

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2017/0039

BETWEEN:

NORMAN AVIATION FLIGHT TRAINING CENTRE INC.

Claimants

and

**ANTHONY GREER
GREER & CO. SOLICITORS**

Defendants

CLAIM NO. ANUHCV2017/0210

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER, INC.

Claimants

and

**ANTHONY GREER
GREER & CO. SOLICITORS**

Defendants

CLAIM NO. ANUHCV2017/0253

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER, INC.

Claimants

and

**ANTHONY GREER
GREER & CO. SOLICITORS**

Defendants

Appearances:

Mr. Warren Cassell and with him Mr. Pete S. McKnight for the Respondents/ Claimant
Mr. Sylvester Carrot for the Applicants/Defendants

2018: December 6th;

2020: March 20th

ORAL JUDGMENT

- [1] **WILKINSON, J.:** (1) **ANUHCv 2017/0039** - On 26th January, 2017 the Claimant (hereinafter “Norman Aviation”) filed its claim form and statement of claim and therein claimed (i) the sum for EC\$235,471.31 being an amount due and owing for negligence and failure to represent the Claimant in ANUHCv2013/0523 Norman Aviation Flight Training Academy Inc. v. Dulani Smith and Leroy Smith (“hereinafter “the Smiths case”), (ii) such further relief as the Court deems just, (iii) costs, and (iv) 10 percent collection fee and 15 percent ABST for the sum of \$58, 867,83. (2) **ANUHCv 2017/0210** - On 21st April 2017, the Claimant (AFTCI) filed its claim form and statement of claim and therein claimed: (i) \$999,999.00 being the amount due and owing for negligence and failure to represent AFTCI in the matter ANUHCv2014/0021 Antigua Flight Training Centre v. Eastern Caribbean Civil Aviation Authority (hereinafter the Parties are “AFTC unincorporated” and ECCAA”) (hereinafter “the ECCAA case”), (ii) such further or other relief as the Court deems just, (iii) costs, (iv) 10 percent collection fee and 15 percent ABST for the sum of \$249,999.75. (3) **ANUHCv 2017/0253** - On 15th May, 2017 the Claimant (AFTCI) filed its claim form and statement of claim and therein claimed (i) 25,173.24 being the amount due and owing for negligence and failure to represent the Claimant in ANUHCv2014/0047 Antigua Flight Training Center v. Clive Oliveras Snr & Clive Oliveiras Jnr. (hereinafter the Parties are “AFTC unincorporated” and “the Oliveras”) (hereinafter the Oliveiras case), (ii) such further relief as the Court deems just, and (iii) costs. The 3 suits were consolidated by the Master on 9th July, 2018 and the case management order was made. Therein the matter was fixed for pre-trial review on 15th November, 2018. Before the pre-trial review could occur, on 15th October, 2018 the Defendants (hereinafter “Mr. Greer and the Firm”) filed their application for summary judgment.
- [2] At all material times Mrs. Grace Norman, the managing director of Norman Aviation and AFTCI filed the claims, replies and defences to counterclaims and appeared at the case management hearing as representing Norman Aviation and AFTCI in-person. Norman Aviation and AFTCI’s Counsel at the hearing of the application, Mr. Cassell filed his notice of acting on 2nd November, 2018 that being approximately 2 1/2 weeks after Mr. Greer and the Firm had filed their application for summary judgment and approximately 1 month before the hearing of Mr. Greer and the Firm’s application for summary judgment.
- [3] Mr. Greer and the Firm’s application for summary judgment sought the following orders:

- (i) there be summary judgment pursuant to **CPR 2000** Rule 15 on the issue of whether or not Norman Aviation and AFTCI have suffered any actionable loss.
- (ii) the claims be struck out pursuant to rule 26.1(3)(b) and (c).
- (iii) that Norman Aviation and AFTCI do pay the costs of each claim on the prescribed basis.

The grounds of the application were:

- (i) each of the claims are based on the tort of negligence and in order to succeed in negligence, Norman Aviation and AFTCI must prove damage or loss.
- (ii) in all 3 actions, Norman Aviation and AFTCI have not suffered any actionable loss.

[4] Mr. Greer and the Firm filed 2 affidavits in support of their application.

