

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0207

BETWEEN:

LYNDON LANGDON

Claimant

and

CARIBBEAN AIRLINES LIMITED

Defendant

Before:

The Hon. Mde Justice Agnes Actie

High Court Judge

Appearances:

Ms. Hazel Hopkin with her Ms. Alicia Lawrence for the Claimant
Mrs. Sabrita Khan-Ramdhani for the Defendant

2021: March 5.
May 31.
June 23.

JUDGMENT

[1] **ACTIE, J.:** This claim concerns whether the Defendant, Caribbean Airlines Limited, ("the airline") is liable to the Claimant for breach of contract, statutory duty and/or negligence.

The pleaded case

- [2] On 20th December 2018, Mr. Langdon was scheduled to travel to Miami, USA via a stopover in Trinidad and Tobago on board Caribbean Airlines. He states that he checked one bag and his carry-on bag remained in his possession. Mr. Langdon claims that he was stopped by the gate agent at the bottom of the steps of the aircraft and asked that he deliver his carry-on to the said agent. Mr. Langdon states that he observed numerous passengers boarded the aircraft ahead of him with their allowed carry-on bags. He states that he reluctantly complied with the request and gave his carry-on bag to the agent.
- [3] In the statement of claim, it is Mr. Langdon's pleaded case that on his arrival at Piarco Airport in Trinidad, he retrieved his checked bag from the carousel, but his carry-on bag was missing. Mr. Langdon states that he received his carry-on the following day. However, when he examined his carry-on, he noticed that his "Officine Panerai Watch" valued at USD\$7,000.00 was missing. He immediately filed a report with the airline.
- [4] Mr. Langdon received a response from Mr. Allister Ross, an agent of the airline, who notified him that the matter was being investigated. Further, he received another notice that the matter was being handled by the airline's insurance office. He states that by email dated 10th January 2019, he was notified by an agent for the airline that the maximum sum that can be paid is the sum of \$4,258.60. Mr. Langdon refused the offer as he claims that it is less than half of the actual cost of the watch. By letter dated 12th February 2019, Mr. Langdon, through his attorneys, wrote to the airline demanding compensation and payment of legal costs. Mr. Langdon states that the refusal to allow him to board the aircraft with his carry-on bag amounts to a breach of his contract with the airline.
- [5] On May 3, 2019, Mr. Langdon filed these proceedings seeking general damages and for breach of contract, negligence and/or statutory duty pursuant to the Consumer Act, No. 2 of 2018. Mr. Langdon also claims special damages in the sum of \$24,169.30 comprising the loss of his "Officine Panerai Watch" valued at

USD\$7,000.00, legal fees, disbursements and costs. Mr. Langdon claims that the airline company was negligent in that its servants and/or agents owed him a duty of care to ensure that his luggage was kept in a safe, secure and protected area.

Defence

- [6] The airline denies most of the claim and contends that it was within its right to refuse Mr. Langdon's carry-on baggage or any other passenger's carry-on baggage as it saw fit. The airline admits that it investigated and engaged in a series of correspondence with Mr. Langdon which led to an offer of compensation. Further, the airline states that Mr. Langdon is bound by its "Contract of Carriage" which sets forth the terms and conditions of the airline's regulations.
- [7] The airline states that it is bound by the provisions of the Hague Protocol which bars awards of attorney's fees, court costs and other litigation expenses. The airline states that the sums claimed by Mr. Langdon are beyond the permissible compensation under the Hague protocol. Moreover, the airline states that the Hague Protocol limits recovery of lost baggage to USD\$23.50 per kilogram and therefore Mr. Langdon is only entitled to damages as determined by the weight of the watch that was purportedly lost.
- [8] In relation to the offer to pay Mr. Langdon, the airline states that it has not breached the contract or statute nor is it negligent. The airline states that the final offer of \$4,258.60 was based on the Convention for the Unification of Certain Rules for International Carriage by Air, commonly referred to as the Montreal Convention. The airline admits that the Montreal Convention is not applicable to Grenada, however, with a view to settlement, the airline said it offered Mr. Langdon more than what he was legally entitled to for his watch.
- [9] Further, the airline claims that damages suffered by Mr. Langdon were through his own negligence, since he did not remove his valuables from his bags which were to be placed in the baggage hold of the aircraft and not carried aboard with him. The

airline denies that it was negligent at any point in time and contends that in any event, the alleged loss, if any, was due to unforeseen, intervening, and such other conduct perpetrated by third parties not within the airline's control.

