

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2018/0062

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER, INC.

Claimant

and

**ERIC PHILIP
PAULINE GRAYMAN**

Defendants

CLAIM NO: ANUHCV2018/0063

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER, INC.

Claimant

and

**ENIQUE WILLIAMS
LAETITIA NATHANIEL**

Defendants

CLAIM NO: ANUHCV2018/0064

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER, INC.

Claimant

and

**ANSE HENRY
SHIRRINE GILLON**

Defendants

Appearances:

Mr. Warren Cassell and with him Ms. Natalya Bevans for the Claimant
Mr. Loy Weste and with him Mrs. Lisa John-Weste for the Defendants in ANUHCV2018/0062
Mr. Lenworth Johnson and with him Ms. Andreen Vanrille for the Defendants in
ANUHCV2018/0063 and ANUHCV2018/0064

2019: November 11th, 12th;
2020: March 13th.

JUDGMENT

- [1] **WILKINSON, J.:** The Claimant (AFTC) filed its respective claims on 2nd February, 2018 alleging breach of contract by the failure to pay monies due and owing for private pilot licence training. The Defendants, Ms. Enique Williams (Ms. Williams) and Mr. Anse Henry (Mr. Henry) were students who attended AFTC for aviation training. The student, Mr. Garic Philip was initially a Defendant on filing of the suit ANUHCV2018/0062 but he being a minor at the time when his Contract was executed, he was removed as a party. Altogether, they are identified as “the Students”. The Defendants, Mr. Eric Philip (Mr. Philip) and Ms. Pauline Grayman (Ms. Grayman) were the parents of Mr. Garic Philip, Ms. Laetitia Nathaniel (Ms. Nathaniel) was the sister of the Ms. Williams, and Ms. Shirrine Gillon (Ms. Gillon) was the mother of Mr. Henry (“the Parents/Co-signees”). AFTC claims against the Students and Parents/Co-signees: (i) Mr. Philip and Ms. Grayman - EC\$25,975.00, (ii) Ms. Williams and Ms. Nathaniel - EC\$31,775.00, and (iii) Mr. Henry and Ms. Gillon - EC\$33,775.00. AFTC in addition to those sums also sought such further relief as the Court deemed just, and costs.
- [2] The claims were all defended, and counterclaims filed in each suit. By the respective counterclaims the Students and Parent/Co-signees alleged that AFTC misled them by way of certain misrepresentations before execution of the Contracts and AFTC never held the requisite aviation training organization (ATO) certificate to authorize it to provide aviation training. Further, when AFTC recognized that there would be no access to ECCAA exams, AFTC sought to unilaterally redirect the Students and the Parents/Co-signees on the need to secure documents for travel to Puerto Rico to sit Federal Aviation Administration (FAA) private pilot licence exams. There was misrepresentation by AFTC that it could legitimately provide aviation training at Antigua and Barbuda under the auspices of ECCAA with the result that that the Contracts were not enforceable. The Students and Parents/Co-signees each sought the following reliefs between them: (i) rescission of their Contract, (ii) return of monies paid, (iii) damages for breach of their respective Contracts, (iv) interest, (v) further or other relief as the Court deemed just, and (vi) costs.

Issues

- [3] The first issue is whether the Contracts were valid since they required that the Students meet “all minimum course requirements, including pre-entry and licence issue, as specified by ECCAA” but they could not gain access to write ECCAA exams because AFTC did not hold an ATO certificate.
- [4] The second issue is whether AFTC's Mrs. Norman misrepresented to the Students and the Parents/Co-signees that AFTC was a licenced ATO, and amongst other misrepresentations made, so well established that its pilots were sought after by the regional airline LIAT so as to induce them to enter the Contracts for private pilot licence.

The Evidence

- [5] The evidence is largely uncontested.
- [6] AFTC is a registered company at Antigua and Barbuda. Its managing director is Mrs. Grace Norman. Mrs. Norman is a qualified pilot who holds a commercial pilot licence. Mr. Martin Norman, is a director of AFTC and its chief flight instructor. AFTC states that it provides aviation training and offered training in the “Private Pilot Licence Course” to the Students.
- [7] Prior to starting classes at AFTC, identical Contracts were executed by the Parties:
- (i) Student Mr. Garic Philip, his Contract was executed on 14th August, 2017. He signed the Contract as Student and Mr. Philip and Ms. Grayman signed as Parents/Co-signees. Mrs. Norman signed on behalf of AFTC. By the Contract Mr. Garic Philip was to start classes on 14th August, 2017. The tuition costs were US\$13,250.00. A payment plan executed on 14th August, 2017, by both Mr. Garic Philip and Mr. Eric Philip was attached to the Contract and it provided that Mr. Garic Philip and Mr. Eric Philip promised to pay the sum of EC\$35,775.00 by way of EC\$5000.00 on 14th July, 2017, 30 monthly installments of EC\$1000.00 starting 31st August 2017, and final payment (undated) EC\$775.00.
 - (ii) Student Ms. Enique S. Williams, her Contract was executed on 10th September, 2017. She signed the Contract as Student and Ms. Nathaniel signed as Parent/Co-signee. Mrs. Norman signed on behalf of AFTC. By the Contract Ms. Williams was to start classes on 10th September, 2017. The tuition costs were US\$13,250.00. A payment plan executed on 10th September, 2017 by both Ms. Williams and Ms. Nathaniel was attached to the Contract and it provided that Ms. Williams and Ms. Nathaniel promised to pay the sum of EC\$35,775.00 by way of 35 monthly installments starting 10th September, 2017 of EC\$1000.00 per month with final payment of EC\$775.00 on 10th September, 2020.
 - (iii) Student Mr. Anse Henry his Contract was executed on 25th September, 2017. He signed the Contract as Student and Ms. Gillon signed as Parent/Co-signee. Mrs. Norman signed on behalf of AFTC. By the Contract Mr. Henry was to start classes on 9th October, 2017. The tuition costs were US\$13,250.00. A payment plan executed on 28th September, 2017 by both Mr. Henry and Ms. Gillon was attached

to the Contract and it provided that Mr. Henry and Ms Gillon promised to pay the sum of EC\$35,775.00 by way of 35 monthly installments of EC\$1000.00 per month starting 28th September, 2017 with final payment of EC\$775.00 on 28th September, 2020.

