

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2023/0005

BETWEEN:

ANTIGUA AND BARBUDA AIRPORT AUTHORITY

Appellant

and

ANTIGUA HANGARS INC.

Respondent

Before:

The Hon. Mr. Gerard St. C Farara

Justice of Appeal [Ag.]

The Hon. Mr. Davidson Baptiste

Justice of Appeal [Ag.]

The Hon. Mde. Gertel Thom

Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Marshall Jr. for the appellant

Ms. Sherrie-Ann Bradshaw for the respondent

2025: November 28;

2026: January 28.

Civil Appeal - Statutory Authority - Section 4 Airport Authority Act No. 17 of 2006 - Easement - Easement of necessity - Alternative access - Private Land Rights - Implied easement - Necessity and convenience (Strict necessity) - Fixtures - Fence affixed to land - Ownership passing with conveyance - Trespass to land - Unauthorised entry - Removal of fixture - Nominal damages - Trespass sufficiently pleaded - Whether the learned judge erred in law in finding that no easement of necessity was established by the claimant/appellant over the defendant/respondent's land - Whether the learned judge erred in awarding nominal damages for trespass when it was not pleaded by the respondent in its counterclaim

The appellant, the Antigua and Barbuda Airport Authority ("the Authority"), is a statutory authority established under the **Airport Authority Act No. 17 of 2006** ("the Act") empowered under the Act with the control, management, security, and maintenance of the V.C. Bird

International Airport, the sole international airport in Antigua and Barbuda. The land comprising the airport, including Runway 10, is vested in the Authority. Runway 10 is the main runway at the airport and is enclosed by a perimeter fence forming part of the airport's security infrastructure. The respondent, Antigua Hangars Inc., is the registered proprietor of land formerly registered as Registration Section Barnes Hill & Coolidge Block 41 2294A Parcel 118, now subdivided into Parcels 152 to 157 ("Parcel 118"). Parcel 118 is a U-shaped parcel which lies immediately adjacent to Runway 10 on both sides and at the approach end of the said runway. The configuration of the land and the location of the perimeter fence were not in dispute and were clearly depicted in a survey plan exhibited at trial.

Parcel 118 originally formed part of a larger area of land owned by the Crown when the airport was under the direct management of the Government of Antigua and Barbuda. In February 2003, the Crown sold Parcel 118 to Stanford Development Company Limited, which later subdivided the land. Following the liquidation of Stanford Development Company Limited, the respondent purchased Parcels 152 to 157 (previously Parcel 118) from the liquidators in 2018. The respondent asserted at trial that, prior to the 2003 sale and purchase of these parcels, the previous owner had removed the old airport fence and replaced it with fencing forming part of the purchased lands.

In March 2018, following a breakdown in discussions concerning access and payment for use of the respondent's land, Parcel 118, the Authority commenced proceedings in the High Court claiming an easement of necessity over Parcel 118. The Authority sought declarations that it was entitled to traverse the respondent's land to access and maintain the perimeter fence around a part of Runway 10 in order to discharge its statutory duties. It pleaded that it had no other means of access to the fence and that it had enjoyed uninterrupted use of the route for more than ten years. The respondent denied the existence of any easement and pleaded that the appellant had alternative access to the perimeter fence, including access from a public road and from other areas under the appellant's control. The respondent further alleged that the appellant had unlawfully entered upon its land, removed sections of the perimeter fence and a gate, and interfered with its access. By counterclaim, the respondent sought declarations, injunctive relief, and damages.

After a trial, the learned judge found that the appellant (claimant in the court below) had alternative access to the perimeter fence without traversing Parcel 118 and, accordingly, held that no easement of necessity existed. The learned judge further declared that the appellant's removal of the fence was unlawful, ordered reinstatement of the fence, and awarded nominal damages for trespass in the sum of EC\$6,500.00, together with prescribed costs.

The appellant appealed, contending that the learned judge misapplied the principles governing easements of necessity; and erred in finding that, in the particular circumstances of this matter, the existence of an alternative access defeated the claim; in concluding that the fence formed part of the respondent's land; and in awarding nominal damages for trespass where trespass was not expressly pleaded.

Held: dismissing the appeal, affirming the orders of the learned judge and awarding costs to the respondent in the appeal to be agreed by the parties within 21 days of the date of this order, or if not to be assessed by a Judge or Master of the High Court, that:

1. The doctrine of easement of necessity is based not on the reasonableness of the enjoyment or use of the dominant land, but on the premise that the only access to the dominant land is over the servient land. It is only in such circumstances that the court will invoke the concept of an implied grant in declaring that an easement of necessity exists; and only for so long as such unqualified necessity continues to exist. It follows that where that 'necessity' ceases to exist, no easement of necessity and no implied grant of such an easement can continue to be maintained as a matter of law. Therefore, the existence of another or alternative access in favour of the dominant land is completely inimical to the existence of an easement of necessity and renders any such equitable claim unsustainable.

Halsbury's Laws of England vol 87 (5th edn.) applied.

2. The burden of proving an easement of necessity rests on the party asserting its existence or existence by implication in favour of their dominant land. This is a heavy burden, and courts are reluctant to imply an easement that has not been expressly reserved. An easement of necessity arises under specific circumstances by operation of law, through the doctrine of implied grant, to address a particular necessity. It is not sufficient that the easement is merely convenient for the reasonable enjoyment of the dominant tenement; rather, it is one without which the dominant tenement cannot be used at all. Additionally, for an easement of necessity to arise where a single owner holds the legal estate in two plots, the following conditions must be satisfied: (i) access from one plot to a public highway must lie solely over the other plot, and (ii) one of the plots must be disposed of without any express grant or reservation of a right of way. If these conditions are absent, or if an alternative means of access exists, no easement of necessity arises.

Alhaji Bora Manjang v Kebba Drammeh [1990] UKPC 50 applied; **Joseph W Horsford v Geoffrey Croft** [2014] UKPC 4 applied and **Leslie Emmanuel & Anor v ACE Engineering Ltd.**, DOMHCVAP2013/0014 (delivered 8th December 2015, unreported) followed.

