

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Civil Division

Claim No. 2023/CLE/gen/FP/00045



IN THE MATTER of a decision made by the Civil Aviation Authority Bahamas on the 4th day of April, 2023 requiring Western Air Limited to pay a civil penalty to the Civil Aviation Authority Bahamas in the sum of \$200,000.00

AND IN THE MATTER of a decision made by the Civil Aviation Authority Bahamas on the 4th day of April, 2023 imposing a 90 day suspension on the Airline Transport Certificate of Captain Gregory Rolle, an airline Pilot

AND IN THE MATTER of a decision made by the Civil Aviation Authority Bahamas on the 4th day of April, 2023 imposing a 90 day suspension on the Airline Transport Certificate of Captain Caneil Cartwright, an airline Pilot

AND IN THE MATTER of a decision made by the Civil Aviation Authority Bahamas on the 4th day of April, 2023 imposing a 90 day suspension on the Flight Dispatcher Certificate of Jason Nairn, a Flight Dispatcher.

**BETWEEN
WESTERN AIR LIMITED
GREGORY ROLLE
CANEIL CARTWRIGHT
JASON NAIRN
Claimants**

AND

**THE CIVIL AVIANTION AUTHORITY BAHAMAS
Defendant**

BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Mr. Harvey O. Tynes KC, with Miss Ntshonda
Tynes for the Claimants

Mr. Ryan N. Sands for the Defendant

HEARING DATES: April 5 and 11, 2023

RULING

This is an application for an interlocutory injunction by the Claimants.

Introduction

1. The Claimants by way of a Notice of Application filed April 5, 2023, makes an application for interim injunction pursuant to Section 21 (1) of the Supreme Court Act Ch. 53 and Part 17.1 (1) (b) of the Supreme Court Civil Procedure Rules, 2022 (“CPC”) to restrain the Defendant from seeking to enforce its decision requiring the First Claimant to pay a Civil Penalty to the Authority in the sum of \$200,000.00 and decisions imposing a 90 day suspension of the Air Transport Certificates of the Second and Third Claimants and the Flight Dispatcher Certificate of the Fourth Claimant.
2. The application is supported by the Affidavit of Mr. Rex Rolle filed on April 5, 2023 and Written Submissions by the Claimants filed dated April 5, 2023 which were supplemented by additional oral submissions at the hearing.
3. The Defendant has not filed any evidence but relies on its Written Submissions dated April 11, 2023 which were also supplemented by additional oral submissions at the hearing.
4. The parties appeared before the Court on an Inter Parties application for an interlocutory injunction on April 5, 2023. After the Claimants had presented their evidence and Submissions in support of the application Counsel for the Defendant indicated to the Court that the Defendant was prepared to give an undertaking to the Court that no steps to enforce the Decisions made would be taken before Tuesday, April 11, 2023. That the parties were in discussions

and that the same would continue over the long holiday weekend. The matter was adjourned to April 11, 2023 at 10:00 a.m. and the Court accepted the Defendant's undertaking and indicated that the same would be in place until the conclusion of the hearing on April 11. On April 11 the parties advised the Court that the parties had not arrived at a Consent position. The Defendant's Counsel then responded to the application. The matter was adjourned to April 14, 2023, for the delivery of the Court's Ruling and the undertaking was extended further.

Statement of Facts

5. Mr. Rex Rolle, President, Director and Accountable Manager of Western Air Limited, on behalf of all of the Claimants states, in part, that the Second, Third and Fourth Claimants are employees of the First Claimant and are a Senior Pilot and a Flight Instructor with responsibility for training Pilots employed by Western Air Limited, a Chief Pilot, a position which is required to be filled by Western Air Limited as the holder of an Air Operator Certificate and a Licensed Dispatcher and the Manager of the Airlines Flight Control Centre respectively.
6. That on February 2, 2023, Mr. Rolle received a letter from the Director General of the Defendant inviting Western Air Limited to show cause in writing within 7 days as to why intended enforcement action, relating to a flight operated by Western Air Limited from the Lynden Pindling International Airport in Nassau to the island of Bermuda on October 19, 2022, should not be proceeded with against the Claimants. On February 3, 2023, Miss Sherreta Rolle, Vice President of Operations and General Counsel to Western Air Limited responded to the letter pointing out to the Director General that the threatened enforcement action was based on assertions made

by him which were incorrect and that the threatened enforcement would be unjust.