- [8] The Students and their Parents/Co-signees failed to pay the sums due for tuition and AFTC issued demand letters together with an account statement for payment on 21st January, 2018 to the Students, Mr. Philip for US\$9,620.37, Ms. Williams for US\$11,768.52, and Mr. Henry for US\$12,509.26.
- [9] By identical documents titled Student Financial Record: (i) Student Mr. Philip was advised that he had paid EC\$9,800.00 and there remained due EC\$25,975.00, (ii) Student Ms. Williams was advised that she had paid EC\$4,000.00 and there remained due EC\$31,775.00, and (iii) Student Mr. Henry was advised that he had paid EC\$2000.00 and there remained due EC\$33,775.00.
- [10] According to Mrs. Norman, at or about September 2017, she advised the Students who had completed the ground school modules to sign up for exams with ECCAA. Most of the Students signed up and paid by October 2017. ECCAA required the Students to provide information on the school which they had attended and the names of their instructors.
- [11] At January 2018, Mrs. Norman said that she had a meeting with the Students and their Parents/Co-signees and thereat informed them that the exams could be written at Puerto Rico at Isle Grande Flight School since there was a problem with ECCAA which needed to be sorted out. She encouraged the Students to continue with their training and stated that assistance would be given to those who needed a United States B1/B2 Visa for travel to Puerto Rico. She said that AFTC had been sending students to Isle Grande Flight School since January 2005.
- [12] The Court inquired about the costs to secure the US visa and which would have included (i) cost of flight to attend the US Embassy at Barbados on application for visa, (ii) costs of visa application, (iii) cost of flight to Puerto Rico, and (iv) cost of accommodation at Puerto Rico. Mrs Norman responded that AFTC would cover the cost of flight to go to Puerto Rico but all other costs were to be borne by the Students and their Parents/Co-signees.
- [13] The Court inquired of Mrs. Norman what was the Plan B, since the obtaining of a US visa was not “a given”, and she said that there were students who had gone to Canada and England to write their exams. The Court again inquired about costs associated with such a move and Mrs. Norman said that AFTC did not carry all costs.
- [14] The Court asked Mrs. Norman if AFTC considered itself an ATO, and she responded: “No. We applied but never got it.”
- [15] The Court put to Mrs. Norman “But you applied per your letter for an ATO licence?” Mrs. Norman responded: “No. We applied but never got. Us applying does not mean we considered. But it was stated to Mr. Johnson that we never applied.”
- [16] Mr. Johnson in cross-examination put to Mrs. Norman: “I suggest that what you said does not make any sense. You applied in 2005 and 2011, to be certified ATO?” Mrs. Norman responded: “It

is correct that we applied in 2005 and 2011 to ECCAA for consideration. However, ECCAA lost both applications and they were never carried out.”

[17] Under cross-examination Mr. Johnson put to Mrs. Norman: “So put to you that AFTC is an aviation training organization”. Mrs. Norman responded: “I have already stated per Aviation Civil Regulations, AFTC category falls into general aviation, general pilot training school per Part 2 (Chapter 2) of the Civil Aviation Regulations of 2004 and not Aviation Training Regulations Part 3 (Chapter 3) of 2004.”

[18] There was disclosed an email exchanged between AFTC and Mr. Carlos E. Reyes dated 13th January, 2018 and wherein Mrs. Norman sought to confirm with Mr. Reyes that AFTC could send the Students to do FAA private pilot licence exams at Puerto Rico and he was asked to indicate the costs of the CFI single engine exam. Mr. Reyes responded the same day and told Mrs. Norman that she could continue to send students and he set out testing days, and costs. The CFI was US\$1,000.00 plus US\$200.00 for a second airplane if the entire check was not performed in a complex aircraft.

[19] AFTC called Mr. Laevando Morrison as one of its witnesses. He was a former student of Norman Aviation Flight Training Academy Inc. This is an associated company of AFTC. He said that he had no problem completing his written examinations (he did not say where) and had 43 hours flying experience at 2017, however, he has been unable to complete his flight examinations because of matters arising between ECCAA and Norman Aviation Flight Training Academy. He started working for AFTC in 2014, and completed his fundamental instructor’s course in April 2016. He was an instructor of the Students. Under cross-examination Mr. Morrison admitted that he had still not completed his flight examinations.

Counsel Mr. Johnson asked Mr. Morrison why he had not done his examinations at Puerto Rico. Mr. Morrison responded: “Because my written exams which I would have to do in Puerto Rico (were) already completed here, and so I had no need to go to Puerto Rico to write that exam.”

Counsel Mr. Johnson: “So now have to do flight tests?” Mr. Morrison responded: “Yes.”

Counsel Mr. Johnson: “And is that not done in Puerto Rico also?” Mr. Morrison: “It probably could be done (there) but the process would require me to write the Puerto Rico written exam.”

Counsel Mr. Johnson: “So you being ground instructor at the school, you yourself stymied by the situation at AFTC?” Mr. Morrison: “Yes.”

[20] It is a fact that all of the Students attended classes at AFTC for a period of time.

[21] According to his mother, Ms. Grayman, Student, Mr. Phillip, following a flight from Antigua to Barbados, and where he was allowed to sit in the cockpit, had the desire to be a pilot. As he was growing up, Ms. Grayman bought him flight simulator programs. His parents Mr. Phillip and Ms. Grayman upon his completion of high school sought to facilitate their son’s desire to be a pilot and so enrolled him in AFTC. Prior to this, they held intermittent conversations with Mrs. Norman about flying lessons. At around August 2017, Mrs. Norman visited Mr. Eric Phillip’s home for the execution of the Contract for aviation training towards a private pilot licence. It was Mr. Phillip’s

understanding at time of execution of the Contract that AFTC had legal certification and authority to operate a flight school and to provide the private pilot licence course.