3. An easement of necessity arises only to provide the owner of the dominant land with access to their property over the servient land, typically from and to a public road. In this case, the appellant does not claim such access over Parcel 118 from the public road. Its claimed easement is solely to reach a fence on Parcel 118 for inspection and maintenance of the Runway 10 perimeter fence, as one of its statutory obligations under section 4 of the Airport Authority Act. However, the doctrine of implied grant depends on strict necessity, not public policy or statutory duty. A statutory obligation to maintain property does not, by itself, create an easement of necessity. Absent an easement of necessity, the entitlement to an easement over the land of another can arise only by express grant.

Nickerson v Barraclough [1981] 1 Ch 426; **Joseph W Horsford v Geoffrey Croft** [2014] UKPC 4 followed.

4. A fence on land is a fixture, and ownership of that fixture passes with the land. Removal or interference with the fence without the consent of the landowner, absent any binding and enforceable agreement to do so, constitutes trespass in law, and nominal damages are recoverable even in the absence of proof of actual loss. In the instant matter, the appellant failed to establish that an easement of necessity exists in its favour over the respondent's land. The learned judge's finding that no such easement was proven is therefore unassailable. This conclusion is supported by several reasons. First, the appellant's claim is not for access to and from a public road, but solely to reach a fence on the respondent's land. Second, the claimed purpose for doing so, that is, inspecting and maintaining that fence does not fall within the established concept of an easement of necessity, but rather the assertion of a right to maintain property on the respondent's land, which right admittedly does not exist. Third, and most important, no real necessity has been demonstrated or proven by the appellant. The indisputable evidence shows that the appellant can access the said fence from the Burma Public Road and over Crown land. Accordingly, there is no necessity to use the respondent's land for the appellant to discharge its statutory obligations under section 4 of the Airport Authority Act. On this basis alone, the judge's findings of fact and law are unassailable and the appellant's claim to an easement of necessity fails.
5. In law a trespass arises from unlawful entry upon land in the possession of another, even where no actual damage occurs. The mere act of stepping on to another's land, or crossing its boundary, constitutes actionable trespass.

Halsbury's Laws of England (5th Ed. 2020) Vol. 4, para. 319. applied; **Rolston Michael v Jo**

Hutchens ANUHCv2004/0298 (delivered 22nd May 2007, unreported) followed; **Loretta Blake v Noel Palmer** [RMCA18/2004] (delivered 28th July 2006) applied; **Law of Torts** (19th edn.) applied.

6. Considering all the findings and circumstances, including the trespass and removal of the fence, and the appellant's clear admission of such trespass at paragraph 6 of its Defence to Counterclaim, the respondent is entitled to an award of damages for trespass to Parcel 118, even in the absence of particulars or proof of actual loss. In these circumstances, this Court finds no basis to disturb the learned judge's award of EC\$6,500 as damages for trespass. The appellant has not challenged the quantum as being unreasonable or disproportionate but contends only that trespass and damages were not properly pleaded. Having rejected these grounds of appeal, there is no justification for setting aside the award.

JUDGMENT

[1] **FARARA JA [AG.]:** By notice of appeal filed on 28th February 2023, the Antigua and Barbuda Airport Authority (“the Authority” or “the appellant”), a statutory body established under and by virtue of the **Airport Authority Act** (“the Act”),¹ appealed against the judgment of the Honorable Justice Marissa Robertson (“the learned judge”) of the High Court of Justice in Antigua and Barbuda dated 31st January 2023 (received by the appellant on 10th February 2023) in Claim No. ANUHCV2018/0126 involving the Authority as claimant and Antigua Hangars Inc. (a company incorporated under the laws of the State of Antigua and Barbuda), as defendant. By the judgment the learned judge dismissed the appellant’s claim and upheld the respondent’s counterclaim and made the following orders:

- “(1) An easement of necessity does not exist in favour of the Claimant over the Defendant’s lands.
- (2) There is a declaration that the Claimant’s removal of the perimeter fence was unlawful, and the Claimant is required to reinstate the Defendant’s perimeter fence.
- (3) The Claimant is liable in trespass, and the Claimant is liable to pay to the Defendant nominal damages of EC\$6,500.00 for such trespass upon the Defendant’s property.
- (4) Prescribed costs are payable to the Defendant by the Claimant.”

Background

[2] As mentioned above, the appellant is a statutory authority established under and deriving its permitted functions and powers from the provisions of the Act. In general terms, the Authority is responsible for the control, management and security of the V.C. Bird International Airport (“the airport”) in Antigua, being the only international airport in the State, and which lands are vested in the Authority. It is the Authority’s ownership of the land constituting the said airport or aerodrome, and the discharge

¹ No. 17 of 2006, Revised laws of Antigua & Barbuda.).

of certain of its statutory duties and functions in relation to the maintenance and up-keep of the perimeter fence with the respondent's adjacent land, which were the subject of the Claim and dispute in the court below between the appellant and the respondent.

[3] Section 4 of the Act provides that:

- “(1) The functions of the Authority are to manage and administer efficiently and in a business-like manner airports vested in the Authority.
- (2) Without prejudice to the generality of subsection (1) the Authority shall –
 - (a) construct, develop, upgrade and improve airports and such other aviation facilities in Antigua and Barbuda;
 - (b) operate airport services in accordance with this Act or regulations made thereunder;
 - (c) prescribe and collect the rates, fees, and charges authorized by this Act or by any regulations made thereunder;
 - (d) provide and maintain facilities for the landing and departing of aircraft, the embarkation and disembarkation of passengers, the loading, unloading, storage, carriage, and warehousing of goods;
 - (e) provide and maintain equipment for hoisting, lifting and transporting goods;
 - (f) construct, equip and maintain runways, passenger terminals, concourses, taxiways, aprons, baggage handling equipment, parking facilities, restaurants and other passenger convenience facilities;
 - (g) provide and maintain hangars, overhaul and training facilities and machine shops;
 - (h) provide safety equipment, lights and beacons, firefighting services, repair services, fueling equipment, catering and cleaning services and such other services as are ordinarily required by airlines.”