7. That sometime after 2:00 p.m. on April 4, 2023 Mr. Rolle received a Penalty Notice electronically from the Defendant advising that it was satisfied that Western Air Limited was responsible for the operation of flight WST 1700 which was operated “negligently and/or recklessly” during the subject flight and that the Defendant was imposing a fine on the First Claimant in the combined sum of \$200,000.00. That he is advised by his attorney and verily believes that the Defendant has no authority to impose a civil penalty on Western Air Limited. That the same afternoon he received electronically a Penalty Notice relating to the Second, Third and Fourth Claimants from the Defendant pursuant to Sections 54 and 30 (1) (c) of the Civil Aviation Act 2021 (“**the Act**”) suspending their Air Transport Certificates/Flight Dispatcher Certificate for 90 days. That he is advised by his Attorney and verily believes that the Defendant has no power to suspend the said Certificates.
8. Mr. Rolle states that he is satisfied that it was within the Director General’s knowledge that the Easter weekend was the busiest period in the calendar year for Western Air Limited in providing services throughout The Bahamas and as usual the First Claimant had made arrangements for additional flights to meet anticipated increased demand of passengers wanting to travel to Bimini, Cat Island, Andros and other destinations during this Easter season. That passengers had purchased tickets in large numbers and to have to cancel flights because of these unlawful decisions would have been disastrous for the business operations of Western Air Limited.
9. Mr. Rolle states that the Claimants wish to make application for Judicial Review pursuant to Part 54 of the CPR and undertake to file an serve the

application within 7 days. That in the meantime they seek an interim injunction pursuant to the provisions of Part 17.1 (b) of the CPC to restrain the Defendant from seeking to enforce the decisions made against the 4 Claimants. Mr. Rolle gave an undertaking to the Court on behalf of the Claimants that they and each of them will abide by any order as to damages caused by the granting of an Interim Order in accordance with the provisions of Part 17. 1 (b) of the CPC. The Affidavit exhibited the said exchange of letters dated February 2 and 3, 2023, the 4 Penalty Notices and email correspondence from the Defendant to the Claimants on April 4, 2023.

Submissions

10.Mr. Harvey Tynes, KC, Counsel for the Claimants submits, in part, that Section 45 (1) of the Act creates the offence of operating a civil aircraft negligently or recklessly in a manner likely to endanger the safety of the aircraft or any person or property. Section 45 (2) (a) provides a maximum penalty payable on conviction of a fine not exceeding \$10,000.00 or 2 years imprisonment or both fine and imprisonment and the suspension or forfeiture of any aviation document held by such person. Section 53 (1) of the Act provides that prosecution for an offence under the Act is to be conducted under the Criminal Procedure Code Act. That, as an alternative to prosecution, Section 55(1) provides for payment to the Authority of a civil penalty not exceeding an amount equal to one half of the maximum penalty prescribed for the offence. That there can be no dispute that the Authority may not require a person to pay a civil penalty in excess of \$5,000.00 in respect of the offences under Section 45 (1) (g) where the maximum penalty is \$10,000.00. The civil penalties imposed against the Authority are excessive and unlawful.

11. Mr. Tynes KC submitted that with respect to the suspension of Licenses and Certificates, the power to suspend a license or certificate is expressly conferred on the Director General who may exercise such power on any one of the 7 grounds listed in Section 30 of the Act. Moreover, any suspension shall remain in force for a period not exceeding 21 days unless extended by the Director General pursuant to subsection 3 of the Act. That the Civil Aviation Authority Bahamas has acted illegally in imposing a 90 days suspension.
12. Mr. Ryan Sands, Counsel for the Defendant submits, in part, that the approach to be adopted and the principles to be applied by the court in hearing applications for interim injunctions are derived from **American Cyanamid** and submitted that as the Civil Penalty amount and suspensions of employment can be calculated in damages, those damages would be an adequate remedy and the application for an interim injunction should not be allowed. That pursuant to Part 17.3 (3) of the CPC “the Court may grant an interim remedy before a claim has been made only if— a. the matter is urgent; or b. it is otherwise necessary to do so in the interests of justice.”
13. Mr. Sands submitted that, while the application for an interim injunction may be viewed as urgent for the 2nd, 3rd and 4th Defendants due to their suspensions having taken effect as of April 4, 2023, no submissions detailing the urgency of the application has been presented before the court. That the Penalty Notices gives a Statutory Objection period of 22 days and an Appeal period of 28 days from the date of the Penalty Notices which have not been exhausted and the Claimants were notified of the Defendants intended course of action, some two months in advance, by letter dated February 2, 2023.
14. Mr. Sands further submitted that it is not in the interest of justice to restrain the Statutory Authority whose function is to issue, renew, suspend or revoke