- [22] At the time of execution of the Contract, the family was advised that there were 5 exams that Student Mr. Phillip would be required to sit and complete at ECCAA to get his private pilot licence and Mrs. Norman also indicated that he was not required to sit all of his exams with ECCAA at the same time he but could complete an exam after each module of study was completed. On 31st August, 2017 Mr. Phillips and Ms. Grayman paid \$2,800.00 for their son to sit 4 exams fixed on 15th September, 6th October, 3rd November and 24th November, 2017. On 26th September, 2017 they received a letter for ECCAA advising that Student, Mr. Phillip would not be permitted to sit the examinations. No reason was given. As December 2017, approached, Ms. Grayman became concerned and telephoned ECCAA to obtain information about why her son's exams had not yet been scheduled. At this time she came to understand that there was an ongoing court matter between ECCAA and AFTC. There followed several conversations between Ms. Grayman and Mrs. Norman about the status of the litigation between ECCAA and AFTC. After this, Mr. Phillip and Ms. Grayman ceased making payments for tuition. Around the first week of January 2018, Mrs. Norman asked for a meeting with Student Mr. Phillip and his Parents/Co-signees. At the meeting Mrs. Norman confirmed that ECCAA was not permitting AFTC students to write ECCAA exams and she suggested the alternative of sending the Student Mr. Phillip to Puerto Rico. While she said that AFTC would pay for the flight to Puerto Rico, all other costs were to be borne by the Parents/Co-signees, Mr. Phillip and Ms. Grayman.
- [23] Ms. Grayman said that Mrs. Norman's suggestion made no sense to her because the final examination was a law exam and it had to be done at Antigua with ECCAA. Further, she did not have the resources to undertake the expense for her son to sit his exams at Puerto Rico.
- [24] On 21st January, 2018 Mrs. Norman took away Student, Mr. Phillip's pass to AFTC and asked him to leave the school's premises. On the same day, Ms. Grayman went to ECCAA and met there with other Parents of Students of AFTC. They were advised that AFTC held no certificate to operate a flight training school.
- [25] Mr. Eric Phillip repeated much of what was said by Ms. Grayman.
- [26] Student Mr. Phillip was born on 14th March, 2000. He said that he completed 2 in-house exams with AFTC but never did any exams with ECCAA even though he had signed up and paid the fees. He said that towards the end of November 2017, his class had completed all of the required modules and simply spent time revising. Frustration built amongst the Students as to why they were not being allowed to sit the ECCAA exams. At the end of November 2017, Mrs. Norman said to the Students that she did not know why ECCAA was not allowing AFTC Students to sit their exams. Towards the end of December 2017, Mrs. Norman told the students that the problem was that ECCAA wanted to know who the instructor was and asked the Students to say that it was Mr. Norman when in fact it was Mr. Edwards and Mr. Norman only participated on occasions to explain matters which Mr. Edwards was unable to explain. Student Mr. Phillip refused to state to ECCAA that Mr. Norman was his instructor. Mrs. Norman also advised the Students at that time that because there was a lawsuit between ECCAA and AFTC that it was for this reason that ECCAA would not allow the Students to sit the ECCAA exams. At January 2018, Mrs. Norman at a meeting raised the matter of the Students doing their exams at Puerto Rico. Student Mr. Phillip said that he could not pay for such.

- [27] Student Mr. Phillip said that each month he would carry \$1,000.00 cash to pay pursuant to the payment plan however, around November/December 2017, when he could not get any information for months about whether he would be able to sit the ECCAA exams, his family stopped making the payments until he could find out when he would be able to sit his exams. Student Mr. Phillip had completed 4 modules.
- [28] Student, Ms. Williams a teacher, attended classes from the 10th September, 2017 up until on or about 21st January, 2018. Ms. Williams said that her interest in pursuing aviation training arose as she was considering a change of career. She met with Mrs. Norman before execution of the Contract and Mrs. Norman told her that the school was qualified and that representatives from LIAT visited the school seeking the names of successful students. At mid-January 2018, when Ms. Williams turned up for class, she found a meeting in progress and where in attendance were Mrs. Norman, a lawyer, and the Students of AFTC. During the meeting Mrs. Norman informed the Students that following certain circumstances and in particular a legal battle with ECCAA that the Students would be forced to secure a visa to travel to Puerto Rico to write flight examinations there.
- [29] According to Ms. Williams, Mrs. Norman left many questions unanswered. She began to speculate as to why the Students were no longer going to be able to sit ECCAA exams. She decided to pay no further fees. Following her decision, Mrs. Norman visited her at her place of employment on 23rd January, 2018 and served her a letter which informed her that if the full tuition fee was not paid within 3 hours, then she would be expelled from AFTC. Mrs. Norman also informed her that Mr. Merchant, the coordinator of the scholarship program in the Prime Minister's Office, wished to meet with her. She visited Mr. Merchant's office and discovered that there was no truth to Mrs. Norman's statement. On 21st January, 2018 she and fellow Students had met with the Director of ECCAA, Mr. Donald Mc Phail and Ms. Nena Joseph, Counsel for ECCAA. At that meeting they were informed that AFTC had never been registered as a flight school or aviation training organization.
- [30] Student, Mr. Henry attended classes from approximately 2 weeks after execution of the Contract up until on or about 21st January, 2018. His mother, Ms. Gillon came to know about AFTC through Student Ms. Williams her co-worker, they both being teachers. Ms. Gillon spoke to Mrs. Norman who advised her about the possibility of funding through the Office of the Prime Minister scholarship programme. At the time, Mrs. Norman told Ms. Gillon that her business had been in existence for in excess of 35 years, the school was a qualified school, and there was displayed a chart showing successful students. Mrs. Norman also stated that LIAT had come to the school asking for the names of students to be employed by LIAT. From this information, Ms. Gillon said that she formed the view that AFTC was a qualified school licenced to do business at Antigua and Barbuda. Mrs. Norman did tell her that she was "ironing" out some problems with ECCAA and had filed a lawsuit regarding same. Mrs. Norman also told her that she had won her case against ECCAA and that everything was now fine. Mrs. Norman assured Ms. Gillon that when the time was right that she would write the necessary letter to ECCAA for Mr. Henry to sit his exams. Ms. Gillon subsequently heard that AFTC was having problems and so she visited Mrs. Norman during December 2017, to find out exactly what was happening. At this time Mrs. Norman told her that the problem with ECCAA was bigger than her, and asked her to read the Montserrat newspaper. At this time, Ms Gillon told Mrs. Norman that she would continue to pay the school fees according to the payment plan rather than hand over the full sum of the scholarship money (EC\$13,500.00). Mrs. Norman demanded the full scholarship money under threat that she would terminate Mr. Henry's enrollment. On 23rd January, 2018 Mr. Henry was given a letter of demand for the scholarship money. He did not pay over the scholarship

money. Mr. Henry did not return to AFTC. Ms. Gillon visited ECCAA and discovered that AFTC never had a certificate to conduct a flight training school or aviation training organization.

- [31] Mr. Henry repeated much of the evidence of Ms. Gillon. He was 19 years old when he started attending AFTC having recently graduated from the All Saints Secondary School. He started attending school on 9th October, 2017. He said that the structure of teaching was for the Students to watch the lessons on a monitor and take notes. They were told that they were preparing for ECCAA exams. There had to complete 5 modules and Mrs. Norman had told the Students that they were to sit in-house exams and on passing these then they would sit the ECCAA exams. He said that he felt rushed through the program. He personally did not understand most of the topics. Most of the Students failed the first module in-house exam. He tried to keep up but Mrs. Norman decided that he and other students were not ready to sit the ECCAA exams. At December 2017, it became clear to him that Mrs. Norman was trying to rush the Students through the program within 3 months, instead of the 8 months that she had indicated that the program would take.
- [32] At December 2017, he became aware of some financial issues that Ms. Gillon was having and so could not make the December 2017, monthly installment payment and so he decided to stay home. In the early part of January 2018, Mrs. Norman told him that he had been granted a scholarship from the Prime Minister's Office scholarship program and that a cheque was ready for him to collect. He was surprised that Mrs. Norman knew about his scholarship because he had not made the application through AFTC. He collected the cheque at January 2018. He was aware that Mrs. Norman had called a meeting at January 2018. He did not attend the meeting. He returned to classes during January 2018. He recounted an incident with an instructor which caused him to leave the classroom and wait for Ms. Gillon to pick him up. Mrs. Norman spoke to him about the incident and then delivered to him a letter dated 21st January, 2018 which referred to his scholarship of EC\$13,500.00 and demanded that he pay the balance of fees EC\$20,275.00 by 1:00 p.m. of that day or else he would be terminated. He subsequently discovered that AFTC did not have a certificate to operate a flight training school or an aviation training organization.