[4] At the airport, the Authority is the registered owner of and has statutory responsibility for the maintenance and security of the land comprising 'Runway 10' - the main runway at the airport. The respondent is the registered proprietor of an area of land previously registered as Registration Section Barnes Hill & Coolidge; Block 41 2294A Parcel 118, which said land now comprises Parcels 152, 153, 154, 155, 156

and 157. For convenience, I shall refer to 'Parcel 118' interchangeably as 'the respondent's land' or 'Parcel 118' particularly as the plans tendered into evidence in this matter in the court below and forming part of the appeal record, depicts the land by its former registration, Parcel 118. The respondent's land is a 'U' shaped piece of land which, paradoxically, is immediately adjacent to and bounds with Runway 10 on both sides and at the top or 'approach' end of the said runway. Accordingly, the respondent's land partially surrounds Runway 10 on both sides and to the approach end of the said runway. This much is clear from and vividly depicted by the evidence²; and is not in dispute.

- [5] The said plan³, also shows other parcels of land on both sides of Runway 10, namely parcel 100 (adjacent to and also bounded with Parcel 118) to the north of Runway 10, and parcels 52 and 58 to the south, with parcel 52 also being adjacent to and bounded with the portion of Parcel 118 to the south of Runway 10. This matter does not touch and concern the lands comprising parcels 52, 58 and 100 and no issue arises in relation to any of them. However, important to the central or predominant issue in dispute between the parties in this matter, that is, whether a claim to an easement of necessity had been made out on the evidence by the appellant (as claimant in the court below) is that the said plan ⁴ clearly shows the perimeter fence of Runway 10 the object of the 'necessity' claim, and most significantly, that the said perimeter fence can be accessed by an alternative route to passing over the respondent's land, that is from a public road. This was the clear finding by the learned judge, and which fact has not been disputed by learned counsel Mr. Marshall for the appellant. I shall return to this important and, in my judgment, decisive feature later in this judgment.

² Plan located at pages 98-99 of the Record of Appeal, Vol 3, filed 28th June 2023.

³ Ibid.

⁴ Plan located at pages 98-99 of the Record of Appeal, Vol 3, filed 28th June 2023.

- [6] The respondent purchased the land comprising Parcel 118 (then subdivided in parcels 152 to 157) in 2018 by Instrument of Transfer No. 2018/2304.⁵ Prior thereto, the land comprising of what used to be Parcel 118 was part of a larger portion of land at and around the airport owned by the Crown. At that time the airport was directly under the aegis and control of the Government of Antigua and Barbuda and being managed by a department of the Government. However, subsequently, a portion of the said larger piece of land, comprising 19.72 acres and registered as Parcel 118, was sold by the Crown on 7th February 2003 to Stanford Development Company Limited.⁶ It was later subdivided into 6 separate numbered parcels (152 to 157) and sold by the liquidators of Stanford Development Company Limited (“SDC”) to the respondent.

The Pleadings

- [7] On 15th March 2018, the appellant filed a Claim Form and Statement of Claim in the High Court against the respondent as defendant. This step had been preceded by an exchange of correspondence between the respondent and the appellant and their respective lawyers. This correspondence is only important as recording how the dispute to and claim as to an easement of necessity arose in the proceedings. By the Claim, the appellants sought the following reliefs:

- (1) “A declaration that the Claimant [the Authority] maintains an easement of necessity over the Defendant’s [respondent’s] lands described in the Land Registry as Registration Section: Barnes Hill & Coolidge Block: 41 2294A Parcel: 118 that *‘surrounds land owned by the Claimant [the Authority] better known as Runway 10 and upon which the Claimant [the Authority] maintains a perimeter fence’*.”
- (2) A declaration that the Claimant [the Authority] is entitled to enter upon the Defendant’s [respondent’s] said lands [Parcel 118] *“for the specific purpose of securing and maintaining the perimeter fence of the V.C. Bird International Airport, and in particular such portions of the fence that are upon the Claimant’s [the Authority’s] land.”*

⁵ Instrument of Transfer No 2018/2304, Record of Appeal, Vol 3, filed 28 June 2023, 84-90.

⁶ Purchase Agreement (dated 7th February 2003), Record of Appeal, Vol 3, filed 28th June 2023, 111-113.

- (3) A declaration that the Defendant [respondent] *"is not entitled to any payment from the Claimant [the Authority] for the placement of the V.C. Bird International Airport Parameter Fence (sic) or such portion of it that is on the Defendant's [the respondent's] lands, and the Claimant's [the Authority's] access to the said fence for sole purpose of maintenance of the said fence."*
- (4) An injunction to restrain the Defendant [respondent], its agents and/or servants from interfering with the Claimant [the Authority] *"in exercising its statutory duties whilst maintaining and or inspecting V.C. Bird International Airport parameter (sic) fence or such portion that is on the Defendant's [the respondent's] lands."*
- (5) Costs.
- (6) Any further relief this Honourable Court deems fit.⁷
[emphasis added]

[8] In its Statement of Claim,⁸ the Authority pleaded, inter alia, that during the period when the lands, of which Parcel 118 formed part, were under the control of the Government and owned by the Crown, the latter erected a fence on the lands, "which fence remained during the proprietorship of the defendant's [respondent's] predecessor in title. Sometime in 2015 the Defendant acquired the subject lands. At the time of acquisition by the Defendant there was in place a perimeter fence on parcel 118 that was erected and maintained by the Claimant [the Authority] and so remained at the time of sale to the Defendant."

[9] It was pleaded at paragraphs 4 to 10 of the Statement of Claim as follows:

- (4) "The Claimant has no other means to access the parameter (sic) fence other than travelling over the lands of the Defendant.
- (5) The Claimant is charged with, amongst other things, securing the airport premises and its environs and the perimeter fence is in place so to do.

