

The Eastern Caribbean Supreme Court

In The High Court of Justice

Saint Vincent and the Grenadines

SVGHCV2014/0002

BETWEEN:

INTER CARIBBEAN EXPRESS INC

Claimant/Applicant

AND

SVG AIR LTD.

Defendant

2015: Feb. 18 & 25

Appearances: Mr Ronald Marks and Ms. Patricia Marks for the Claimant/Applicant, Mr. Samuel E. Commissiong for the Defendant.

JUDGMENT

[1] **Henry, J. (Ag.):** Inter Caribbean Express Inc. (“ICE”) is a company registered and having its registered office in Saint Lucia. SVG Air Ltd. (“SVG Air”) is a company registered in Saint Vincent and the Grenadines with a registered office in Saint Vincent. ICE and SVG Air formed ABMAir Ltd.ⁱ (“ABMAir”) in Antigua and Barbuda to provide air passenger services between Antigua and Barbuda and Montserrat. ABMAir Ltd. leased an aircraftⁱⁱ from ICE for one year commencing on July 30, 2012, for use in its business.ⁱⁱⁱ The aircraft remained in SVG Air’s possession until July 2014 when ICE flew it from Saint Vincent to Saint Lucia without consulting SVG Air. ICE seeks an interim injunction compelling SVG Air to deliver to it all logbooks, records and other documents

necessary for the aircraft's proper operation. ICE is also seeking an order that SVG Air pays it damages for trespass and for wrongful interference with the aircraft.

ISSUE

[2] The issues are whether:

- (a) ICE should be granted the interim injunction compelling SVG Air to hand over those logbooks, records and other records? and,
- (b) SVG Air should be ordered to pay ICE for damages for trespass and for wrongful interference with aircraft J8-UVF?

LAW AND ANALYSIS

Issue 1 – Should ICE be granted an interlocutory injunction?

[3] In arriving at a determination on this issue, the court must consider whether:

- (a) ICE has a pre-existing cause of action against SVG Air;^{iv}
- (b) there is a serious issue to be tried;^v
- (c) damages would be an adequate remedy;^{vi} and
- (d) where the balance of convenience lies as between the parties.^{vii}

Is There a Pre-existing Cause of Action or a Serious Issue to be tried?

[4] ICE filed a Fixed Date Claim Form^{viii} seeking among other reliefs, damages for trespass to its aircraft, a final injunction for SVG Air to deliver its logbooks, records and other documents, damages for SVG Air's interference with its business by the unlawful detention of its logbooks and records. ICE^{ix} alleges that SVG Air's failure to deliver its logbooks and records is unlawful and has resulted in the subject aircraft being grounded. It also deposes that it is losing revenue of approximately \$12,200.00 per day and incurring daily expenses of \$2,609.00.^x ICE avers that it owes SVG Air \$25,000.00^{xi} as repayment for a loan. SVG Air counters that it has retained possession of the logbooks

and records because ICE owes it \$513,737.78 and refuses to address settlement of this debt.^{xii} SVG Air claims this sum in respect of *inter alia*, insurance payments and charters done by them for ICE. These divergent positions demonstrate that there is a serious issue to be tried between the parties involving consideration of the law relating to detainee and breach of contract. These claims pre-dated ICE's Application for the interim injunction and therefore qualify as a pre-existing cause of action.

Would Damages be an Adequate Remedy?

[5] ICE contends that the subject aircraft is the only aircraft it owns.^{xiii} It attests further that if the logbooks and records are not returned, it would be unable to pay its operational expenses, services and debts, and would have to suspend operations and close.^{xiv} ICE avers also that it fears that its records and logbooks may be altered or destroyed if no steps are taken to secure them.^{xv} SVG Air denies that it will ever destroy or alter the logbooks or records.^{xvi} The court must consider whether ICE could be adequately compensated in damages for any loss it might sustain through SVG Air's continued admitted detention of its logbooks and records, if ICE succeeds in obtaining a permanent injunction at the trial.^{xvii} If the court concludes that damages would be adequate and that SVG Air is able to pay such damages, no interlocutory injunction should be granted.^{xviii} While it is clear that ICE can be compensated in damages if it succeeds in obtaining a permanent injunction at the trial, there is insufficient evidence before the court on which to make a determination as to SVG Air's financial capacity to pay such damages.

[6] Similarly, while SVG Air may be adequately compensated in damages by ICE, if SVG Air prevails at the trial, there is no evidence before the court as to ICE's ability to satisfy an award of damages. In this regard, while ICE submits that it is incurring daily expenses and losing weekly revenue, no data in the form of invoices, receipts or contracts was presented to the court supporting these assertions, or ICE's financial status.

Where does the balance of convenience lie?