The Documents

- [33] The identical Contracts as prepared by AFTC were executed by all the Parties. The Contract provided amongst other matters the following:

“Terms and Conditions of Training
between
Antigua Flight Training Center, Inc (AFTC)
and

(signed by Enique Williams) (Student Name)

PRIVATE PILOT LICENSE COURSE

START DATE: 09.10.2017 (signed)

We would like to ask you to read and sign the following document which outlines our code of conduct and terms and conditions here at Antigua Flight Training Center, Inc. Each of the items helps us ensure we provide the best service possible to you.

The Student and Parent/Guardian agrees to enroll the Student to pursue flight and academic/ground school training offered by Antigua Flight Training Center, Inc. according to the terms and conditions set hereunder in this agreement.

- 1) The Student must meet all minimum course requirements, including pre-entry and licence issue, as specified by the Eastern Caribbean Civil Aviation Authority (ECCAA).
- 2) The cost of the tuition is USD\$13,250.00 is due one month in advance for the Private Pilot License Course start date to commence that course. Unless the Student and Parent/Guardian/Co-Signee presents a Payment Plan, academic fees including all ground school courses are payable in full prior to course commencement. If the Student and Parent/Guardian/Co-signee presents a Payment Plan for payment of any course, an interest of +5% will be charged at the monthly rate.
- 3) The Student and Parent/Guardian/Co-signee acknowledge that fees for additional training beyond the training course outlined during course enrollment will be charged at the agreed current published rates. Antigua Flight Training Center, Inc. reserves the right to substitute aircraft of equal or higher value in order to complete the training requirements.
- 4) The Student and Parent/Guardian acknowledges that in the event the Student terminates the course for any reason or is terminated from training by AFTC, the Student agrees to comply with the following refund policy. No refund is available.
- 5) The Student acknowledges that all flight and academic training is integrated in to the course of instruction offered by AFTC and may not be pursued separately by the Student.
- 6) ...
- 7) Antigua Flight Training Center, Inc. reserves the right at its sole discretion to terminate the Student's enrollment in the event the Student violates the policies and agreements set forthwith. The termination will apply if the Student fails to make themselves available for scheduled training, demonstrates unsatisfactory progress due to failure in applying him/herself, not completing study assignments, tardiness or absence, improper or irresponsible attitude, any drug or alcohol related activities, incapacitation or inability to maintain a medical certificate, or language barriers, or AFTC otherwise at its sole discretion considers the Students competencies, aptitude or character unsuitable for further training.

The Student is expected during training to maintain a high standard of dress and appearance in keeping with their proposed profession.

...

The Student is expected to maintain a professional code of conduct at all times. In all cases of a grievance please try to sort out the problem with the person concerned first. In the unlikely event of any further grievance, please report it in writing to Capt. Grace Norman, Principal/Rector/Counselor or Vice Principal Mr. Lesney Benjamin for Antigua Flight Training Center, Inc.

All assessments are recorded and held on file. Should the Student fail an assessment or exercise they will be subject to a retake. Entry to the regulatory body examinations will be at the discretion of Antigua Flight Training Center, Inc. and AFTC's conclusions on the Student's level of understanding and ability of the course. These conditions will be in accordance with the legislation laid down by the ECCAA. Student records will reflect any uncompleted assessments. Assessments and their results count towards the overall assessment of the Student's abilities and therefore affect the Student's ability to sit examinations.

8) ...

9) These terms and conditions constitute the entire agreement between the Student and AFTC; any and all prior agreements, understandings, representations or statements, oral or written are merged herein. No employee, agent, or other representative to or waiver of the terms of this agreement are invalid unless they are in writing and signed by the Principal.

10) ...

The Student and Parent/Guardian/Co-signee acknowledges that no employee, agent or other representative of AFTC has made any representations, promises or warranties to the Student concerning the course time necessary for his/her successful completion of the course of instruction, or any part thereof, or to obtain a particular rating, or to complete a given number of flight hours, or to successfully complete written test or flight tests. AFTC does not guarantee employment to the Student on completion of training. Every reasonable effort will be made to assist the Student in attaining their goals.

11) ...

12) ...

(Attestation clause where the student, parent/guardian/co-signee and AFTC executed the Agreement)." (My emphasis)

[34] A series of letters were relied upon by the Students and Parents/Co-signees.

- [35] A letter from ECCAA to Mr. Martin Norman on the status of AFTC operating an aviation training school read:

"Ref: 3A/322/56

20th July 2016

Mr. Martin Norman
C/o Antigua Flight Training Center Inc.
P.O. Box 1340
St. John's
Antigua

Dear Mr. Norman,

Antigua Flight Training Center

Reference is made to the above-captioned subject.

The Eastern Caribbean Civil Aviation Authority (ECCAA) has observed that for some time Antigua Flight Training Center (AFTC) appears to have been operating as a training organization. This is despite the fact that AFTC is not an Approved Training Organization (ATO) as required by Part 3 of the Civil Aviation Regulations 2004.

Section 3.1.2.1(a) of the **Civil Aviation Regulations** provides as follows:

"A person shall not operate an ATO without, or in violation of, an ATO certificate and training specifications issued under this part."

We note that Norman Aviation Ltd. applied to the ECCAA on 13th January 2005 for approval as a Level Two ATO. The ECCAA responded by letter dated 20th January 2005 stating that the authority was not yet in a position to undertake the certification of an ATO. This was primarily due to the fact that at that time ECCAA's resources were devoted to the recertification of LIAT and Caribbean Star as part of its efforts to obtain Category One Status from the FAA.

A related entity named Norman Aviation Flight Training Academy Inc. was incorporated on 25th April, 2005. This entity was also never certified as an ATO. However, the ECCAA permitted student pilots affiliated with the academy to sit examinations leading to the grant of Private and Commercial Pilot's Licences. This was on the basis that the student pilots had been trained by you as the holder of a Flight Instructor's Rating.

On 7th October, 2010 the ECCAA was notified that Norman Aviation Flight Training Academy Inc. was now training as Antigua Flight Training Center (AFTC). The arrangement described above continued with AFTC.

In 2014 AFTC commenced proceedings against the ECCAA for failure to process its application as an ATO among other things. AFTC claimed that an application to be certified as an ATO was submitted on 27th July, 2011. However, we have no record of any such application being received.