⁷ Record of Appeal, Vol 2, filed 28th June 2023, 4-5.

⁸ Statement of Case filed 15th March 2018 [3], Record of Appeal, Vol 2.

- (6) On or around November 2014 the Defendant began tendering invoices to the Claimant for use of that portion of its land the Claimant's perimeter fence sits on.
- (7) On or around May, 2016 the Claimant attempted to plant lamp posts on the Defendant's land and was prohibited from doing same.
- (8) The Claimant asserts that it has a right of way over the Defendant's land by reason of having enjoyed it for more than 10 years and without interruption before the commencement of this action.
- (9) The Claimant asserts that this right of way is an easement of necessity to facilitate the Claimant's performance of its statutory duties.
- (10) The Claimant further asserts that the Defendant is not entitled to payment for the Claimant's use of its property."

[10] From the Statement of Claim, it is clear that the appellant's Claim rested on the equitable doctrine of 'easement of necessity', entitling it, so asserts the appellant, to a right of way over the respondent's land to maintain what it asserted was a preexisting fence placed there by the Government prior to when Parcel 118 was sold to SDC and which fence existed when the respondent purchased Parcel 118 in 2015 from the liquidators of SDC.

[11] In its Defence and Counterclaim⁹, the respondent pleaded in relation to paragraph 3 of the Statement of Claim that in 2003, when the land comprising Parcel 118 together with other parcels of land around the airport was sold by the Government to SDC, "the latter promptly removed the old airport fence and replaced it with the eight inch (8') required fence which was part and parcel of the purchased lands under the current ownership. The Defendant contends that the lands were bought [by the respondent] with the [new] fence."¹⁰ The respondent also denied the assertions in paragraph 4 of the Statement of Claim and put the appellant to strict proof of the same.

⁹ Defence & Counterclaim, filed 15th May 2018, Record of Appeal, Vol 2, 16–23.

¹⁰ Statement of Case filed 15th March 2018 [3], Record of Appeal, Vol 2.

[12] Of much significance to the issue of whether an easement of necessity exists in favour of the appellant over the respondent's land, the respondent asserted at paragraph 6 of the Defence the existence of another or alternate access available to the appellants to access the perimeter fence and to discharge its inspection and maintenance obligations under the Act: -

- (6) "Further to the aforesaid, the Claimant recently erected a fence along Burma Road giving the Claimant their own access to the Perimeter fence and also on the outside of the Defendant's fence, which was completely removed by the Claimant without notification, consent and/or approval of the Defendant."

[13] At paragraph 8 of the Defence, the respondent asserted that there is no operative agreement between it and the Authority with regard to the latter's entry upon the respondent's lands to access the perimeter fence of Runway 10 for the purposes of inspection and maintenance or for any other purpose, similar to the 'operating agreement whereby sharing and accommodations were established' between SDC and the Authority. Further, once discussions between the appellant and the respondent regarding the payment of rent by the Authority had broken down, the respondent then instituted rent charges against the appellant for its use of the respondent's land. It was also asserted in the Defence that the appellant started to build 'an electrical sub-station' on Parcel 118 without consultation with or the approval of the respondent, and was, accordingly, advised by the respondent to cease the building operations 'until the request was tabled and approved. The unfinished sub-station is still on the [respondent's] land.'¹¹

[14] The respondent also pleaded in its Defence that any agreements existing with prior owners of Parcel 118 ceased upon the purchase of the land by the respondent. Further, it was asserted that the appellant 'has access to the parking ramp from the

¹¹ Statement of Claim filed 15th March 2018 [9], Record of Appeal, Vol 2.

Defendant's [the respondent's] six access Gates 8, 9, 10, 11, 12, 13 and also from the Active Runway."¹²

[15] By its Counterclaim, the respondent relied on what was pleaded in its defence. In addition, the respondent also asserted that on 27th February 2018 the appellant had a chain and lock placed at Gate 10 – *"a Gatehouse and Access Bar, which provides security oversight for emergency access to Gate 11 and the Hangar for the Defendant as well as access for SFS Antigua Operations Ltd..., to their demised premises on leased land which entitled them to vehicular and pedestrian access through Gate 10 during the term of their lease."*¹³ The respondent also pleaded that it has requested from the appellant a key to Gate 10 but has not been provided with one.¹⁴

[16] The respondent also pleaded in its Counterclaim that on 12th March 2018 it became aware and was able to confirm upon a site visit that the appellant was 'removing the fence on the south-eastern end of Parcel: 118 leading to Gate 13 situated on the southern tip of Parcel: 118' without prior consultation or authorization. Notwithstanding, a site visit by the police who advised the appellant to 'cease and desist from removing the fence' the appellant continued with its removal on 13th March 2018. Furthermore, in removing the said fence the appellant also removed Gate 13 and placed it 'on their outer fence, thereby denying the Defendant [the respondent] access from the road to their Gate now unnumbered and left wide open.'¹⁵

¹² Ibid [11].

¹³ Ibid [17].

¹⁴ Ibid [21].

¹⁵ Ibid [24]-[25], [28]

[17] By its Counterclaim the respondent sought certain declarations, orders and injunctions as detailed therein.¹⁶ The respondent also seeks 'damages' and interest at 5 percent per annum from the date of filing until judgment.

