lack a detailed explanation as to why the decisions of the Respondent are deemed unreasonable, irrational, or made with malicious intent for an unsuitable purpose. According to the well-established legal maxim “he who asserts must prove”⁴, it is the responsibility of the Applicants to present substantial evidence demonstrating the Respondent’s irrational decision-making. Yet, the Applicants have merely stated their claims without providing further evidence.

[35] In contrast, the Respondent has furnished considerable evidence and rationale for its decision to ground the First Applicant’s aircraft. The decision was based on issues regarding the First Applicant’s

³ Paragraph 44

⁴ R (on the application of CJ) v Cardiff City Council [2012] 2 All ER 836

engineer's competence in fulfilling his responsibilities to the expected standards, as well as the absence of a sanctioned maintenance schedule for the aircraft. As the Respondent is responsible for overseeing civil aviation in the Eastern Caribbean, it possessed the necessary authority to address any circumstances it perceived as a potential threat to aviation safety.

[36] In the circumstances I am unable to find that the Respondent's decision of 10th December 2013 to prohibit the First Applicant from flying its aero planes at the V.C. Bird International Airport was unreasonable and refuse to make any such declaration.

Whether there was an imposition by the Respondent on the First-Named Applicant of a fine of US\$250,000.00 which was made in bad faith and was unreasonable and unlawful.

[37] Regarding the alleged fine of US\$250,000.00, the court observes a lack of evidence presented to substantiate the claim that such a fine was levied against the Applicants. The First Applicant has claimed in her statements that she was notified about a retroactive fine of US\$10,000.00 for each training session conducted before the grounding of the aircraft in December 2013, totaling 25 sessions. According to her, this information was communicated in a phone call with the Respondent's Director General. However, there is no written proof of either the fine's imposition or its payment. Further the Respondent denies ever imposing this fine on the Applicants. In the absence of evidence of a fine, I decline to conclude affirmatively that a fine was imposed or that the Respondent acted improperly in this matter. Accordingly, the declaration sought is hereby refused.

Whether the ECCAA's decision to prohibit the Second Applicant from advertising its business was unreasonable.

[38] Counsel for the Applicants' argument in this regard is that the Second Applicant is not an ATO and therefore is not subject to the advertising limitations placed on ATOs.

[39] The Civil Aviation Regulations No. 27 of 2004 at Regulation 3.1.2.7 states as follows:

"3.1.2.7 ADVERTISING LIMITATIONS

a) An ATO shall not:

(1) Make any statement relating to its ATO certification and training specifications that is false or designed to mislead any person contemplating enrolment in that ATO;

(2) Advertise that the ATO is certified unless it clearly differentiates between courses that have been approved under this Part and those that have not been approved under this Part;

b) An ATO whose certificate has been surrendered, suspended, revoked, or terminated shall promptly—

(1) remove all indications, including signs, wherever located, that the ATO was certified by the Authority; and

(2) notify all advertising agents, and advertising media employed by the certificate holder to cease all advertising indicating that the ATO is certified by the Authority.”

[40] Clearly this Regulation exists to regulate the advertisement of services offered by ATOs. I do not however agree with counsel for the Applicant that the Second Applicant is entitled to advertise its business as a flying school simply by virtue of not being certified as an ATO. The intent of this legal provision is to safeguard the public from being deceived into believing that a business is a sanctioned ATO when it is not, which, in my opinion, is the objective the advertisement sought to achieve. It is noteworthy that the advertisements mentioned the Norman Aviation Flight Training Academy rather than instruction by an individual who holds the appropriate licence or rating in accordance with Part 2 of the Regulations. This could lead to the misconception that the flight training academy is a formal organization similar to an ATO.

[41] The Civil Aviation Regulations 2004 state that “Level 1 Aviation Training Organisation (ATO) means a flight training facility which conducts all or substantially all of each flight training course using aircraft”. The Applicants in their pleadings have described the Second Applicant as “a locally registered educational institution which provides instruction for persons wishing to qualify as private and commercial pilots”. It is therefore plain to see why the Respondent would have been concerned about the possible confusion that could be caused by the advertisement.