Despite this and at the urging of the Honourable Sir Robin Yearwood, Minister with Responsibility for Civil Aviation, the ECCAA by letter dated 8th July 2014 proposed that AFTC commence the process leading to certification as an ATO. To this end AFTC was invited to a meeting to discuss the process for the certification of AFTC as an ATO. Other than an email indicating that the date proposed for the meeting was not convenient, there was no response from AFTC. The ECCAA made a further request for a meeting by letter dated 23rd December, 2015. AFTC also did not respond to this letter.

The ECCAA notes that despite commencing proceedings against it for failure to process its ATO application, AFTC has so far ignored our efforts to resolve this matter. The ECCAA is obligated by law to regulate organizations which purport to offer aviation training. At present the ECCAA has no oversight of AFTC's training facilities, curriculum and evaluation methods.

In the interests of aviation safety the ECCAA can no longer operate under the fiction that your students are not receiving training from AFTC. It is our considered opinion that this situation is both unsatisfactory and unsafe. In addition it can potentially adversely affect the regulatory integrity of our office.

Please be advised however that if the concerns identified herein are not addressed in a timely manner, the ECCAA will have no alternative but to take steps to ensure that the provisions relating to training organizations in the Civil Aviation Regulations are enforced.

Please do not hesitate to contact the undersigned should any further information or clarification be required. (My emphasis)

Yours faithfully,

(signed)
Donald McPhail
Director General

DM/tba

cc: Sylvester Dardaine – Director Flight Safety, ECCAA”

[36] On 21st July, 2016 Mr. Dane Hamilton Jnr wrote to the Director General of ECCAA as follows:

“

21st July 2016

Mr. Donald McPhail
Director General

Eastern Caribbean Civil Aviation Authority
Factory Road
St. John's
Antigua
Dear Sir,

Re: ANUHCv2014 / 037 Antigua Flight Training Centre Norman Aviation Flight
Training Academy v ECCAA
Civil Appeal No 20 / 2014 Antigua Flight Training Centre v ECCAA
Your letter dated the 20th day of July 2016 to Mr. Martin Norman

We are now instructed by and represent Mr. Martin Norman, Antigua Flight Training Centre Inc. and Norman Aviation Flight Training Academy Inc. and your letter dated the 20th day of July, 2016 has been passed to us for reply thereto.

We thank you for your kind invitation to enter into discussions relative to the settlement of the claims for Judicial Review brought by our client against the Eastern Caribbean Civil Aviation Authority. However our client is most concerned that your position appears to be that our client has not availed himself of the opportunity to apply for Approved Training Organization status as per the Civil Aviation Regulations 2004. Nothing can be further from the truth.

Mr. Martin has operated a flight training school here in Antigua for over twenty (20) years. On the promulgation of the **Civil Aviation Regulations** in 2004 our client through his current companies, and his defunct company Norman Aviation Ltd. have made applications to the ECCAA for ATO status. On his first application our client was informed that the Authority was not in a position to process ATO applications. His pre-existing business was allowed to continue in the interim however the Authority did not advise our client precisely when ATO applications would be accepted. In July 2011 our client through Antigua Flight Training Centre Inc. made application for ATO status pursuant to the Regulations, our clients were subsequently advised that the application was misplaced and not processed by the Authority hence the filing of ANUHCv2014/0037. To date the Authority has neglected to request a copy of the application so made to it by our clients.

Notwithstanding the pending court actions our clients are willing to enter into discussions to settle all outstanding issues. However, your suggested date of Friday 22nd July, 2016 is not convenient to our clients or our offices on less than two days notice. Further given the long history of this matter our client is reluctant to enter into discussion outside the ambit of the Court's supervision or a structured Alternative Dispute Resolution mechanism.

In this regard, given that both parties are amenable to taking steps towards resolution of the several issues between them we are instructed to recommend that the parties enter into a process of Mediation through the Court Mediation Programme or the parties may explore Mediation privately.

In the circumstances we must regretfully ask for the meeting to be postponed and that your Legal Representatives be consulted with regard formally entering into mediation.

We look forward to hearing from you soonest in this regard.

Yours truly,

(signed)
D. Raimon Hamilton”

[37] On 22nd February, 2018 ECCAA wrote as follows:

“22nd February, 2018

Mr. Lenworth Johnson
Attorney-at-Law
Chambers of Johnson Gardiner
Attorneys-at-Law, Notaries Public & Trade Marks and Patent Agents
No. 51A St. Mary's Street
St. John's
Antigua, West Indies

Dear Mr. Johnson,

RE: CIVIL LITIGATION ANUHCV2018/0063 & ANUHCV2018/0064

Reference is made to the above-captioned subject.

The Eastern Caribbean Civil Aviation Authority (ECCAA) acknowledges receipt of your letter dated 21st February, 2018 and responds to the same.

The ECCAA has perused the contents of your letter and notes your request for information as to:

1. Whether the Antigua Flight Training Center Inc. (AFTC) has a current license from the ECCAA to operate a flight training school in Antigua; and
2. If a current license exists, the date of commencement of the license; and
3. The periods, if any, during which the AFTC was unlicensed; and
4. Whether the ECCAA is the only entity authorized to license flight training institutions in Antigua and Barbuda.

The ECCAA has the sole jurisdiction for approving and licensing Aviation Training Organizations (ATO) in Antigua and Barbuda.

The ECCAA is committed to process and to determine Applications for Civil Aviation documents, provided that such Applications are submitted.

Please be notified that there is currently no approved flight school in Antigua and Barbuda. The ECCAA has yet to receive an Application for ATO Certification from AFTC. In other words, the AFTC has never been the holder of an ATO Certificate.

It is a violation of the **Civil Aviation Regulations 2004** of Antigua and Barbuda, particularly Paragraph 3.1.2.1 (a), to operate an ATO without or in violation of an ATO Certificate and training specifications.

The ECCAA trusts that the foregoing satisfies your queries. (My emphasis)

Yours faithfully,

(signed)
Donald McPhail
Director General”

[38] On 12th September, 2018 Mr. Loy Weste wrote to ECCAA as follows:

“September 12, 2018

Mr. Donald McPhail
Director General
Eastern Caribbean Civil Aviation Authority
Lower Sir Sydney Walling Highway
St. John's, Antigua

Dear Sir

Re: **High Court Claim: ANUHCv2018/0062**
Antigua Flight Training Center Inc. v Eric Philip & Pauline Grayman

We are the Attorneys-at-Law for the Defendants, Pauline Grayman, Eric Philip and their son Garic Philip, in the captioned matter instituted by the Claimant, Antigua Flight Training Center Inc.