[18] On 12th October 2018 the appellant filed a Reply and Defence to Counterclaim. Specifically with regard to the assertions at paragraphs 23 to 29 (inclusive) of the Counterclaim, the appellant contends that "it was removing and replacing its fence on its land, and need not consult with the Defendant [the respondent] in so doing as at no time did the activities involve the Defendant's [the respondent's] land or land under the control of the Defendant [the respondent]. In any event the land was under the Claimant's [the appellant's] control and the scheduled maintenance of the perimeter fence would not be a trespass."¹⁷

The Appeal

[19] In its Notice of Appeal the appellant relies on 5 grounds of appeal. These are:

- (1) "The learned judge erred in law when she found that no easement of necessity existed in that the fence that was entirely on the Respondent's property, even if accessible from Crown lands, was nonetheless entirely on the Respondent's property and could not be touched unless the Defendant's [Respondent's] lands are traversed.
- (2) The learned judge erred in law in that though she rightly set out the principles of an easement of an easement of necessity, she failed to appropriately apply those principles to the facts before her.
- (3) The learned judge erred in law in finding that the fence, which was situate on the Respondent's land when it purchased the land, its ownership travelled to the Respondent with the land, there being no evidence before her from which she could make that deduction and in the face of evidence to the contrary by the Respondent that it had no knowledge of the arrangement of the fence at the time of its placement and use during the ownership of its predecessor in title.

¹⁶ Statement of Claim filed 15th March 2018, Record of Appeal, Vol 2, pp. 21-22.

¹⁷ Record of Appeal, Vol 2, 25, [6].

- (4) The learned trial judge erred in law in awarding nominal damages of \$6,500.00 for trespass when the Respondent brought no such claim against the Appellant in its counterclaim.
- (5) The learned trial judge erred in law when she found the Appellant's removal of the perimeter fence was unlawful and ordered the Appellant to reinstate it."¹⁸

[20] In its appeal skeleton argument filed on 18th July 2025, the appellant dealt with grounds 1 and 2 (easement of necessity issue) together and the remaining grounds separately, albeit briefly. However, in arguing the appeal Mr. Marshall, learned counsel for the appellant, conveniently identified two issues for the Court's consideration. The first issue is the judge's finding that no easement of necessity was established by the claimant/appellant over the defendant/respondent's land. The second issue is whether the learned judge erred in awarding nominal damages for trespass when, assets the appellant, trespass was not pleaded by the respondent in its counterclaim. I agree with counsel for the appellant that these are the two issues or questions for determination in this appeal, however I must note that during the hearing of this appeal, counsel did not argue ground 3 or 5 as such this ground was not heavily analyzed in this judgement and only mentioned for completeness.

Issue 1 - Easement of necessity – grounds 1 and 2

[21] In seeking to make good on grounds 1 and 2 of its appeal, that the learned judge erred as a matter of law in finding that no easement of necessity existed in favour of the appellant over the respondent's land, the appellant accepts two important factors. The first is that the fence or perimeter fence (the fulcrum of its claim to an easement of necessity) is on the respondent's land. The second is that there exists, as the learned judge correctly found on the evidence, an alternative access to the perimeter fence of Runway 10 via the Burma Road¹⁹ and Crown lands.

¹⁸ Record of Appeal, Vol 1, 8.

¹⁹ Public road shown on the map, Appeal Hearing Bundle, filed 20th October 2025, 489.

- [22] The appellant's case on easement of necessity rests purely on its contention in this case, that there exists a 'unique set of circumstances' which properly considered support a claim in law to an easement of necessity over Parcel 118. This unique set of circumstances arises from the statutory obligations of the appellant under the Act to inspect and maintain the perimeter fence of Runway 10. In order for the Authority to discharge this obligation, it must have access to the fence itself, which is erected on the respondent's land, even if it were to attempt access via the alternative route of the public road. It is submitted by the appellant that the learned judge failed to take this factor into account in her assessment of whether the appellant had established an easement of necessity existing in its favour over Parcel 118 to the perimeter fence for the stated statutory functions and purposes. In short, it is the appellant's case on this first issue, that its statutory obligations under section 4 of the Act give rise to an easement of necessity over the respondent's land, notwithstanding the existence of the alternative public road and Crown lands access to the perimeter fence on the said Parcel 118.
- [23] The appellant accepts the correctness of the law and principles set out by the learned judge at paragraphs 11 through 15 of the judgment²⁰ in the court below as applicable to the question concerning the existence in law of an easement of necessity in favour of A (dominant tenement) over the (servient tenement) lands of B. This includes the principle that where there is alternative access available to A, even one which is or may prove more difficult to traverse, no easement of necessity is or can exist as a matter of law. This notwithstanding, the appellant's primary submission on this issue is that in the unique circumstances of this case, the Authority can lay claim to the existence of an easement of necessity over the land of the respondent, being Parcel 118, to access the perimeter fence in order to discharge its statutory obligations under, in particular, subparagraphs (d), (h), and to some extent (b) and (f) of section 4 of the Act. However, when pressed Mr.

²⁰ Antigua and Barbuda Airport Authority v Antigua Hangar Inc (High Court of Justice, Antigua and Barbuda), ANUHCV2018/0126.

Marshall was unable to produce or to rely on any authority supportive of this proposition and line of argument.

[24] In responding to the appellant's argument on grounds 1 and 2 (issue of easement of necessity), Ms. Bradshaw, learned counsel for the respondent, submitted that the uncontroverted and unassailable evidence in this matter was that there is an alternative access available to the Authority via Burma Road and Crown lands as the learned judge correctly found at paragraphs 16 through 18 of the judgment²¹, which enabled the appellant to check on the perimeter fence of Runway 10. Accordingly, as a matter of law no easement of necessity can arise or exist over the respondent's land to access said fence, absent a specific grant of easement. It is also submitted by the respondent that, as a matter of law and applicable principles, even where an easement of necessity had existed in favour of A (dominant tenement) over the land of B (servient tenement), once an alternative access is created or made available to A, that easement of necessity over the land of B ceases to exist in law.