[7] SVG Air claims over half a million dollars from ICE while ICE seeks to recover its logbooks and records and admits to owing SVG Air no more than \$25,000.00. ICE's contention that it might even have to suspend and close its operations implies that it apprehends suffering significant loss to which it has not ascribed a value. There is no material before the court on which such evaluation can be made. In addition, ICE has represented to the court that it is prepared to give an undertaking to the court not to dispose of the aircraft until trial of the substantive issue. There is no evidence before the court describing or cataloguing ICE's assets within Saint Vincent and the Grenadines or elsewhere, if any. The subject aircraft is located in and ICE is registered in Saint Lucia, a state over which this court exercises no jurisdiction. ICE has not indicated the value of the aircraft or whether there are any liens or charges in existence in respect of the aircraft. Neither party has provided information to the court regarding their respective assets and liabilities. In this regard, enforcement of an undertaking in damages by ICE or an undertaking by it not to dispose of the aircraft might require SVG Air to initiate fresh proceedings in Saint Lucia. This is likely to be disadvantageous to SVG Air who will necessarily be compelled to instruct new counsel there and to travel there to facilitate disposal of the ensuing matters, which may or may not be protracted.

[8] The court notes too that the main issues between the parties involve the resolution of a factual dispute concerning amounts due and owing between them which spanned a period of 3 months before ICE initiated action in this court. Further, an order granting ICE the interlocutory injunction will effectively resolve ICE's major claims without addressing SVG Air's. In all of those circumstances, the grant of the interlocutory injunction would be more disadvantageous to SVG Air than denial would be to ICE. The balance of convenience favours preservation of the status quo. In the premises, although this case involves a serious issue, the non-disclosure of pertinent details on which the court could conclusively rule on the issue of adequacy of damages combined with my finding on the balance of convenience, lead me to hold that the interlocutory injunction should not be granted and that the status quo should be maintained.

Issue 2 – Should the court make an interim order for SVG Air to pay damages to ICE for trespass and for wrongful interference with aircraft J8-UVF?

[9] Neither party addressed the court on this issue. The court nonetheless, has a discretion to grant an interim remedy including an order for damages.^{xix} In exercising this discretion, the court must seek to give effect to the overriding objective of the Civil Procedure Rules 2000 (“CPR”).^{xx} The parties’ convoluted accounts of their relationship and the judiciousness of full ventilation of their respective positions militate against a summary^{xxi} adjudication of this issue of damages. I therefore make no order on this issue but consider it just and equitable to give directions for an early trial of the substantive matter pursuant to Part 17.8 of the CPR.

ORDER

[10] I accordingly dismiss Inter Caribbean Express Inc.’s application for:

- (i) an order compelling SVG Air Ltd. to deliver up possession of Inter Caribbean Express Inc.’s logbooks, records and all other documents belonging to and necessary for the proper and/or lawful operation of Inter Caribbean Express Inc.’s aircraft J8-UVF.
- (ii) an order that SVG Air Ltd. pays ICE for damages for trespass and for wrongful interference with aircraft J8-UVF.
- (iii) Inter Caribbean Express Inc. shall pay SVG Air Ltd.’s costs of \$800.00.

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Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ On April 5, 2011, incorporated in Antigua and Barbuda – see PG1B.

ⁱⁱ Bearing registration number J8-VBL.

ⁱⁱⁱ Affidavit of Wayne Mc Diarmed filed on 23 January, 2015, para. 3, exhibit “W.M.”.

^{iv} **Siskina (Owners of cargo lately laden on board) v Distos Compania Naviera S.A. [1977] 3 All E.R. 803.** See also **Mirsand Town Planning and Architects Limited v. Samuel S. Conde Asociados C. Por A TVIHCVAP2000/0020**; and **Antigua Aggregates Limited v. The Attorney General of Antigua and Barbuda & Antigua Commercial Bank ANUHCV2008/0058.**

^v **American Cyanamid Co. v. Ethicon Limited [1975] 1 All E.R. 504.**

^{vi} Ibid.

^{vii} Ibid.

^{viii} On November 20, 2014.

^{ix} See paras. 15 -17 of Wayne Mc Diarmed’s (ICE’s shareholder and Director) Affidavit filed on December 16, 2014.

^x Ibid. at para. 15.

^{xi} Ibid. at para.10.

^{xii} See paras. 4.6, 9 b), 10 and 13 of the affidavit of Mr Paul Gravel filed on January 13, 2015.

^{xiii} Mc Diarmed’s Affidavit. Supra. at para. 16.

^{xiv} Ibid. at para. 20.

^{xv} Ibid. at para. 19.

^{xvi} Paul Gravel’s Affidavit, Supra. At para. 19.

^{xvii} See **American Cyanamid**, Supra. Per Lord Diplock,

^{xviii} Ibid.

^{xix} Civil Procedure Rules 2000, Part 17.1 (1) & (3).

^{xx} Ibid. at Part 1.2.

^{xxi} Albeit by interlocutory process.