

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2018/0126

BETWEEN:

ANTIGUA AND BARBUDA AIRPORT AUTHORITY

Claimant

and

ANTIGUA HANGARS INC

Defendant

Appearances:

Mr. Hugh C. Marshall Jnr. appearing with Mrs. Chantal Thomas-Marshall for the
Claimant

Ms. Sherrie Ann S. Bradshaw for the Defendant

2022: August 4th

2022: November 10th

2023: January 31st

JUDGMENT

- [1] **ROBERTSON, J.:** The Claimant is seeking a declaration that the Claimant maintains an easement of necessity over the Defendant's land that surrounds land owned by the Claimant better known as Runway 10 and upon which the Claimant maintains a perimeter fence. The Claimant also seeks a declaration that it is entitled to enter the Defendant's land for the specific purpose of securing and maintaining the perimeter fence, an order that the Claimant is not required to pay

the Defendant for use of the Defendant's land and the Claimant seeks an injunction restraining the Defendant from interfering with the Claimant in the exercise of the Defendant's statutory duties.

- [2] The Defendant has defended this claim and issued a counterclaim.

The Relevant Facts

- [3] The Claimant, a statutory corporation deriving its authority from the **Airport Authority Act No. 17 of 2006**, is responsible for the control, management, and security of the V.C. Bird International Airport. The V.C. Bird International Airport is the only international port of entry by air in Antigua and Barbuda.

- [4] Section 4 of the Airport Authority Act No. 17 of 2006 provides that:
- (1) The functions of the Authority are to manage and administer efficiently and in a business-like manner airports vested in the Authority.
 - (2) Without prejudice to the generality of subsection (1) the Authority shall-
 - (a) Construct, develop, upgrade and improve airports and such other aviation facilities in Antigua and Barbuda;
 - (b) Operate airport services in accordance with this Act or regulations made thereunder;
 - (c) Prescribe and collect the rates, fees, and charges authorized by this Act or by any regulations made thereunder;
 - (d) Provide and maintain facilities for the landing and departing of aircraft, the embarkation and disembarkation of passengers, the loading, unloading, storage, carriage, and warehousing of goods;
 - (e) Provide and maintain equipment for hoisting, lifting and transporting goods;
 - (f) Construct, equip and maintain runways, passenger terminals, concourses, taxiways, aprons, baggage handling equipment, parking facilities, restaurants and other passenger convenience facilities;
 - (g) Provide and maintain hangars, overhaul and training facilities and machine shops;
 - (h) Provide safe equipment, lights and beacons, firefighting services, repair services, fuelling equipment, catering and cleaning services and such other services as are ordinarily required by airlines.

- [5] The Claimant is the owner of Runway 10. Runway 10 is attached to the airport. The Defendant is the registered proprietor of lands that butts and bounds Runway 10. The property of the Defendant is more particularly described in the Land

Registry as Registration Section: Barnes Hill & Coolidge; Block: 41 2294A; Parcels: 118, 52, 54, 56, 57, covering the end of Runway 10 together with other lands of the airport. The Defendant became the registered owner of Parcel 118 on February 11, 2015. Parcel 118 is relevant to these proceedings.