[25] The respondent also submits that an easement of necessity related to traversing over the land of another and cannot exist in a 'fence'. Thus, the appellant's argument that its statutory obligations under section 4(b), (d), (f) and (h) of the Act somehow gives rise in law to an easement of necessity in the circumstances of this case, is wholly unmaintainable as a matter of law in the face of the alternative access available to the Authority to carry out inspections and maintenance of the perimeter fence. Moreover, the fact that the fence is on the respondent's land and to touch it would constitute a trespass by the appellant does not alter or change the legal position leading to the existence of an easement of necessity in favour of the appellant over Parcel 118. It simply means that the appellant ought, in seeking to ensure that it can discharge its statutory functions and obligations, to approach those representing the respondent and to negotiate and enter into an appropriate

²¹ Ibid.

agreement with the respondent to either access the fence over the respondent's land to carry out its inspection and maintenance obligations in managing the airport/aerodrome, or maintain the fence using the alternative access.

- [26] In this respect, it is submitted by the respondent that the statutory obligations of the appellant cannot override the protected ownership rights of the respondent in relation to its land, absent some express statutory provision to that effect in the broader public interest, of which there is none. Furthermore, the Crown, in selling Parcel 118 to SDC, did not expressly reserve and/or register an easement over it to the perimeter fence of Runway 10 for the purpose of conducting inspections and maintenance of the said fence. Likewise, no such easement was reserved and registered when the said Parcel 118 was sold by the liquidators of SDC to the respondent.

Analysis and Conclusion on Easement of Necessity

- [27] In making short shrift of this issue, I do so respectfully. However, there is no merit in grounds 1 and 2 of the appeal. The starting point is that the legal principles applicable to an easement of necessity are uncontroversial and are not in dispute. It is accepted by both sides that they were correctly set out by the learned judge at paragraphs 11 to 15 of the judgment.²² At paragraph 11 the learned judge sets out an extract from the learned authors of **Halsbury's Laws of England Vol. 87** defining what constitutes an 'easement of necessity'. It emphasizes that, absent an express grant or reservation of the easement, an easement of necessity can arise in certain circumstances from the doctrine of implied grant, in order to meet the necessity of the case. It bears repeating here: -

"An easement which under particular circumstances the law creates by virtue of the doctrine of implied grant to meet the necessity of a particular case. It is an easement which is **not merely necessary for the reasonable enjoyment of the dominant tenement, but one without which that tenement cannot be used at all**. Such an easement lasts **only so long as**

²² Ibid.

the necessity exists unless it is expressly granted, for a grant arising out of the implication of necessity cannot be carried further than the necessity of the case requires.”²³ (emphasis added)

[28] It is clear from the above that the doctrine of easement of necessity is based not on the reasonableness of the enjoyment or use of the dominant land, but on the premise that the only access to the dominant land is over the servient land. It is only in such circumstances that the court will invoke the concept of an implied grant in declaring that an easement of necessity exists; and only for so long as such unqualified necessity continues to exist. It follows that where that ‘necessity’ ceases to exist, no easement of necessity and no implied grant of such an easement can continue to be maintained as a matter of law. Therefore, the existence of another or alternative access in favour of the dominant land is completely inimical to the existence of an easement of necessity and renders any such equitable claim unsustainable.

[29] The burden of establishing an easement of necessity lies with the party asserting the existing or implied existence of such an easement in favour of their dominant land. This burden is notably a high one, and courts must not be quick to imply an easement not expressly reserved. This Court opined in the case of **Leslie Emmanuel and anor v ACE Engineering Limited**²⁴, that –

“An easement of necessity is one without which the property retained cannot be used at all and not one merely necessary to the reasonable enjoyment of that property. Such an easement will be implied if the remaining land is effectively landlocked. The right of way arises out of necessity, not convenience.”

[30] In **Alhaji Bora Manjang v Kebba Drammeh Co (Gambia)**, Lord Oliver of Aylmerton in the Privy Council stated: -

“It seems hardly necessary to state the essentials for the implication of such an easement. There has to be found, first, a common owner of a legal estate in two plots of land. It has, secondly, to be established that access between

²³ Halsbury’s Laws of England: Real Property and Registration vol 87 (2022) 4(1)(iv) 753.

²⁴ DOMHCVAP2013/0014 (delivered 8th December 2015, unreported).

one of those plots and the public highway can be obtained only over the other plot. Thirdly, there has to be found a disposition of one of the plots without any specific grant or reservation of a right of access. Given these conditions, it may be possible as a matter of construction of the relevant grant (see *Nickerson v Barraclough* [1981] 1 Ch. 426, 440) to imply the reservation of an easement of necessity.”²⁵

[31] In this passage, which was recently quoted with approval by the Board in **Joseph W Horsford v Geoffrey Croft**,²⁶ the Privy Council underscored that the implication of an easement must relate to a right of access necessary for the owner of the dominant land to access his or her property over the servient land owned by another extending from and to a public road. In the instant matter, the appellant does not claim any right of access from and to the public road over the respondent’s land to the lands of the appellant. The right of access which the appellant has claimed to exist by way of an easement of necessity, is from its lands onto and across the land of the respondent’s land, to a fence on Parcel 118, in order to facilitate its inspection and maintenance of that perimeter fence of Runway 10.

[32] Regarding the appellant’s argument that the easement of necessity over the respondent’s land to the fence, can be made out on the basis of the appellant’s obligations under section 4 of the Act, the simple answer to this, as submitted by the respondent, is that the doctrine of implied grant or easement of necessity does not rest on any issues of ‘public policy’. This is made clear by Buckley LJ in **Nickerson v Barraclough**.²⁷ The learned Lord Justice opines-

“.... in my judgment, the law relating to ways of necessity rests not upon a basis of public policy but upon the implication to be drawn from the fact that unless some way is implied, a parcel of land will be inaccessible. From that fact, the implication arises that the parties must have intended that some way giving access to the land should have been granted...Public policy may inhibit the parties from carrying their intention into effect, but I cannot see how public policy can have a bearing upon what their intention was.”

²⁵ [1990] UKPC 50.

²⁶ [2024] UKPC 4 at [23].

²⁷ [1981] Ch. 426, 447.