aviation certificates, licenses, permits, approvals and registrations in the interests of aviation safety and security from carrying out its statutorily mandated function but would rather be in the economic interest of the Claimants. Consequently, the Court should not grant the interim remedy requested before the Judicial Review claim has been made as the elements required by Part 17.3(3) of the CPR of urgency and interest of justice have not been satisfied.

15. Mr. Sands submitted that section 45(2) of the Act, when used in conjunction with section 55(1) does limit the Civil Penalty amount able to be charged for offenses listed under section 45(1)(a) – (i) to \$5,000. However, the offenses enumerated in the First Claimant’s Penalty Notice do not fall within sections 45(1)(a) – (i) and they are offenses that do not have a specific penalty amount provided. Consequently, the alleged breaches would fall within the provisions of the General Penalty under section 53(2) of the Act which equates to a fine not exceeding \$100,000.00. That once 53(2) is viewed in conjunction with 55(1), it would reflect that the Civil Penalty amount for General Penalties can be up to \$50,000 per offence. Therefore, with multiple offenses which can be up to \$50,000.00 each, one can arrive at a total of up to \$200,000.00.

16. Mr. Sands submits that the Claimants allege that the power to suspend is expressly conferred on the Director General and that there is no power whatsoever conferred on the Civil Aviation Authority to suspend the license under the Act. He submits that Section 5(1) of the Act states: “The Civil Aviation Authority Bahamas shall be the body with responsibility for carrying out the functions of this Act and any convention to which the Bahamas is a party on matters relating to civil Aviation.” And that furthermore, section 4(1)(d) of the Civil Aviation Authority Bahamas Act 2021 (“**the Bahamas 2021 Act**”) provides: “The functions of the Authority are— d. To issue,

renew, suspend or revoke certificates, licenses, permits, approvals, registrations and such other requisite authorizations as necessary under this Act, the Civil Aviation Act and any operating regulations.” Therefore, the Authority is empowered to carry out suspensions of aviation licenses and did not act ultra virus by doing so. That it is for the above-mentioned reasons that the Defendant prays that the Court refuses the Claimants application for an interim injunction and grants the Defendant’s cost in the application.

17. In Reply, Mr. Tynes submitted that there are two different Acts to which Mr. Sands refers, the Act and the Bahamas 2021 Act. That the one that he referred to in his submissions was the Act and he is now referring Section 4(1)(d) of the Bahamas 2021 Act. That Section 4 of the Bahamas 2021 Act does provide that the **functions** of the Authority are to "issue, renew, suspend or revoke certificates, licenses, permits, approvals". However, Section 4(1)(d) does not confer any **powers** on the Civil Aviation Authority. It says the functions are "to issue, renew, suspend or revoke certificates, licences, permits, approvals, registrations and such other requisite authorizations as necessary **under this Act.**" The words “under this Act” appear to suggest that the word, the preposition "under", governs "this Act". So, what are the functions of the Authority under this Act? The functions are to issue, renew, suspend or revoke, certificates, licences et cetera, under this Act. What that then takes us to is the question: What are the **powers** of the Authority under this Act in respect of which it does have **functions** relating to licences? To find out what the power of the Authority is one must go to Section 5 of the very same Act. Section 5(1) (h) and (i) reads: "The Authority shall have, in addition to the powers conferred by any other law," and Mr. Tynes argued that there is no other law that is relevant to the matter before the Court, “power to - (h) issue certificates to training organizations” and “(i) issue aeronautical mobile radio