[5] The Court has read Norman Aviation and AFTCI's claim forms, statement of claims replies and defences to the counterclaims. The pleadings of Norman Aviation and AFTCI are key to Mr. Greer and the Firm's application.

Mr. Greer and the Firm's Evidence to Support the Application

[6] Mr. Greer is an attorney-at-law and the principal of the Firm. He holds LL.B and LL.M degrees and post-graduate diplomas in management studies and business administration. He is a barrister of 29 years Call at England and Wales, and an attorney-at-law of 26 years Call at Antigua and Barbuda. Between the years of 1985 – 1990, he was a senior lecturer in law at the University of North London. He also tutored law at Birkbeck, University of London and Holborn College of Law.

[7] Mr. Greer said that some confidential and personal matters of Norman Aviation and AFTCI were not laid out in his affidavits because of attorney-client privilege and that privilege had not been waived by Norman Aviation and AFTCI.

[8] Mr. Greer deposed that Mrs. Grace Norman visited the Firm in or about February 2013, for legal advice and assistance in regard to Norman Aviation and AFTC unincorporated. He acted on Mrs. Norman's instructions for both from that point on through to the latter part of 2014 or early 2015. The context in which he was approached by Mrs. Norman was that Norman Aviation, AFTC unincorporated and Mrs. Norman were in dire financial straits and all goodwill with several other attorneys-at-law had been exhausted. Mrs. Norman made it abundantly clear to Mr. Greer that Norman Aviation and AFTC unincorporated could not pay legal fees upfront. (At all material times Mr. Greer only dealt with Norman Aviation and AFTC unincorporated. AFTCI was incorporated after his retainer came to an end).

[9] At the time that Mrs. Norman approached Mr. Greer, there were a number of matters pending and or ongoing. The matters included: (i) the Antigua & Barbuda Development Bank was seeking to foreclose on Mrs. Norman's home wherein she and her family resided, (ii) ECCAA had grounded 2

airplanes used in the businesses and she, herself was effectively banned from flying, and (iii) a significant number of students were indebted to Norman Aviation and AFTC unincorporated for flight training. According to Mrs. Norman, she was at breaking point as she faced the loss of her home and businesses.

- [10] According to Mr. Greer, because Mrs. Norman appeared so desperate, he told her that he would try to help her, however, he made it abundantly clear to her that legal fees would have to be addressed. Mrs. Norman in response proposed that she would make periodic payments on account as and when monies were recouped from various judgment debts in favour of the businesses. Mr. Greer agreed to this arrangement.
- [11] Mr. Greer said per his obligation, he made discrete inquiries as to Mrs. Norman's relationship with her former Counsel and the picture which emerged was that she had frequently fallen out with Counsel and this often occurred over the matter of payment of fees. Armed with this information, Mr. Greer said that he again made it abundantly clear to Mrs. Norman that Norman Aviation and AFTC unincorporated would have to pay for legal services because he would not be taking on the matters pro bono. Mrs. Norman agreed to faithfully make payments on account as and when monies were collected.
- [12] According to Mr. Greer, it was Mrs. Norman's failure to adhere to the agreement on payment of fees which eventually led to him ceasing to act for Norman Aviation and AFTC unincorporated.
- [13] Mr. Greer said that he had managed to enforce a significant money judgment for one of Mrs. Norman's businesses in a suit against the Imhoffs. The money was being paid in installments to the Firm via the judgment debtors' Counsel, Mr. Commodore. This was the principal method by which the Firm received payment, albeit a token payment. Mrs. Norman objected to Mr. Greer deducting his fees from the judgment debt. She wanted it all and did not want to pay the Firm anything. At a very early stage and unbeknownst to Mr. Greer, Mrs. Norman began going directly to Mr. Commodore and collecting the periodic payments which otherwise would have come to the Firm. By the time Mr. Greer realized what was happening, Mrs. Norman had siphoned off a significant amount. By the time Mrs. Norman wrote to Mr. Commodore in March 2015, to formerly terminate the periodic remittances coming to the Firm, she had in fact taken the "lion's share". Even when monies from Mr. Commodore managed to reach the Firm, Mrs. Norman, on being informed by the Firm's secretary that a payment had been received, she would come into the Firm immediately and demand the "lion's share" without any consideration for the agreement with Mr. Greer on how legal fees were to be paid for matters being handled by the Firm.
- [14] Mr. Greer asked the Court to note that Mrs. Norman never once put her hand in her pocket to make any payment on legal fees, not even to pay disbursements. The only monies he received was from Mr. Commodore on behalf of the judgment debtors, the Imhoffs, a part of which would be applied to fees and the sums applied were minimal against the significant amount of work which was undertaken by the Firm on behalf of Norman Aviation and AFTC unincorporated.
- [15] According to Mr. Greer, between February 2013 through to late 2014 or early 2015, he did the following: (i) appeared in court as legal representative for Norman Aviation and AFTC unincorporated pursuing and advancing various cases, (ii) his pursuit and advancing of the various