[33] In my view, the appellant failed to demonstrate on the evidence and circumstances that an easement of necessity exists in favour of its land over the land of the respondent Parcel 118. Accordingly, the judge's finding that no easement of necessity was established is unassailable and cannot be set aside. I have reached this conclusion for a number of reasons. First, the appellant's claim to an easement of necessity over Parcel 118 from its lands at the airport is not to provide access to and from a public road, but to access an erected fence on Parcel 118. Second, the purpose of accessing the fence on Parcel 118 is to enable the Authority to inspect and, if necessary, maintain that fence. Such a right to access and maintain a fence on another's property does not accord with the established concept of an easement of necessity, but involves fundamentally a right to maintain a fence, where no such right exists or have been found to exist. Thirdly, and most importantly, no real 'necessity' has been established or proven by the appellant on the evidence before the court below.

[34] To the contrary the indisputable evidence is that the appellant can access the said fence from the Burma Public Road and over Crown land. Accordingly, there is no real 'necessity' for the appellant to use the respondent's land as access to the said fence in order to discharge its statutory functions and obligations in relation to the airport under section 4 of the Act. On this basis alone, the claim to an easement of necessity must fail and the learned judge was correct in her finding of fact and conclusion of law at paragraphs 16, 17, and 18 of the judgment.

[35] I would merely add for the sake of completeness that the position in which the appellant finds itself is that it can access the perimeter fence via the Burma Road and does not require the permission of the respondent to do so. What does require the permission and agreement of the respondent is the appellant's access to the fence itself and to be able to maintain it. The solution to this dilemma, to the extent that one really exists, lies in the appellant arriving at a suitable agreement with the respondent which would facilitate and fully enable the appellant to carry out and to

discharge is statutory functions under section 4 to the extent at which such functions relate to the inspection and maintenance of fences delineating Runway 10.

Issue 2 – Damages for trespass - ground 4

- [36] The learned judge allowed the respondent's counterclaim in part and awarded the respondent nominal damages in the sum of EC\$6,500 for trespass upon the Defendant's/respondent's property Parcel 118. In making this order, the learned judge found—

“It appears to this Court that the fence was erected to be a fixture to the land and that the Defendant acquired ownership of the fence when the property in question was purchased. In such circumstances the removal of the fence by the Claimant was unlawful and the Claimant would be required to reinstate the fence.”²⁸

- [37] Specifically in relation to trespass, the learned judge found as follows:

“It is accepted that an unlawful entry by someone upon land in the possession of another is an act of trespass. In the circumstances of this case the Defendant in its counterclaim claimed trespass by the Claimant. Implicit in the finding by this Court that an easement of necessity does not exist is that the Claimant committed acts of trespass. Despite the removal of the fence the Defendant has not offered proof of loss or damage resulting from the trespass. Where there is no proof of loss nominal damages may be awarded.”²⁹

- [38] The appellant submits that in the respondent's counterclaim there is no claim for trespass and no claim for damages for trespass. Having not pleaded a case in trespass and having made no claim to damages stemming from that cause of action, it is the appellant's argument that the learned judge erred in awarding nominal damages to the respondent at all or in the sum of EC\$6,500.

²⁸ Antigua and Barbuda Airport Authority v Antigua Hangar Inc (High Court of Justice, Antigua and Barbuda), ANUHCV2018/0126, [21].

²⁹ Antigua and Barbuda Airport Authority v Antigua Hangar Inc (High Court of Justice, Antigua and Barbuda), ANUHCV2018/0126, [23].

[39] In response to ground 4, the respondent points first to paragraphs 6, 7 and 9 of the reliefs sought. Relief number 6 seeks injunctive relief against the appellant, its servants and agents *'from repeating or continuing the said trespass or trespass of a like kind.'* By relief number 7, the respondent seeks an award of *'damages'*; and by relief number 9 *'such further or other relief'* as the court deems just. On this basis, the respondent argues that its counterclaim does raise the *'issue of trespass'* and *'requests damages'*, and this ground of appeal is, therefore, without merit.

Analysis and conclusion on ground 4

[40] The starting point on this issue is the pleading in the respondent's counterclaim.³⁰ It must first be stated that by paragraph 15 the respondent expressly reiterates paragraphs 1 to 14 of its Defence, thereby incorporating what is pleaded in those paragraphs of the Defence into the counterclaim itself. Second, the matters pleaded at paragraphs 16, 17, 18, 19, 20, 21 and 22 of the counterclaim do not sound in trespass. They concern the appellant's agents placing a chain and lock at Gate 10, thereby preventing others who have a right to vehicular or pedestrian access through the gate from exercising that right. Indeed, at paragraph 19 it is pleaded that as a result of the matters pleaded in paragraphs 16, 17 and 18, *'the Defendant and its related companies have been effectively denied their established rights of access without any discussion or consultation.'*

[41] Thirdly, paragraph 23 concerns the alleged erection by the appellant at a time unknown of *'an outer fence beyond the southern side of the Defendant's fence of Parcel 118.'* Paragraphs 24, 25, 26, 27, 28 and 29 of the counterclaim concerns the alleged removal on 12th and 13th March 2018 of a fence *'on the south eastern end of Parcel 118 leading to Gate 13 situated on the southern tip of Parcel 118 on the southern end'*; the visit by representatives of the respondent to that site; their observation there of *'persons acting under the authorization of [the respondent]'* removing the said fence; the contacting of the police who visited the site and

³⁰ Defence & Counterclaim, Record of Appeal, Vol 2, filed 28th June 2023, 16–23.

allegedly requested the appellant 'to cease and desist from removing the fence'; and this notwithstanding, the appellant by its servants and agents continuing with the removal of Gate #13 by Tuesday 13th March 2018. At paragraph 28 of the counterclaim, it is averred, *inter alia*, that 'the fence which was removed was demarcated land area leading to Gate 13 which is located on the southern end of Parcel 118.'

[42] At paragraph 31 of the counterclaim, the respondent pleads 'interest on the said damages pursuant to the Eastern Caribbean Supreme Court Act, Cap. 143 at the rate of 5% per annum from the date of filing to judgment.'