licences." That this application before the Court has nothing whatsoever to do with the issuing of certificates to a training organization. That it has nothing to do with the issuing of an aeronautical mobile radio license. It is a Pilot and a Dispatcher whose license and certificate have been suspended. So, Mr. Tynes submitted, when one comes to the functions under Section 4(1)(d), the function of the Authority is to issue, renew, suspend or revoke certificates and licences, the power relates to training organizations or to mobile radio licences. Mr. Tynes drew the Court's attention to the fact that the letters of suspension of certificates and licenses received by the Second, Third and Fourth Claimants make no reference whatsoever to the exercise of the power of the Civil Aviation Authority under the Bahamas Act 2021 which he referred to in Submissions, but to the Act. That there is no reference to the purported exercise of the Authority under the Bahamas Act 2021. That if you look at the exhibits to the affidavit of Mr. Rex Rolle, in each case of the Second, Third and Fourth Claimants, the Penalty Notices issued to each one provides that pursuant to the powers of the Director General contained in sections 54 and 30 of the Act, the Authority imposes a 90-day suspension. Pursuant to powers conferred on the Director General, the Authority is exercising those powers. That the Defendant now seeks to fall back on and refer to Section 4 of the Bahamas Act 2021 without reference to Section 5. That Section 4 talks about the function to issue a license, which is not being invoked by this Notice; and Section 5 expressly confers the power that is conferred on the Civil Aviation Authority under the Bahamas Act 2021. The Notice of suspension does not invoke any authority conferred under the Bahamas Act 2021. So, it deals with the power to **suspend**. There is nothing in any of the three Notices of suspension that purports to invoke any power conferred on the Civil Aviation Authority by the Bahamas Act 2021.

18. That Section 30 of the Act deals with suspension. It expressly confers the power to suspend on the Director General and not on the Civil Aviation Authority. What is more, it sets out 7 specific circumstances in which the power to suspend may be exercised by the Director General, none of which are listed in any of the Penalty Notices issued. What is more, Section 2 states that the suspension of an aviation document shall remain in force for a period not exceeding 21 days, unless it is further extended. Here, the initial suspension is purported to be 90 days in the case of the Second, Third and Fourth Claimants. Mr. Tynes submitted, that on the face of it, that is illegal conduct. The Defendant's answer to this is that the Claimants have a right to appeal. Mr. Tynes asked, Appeal against what? An illegality, illegal conduct? He submitted that this is the kind of conduct that you go to quash. To Appeal would be to his mind, an admission, a concession that the Defendant had the power to do it. He submitted that the Civil Aviation Authority had no power in law or otherwise to do what they purported to do, and it is a decision which needs to be quashed, not appealed.

19. Mr. Tynes then proceeded to consider the principles raised by Mr. Sands as set out in *American Cyanamid*. He agreed that the Court ought to adopt the principles as relate to Interim Injunctions set out in *American Cyanamid*. He acknowledged the concession made by Mr. Sands that there were serious issues to be tried in the instant case. He disagreed however, with how Mr. Sands addressed the principle, "Where does the balance of convenience lie?" That in short, Mr. Sands seemed to be saying that the balance of convenience would lie in favour of allowing the Civil Aviation Authority to do what they have done, because they are charged with responsibility for keeping the air safe and for safety of travel. Mr. Tynes took the position that of course it is

expected for the Civil Aviation Authority to take steps to try and keep the air safe, but that its conduct must be kept within the limits of the law.

20. Mr. Tynes submitted that Mr. Sands has argued that damages can be quantified. That the Act speaks in terms of penalties and it nails down the kind of penalty that an airline operator may be exposed to if he is brought before the Courts in quasi-criminal proceedings. He can be fined up to a certain amount. That penalties cannot be calculated. They are actually specified in the law itself. That one cannot imagine the kind of damage that can be done to a legitimate airline operation if the Director General or the Civil Aviation body, whatever their responsibilities may be under the law, are allowed to impose penalties that the law does not allow.

21. Mr. Tynes addressed Part 17.3(3) of the CPR which provides that “the court may grant an interim remedy before a claim has been made only if the matter is urgent.” He submitted that it was a matter of tremendous urgency when on Tuesday afternoon, two working days before the start of the long holiday weekend, the Claimants were “slammed” with a \$200,000.00 penalty after having received a lengthy letter on February 3, 2022 in which Miss Rolle refutes the allegations of wrongdoing or impropriety by Western Air. It is a matter of urgency because of what the Penalty Notices say. He argued that Mr. Sands accepted that under Part 17.3(3) an interim remedy may be granted. That this matter is urgent. But that Part 17.3(3) does not stop there. It states, “or it is necessary to do so in the interest of justice.” In the interest of justice, “urgency” (on the part of the Claimants) can never disappear because of the Civil Aviation Authority’s responsibility to keep the air safe. Urgency must always exist and remain where there is conduct on the part of an individual which is illegal, not founded in law, that could destroy an operation, where from the response within 24 hours the airline is trying to demonstrate.