[42] Additionally, the Respondent is entitled to consider any materially relevant factors. The timing of the Applicants submitting their application for ATO status mere days before the initial advertisement, implies that the Applicants were eager to be regarded as an ATO. This eagerness likely shaped the manner in which they marketed their services, which did not correspond with their actual status at the time.

[43] In the circumstances this court can find no fault in the Respondent’s decision to prohibit the Second Applicant from advertising its business in the manner it did without having attained ATO status. I therefore refuse to make the declaration sought.

Whether the ECCAA handled the Second Applicant's application to become an Approved Training Organization negligently.

[44] I note that the Applicants did not advance any argument regarding the alleged negligent handling of the Second Applicant's ATO application in their closing submissions. Furthermore, a review of pleadings reveals that a claim for negligence has not been properly articulated. If the claimant intended to rely on a claim for negligence, that claim must be clear to allow the Defendant to understand what it needs to address. Clarity was not provided, and the apparent abandonment of this claim in the closing submissions, supports the notion that there is no proper claim for negligence. Therefore, I refuse to grant the declaration sought.

Whether the Respondent's actions have caused the Applicants to suffer loss in the amount of US\$1,192,513,907.00.

[45] The testimony from all the Applicants' witnesses indicates that the Applicants incurred a substantial loss totaling US\$1,192,513,907.00 due to the Respondent's actions. The court observes that the Applicants' witnesses presented claims of financial loss without any clarifying details or corroborative evidence. Upon cross-examination regarding the calculation of the US\$1,192,513,907.00 loss, none of the Applicants' witnesses could elucidate how this figure was determined. Moreover, damages are not in themselves a cause of action, a recoverable damage claim must be predicated on an established cause of action. Since the Applicants have not succeeded on any aspect of their claims, they are not entitled to the damages sought.

Costs

[46] Counsel for the Respondent has argued that an order for costs should be made against the Applicants as they have acted unreasonably by bringing this matter before the court. I am inclined to agree.

[47] **CPR 56.11(6)** provides that "The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

[48] In **Danville Walker v The Contractor General**⁵ the court accepted that the principle of "exceptional circumstances" as enunciated in **Mount Cook Land Ltd v Westminster**⁶ can be considered as helpful in the determination as to what may be unreasonable conduct of an applicant. The court in **Mount Cook** stated as follows:

⁵ Claim No. 2012 HCV009994

⁶ [2004] 2 Costs LR 211

“5) Exceptional circumstances may consist in the presence of one or more of the features in the following non-exhaustive list:

a) The hopelessness of the claim:

b) The persistence in it by the claimant after having been alerted to facts and/or of the law demonstrating its hopelessness;

c) the extent to which the court considers that the claimant, in the pursuit of his application, has sought to abuse the process of judicial review for collateral ends – a relevant consideration as to costs at the permission stage, as well as when considering discretionary refusal of relief at the stage of substantive hearing, if there is one; and

d) Whether, as a result of the deployment of full argument and documentary evidence by both sides at the hearing of a contested application, the unsuccessful claimant has had, in effect, the advantage of an early substantive hearing of the claim.”

[49] The Applicants initially sought fourteen (14) substantive items of relief, seven (7) of which were struck out at the hearing of the application for judicial review. After examining the pleadings and arguments presented, I have found that the remaining claims could be dismissed readily, without extensive effort or analysis. It is apparent that the claims were fundamentally frail, often lacking any substantial underpinning. Consequently, this case was doomed from the start. In the circumstances I am of the view that the Applicants have acted unreasonably in bringing and maintaining a hopeless claim before the court. The issue is further compounded by the unusually large claim for damages made by the Applicants in excess of 1 billion dollars with absolutely no evidence to support the sum claimed. In the circumstances I will order costs to the Respondent.

Order

[50] The order of the court is as follows:

1. The Applicants' claim for judicial review is refused in its entirety.
2. The Applicants to pay the Respondent costs.
3. Costs to be assessed pursuant to CPR65.12 if not agreed within 21 days.

Jan Drysdale

High Court Judge



By the Court

Registrar