cases involved a myriad of responsibilities including but not limited to (a) sundry consultations, (b) drafting and filing pleadings; (c) filing and appearing on applications for judicial review; (d) preparing and filing standard and fixed date claims; (e) drafting and finalizing affidavits, (f) attendance at case management conferences; (g) presenting verbal arguments in open court; (h) negotiating with other Counsel; (i) drafting correspondence; (j) vetting agreements; and (k) researching points of law.

- [16] Mr. Greer said that even prior to dealing with the legal matters, he was instrumental by his actions in preventing the Antigua & Barbuda Development Bank from evicting Mrs. Norman and her family from their home. For this work he was paid nothing. This work entailed a number of meetings with the Bank's manager and Counsel. In addition, there were telephone calls, and various correspondence that he had to address. He estimates that he spent in excess of 10 billable hours without any remuneration from Mrs. Norman.

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- [17] In regard to this suit, the Smiths case, Mr. Greer said that Norman Aviation was not entitled to collection fees, and ABST. In relation to the quantum of damages - \$235,471.31, there was no explanation as to how Norman Aviation arrived at that figure.
- [18] As to the claim, it was being alleged that he had been paid legal fees and failed to deal with the Smiths case and yet no sum as to the payment made had been specified. The Smiths case was a claim based on a contract and promissory note prepared by Mrs. Norman against the Smiths, a father and his son for aviation tuition fees. The suit was erroneous as against the son, Mr. Dulani Smith in that Mrs. Norman had asked the son, a minor of 15 years to sign a contract and promissory note. Master Glasgow stated that since the contract was not one for necessities, the suit could not proceed against the son, Mr. Dulani Smith but could proceed against Mr. Leroy Smith.
- [19] Mr. Greer said that he was aware that another Counsel was now acting for Norman Aviation in the claim against Mr. Leroy Smith. There was therefore no loss suffered.
- [20] Mr. Greer said that he recalls explaining to Mrs. Norman, during a number of meetings about contract law in regard to minors. His position on the law in relation to minors was reduced to his written submissions. He exhibited a copy of his filed written submissions which were filed on 25th March, 2014 to support his position on the law of contract in relation to minors.
- [21] Mr. Greer denies that he was negligent. Further, there was no loss, since the Norman Aviation was free to proceed against Mr. Leroy Smith on the contract (not promissory note) for the unpaid tuition.
- [22] As regards Mrs. Norman's claim that she made payments of legal fees, Mr. Greer said that he wished to make it clear that Norman Aviation did not pay the Firm any money directly and as stated prior, some monies were only recovered via the Imhoffs' judgment debt payments but then Mrs.

Norman terminated that arrangement. In any event, sums recovered from the judgment debt were to be applied to earlier outstanding legal fees.