[43] Interestingly, the appellant in its defence to the counterclaim, did not deny any of the acts pleaded at paragraphs 23 to 29 (inclusive). In fact, at paragraph 6 it admits them, while going on to deny that in removing the fence on Parcel 118, it had any obligation to consult with the respondent. Paragraph 6 of the Defence to Counterclaim states:

"With respect to paragraphs 23,24,25,26,27,28,29 [of the counterclaim], the Claimant states that it was removing and replacing its fence on its land and need not consult with the Defendant in so doing at no time did the activities involve the Defendant's land or land under the control of the Defendant. In any event, the land was under the Claimant's control and the scheduled maintenance of the perimeter fence would not be a trespass."³¹

[44] In my judgment, the pleaded removal of the fence on Parcel 118 at paragraphs 24 to 29 of the counterclaim³² amounts to a clear claim in trespass. Moreover, paragraph 6 of the Defence and Counterclaim amounts to a clear admission of that trespass to the respondent's fence and land. This is so because, the appellant no longer contends that the perimeter fence was on its land, but admits it was/is on the respondent's land. This is contrary to what is asserted in part at paragraph 5 of the Defence to Counterclaim and its denial at the end of that paragraph of the scheduled maintenance of the perimeter fence amounting to a 'trespass'.

³¹ Record of Appeal, Vol 2, 24-25.

³² Record of Appeal, Vol 2, 20.

- [45] Furthermore, it is not correct to say, as the appellant does in relation to ground 4, that the respondent did not plead trespass in its counterclaim and did not claim damages for trespass. The trespass pleaded was the wrongful removal of the respondent's fence, said removal has been admitted. Having clearly counterclaimed in trespass to its land and fence on Parcel 118, the respondent not only sought injunctive relief preventing the appellant from repeating and continuing the said trespass, but also 'damages'.
- [46] Additionally, by paragraph 9 of the Defence to the Claim the respondent contends that the appellant wrongly commenced the building of 'an electrical sub-station' on the respondent's land without consultation or approval and that the unfinished sub-station is still on its land. This paragraph 9, by its incorporation into the counterclaim, alleges a trespass. However, the learned judge made no specific finding of fact or law of trespass in relation to it.
- [47] In the premises, it was open to the learned judge on the respondent's pleaded case (including its counterclaim) to make a finding of trespass and to award damages for trespass and interest.
- [48] The judge considered the matter of the removal of the fence on the respondent's land at paragraphs 19 to 21 of the judgment.³³ She found at paragraph 21 that when the respondent acquired Parcel 118 it acquired it with the fence on it as a fixture to the land, and therefore the appellant's removal of the fence was 'unlawful' (amounted to a trespass) and the appellant would be required to reinstate the fence. This was the subject of a declaration by the judge and an order requiring the appellant to reinstate the fence at sub-paragraph (ii) of paragraph 25 of the judgment.³⁴ These findings and order were the subject of challenge by grounds 3

³³ *Antigua and Barbuda Airport Authority v Antigua Hangar Inc* (High Court of Justice, Antigua and Barbuda), ANUHCV2018/0126.

³⁴ *Ibid.*

and 5 in the appeal. As previously reiterated these two grounds were not pursued or argued by the appellant at the hearing of the appeal. For the reasons already articulated above, they too are without merit and therefore fail.

[49] In arriving at her decision on the counterclaim in trespass, the learned judge held: *'implicit in the finding by this Court that an easement of necessity does not exist is that the claimant committed acts of trespass'*. The effect of this is that nothing which the appellant did in entering upon Parcel 118 and carrying out acts, including the removal from Parcel 118 of the respondent's fence, was lawful. These acts amounted in law to a trespass to the respondent's said property, as they were done without prior consultation with or the agreement of the respondent. The learned judge also found that 'despite the removal of the fence' the respondent has not tendered any proof of loss or damage resulting from such trespass. Accordingly, she awarded to the respondent/counter-claimant nominal damages of EC\$6,500.

[50] A trespass is made out by a person's unlawful entry upon and presence on land in the possession of another, even though no actual damage is done. Accordingly, the mere setting foot upon the land of another amounts to an actionable trespass in law.³⁵ Likewise, the slightest crossing of the boundary of the land of another is sufficient to constitute a trespass **Rolston Michael v Jo Hutchens**,³⁶ **Loretta Blake v Noel Palmer**,³⁷ and **Law of Torts**.³⁸

[51] In my view, taking all finding and circumstances into account, including the trespass to and removal of the fence, and the clear admission of such trespass by the appellant at paragraph 6 of its Defence to Counterclaim, absent any particulars and proof of loss and damage, the respondent is entitled to an award of some damages for the trespasses onto its land Parcel 118 by the appellant. In the circumstances, I can find no basis upon which to derogate from the judge's award of EC\$6,500 as

³⁵ Halsbury's Laws of England (5th Ed. 2020) Vol. 4, para. 319.

³⁶ [ANUHCv 2004/0298].

³⁷ [RMCA18/2004] (delivered July 28, 2006).

³⁸ (19th Ed.) page 46

damages for trespass. Moreover, the appellant has not argued that the quantum is unreasonable or disproportionate. Its case is that there was no pleading of trespass or of damages for trespass in the respondent's counterclaim upon which such findings and an award of damages could be based. These grounds of appeal having failed, there is therefore no basis upon which this Court ought to set aside the award of EC\$6,500.

Disposition

[52] The appeal fails on all five grounds and accordingly ought to be dismissed. The orders of the Court are:

- (1) The appeal is dismissed and the decision and orders of the learned judge affirmed.
- (2) The respondent shall have its costs in the appeal to be assessed by a Judge or Master of the High Court, if not agreed by the parties within 21 days of the date of delivery of this judgment.

I concur.
Davidson Baptiste
Justice of Appeal [Ag.]

I concur.
Gertel Thom
Justice of Appeal [Ag.]

By the Court

Chief Registrar