The nature of the dispute revolves around inter alia:

1. whether the Antigua Flight Training Center Inc. had the requisite licence to legally operate as a flight school in Antigua; and
2. whether the students of the AFTC were able to sit the ECCAA examinations for the Private Pilot Licence.

Our clients advise that in January 2018, our clients visited ECCAA for a face-to-face meeting and were advised by ECCAA that no students at the Antigua Flight Training

Center would be permitted to sit exams with ECCAA due to the failure of the said School to apply for and obtain an ATO Certificate.

On the 8th day of February, 2018 a letter was written under your hand to Corporal Henry verifying this information.

At this stage of the captioned High Court proceedings, the parties are required to file Witness Statements. It is necessary for the Defendants to have filed a Witness Statement from your good self to indicate the circumstances as to why ECCAA did not allow the students of the AFTC to sit the ECCAA exams.

Since ECCAA is the regulatory body and authority, our clients cannot speak on behalf of ECCAA regarding the legality of the operations of the AFTC.

Such a Witness Statement is absolutely necessary since in the absence of same, the evidence provided by our clients is merely hearsay and carries less probative value than a statement from an ECCAA representative.

Our client has been attempting to obtain such a Witness Statement from ECCAA for the past week without success.

We trust that the above is satisfactory and we look forward to hearing from you soonest. The said Witness Statement will need to be filed in the High Court of Justice on or before September 13, 2018.

We do so advise and thank you in advance for your timely response.

Yours faithfully

(signed)
LOY L.A. WESTE
Attorney-at-Law

cc Ms. Pauline Grayman & Mr. Eric Philip”

[39] On 24th September, 2018 ECCAA wrote to Mr. Weste as follows:

“Ref: 3A/23/4

25th September, 2018

Mr. Loy L.A. Weste
Attorney-at-Law
Chambers of Thomas, John & Co
Attorneys-at-Law & Notaries Public
P.O. Box 990

Sir Sydney Walling Highway
St. John's
Antigua, West Indies

Dear Mr. Weste,

RE: HIGH COURT CLAIM ANUHCV2018/0062, ANUHCV2018/0062 - Antigua Flight Training Center Inc. v. Eric Philip & Pauline Grayman

Reference is made to the above-captioned subject.

The Eastern Caribbean Civil Aviation Authority (ECCAA) acknowledges receipt of your letter dated 12th September, 2018 and hereby responds to the same.

The ECCAA notes that the objective of your letter, as observed from paragraph 5 of your letter, is to obtain a Witness Statement from the ECCAA indicating "the circumstances as to why ECCAA did not allow the students of AFTC to sit the ECCAA exams." You have announced, at paragraph 9 of your letter, that the "said Witness Statement will have to be filed in the High Court of Justice on or before September 13, 2018."

The ECCAA cannot acquiesce to your invitation to be a witness in the above-captioned matter. The ECCAA relies on the strength of the provisions of Article 25 of the Eastern Caribbean Civil Aviation Authority Agreement Act (No. 24 of 2003) for its position.

However, the ECCAA, by this letter, is prepared to offer an official response to the issue raised in paragraph 5 of your letter and considers the rendering of such a response as being outside of the realm of "hearsay".

The ECCAA can confirm that in January 2018, a collective meeting occurred at the ECCAA Headquarters between some students of AFTC, parents or guardians of those students, and some members of staff of the ECCAA. Owing to the large gathering of persons who, of their own accord, visited the Headquarters on that day this impromptu meeting was convened by the ECCAA in an attempt to hear the concerns of the students and guardians, and to provide answers. The ECCAA addressed persons collectively to avoid any unnecessary repetition of queries and answers and any wastage of time in addressing the concerns.

At that meeting, it was put to the ECCAA that the ECCAA had taken a decision to prohibit the students of AFTC to sit ECCAA pilot examinations. It must, here, be noted that that allegation came on the heels of the High Court matter – namely **Antigua Flight Training Centre Inc (AFTC) & Martin Norman v. ECCAA** ANUHCV2017/0485 which ECCAA successfully defended in December 2017. The ECCAA had not, at that time, taken any such decision but merely, in writing, requested (as is the norm) from persons applying to sit the pilot examinations to give particulars of their training – e.g. identify the person or entity that provided such training. As a result of that query for further information from the ECCAA, the ECCAA was accused of prohibiting students from AFTC from sitting ECCAA examinations.

At that meeting in January 2018, it was revealed to the ECCAA that the students present were part and parcel of the student body of AFTC and had enrolled to receive flight training and instruction from AFTC. With that revelation, the ECCAA noted that:

1. The answers to any issue on this matter are firmly couched and addressed in the Civil Aviation Regulations of Antigua and Barbuda (2004);
2. The law clearly provides that an entity which provides flight training and instruction must be the holder of an Aviation Training Organization (ATO) Certificate to validly and legitimately dispense or provide such training and instruction – Paragraph 3.1.2.1 (a) of the Civil Aviation Regulations of Antigua and Barbuda (2004);
3. In accordance with the provisions of the Civil Aviation Regulations of Antigua and Barbuda (2004), the ECCAA is the sole entity in Antigua and Barbuda which can entertain ATO Applications and which can grant ATO Certificates;
4. Persons assigned to give training and instruction must hold a valid Flight Instructor Rating to be deemed to have given valid training and instruction – Paragraph 2.2.5.9 (b)(ii) of the Civil Aviation Regulations of Antigua and Barbuda (2004);
5. If a person has a valid Flight Instructor Rating but performs flight training and instruction for and on behalf of an entity which does not have an ATO Certificate, the training and instruction are also to be deemed invalid owing to the fact that a person is not entitled to use a civil aviation document issued by the ECCAA to circumvent the laws and regulations. Without exception, an ATO Certificate is required by an entity to validly engage in flight training and instruction. A flight instructor rating does not empower the holder to deracinate the requirement for an ATO Certificate to be held by the entity on whose behalf the instructor is giving such training and instruction

With students from ATC not having the benefit of legitimate or valid flight and instruction, as required by the Civil Aviation Regulations of Antigua and Barbuda (2004), the ECCAA cannot accept applications from such students to sit the ECCAA examinations.

Grace Norman and Martin Norman have been previously told by the ECCAA of the requirements and are fully knowledgeable of the same. (My emphasis)

Sincerely,

(signed)
Donald McPhail
Director General”

The Law

[40] As the Court understands, aviation training schools at Antigua and Barbuda are regulated by ECCAA pursuant to **The Civil Aviation Act, 2003** (the “**Act**”) and **The Civil Aviation Regulations, 2004** (the “**Regulations**”). The **Act** by its long title states that it is to make provision respecting the regulation, operation and control of civil aviation at Antigua and Barbuda.