- [6] At the time of acquisition by the Defendant there was in place a perimeter fence on Parcel 118 that the Claimant contends was erected and maintained by the Claimant. The contention of the Defendant is when the property was sold by the Claimant to the Defendant's predecessor in title, Stanford Development Company Limited (SDC Limited), the property was sold with the fence and SDC Limited removed that fence and replaced it with the existing fence. The land with the newly erected fence was purchased by the Defendant.
- [7] The Claimant asserts that the only access to the perimeter fence is over the lands owned by the Defendant. The Claimant contends that it is necessary to access the fence since the Claimant is charged with, among other things, securing the airport premises and its environs. The Claimant also asserts that the Claimant has accessed and enjoyed a right of way without interruption over the Defendant's property for more than 10 years prior to the commencement of these proceedings. This would have been during the period that Defendant's property was owned by SDC Limited.
- [8] Sometime on or about November 2014, and after discussions between the parties bore no fruit, the Defendant began tendering invoices to the Claimant for the Claimant's use of the portion of the Defendant's property upon which the perimeter fence sits. The satisfaction of these invoices was rejected by the Claimant and the Defendant objected to the Claimant accessing the Defendant's property.
- [9] The Defendant denies the existence of an easement of necessity and raises that the Claimant has obstructed the Defendant's use of its property by not giving the Claimant access through Gate 10. The Defendant also objects to the Claimant's removal of the perimeter fence without the Defendant's knowledge or consent; to the Claimant building an electrical sub-station on lands belonging to the Defendant without the Defendant's approval. Additionally, the Defendant indicates that the Claimant erected a fence along Burma Road (a public road which runs along the outer side of the perimeter fence) and that this gives the Claimant their own access to the perimeter fence.
- [10] The Defendant asserts that while SDC Limited and the Claimant had an operating agreement regarding access no such agreement exists between the Claimant and the Defendant.

Easement of Necessity

The Law

- [11] The authors of Halsbury's Laws of England¹ defined an easement of necessity to be:

“An easement which under particular circumstances the law creates by virtue of the doctrine of implied grant to meet the necessity of a particular case. It is an easement which is not merely necessary for the reasonable enjoyment of the dominant tenement², but one without which that tenement cannot be used at all. Such an easement lasts only so long as the necessity exists unless it is expressly granted⁴, for a grant arising out of the implication of necessity cannot be carried further than the necessity of the case requires⁵.

- [12] In the circumstances of this case the properties in question are owned by different persons, the Claimant contends that the property owned by the Claimant is dominant, the easement asserted by the Claimant is with the intention of accommodating the dominant property and the right alleged is capable of forming the subject-matter of a grant².

- [13] This court notes there is a high onus on the party asserting the existence of an easement to show that one exists. There must be no alternatives or if alternatives exist they must be of such a nature that they are unworkable.

- [14] In the case of **Leslie Emanuel and another v ACE Engineering Limited**³ our Court of Appeal addressed the matter of easement by necessity. In that case the Court of Appeal's decision as summarised indicated that:

“(1) The duty to expressly reserve any easement or incorporeal right in or over land is a well-established legal principle. The general rule is that if a grantor intends to reserve any such right over the tenement granted, it is his duty to reserve it expressly in the grant. However, this general rule is subject to two exceptions, in which cases the law will imply the grant or reservation of such easement in the clear absence of an expressed reservation of a right of way. This implied reservation can only come about by way of an easement of necessity and/or to give effect to the common intention of the parties to a grant of real property. Notably, the threshold to imply a reservation of an easement is a high one as the court are not quick to imply an easement not expressly reserved.”

¹ Real Property and Registration (Volume 87 (2022))/4. Easements and Profits À Prendre/ (1) Nature and Characteristics of Easements/(iv) Classification of Easements/753. Easement of necessity.

² See **Re Ellenborough Park** [1955] 3 All ER 667 for the characteristics of an easement.

³ DOMHCVAP2013/0014.

- [15] In that same case the Court of Appeal noted that *“An easement of necessity is one without which the property retained cannot be used at all and not one merely necessary to the reasonable enjoyment of that property. Such easement will be implied if the remaining land is effectively landlocked. The right of way arises out of necessity, not convenience. It would be most dangerous to hold that where a deed is silent as to any reservation of a way, because it is more convenient to use that way than another, it must exist as a way of necessity. Further, once alternative access is available, even if it is by water rather than land, no matter how inconvenient, a right of necessity cannot arise, unless that other way is merely precarious”*.
- [16] In the circumstances of this case the Claimant claims that it maintains an easement of necessity over the Defendant's land upon which the Claimant maintains a perimeter fence. Specifically, the Claimant pleads, that it is entitled to enter the Defendant's land for the specific purpose of securing and maintaining the perimeter fence. The evidence of Euletta Francis, the Chief Executive Officer for the Claimant, is that due to the location of the perimeter fence the Claimant has no other means of access to the fence on parcel 118 other than travelling over lands of the Defendant. This witness also indicates that the maintenance of the perimeter fence includes “among other things the cutting of the grass and the lighting on the area”. It appears to the Court that the cutting of grass is a wider exercise than maintenance of the perimeter fence.
- [17] The evidence before the Court is that it is possible for the Claimant to access the fence from Crown Lands and the roadway which road runs along the fence of the airport. While such an approach would provide a more limited access to the perimeter fence in that the access would generally be on the outer side of the fence these points do provide access to the perimeter fence to enable the Claimant to maintain the fence, install lighting and such activities which supports the Claimant's performance of its statutory functions.
- [18] On the matter of access to Runway 10, it is accepted that Runway 10 is the property of the Claimant and it is in part bounded by property of the Defendant. The evidence before the Court is that the Claimant has access to Runway 10 from the commercial apron of the airport and via Gate 7. Access to Runway 10 from the commercial apron, crossing the active, does not require the Claimant to traverse the Defendant's property. This path entails traveling along a road on the Claimant's property crossing a runway and proceeding onto a road then onto the disused Runway 10. Although the Claimant, for obvious reasons, restricts access through this path the commercial apron does provide the Claimant with access to the disused Runway 10.

Whether the Claimant's removal of the fence was unlawful?

- [19] The Defendant in its counterclaim contended that the Claimant's removal of the fence from the south-eastern end of Parcel 118 leading to Gate 13 and thereby including the Defendant's parcel 118 with the Crown Lands was unlawful. The Defendant also seeks that the fence be reinstated.
- [20] In this case both the Claimant and the Defendant express ownership over the fence. The Claimant contends that the fence was erected by the Claimant prior to the land being sold to SDC Limited and that the Claimant consistently maintained the fence during the period that the property was owned by SDC Limited. The Defendant contends that after SDC Limited acquired the property SDC Limited erected a new fence on the boundary of the property and the property was sold with the fence.
- [21] It appears to this Court that the fence was erected to be a fixture to the land and that the Defendant acquired ownership of the fence when the property in question was purchased. In such circumstances the removal of the fence by the Claimant was unlawful and the Claimant would be required to reinstate the fence.

Whether there ought to be an order that the Claimant reinstate Gate 13 and an order that the Defendant be given access through Gate 10.

- [22] The evidence before this Court is that there are several Gates on the perimeter. The Gates open to the public road. The evidence before the Court is that the Defendant has access to the Defendant's property through Gate 7 which is in close proximity to Gate 10. The proximity of Gate 7 to Gate 10 has not been challenged by the Defendant.

Trespass.

- [23] It is accepted that an unlawful entry by someone upon land in the possession of another is an act of trespass. In the circumstances of this case the Defendant in its counterclaim claimed trespass by the Claimant. Implicit in the finding by this Court that an easement of necessity does not exist is that the Claimant committed acts of trespass. Despite the removal of the fence the Defendant has not offered proof of loss or damage resulting from the trespass. Where there is no proof of loss nominal damages may be awarded.
- [24] As a consequence of the foregoing this Court dismisses the claim and allows the counterclaim in part.
- [25] This court orders that:
- (i) An easement of necessity does not exist in favour of the Claimant over the Defendant's lands.

- (ii) There is a declaration that the Claimant's removal of the perimeter fence was unlawful, and the Claimant is required to reinstate the Defendant's perimeter fence.
- (iii) The Claimant is liable in trespass and the Claimant is liable to pay to the Defendant nominal damages of EC\$6,500.00 for such trespass upon the Defendant's property.
- (iv) Prescribed costs are payable to the Defendant by the Claimant.

Justice Marissa Robertson

High Court Judge

By The Court

Registrar