Issues

22. In determining whether it should grant an interlocutory injunction, the Court will exercise its discretion having regards to the criteria in **American Cyanamid Co. Ltd. v Ethicon Ltd** [1976] AC 396, as follows:

- a. Whether there is a serious issue to be tried;
- b. Whether the Claimant case has good prospects of success;
- c. Whether the Claimants can be adequately compensated by damages;
- d. Whether the Claimants can provide an undertaking in damages to compensate the opposing party should it be later determined that the injunction was wrongly granted; and
- e. Where the balance of convenience lies.

Analysis/Discussion

The Law

23. The Court has the power to grant an interim injunction by virtue of Section 21 of the Supreme Court Act which states:-

“The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.”

24. Additionally, Part 17.1 of the CPR provides:

“17.1 (1) The Court may grant interim remedies including —

- (a) an interim declaration;
- (b) an interim injunction; ...”

Part 17.3 (3) of the CPR provides:

“the Court may grant an interim remedy before a claim has been made only if —

- a. the matter is urgent; or
- b. it is otherwise necessary to do so in the interests of justice.”

25. It is clear that the Court has the jurisdiction as a matter of urgency or in the interest of justice pursuant to Section 21(1) of the Supreme Court Act and Part 17.1 (1) (b) and 3 (3) of the CPR to grant injunctive relief. I am also guided by the principles found in **American Cyanamid**.

Serious Issue To Be Tried

26. The first consideration that must be given before granting an interim injunction is whether there is a serious issue to be tried. Having considered both parties submissions and the evidence before the Court I am satisfied that there is a dispute between the parties. The facts upon which the Claimants rely are in dispute between the parties and raise some difficult questions of law which must be carefully considered and analyzed by the Court, such as, whether the Civil Aviation Authority on a true construction of certain provisions of the Act is empowered under the Act to impose the penalties imposed in this instance; whether the penalties are excessive; whether the length of the suspensions is excessive (or unlawful); the fairness of one day's notice of the imposition of the penalties, and whether, as opposed to the Judicial Review process, there are alternative remedies available to the Claimants which they ought to take. These issues can only be determined at trial or taken in Judicial Review Proceedings and not at this stage.

27. I refer to Lord Diplock at paragraph 407 in **American Cyanamid** where he stated that "It is no part of the court's function at this stage of litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at the trial."

28. Indeed, as Lord Diplock himself observed, "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there

is a serious question to be tried.” I have examined the evidence before me for the purpose of satisfying myself that the underlying claims by the Claimants are not frivolous or vexatious and that there is indeed a serious issue to be determined at trial. The Defendant has conceded as much. In the circumstances, on an application for injunctive relief the Court needs to be satisfied **ONLY** that there is a serious question to be tried on the merits. So, I therefore conclude that there are triable issues to be determined by the Court (emphasis mine).

29. Although the Court may be satisfied that there are triable issues to be determined at trial/in judicial review proceedings, in keeping with the principles laid out in **American Cyanamid** the Court must then determine whether damages would be an adequate remedy for the Claimants.

Adequacy of Damages

30. I refer to Lord Diplock at paragraph 408 of **American Cyanamid** whereby he stated that **“...the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed**

at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction."

31. The Claimants in my view have demonstrated that they will suffer real and irreparable damage should the enforcement of the Decisions not be restrained until the determination of the Intended Judicial Review Proceedings. A \$200,000.00 penalty to any business would cause economic harm; there can be no doubt that the 3 employees (2 Pilots, Captains no less, one in charge of training pilots and a person responsible for the Flight Control Centre of the airline) are key employees in the operation of the airline. Just as their services were keenly required during a busy holiday weekend, they would be required in the day to day operation of the airline and if de-rostered would probably result in cancelled flights as would have occurred over the holiday weekend, loss of revenue, a reduction in efficiency and most of all, the loss of good will by the Bahamian public and reputational damage to the said employees. The suspension of the licenses for the 2, 3 and 4 Claimants would result in a loss of their livelihood for 3 months. While some of these damages are calculable, I am of the view that in the circumstances of this case, due to the overall and various damages and inconvenience that would be suffered by the Claimants, that damages would not be an adequate remedy.

Undertaking in damages

32. The Court should also consider whether the Claimants can provide an undertaking in damages to compensate the Defendant should it be later determined that the injunction was wrongly granted. The First Claimant has undertaken on behalf of all of the Claimants to abide by any order as to damages caused by the granting of the injunction. There has been no suggestion or evidence put before the Court that the First Complaint is not a going concern or is impecunious. I am of the view that the First Claimant would be in a position to meet any losses that the Defendant is able to justify should it be determined that the injunction was wrongly granted.

33. If the Claimants undertaking as to damages would be an adequate remedy for the Defendant and if the Claimants are in a financial position to pay them there is no reason to refuse the Claimants an interlocutory injunction.

Balance of Convenience

34. If the Court is incorrect in finding that the Claimants are able to provide an undertaking in damages, or that damages would be an inadequate remedy, or if there is any doubt in this regard, the Court ought to consider in whose favor the balance of convenience lies. Lord Diplock continues at page 408 of **American Cyanamid (supra)** “**It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises.**”

35. In seeking an interlocutory injunction the Claimants are seeking from the Court an order which would restrain the Defendant from enforcing the penalties and suspensions sought to be imposed on April 5, 2023. If the injunction is refused, the Claimants would be negatively and irreparably affected. If the Injunction is granted the Civil Aviation Authority will not suffer the same or similar consequences. It will continue to carry out its functions unimpeded. I find that that the damage likely to be caused to the

Claimants ought to prevail in the circumstances, thereby tipping the balance of convenience in favour of granting the interlocutory relief. Having considered the evidence and having accepted the submissions by Mr. Tynes KC the Court is satisfied that the balance of convenience lies in favor of the Complainants and in maintaining the status quo.

36. In paragraphs 130 to 134 of **Phillippa Michelle Finlayson v The Bahamas Pharmacy Council** [2017/PUB/jrv/0006] – a Judgment delivered on 5 June 2019 [unreported] and upheld on appeal on 20 June 2020 Justice Indra Charles, as she then was, fully set out the role of the Court in judicial review matters. She said, “**Judicial Review is the method by which the Court exercises a supervisory jurisdiction over public decision-making bodies to ensure that those bodies observe the substantive principles of public law and do not exceed or abuse their powers while performing their duties.**” In the present case, I am satisfied that prima facie, the Claimants complaints involve an element of public law sufficient to attract public law remedies, which would be available through the Judicial Review process as opposed to the Objection and Appeal process outlined in the Act.

Disposition


37. Therefore, having considered all of the relevant facts, having accepted the submissions of Counsel for the Complainants and having applied the principles laid out in *American Cyanamid* and being satisfied that this is a case of urgency, albeit that the holiday weekend has passed (and with it the initial urgency), and that in the interest of justice, I have come to the determination that the Plaintiff’s application for injunctive relief ought to be granted until the determination of the Judicial Review Proceedings. The Court makes the following Orders that:

- (1) The Claimants shall by their Counsel give an undertaking to abide by any Order as to damages caused by the granting of this Order.
- (2) The Claimants shall by their Counsel undertake to file and serve a Claim Form within 14 days of the date hereof;
- (3) The Defendant be and is restrained from seeking to enforce its decision requiring the First Claimant to pay a Civil Penalty to the Authority in the sum of \$200,000.00 and decisions imposing a 90 day suspension of the Air Transport Certificates of the Second and Third Claimants and the Flight Dispatcher Certificate of the Fourth Claimant. Until the determination of the Intended Judicial Review Proceedings.
- (4) The Claimant shall make application for Leave to Commence Judicial Review Proceedings within 21 days of the date hereof.

Costs

38. I reserve my decision as to costs until the close of the application for Leave to Commence Judicial Review Proceedings and if granted such costs will be fixed.

This 11th day of April, 2023


Petra M. Hanna-Adderley
Justice