[41] The **Act** provides:

“2.(1) In this Act, and any regulation made pursuant to this Act,

“air operator” means any person who has been issued a civil aviation document authorizing the use of aircraft for air transport, aerial work or flight training operations;

“Authority” means Eastern Caribbean Civil Aviation Authority established by Article 3 of the Agreement;

3. (1) This Act applies to all persons and to all aeronautical products and other related things in Antigua and Barbuda, to all persons outside Antigua and Barbuda who hold civil aviation documents and to all aircraft registered or operated under the authority of a civil aviation document and passengers and crew members thereon such aircraft when operated outside Antigua and Barbuda. (My emphasis)

[42] **The Civil Aviation Regulations, 2004** provides:

“2. ...

“aviation training organization” an organization which hold a valid aviation training organization certificate;

“aviation training organization certificate” means an aviation training organization certificate issued pursuant to Chapter 3;

3. ...

7. (1) Without prejudice to any other provision of these Regulations the Authority may, for the purpose of personnel licensing as provided in this Chapter and in Part 2 of the Schedule, and subject to such conditions as the Authority thinks fit –

(a) approve any course of training or instruction;

(b) authorize a person to conduct such examinations or tests as the Authority may specify;

(c) approve a person to provided or conduct any course of training or instruction;

(d) approve a person as qualified to furnish reports to the Authority and to accept such reports; and

(e) certify an aviation training organization.

15. Subject to the provisions of this Chapter, the provisions of Part 3 of the Schedule apply to the requirements for certifying and administering aviation training organizations.

16. A person shall not engage in any programme of aviation training on behalf of a holder of an air operator certificate issued pursuant to these Regulations unless that person is the holder of a valid aviation training organization certificate issued pursuant to these Regulations and the conditions subject to which the aviation training organization certificate was issued are complied with.

17. An organization intending to engage, in any programme of aviation training on behalf of a holder of an air operator certificate issued pursuant to these Regulations may apply to the Authority for an aviation training organization certificate.

18. (1) ...

(2) The Authority may grant an aviation training organization certificate to an organization which complies with the requirements of Part 3 of the Schedule in respect of the activities applied for.

19. An aviation training organization certificate shall be in such form, be subject to such conditions and limitations and contain such particulars as may be determined from time to time by the Authority.

20. An aviation training organization shall use a training and checking manual approved by the Authority that lays out the processes, procedures and quality systems applicable to its activities.” (My emphasis)

[43] By their counterclaims the Students and their Parents/Co-signees have alleged misrepresentation by AFTC. **Halsbury’s Laws of England** 4th ed. Vol. 31 states:

“1001. Misrepresentation as a ground for the rescission of a contract or award of damages. Where one person (who may be called “the representor”) makes a false representation to another (who may be called “the representee”) which has the object and result of inducing the representee to enter into a contract or binding transaction with him, the representee may, in general and subject to certain circumstances which may preclude him from so doing, elect to regard the contract as rescinded. In these circumstances he may invoke the aid of the court, which may confirm by declaration his entitlement so to regard the contract, and grant him such other relief as may flow directly from the fact of rescission, for example, the return of money paid or chattels delivered by him pursuant to the terms of the contract. Alternatively, he may set up entitlement to regard the contract as rescinded by way of defence in any proceedings brought against him in order to enforce its terms. At common law, however, the relief afforded by the court to a representee as such does not extend to the award of damages for loss suffered by him in consequence of entering into a contract or binding transaction

unless he can further show that the false representation was made fraudulently or negligently.

1005. Constituent elements. A representation is a statement made by a representor to a representee and relating by way of affirmation, denial, description or otherwise to a matter of fact. The statement may be oral or in writing or arise by implication from words or conduct. The representor and the representee must be distinct from one another in substance as well as in name; where the persons claiming to have been deceived by a statement are in effect the same as those who are alleged to have made it, there is no representation which the law can recognize.

The matter of fact to which the statement relates must be a matter of present or past fact. The principle is clear, but there are difficulties in applying it to certain classes of statements. Thus, if a person makes a statement relating to his own or some other person's intention, or containing a promise or forecast as to the future with possible implications as to the present, or relating to his own or some other person's opinion, belief or other condition of mind, or to a matter of law, or to a document, or containing laudatory generalities or exaggeration, questions may arise whether, and in what sense and to what extent a representation is contained in or to be applied from the statement.

1006 Distinction between representation and contractual term. A representation must be distinguished from a statement."

[44] In **Chitty on Contracts** 28th ed. Vol. 1 assisted the Court on how it must approach the interpretation of the Contract between the Parties. It provides:

12-002 Proof of terms. Where the agreement of the parties has been reduced to writing and the document containing the agreement has been signed by one or both of them, it is well established that the party signing will ordinarily be bound by the terms of the written agreement whether or not he has read them and whether or not he is ignorant of their precise legal effect. But it by no means follows that the document will contain all the terms of the contract: it may be partly oral, and partly in writing. Further, many contracts are made solely by word of mouth or are contained in or evidence by documents which have not been signed by the party affected. In such case, it will be necessary to prove which statements, or stipulations, were intended to be incorporated as terms of the contract or to have contractual effect.

12-019 Conditions and warranties. Once it has been established that a certain stipulation is indeed a term of the contract, the question arises as to its comparative importance and effect....

12-021 Fundamental terms. There is some support for the view that, in addition to conditions, warranties and intermediate terms, the law recognizes yet a fourth category of term, the "fundamental term". The fundamental term has been described as part of the "core" of the contract, the non-performance of which destroys the very substance of the agreement. It has been distinguished by Devlin J. as being "something narrower than a condition of the contract" and as "something which underlies the whole contract so that, it is not complied with, the performance becomes totally different from that which the

contract contemplates.” Examples usually cited are those where a seller delivers goods wholly different from the agreed contract goods or delivers goods which are so seriously defective as to render them in substance not the goods contracted for: ... In each case, so it is said, there is a breach of the fundamental term, that is to say, of the “core” obligation to deliver the essential goods which are the subject-matter of the contract of sale. (My emphasis)

...

12-061 The whole contract is to be considered. Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intentions of the parties, even though the immediate object of inquiry is the meaning of an isolated word or clause. ...

....

12-081 Construction against grantor. Another rule of construction is that a deed or other instrument shall be construed more strongly against the grantor or maker thereof. This rule is often misinterpreted. It is only to be applied in cases of ambiguity and where other rules of construction fail. Nevertheless, despite certain doubts which have been cast upon it from time to time, the rule has constantly been cited as a rule of construction from Coke’s time to the present day. For instance, Coke says: “It is a maxim in law that every man’s grant shall be taken by construction of law most forcible against himself,” and in 1949, Evershed M.R. said:

“We are presented with two alternative readings of this document and the reading which one should adopt is to be determined, among other things, by a consideration of the fact that the defendants put forward the document. They have put forward a clause which is by no means free from obscurity and have contended ... that it has a remarkably, if not an extravagantly, wide scope, and I think that the rule contra preferentem should be applied”

12-082 The justification for the rule has been said to be that “a person who puts forward the wording of a proposed agreement may be assumed to have looked after his own interest so that if the words leave room for doubt about whether he is intended to have a particular benefit, there is no reason to suppose that he is not.”