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- [23] In regards to this suit, the ECCAA case, Mr. Greer said AFTCI seeks \$999,999.00, \$1.00 short of 1 million as the amount due for negligence and failure to represent, \$249,999.75 for 10 percent collection fees and 15 percent ABST (the Court observes that the sums for this claim differs on the claim form and the statement of claim and the calculation of 15 percent on the collection fee of \$999,999.00 is inaccurate – reads \$149,999.85 when should read \$14, 999.98). Mr. Greer says that AFTCI as an unrepresented litigant cannot claim collection fees and ABST on collection fees and so this sum ought to be struck out.
- [24] Mr. Greer further states that AFTCI has sought exemplary damages but failed to plead the basis for exemplary damages in a case which is supposedly based on the tort of negligence. Therefore, the claim for exemplary damages sought also to be struck out.
- [25] In regard the claim which pertains to the ECCAA case, Mr. Greer says that AFTCI complains that he did not apply for leave to appeal but instead he served a notice of appeal. AFTC unincorporated had 2 suits against ECCAA, there were 2 separate applications for leave to apply for judicial review. The first suit was ANUHCV2014/0037 Antigua Flight Training Centre & Norman Aviation Flight Training Academy v Eastern Caribbean Civil Aviation Authority. AFTCI claims that this case was “almost struck out”. Mr. Greer says that he has no knowledge about that and that as far as he was aware, that suit is still proceeding. Therefore, there is no actionable loss.
- [26] In regard to the second suit, ANUHCV2014/0163 Antigua Flight Training Center v Eastern Caribbean Civil Aviation Authority AFTC unincorporated sought to challenge decisions of ECCAA and which included (i) banning AFTC unincorporated from flying airplanes (ii) not renewing the aircraft maintenance engineer’s licence which had expired, and (iii) refusing to grant it aviation training organization status. The first two decisions prevented AFTC unincorporated from operating aircrafts and the third decision prevented AFTC unincorporated from charging an enhanced rate for tuition. This was the substantive challenge and ultimately subsumed the further ECCAA decision ordering the surrender of certificates of registration and airworthiness. Mr. Greer said that during the course of the application for leave before Henry J., it became apparent that ECCAA was arguing that AFTC unincorporated was an unincorporated association and as such it was not entitled to own an aircraft. Leave to apply for judicial review was refused on that basis. A copy of Henry J. judgment was disclosed.
- [27] Mr. Greer said that it was correct that he served a notice of appeal rather than filing an application for leave to appeal, however, AFTCI had not made clear the whole story. There was a practical solution to the problem and that was to incorporate AFTC unincorporated. This he had advised and was what eventually happened, hence AFTCI’s existence. The idea was that Mrs. Norman and AFTC unincorporated would meet the objections of ECCAA.

- [28] Mr. Greer disclosed the certificate in incorporation for AFTCI and the request for cancellation of the business name for AFTC unincorporated.
- [29] Mr. Greer drew to the Court's attention that the ECCAA case was filed by AFTC unincorporated while the present suit was filed by the corporation AFTCI. AFTCI of the present suit, has suffered no loss and so there could be no claim for damages. He added that the now defunct AFTC unincorporated could not sue for damages due to the cancellation of its registered business name.
- [30] Mr. Greer stated, that he was advised by his Counsel that Henry J.'s judgment was in fact unimpeachable given the mischief to which the regulations were directed, namely identification of ownership for health and safety matters and for accountability. Hence even if, as he thought at the time, there was an arguable case for leave to appeal, on reflection there was little prospect for a successful outcome.
- [31] Further, there was no possibility of obtaining damages because there was in fact no loss stated in that claim. Even if the Court had come to the conclusion that ECCAA was wrong, the quashing of the decisions would not alter fact that AFTC unincorporated would still not have been at liberty to operate its aircrafts given the original banning order which was and remains in force because of ECCAA's earlier decisions.
- [32] Mr. Greer was not aware of whether Mrs. Norman ever returned the ECCAA certificates but, in any event, the certificates were cancelled by ECCAA. He exhibited a letter issued by ECCAA which cancelled the certificates.
- [33] Mr. Greer added that an important point was that the substantive and lead suit actually subsumed the issues in the second suit. Therefore, unless and until the first action was favorably concluded, the airplanes would remain grounded.
- [34] Mr. Greer said AFTCI was not entitled to any damages claimed because it was not a party to the proceedings and which party was AFTC unincorporated. AFTCI suffered no actionable loss because even if, on the remote possibility that the decision was quashed, AFTC unincorporated would still not have been able to operate. In those circumstances it could not be said that AFTC unincorporated would have recovered damages.
- [35] In addition, the first judicial review matter ANUHCv2014/0037 against ECCAA continues before the Court.