Evidence at Trial

- [10] At the trial, Mr. Langdon's evidence was at variance with the evidence in his witness statement and other supporting evidence in the trial bundle.

- [11] In his witness statement filed on 31st January 2020, Mr Langdon states; "On arrival at the Piarco International Airport, Trinidad, I cleared immigration and immediately attempted to retrieve my two pieces of luggage from the designated carousel. I only retrieved the piece of luggage that I had checked in at the airport and not the said carryon. Said carryon was nowhere in sight".

- [12] At the trial, Mr. Langdon in cross-examination states that "I was given the assurance that the carryon bag would have been collected at the Miami airport". He states "on arrival at the Piarco Airport in Trinidad, I went to the Caribbean Airlines executive lounge area for a little while after I disembark the plane and was directed in the in-transit waiting area. I did not go to immigration. I would not have to collect in Trinidad".

- [13] The court notes a letter in the trial bundle dated 12th February 2019 from Derick Sylvester, counsel on behalf of Mr. Langdon, to Ms. Delia Fletcher, the manager of Caribbean Airlines Ltd, St. George's, Grenada. The letter states "when our client cleared with the immigration officials in Trinidad and attempted to retrieve his luggage, he noticed the only bag available to him is what he checked himself at counter and not his carry on".

- [14] The claimant's Pre-trial Memorandum filed on May 6, 2020, states "upon the claimant's arrival at Piarco Airport his carryon was not produced to him, and he immediately made a missing baggage claim."

- [15] In a statement of agreed facts and issues filed on 18th June 2020, both the claimant and defendant agreed the fact that “When the claimant landed at Piacro Airport, his carryon was not produced to him, and he immediately made a missing report”.
- [16] It is evident that Mr. Langdon’s witness statement, contemporaneous document, Pretrial review and agreed statement of facts leading up to trial are all at variance with the evidence given at trial with respect of where he was told that he would be receiving his carry-on luggage.
- [17] **CPR 29. 5 (1) (a) (d)** requires a witness statement to be signed or otherwise authenticated by the intended witness and must include the statement by the that he or she believes the statement of facts in it to be true. Mr Langdon witness statement complied with the requirement.
- [18] A litigant should not argue a different case at trial other than what was pleaded. A witness’ statement stands as his or her “evidence-in-chief” and forms part of the evidence at trial. The witness (on oath or affirmation) confirms the truth of his statement when he is called to give evidence at trial. It is therefore essential for the witness statement to accurately reflect the true facts of the case that the witness will rely on. The function of the witness statement when viewed against the contemporaneous documents verify the credibility of the witness testimony given in court. As a result, it is important that parties make sure that their witness statements correctly deal with all the factual issues in the case.¹
- [19] Mr. Langdon states that he simply signed the witness statement. He said that he was never given the assurance that he would be collecting his bag on arrival at Piarco Airport, Trinidad.
- [20] In **Smith –v- J&M Morris (Electrical Contractors) Limited**² “ it was said:

¹ Handbook for litigant in person

² 2009] EWHC 0025.

“.....It is often the case that witness statements, drafted by solicitors or their agents in good faith (I exclude, of course, any case of deliberate intent to deceive by a witness or drafter), are signed or otherwise accepted by witnesses without any or any proper consideration of their accuracy, completeness or even truth”. Too often (indeed far too often) witnesses who have had statements prepared for them by solicitors tell the Judge that matters in the statement are not correct; they say (all too believably) that *they simply signed what the solicitor had drafted for them without reading it through carefully and critically*. This reflects badly not only on the witness, but on the whole case presented by the party calling the witness.”

“This goes to the credibility of the witness.”

- [21] Counsel for the defendant contends that the claim should be dismissed considering the discrepancy in Mr Langdon’s case. The court is of the view that the discrepancy is not fundamental to the merits of the claimant’s case. The issue in the case is for compensation for the loss of a watch allegedly missing from the claimant’s carryon. The authority in **Smith v Morris** above states that inaccuracies go to the credibility of the witness. It is now for the court to decide the probity of the witness’s evidence in light of the new evidence emanating at trial.

Discussion and Analysis

Whether the Hague Protocol is applicable and enforceable

- [22] Mrs. Sabrita Khan-Ramdhani, Counsel for the Defendant, states that Grenada and the United States of America are signatories to the “Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air”, commonly referred to as the Hague Protocol. The Hague Protocol executed on 28th September 1955 amended the Warsaw Convention which was executed on 12th October 1929. Counsel submits that the contract between the Mr. Langdon and the airline is a contract for carriage by air, which is governed by the Hague Protocol and Warsaw Convention.
- [23] Mrs. Khan-Ramdhani submits that the provisions of the airline’s Contract of Carriage and the Hague Protocol limit recovery of lost baggage to USD\$23.60 per kilogram.

She submits further that any damage, if at all, should be determined by weight of the watch allegedly lost as set out in Article 22 of the Hague Protocol.

[24] Ms. Alicia Lawrence, Counsel for the Defendant, submits that the Hague Protocol entered into force on 1st August 1963 and ratified by Grenada on 15th August 1985 was entered into force on 13th November 1985. She states that Grenada is not a party to the Warsaw Convention and the Montreal Conventions as neither of the conventions have been ratified by Grenada.

[25] Ms. Lawrence states that section 4 of the Civil Aviation Act³ provides the functions of the Minister in relation to the adherence of the State of Grenada to its obligations under any international conventions concerning air navigation and air transport to which Grenada is a party. **Section 4 (f) of the Civil Aviation Act** provides that the Minister may:

“...take such action as may be necessary to secure by international regulation or otherwise the rights of the Government in international air traffic and the carrying out of obligations under any international convention, any annex thereto, relating to air navigation and air transport to which Grenada is a party and the recognition and implementation of standards and recommended practices particularly as issued by the International Civil Aviation Organisation.”

[26] Ms. Lawrence cites the Court of Appeal case of **Havis Francois et al v Cardinal Airlines Ltd.**⁴ which considered the application of the Warsaw Convention in the Commonwealth of Dominica. She states that the court⁵ held that in the absence of a statutory change to the law, the Warsaw Convention was applicable to Dominica.

[27] The court is of the view that the **Havis Francois et al** case is not relevant to the present case at bar. The facts in **Havis Francois et al** show that the Dominica Modification of Enactments Order 1978 Statutory Instrument No. 1030 of 1978 (“the 1978 order”) carried and received the United Kingdom Carriage by Air Act 1932 and

³ Cap 54A of the 2010 Continuous Revised Edition of the Laws of Grenada.

⁴ DOMHCVAP2006/019.

⁵ at paragraph 48

the Carriage by Air order 1953 which provided for the Warsaw Convention. By virtue of the 1978 order, the Warsaw Convention maintained force in the Commonwealth of Dominica and there has been no statutory change since. Therefore, this case at bar can be easily distinguished as there is no reception or saving provisions for the Warsaw Convention or Hague Protocol into the domestic law in Grenada.