Findings and Analysis

- [45] To commence, whilst there was much evidence from Mr. Norman and Mrs. Norman about issues arising between AFTC and ECCAA, and which issues arose according to the evidence, prior to the execution of the Contracts with the Students and Parents/Co-signees, and so was the status quo at execution, the Court will have no regard to such matters save as in a limited sense as it affects the Contracts with the Students. In this regard, ECCAA by its letter of 20th July, 2016 this being in excess of 1 year before the present Contracts under consideration were executed, put AFTC on notice as to how it would be treating with AFTC - there would be no recognition of it as an ATO. .

- [46] There was no challenge to the actual execution of the Contracts between the Parties. The challenge is to whether AFTC was in a position to offer aviation training and which training would permit the Students when ready to do so, sit ECCAA exams so as to lead to a private pilot licence.
- [47] It is not challenged that ECCAA is the Authority which regulates and controls all manner of aviation at Antigua and Barbuda pursuant to the **Regulations** and at regulation 16 (Chapter 3) it is provided that a person shall not engage in any programme of aviation training unless the person is the holder of a valid aviation training certificate issued pursuant to the **Regulations** – an ATO certificate. Under cross-examination Mrs. Norman suggested that the teaching that AFTC provided was not covered or was outside of that covered by the **Regulations** Chapter 3 and so in effect she was saying that AFTC was not required to hold an ATO certificate to operate its aviation training school. Her position was that the training offered at AFTC fell under Chapter 2.
- [48] The dispute as to whether or not, the aviation training provided by AFTC fell under Chapter 2 or Chapter 3, is not for the consideration of the Court in this suit. That is a clearly a dispute between AFTC and ECCAA.
- [49] This brings the Court to the first issue. A review of the Contract between the Parties finds that the only aviation authority referred to was ECCAA. The Contract provided that:
- “The Student must meet all minimum course requirements, including pre-entry and licence issue, as specified by the Eastern Caribbean Civil Aviation Authority (ECCAA).
- ...
- Entry to the regulatory body examinations will be at the discretion of Antigua Flight Training Center, Inc. and AFTC’s conclusions on the Student’s level of understanding and ability of the course. These conditions will be in accordance with the legislation laid down by the ECCAA.” (My emphasis)
- [50] According to the evidence, it is clear, that when the issue of ECCAA rejecting AFTC students arose, AFTC sought to make unilateral alternative arrangements through Puerto Rico and this was to be at costs to the Students and their Parents/Co-signees. Unfortunately, such change to the Contracts could only come about with the agreement of the Students and their Parents/Co-signees. AFTC could not unilaterally change the arrangement from meeting ECCAA standards to FAA standards via examinations conducted at Puerto Rico even if it was prepared to meet all of the costs associated with such change.
- [51] It is also clear that given ECCAA’s position from as early as 20th July, 2016 that AFTC could not have given a genuine undertaking that the Students were being prepared to meet ECCAA course requirements when AFTC had no ATO certificate and so its Students had no access to ECCAA examinations.
- [52] Examinations towards a private pilot licence was mandatory. Considering that ECCAA was the prescribed Authority for examinations purposes, access to the examinations of ECCAA was fundamental and went to the root of the Contracts between AFTC, the Students and the Parents/Co-signees. If AFTC could not provide access to ECCAA’s exams then the Contracts between the

Parties cannot be allowed to stand. That being so, any claim by AFTC for monies due and owing on fees from the Students and Parents/ Co-signees must be denied. The Court will so order.

- [53] This brings the Court to the second issue, that of whether the Students and their Parents/Co-signees were misled and induced to enter into the Contracts by the statements of Mrs. Norman, such statements being (i) LIAT visited AFTC to secure the names of pilots for hire by the Airline¹, (ii) leading the Students and Parents/Co-signees through various conversations to believe that AFTC was qualified to provide aviation training up to private pilot licence and submit its students to sit ECCAA exams for the private pilot licence, (iii) displaying of a chart showing successful students², (iv) that AFTC had won its suit against ECCAA and so “everything was fine”, and (v) that while AFTC had some issues with ECCAA it was “ironing” out the issues.
- [54] From all accounts, the Students and their Parents/Co-signees were persons without any knowledge of the aviation industry. They all depended on AFTC and in particular, on Mrs. Norman to guide them through the process and which included assisting them with the sourcing of funding by way of Office of the Prime Minister scholarship programme with a value of EC\$13,500.00. The clear goal was to be achieving the private pilot licence under the auspices of ECCAA.
- [55] From the evidence, it is clear that the Students and Parents/Co-signees on being told of the matters listed above held the view that AFTC was licenced to provide aviation training and submit the Students for ECCAA exams. Alas, such was not the case, the dispute between ECCAA and AFTC which had been ongoing prior to the execution of the Contracts came ‘face to face’ with the Students. There would be no access to ECCAA exams.
- [56] The Court finds that the Students and their Parents/Co-signees have made out a case of misrepresentation. This being so, the Court must order that the Contracts are rescinded and order a full refund of all monies paid by the Students and their Parents/Co-signees to AFTC.
- [57] The Students and their Parents/Co-signees have sought damages. For such an award, there must be proof of fraud or negligence. The statements of misrepresentation and in particular that of AFTC being licenced to give aviation training was fraudulent and this was made with the knowledge of ECCAA’s position prior to the Contracts. It is a fact that the nature of the misrepresentation came to light in a short time. That is between 14th August, 2017 when Student Mr. Phillip and his Parents/Co-signees executed his Contract, and 31st December, 2017 when on a visit to ECCAA, all of the Students and their Parents/Co-signees were informed that AFTC did not hold an ATO certificate authorizing it to provide an aviation training program and so there would be no access to ECCAA exams.
- [58] The Court believes that an award of \$10,000.00 in each instance would be reasonable and will so order.
- [59] Court’s order:

1. The claims of the AFTC are dismissed.

¹ No proof of this. LIAT is a commercial airline and so it appears to the Court that its pilots would have to hold a commercial pilot licence.

² No such students called to give evidence on behalf of AFTC.

2. The Contracts between AFTC and the Students and their Parents/Co-signees are rescinded.
3. AFTC is to refund the Students and their Parents/Co-signees all monies paid in full together with 5 percent interest from the date of this judgment.
4. AFTC is to pay \$10,000.00 in damages to each Student and their Parents/Co-signees.
5. Prescribed costs are awarded to each Student and their Parents/Co-signees.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar