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- [36] In regards to this suit, the Oliveiras case, Mr. Greer said that he served proceedings on Messrs. Watts, Dorsett and Associates rather than the Oliveras personally on the instructions of Mrs. Norman who told him that the said firm was representing the Oliveras. When there was no response to the suit and Watt, Dorsett and Associates did not return the documents, an application for default judgment was filed and default judgment entered. Subsequently, the default judgment was set aside for failure to personally serve the Oliveras. To the best of Mr. Greer's knowledge,

the proceedings against the Oliveras continue and therefore it was difficult to see how the Court could speculate on what would have been the prospects for a successful outcome when the matter was yet to be tried.

- [37] Mr. Greer filed his second affidavit on 29th October, 2018 and therein he disclosed certain documents and provided an update on the pending suits which form the basis of the claims against him and the Firm.
- [38] In regard to ANUHCV 2017/0039, the Smiths case, he exhibited a copy of Master Glasgow's ruling. The Court has read Master Glasgow's ruling of 29th April, 2014 and noted that he states:

"[37] I have already found that the notes (promissory note) were invalid against the second applicant since, as a matter of law, he could not contract for them. The first applicant has also, on the above stated legal principles to be discharged from his obligations on the notes since there is no demur that he signed them as guarantor. There is no point in leaving this issue for contest at trial. The law being against the respondent on this issue, summary judgment must be entered for on it for the applicants. I so order.

CONCLUSION

- [38] The applicants have been partially successful on this application. CPR 15.2 permits me to enter summary judgment on the claim or on a particular issue if I consider 'the claimant has no real prospect of succeeding on the issue.' Therefore for the reasons stated above, summary judgment is granted to the applicants as it relates to the notes (promissory notes). The applicants are not successful on their application regarding the agreement and the issue of liability thereon must proceed to trial. As required CPR 15.6 (2) where the application does not determine the proceedings, a case management conference must be conducted. Accordingly, case management directions will be given after hearing counsel. Costs on this application are awarded to the applicants in the sum of \$1,500.00. I thank Counsel for their assistance."
- [39] Mr. Greer also disclosed from the Smiths case (i) an application filed 28th January, 2017 for a stay of execution of the proceedings filed by Mrs. Norman on behalf of Norman Aviation and (ii) a notice of acting filed 5th January, 2018 by Mr. Warren Cassell.
- [40] In regard to ANUHCV 2017/0210 the ECCAA case, Mr. Greer disclosed a copy of the application for leave to file judicial review proceedings and drew to the Court's attention that there was no claim for damages in that suit.
- [41] Mr. Greer said that in addition thereto, he noted that in the connected action ANUHCV 2014/0037 Antigua Flight Training Center & Norman Aviation Flight Training Academy Inc. v. ECCAA and which proceedings were still on-going, that on perusal of the file, that post his dealings with the suit, Norman Aviation and AFTCI had amended the claim to claim damages to excess of 1 billion USD. The amended pleading ran to many pages which were too extensive to copy. He disclosed a copy

of the original filed fixed date claim form as filed by him and which was filed pursuant to the order of Cottle J. made on 23rd January, 2014.

- [42] Mr. Greer stated that appeals cost money, Norman Aviation and AFTC unincorporated pleaded poverty and yet expected him to finance the appeal. This he was not obliged to do.
- [43] Mr. Greer said that in any event, Norman Aviation and AFTC unincorporated never actually parted with the ECCAA certificates and even if ECCAA's decision was wrong in requesting the surrender of the said certificates, Norman Aviation and AFTC unincorporated would still not be at liberty to fly unless and until the issues in the first judicial review suit were resolved. It was the issues in the first judicial review suit that prevented Norman Aviation and AFTC unincorporated from flying. The possession of the certificates was therefore academic. Moreover, had the Norman Aviation simply acceded to ECCAA's requirement of employing a competent and licensed engineer to maintain the airplanes, the matter would have been resolved a long time ago. Even after the death of her father-in-law Mrs Norman still did not hire an engineer and has not done so to date. It was therefore difficult to understand how AFTC unincorporated had lost nearly \$1 million as a result of him not having applied for leave to appeal.
- [44] In regard to ANUHCv 2017/0253, the Oliveras case, Mr. Greer said that he, together with his Counsel, Mr. Carrott had inspected the suit file at the High Court on 24th October, 2018 and he noted on the inside cover of the court file jacket that there was a green post-it note which recorded as follows – "In affidavit of service, personal service is required per rule 5. Neither named Defendant personally served. Watts and Dorsett not on record as acting for the Defendants." There was not in the court file any recording of a default judgment having been obtained and then set aside contrary to Mrs. Norman's assertions.
- [45] In concluding his evidence, Mr. Greer asked the Court to understand that he did not take the proceedings lightly. They have cost him both time and money, has unduly interfered with his practice and has taken a toll on him personally not least of which because of the threats which Mrs. Norman had made against him. Further, Mrs. Norman reported him to the Criminal Investigation Department, and which she has readily admitted, without reasonable cause. She has accused him of stealing her files and had broadcast her claims against him far and wide. She has also reported him to the Disciplinary Committee of the Bar Association because of this litigation.
- [46] According to Mr. Greer, Norman Aviation and AFTCI have readily admitted that they are impecunious therefore, he and his Firm see very little prospect of recovering any costs from them. In view of what he has outlined in his evidence, the present 3 suits are doomed to fail, he therefore asks that Court that he bear no further litigation costs in the present suits.

The Law

- [47] **Civil Procedure Rules Part 15** rule 15.2 provides:

“15.2 The court may give summary judgment on the claim or on a particular issue if it considers that the –

- (a) claimant has no real prospect of succeeding on the claim or the issue; or
- (b) defendant has no real prospect of successfully defending the claim or issue.”

...

15.4 (1) Notice of the application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.

(2) The notice under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.

(3)

15.5 The applicant must –

- (a) file affidavit evidence in support with the application; and
- (b) serve copies of the application and the affidavit on each party against whom summary judgment is sought;

not less than 14 days before the date fixed for hearing the application.

(2) A respondent who wishes to reply on evidence must –

- (a) file affidavit evidence; and
- (b) serve copies on the applicant and any other respondent to the application; at least 7 days before the summary judgment hearing.

...

15.6 (1) The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.

(2) If the proceedings are not brought to an end the court must also treat the hearing as a case management conference.”

[48] The Court of Appeal in SLUHC VAP 2009/008 **Saint Lucia Motor & General Insurance Co. Ltd. vs. Peterson Modeste** settled and distilled the principles by which this Court must be guided on determining an application for summary judgment. There Creque-George JA said:

“[21] The principle distilled from these authorities by which a court must be guided may be stated thus: summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in **Swain v. Hillman** is that the claim or the defence has no “real” (i.e. realistic as opposed to fanciful) prospect of success. It is not required that a

substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.” (My emphasis)

[49] In BVIHCVAP 2009/001 **Alfa Telecom Turkey Ltd. v. Cukurova Financial International Limited, Cukurova Holdings AS** Gordon JA said:

“[18] ... The court is concerned to determine whether in the circumstances of the pleadings it would be a proper exercise of the court’s discretion to grant the application for summary judgment and to dismiss the claim by the respondents.

...

[20] There have been a number of decided cases dealing with the criteria for granting or refusing an application for summary judgment. Leading among them are the cases of **Swain v. Hillman** and **Royal Brompton Hospital NHS Trust v. Hammond No. 5**. In the former case the view was expressed that the decision on an application under Part 15 (or Part 26.3) of **CPR** does not involve the judge in conducting a mini trial. I am of the view that if the pleaded case of the parties indicates that there is a factual issue to be tried, which if proved in favour of the respondent to the application might result in the decision in the latter’s favour, then the preemptive power of the court should not be used. As was expressed in **Hammond**, when deciding whether the respondent has some real prospect of success the court should not apply the standard which would be applicable to a trial, namely the balance of probabilities on the evidence present. Indeed, by the very nature of the proceedings, the testing of evidence is not an option.” (My emphasis)

Findings and Analysis

[50] Mr. Greer and the Firm’s application was supported by 2 affidavits as noted. Although permitted by **CPR 2000** rule 15.5. (2), to file an affidavit in reply, Norman Aviation and AFTCI did not file an affidavit in reply to the application. As a consequence there was no evidence from Norman Aviation and AFTCI before the Court at the hearing of Mr. Greer and the Firm’s application for summary judgment.

[51] The Court has observed that in all the claim forms for the suits, Norman Aviation and AFTCI have pleaded (a) negligence, and (b) failure to represent the Claimants. While there is the tort of negligence, the Court could find no cause of action identified as “failure to represent”. There is the tort of professional liability and which on principle, the rules governing a professional person’s liability for negligence are not different from those governing the liability of anyone else who

undertakes a specific task and professes some special skill in carrying out that task¹. But even under professional liability, there is a recognition on limitation of skills. As Tindal C.J put it in 1838:

“Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure, nor does he undertake to use the highest possible degree of care and skill.”²

- [52] The authorities cited say in short, that summary judgment is designed to deal with cases which are not fit for trial, cases where it is clear on the face of the claim or defence, that it cannot be sustained. A claim where on the face of it, there is demonstrated an abuse of process and so in effect there is an abuse of the Court, will be struck out on an application summary judgment application.
- [53] This brings us to the cause of actions in the 3 consolidated suits, that of negligence. A claim in negligence has 3 facets that must be satisfied in order for it to succeed. Norman Aviation and AFTCI must prove that (a) there was a duty, (b) that there occurred a breach of that duty, and (c) damage was caused and such the damaged is described.
- [54] Of note at this juncture, is that Norman Aviation and AFTCI have sought in each suit to tell the Court what they wanted as an award of general damages. Assessment of damages is solely within the province and discretion of the Court. It is of course a different matter for special damages which must be specified/particularized, prayed for and proved at trial.
- [55] Duty – it is a given that once retained, Mr. Greer and his Firm would have undertaken to bring a reasonable degree of skill to dealing with the suits in which he appeared. It was not a skill to the point that he was bound to win Norman Aviation and AFTCI 3 cases against the Smiths, ECCAA and the Oliveras.
- [56] ANUHCv2017/0039 – In regard to the Smiths case, which is the subject of this suit, the contract and promissory note which were the foundation of this case were prepared by Norman Aviation and executed by the 15 years minor, Mr. Dulani Smith, Mr. Leroy Smith and Norman Aviation. The error of executing the documents with a minor falls straight into the lap of Norman Aviation. That so to speak made the action against Mr. Dulani Smith a “non-starter”. Master Glasgow was clear on the law in relation to minors. Following the Master’s finding on the promissory note, the claim remained alive against Mr. Leroy Smith on the contract.
- [57] As the Court sees it, if the contract and promissory note executed were bad as regards the minor Mr. Dulani Smith that could not be a breach of duty on Mr. Greer’s behalf. They were executed before Mr. Greer’s time.
- [58] According to Mr. Greer’s evidence, up to his departure from dealing with the Smiths case, the matter was still alive for continuance against Mr. Leroy Smith. This indeed was the situation as outlined in Master Glasgow’s judgment. The Court observes that Master Glasgow’s judgment was

¹ Clerk & Lindsell on Torts 18th ed. para. 8.02 p. 441.

² Ibid. p 442.

issued on 29th April, 2014. Some 2 3/4 years later, according to the disclosed application for stay of execution of proceedings filed by 26th January, 2017 by Mrs. Norman on behalf of Norman Aviation, it was Norman Aviation that sought to bring the proceedings to a halt.

- [59] The Court has already made its remarks prior on the sum of damages claimed in negligence. As stated prior, the statement of claim shows no details as to how the sum of \$235,471.31 was arrived at.
- [60] It is the Court's view, that in the circumstances of (a) having a minor sign the contract and promissory note unlawfully falls squarely at the feet of Norman Aviation, and (b) the suit being able to have continued against Mr. Leroy Smith, and it was Norman Aviation which filed a stay of the proceedings in the suit and so halting it, then there is no claim against Mr. Greer and his Firm. Of course, Norman Aviation could also at its convenience seek to have the stay removed, if one was entered.
- [61] Clearly, the claim is not sustainable. Further there is also an abuse of process as Norman Aviation seeks a stay of proceedings and then seeks to also go after Mr. Greer and his Firm for damages.
- [62] This is a suitable case for the entry of summary judgment. The claim will be struck out.
- [63] ANUHCV2017/0210 – In this suit, the ECCAA case, the claim is for negligence and failure to act in the suit against ECCAA. The first issue for the Court, is that the claim is for \$1.00 short of \$1 million dollars and not an iota of details was provided as to how such sum was arrived at in the statement of claim. Further, there were no pleadings set out to support why the Court would consider exemplary damages. Again the Court's earlier remarks on damages are relevant.
- [64] The second issue and perhaps really the primary issue, is that AFTCI is a recognized corporate legal entity and it seeks to make a claim for damages on behalf of an AFTC unincorporated, the unincorporated entity in ANUHCVAP2014/0021. There is no connection or relationship pleaded between the incorporated entity and unincorporated entity. And the unincorporated entity is not a party in the present suit.
- [65] In the circumstances, the Court does not believe that the incorporated entity, AFTCI can plead negligence of duty, breach and damage without more. This claim is also an abuse of process.
- [66] This is a suitable case for the entry of summary judgment. It is the Court's view that this claim must be struck out.
- [67] ANUHCV2017/0253 – Again in the Oliveras case, the Court reflects on its earlier comment about damages, and if there is to be special damages then they must be pleaded and particularized.
- [68] Secondly, according to the evidence of Mr. Greer, and which evidence remains unchallenged, he served the suit against the Oliveiras on Watt, Dorsett and Associates on the instructions of Mrs. Norman. Following service, when there was no response to the suit, there followed an application for a default judgment application and the default judgment was entered. The default judgment was subsequently set aside and the suit continues to be alive for trial and determination.
- [69] In his second affidavit, Mr. Greer says there is no record on the Court's file of the default judgment or order setting it aside. This has little impact on the Court's decision because it simply means that the status quo of the matter following a path to trial exist.

- [70] Reverting to the contents of Mr. Greer's first affidavit, a default judgment is granted as of right based on the meeting of prescribed criteria set out in the **CPR 2000** but it is not intended to be the "stealing of a march" on the other party and for this reason the very same Rules provide conditions on which a default judgment may be set aside. A default judgment is a judgment where there is no testing of the evidence and rendering of a decision by a judge.
- [71] There is no loss to a party who initially obtained a default judgment which was set aside and so caused the matter to follow a full trial route and be assessed on evidence presented to a Court. The filing of a suit is usually with the expectation that there will be a trial and testing of the evidence before a judge and he/she arriving at a decision. The judicial system is about being fair and balance in all the circumstances.
- [72] With the setting aside of the default judgment, it meant that the matter was now to proceed to trial, and a judge would render a decision on the evidence. The suit is not at an end. There was no loss.
- [73] Finally, the Court observes that the suit against the Oliveiras was brought by AFTC unincorporated and as with the ECCAA suit, there is no explanation in the pleadings as to on what grounds the incorporated AFTCI can bring proceedings on behalf of AFTC unincorporated against Mr. Greer and the Firm.
- [74] In all the circumstances, the Court does not believe that the suit can stand against Mr. Greer and the Firm. It is also an abuse of process given that the suit is still alive and AFTCI seeks damages against Mr. Greer and his Firm.
- [75] This too is a suitable for the entry of summary judgment. The suit will be struck out.
- [76] The Court has decided that Norman Aviation and AFTCI's claims (3 claims) are fit for summary judgment to be entered and they must be struck out but there remains alive Mr. Greer and the Firm's counterclaims. The Court is required pursuant to **CPR 2000** rule 15.6(2) to proceed to exercise its case management powers to move the counterclaims forward. The matter was in fact ready for pre-trial review at the time when Mr. Greer and the Firm filed their application for summary judgment. The Court will order that the matter be fixed for pre-trial review as regards trial of the Mr. Greer and his Firm's counterclaims.
- [77] Court's Order:
1. Norman Aviation and AFTCI's claims in the 3 suits are struck out.
 2. The matter is to be fixed within 45 days for pre-trial review of Mr. Greer and the Firm's counterclaims.
 3. The Defendants are awarded \$2,500.00 on their application and same is payable within 21 days.

Rosalyn E. Wilkinson
High Court Judge