- [28] The enforcement of rights under unincorporated international treaties has been discussed at length in the Commonwealth Caribbean jurisprudence. In the Caribbean Court of Justice case of **the Attorney General and Ors. v Jeffrey Joseph & Lennox R. Boyce**⁶ the court opined as follows:

“In states that international lawyers refer to as 'dualist', and these include the United Kingdom, Barbados and other Commonwealth Caribbean states, the common law has over the centuries developed rules about the relationship between domestic and international law. **The classic view is that, even if ratified by the Executive, international treaties form no part of domestic law unless they have been specifically incorporated by the legislature. In order to be binding in municipal law, the terms of a treaty must be enacted by the local Parliament.** Ratification of a treaty cannot ipso facto add to or amend the Constitution and laws of a State because that is a function reserved strictly for the domestic Parliament. Treaty-making on the other hand is a power that lies in the hands of the Executive. See: *JH Rayner (Mincing Lane) Ltd v Dept of Trade & Industry*[FN31]. **Municipal courts, therefore, will not interpret or enforce the terms of an unincorporated treaty.** If domestic legislation conflicts with the treaty, the courts will ignore the treaty and apply the local law. See: *The Parlement Belge* [FN32]⁷” (Emphasis added).

- [29] Furthermore, **Section 4 of Civil Aviation Act** is an empowering provision which gives the Minister under the Act the power to enact international regulations to adhere to or recognise its international civil aviation obligations. The Hague Protocol was ratified by the State of Grenada on 15th August 1985. However, the provisions of the Hague Protocol were never incorporated into domestic or municipal law of Grenada. Therefore, the Hague Protocol is binding on the State of Grenada as a party to the multilateral treaty, however, since the Hague Protocol was never incorporated into domestic law by Parliament it does not confer rights on private

⁶ [2006] CCJ 1 (AJ).

⁷ Ibid at para. 55.

citizens for its enforcement. The Hague Protocol is therefore applicable as persuasive authority, but it is not binding on this court nor is it enforceable by private citizens or individuals.

Breach of Contract

[30] Ms. Lawrence submits that the airline breached its contract with Mr. Langdon when its servants/agents prevented him from boarding the aircraft with his carry-on baggage and by treating his carry-on as checked baggage. She submits that the airline is not entitled to unilaterally convert Mr. Langdon's carry-on baggage into checked baggage. Counsel states that Mr. Langdon's baggage was not rejected at check-in on the basis that it was overweight or that it did not confirm to the airline's baggage policy. However, it was indicated to Mr. Langdon that there was no further space in the overhead bins in the cabin as he was about to board the aircraft and his carry-on baggage was taken from him on the promise that it would have been available on arrival.

[31] Mrs. Khan Ramdhani in submissions states that the airline at its sole discretion is permitted to deny Mr. Langdon from bringing his carry-on baggage on board the aircraft due to space limitations in the cabin. She submits the airline's request to check the carry-on baggage does not amount to a breach of contract.

[32] The court accepts Mrs. Khan Ramdhani's submissions that the airline did not breach the contract for carriage. Mr. Langdon and his baggage were carried to the destination, save and except without his watch which he alleges was missing from the contents of his carry-on.

Common Law principles of Negligence and Res Ipsa Loquitur

[33] Counsel Ms. Lawrence submits that the airline owed a duty of care to Mr. Langdon to carry out its obligations without any loss to him. Ms. Lawrence relies on the

doctrine of “*res ipsa loquitur*” and cites the case of **Anns v Merton**⁸, where Lord Wilberforce laid down a two-stage test for the existence of a duty of care.

- [34] Mrs. Khan-Ramdhani submits that Mr. Langdon was not prudent in the care of his watch as a valuable asset. She submits that a prudent person would have secured his valuables knowing that his carry-on would not be in his possession.
- [35] The court agrees that a case of negligence on the part of the airline has been made out. The airline owed a duty of care to Mr. Langdon when it took his carry-on baggage into its custody and possession. The duty of care was not limited to carriage of his carry-on baggage, but it covered its contents.
- [36] **Article 16.2.3** of the airline’s Contract of Carriage states that “CAL is not liable for damage to baggage **unless such damage is caused by our own negligence**”. (Emphasis added). The House of Lords in **Fothergill v Monarch Airlines Ltd.**⁹ in interpreting Article 26(2) of the Hague Protocol held that the word “damage” included loss of contents of baggage. Accordingly, the court is of the view that the loss of Mr. Langdon’s watch was as a result of the negligence of the airline.
- [37] The issue then arising from the facts at trial is whether the claimant was negligent in leaving his valuable watch in the carry-on bag. Mr. Langdon states that he was a frequent traveller. The evidence now emanating at trial was that he was given the assurance that his carry-on bag would be collected on his arrival at the Miami airport and not Piarco airport as stated in his evidence leading to the trial. This evidence puts this claim in a totally different perspective. Mr Langdon as a frequent traveller should have been aware of the possibility of a change of aircraft in Trinidad and also the many incidents of lost/misplaced baggage. A prudent frequent traveller would have insisted on removing his valuables from his hand luggage that is no longer in his control. There is no evidence before the court to indicate that Mr. Langdon insisted (and or refused) on removing his valuable watch from the carryon bag. The

⁸ [1977] 2 All ER 492

⁹ [1980] 2 All ER 696.

court is of the view that the claimant knowing the pitfalls of loss and/or missing luggage was contributory negligent in the circumstances.

Breach of Statutory duty

- [38] Mr. Langdon claims a breach of statutory duty under the Consumer [Protection] Act No. 2 of 2018. Mrs. Khan Ramdhani submits that the Consumer Protection Act No. 2 of 2018 is not applicable to the case at bar in light of the Hague Protocol. The court accepts that the Consumer Protection Act is not applicable as the Act was not in force at the time of this alleged incident. The cause of action arose in December 2018 prior to the enactment of the Consumer Protection Act on 1st July 2020. The Act does not act retroactively and is therefore inapplicable to the facts of this case.

Damages

- [39] The court accepts that the provisions of Article 22 of the Hague Protocol restricting an award of damages based on weight does not apply to carryon luggage. It would lead to absurdity if compensation for loss of a carry-on luggage in which travellers' most valuables are kept would be compensated on weight per kilogram, which Counsel for the airline estimates at USD \$2.35 or EC\$6.35¹⁰.
- [40] The court notes the airline's offer for compensation in the sum of \$4,258.60. Mr. Langdon claims for the loss of his watch valued at USD \$7,000.00 equivalent to ECD \$19,018.30 together with legal fees incurred and costs. In support of his claim for the value of the watch, he exhibits an appraisal of the watch dated 13th December 2016, some 2 years before the incident on 20th December 2018.
- [41] An appraisal merely provides a monetary value of an item which can sometimes be lower or higher than the market value at the time of destruction or loss. Mr. Langdon did not provide evidence of the estimated current value of the watch at the time of the loss. The onus always lies on the claimant to prove special damages as pleaded. The court in the absence of evidence cannot speculate.

¹⁰ Paragraph 11 of the Defendant's submissions filed 15th February 2021.

- [42] The court having viewed the evidence is not convinced that Mr. Langdon should be compensated for the full 2016 appraised value of the watch. The normal wear and tear may have affected the value of the watch of the same model in production as well as the market value of an upgraded version, at the time of the loss. Depreciation and useful years are factors to be taken into consideration.
- [43] The court in a case where the loss is established but the evidence to substantiate the loss is lacking can make a nominal award which is not out of scale. In the circumstances, the court makes an award on a depreciated value of the watch by twenty percent (20%). The court is of the view that Mr. Langdon as a frequent traveller was fifty percent (50%) contributory negligent in leaving his valuable watch in his carry-on. In the circumstances the court makes an award in the sum of \$7607.32 i.e. $(\$19,018.30 \times 20\% = \$15,214.64 \div 2)$.

Conclusion

- [44] For the foregoing reasons,
1. Judgment is entered in favour of the claimant in the sum of \$7,607.32.
with interest at the rate of 6% from the date of judgment until payment in full.
 2. Prescribed Costs in the sum \$1,141.10 pursuant to CPR 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar