

1 Number 428001021 United States registration number N396FW to the
2 Defendant for the sum of US \$400,000.

- 3
4 2) That in order to provide the 50% interest in the aircraft to the Plaintiff the
5 Defendant would cause to be incorporated a company in whose name the title
6 would be transferred and whose shares would be held in equal shares by the
7 Plaintiff and the Defendant. The Plaintiff and the Defendant would then
8 divide the expenses in connection with the aircraft between them.
9

10 The Defendant subsequently caused Zehyr Aviation III, a Delaware Corporation to be
11 incorporated on or about the 18th September, 2002. In October 2002, the Plaintiff
12 completed the payment of the purchase price of US \$400,000 to the Defendant. The
13 Plaintiff subsequently received from the Defendant title forms for execution which the
14 Plaintiff duly executed and returned.

15
16 With the advent of Ivan the aircraft was damaged and it is the Plaintiff's position now
17 that he wishes the money to be returned as the transfer has yet to be undertaken despite
18 the signing of the forms, and that there has been a total lack of consideration.

19
20 The Defendant submits that the transfer has not taken place because the Plaintiff has not
21 supplied the necessary information required under the United States law to the Defendant
22 for the completion of the registration. The Defendant says he has always been ready to
23 register and that in fact the transfer having been signed, the Plaintiff is a 50% co-owner.
24 Those are the facts that ground the action for damages for Breach of Contract.

25

1 A Defence and Counterclaim has been filed and a Reply and a Defence to Counterclaim
2 too has been filed. Some four years later the Plaintiff now wishes to re-amend alleging
3 that the Defendant is liable in conversion to the Plaintiff for having converted the aircraft
4 “to his own exclusive use”. In the proposed re-amended Statement of Claim, he
5 particularizes six instances which he alleges ground the action for conversion in the
6 alternative to damages for breach of contract. Those six allegations are:

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

- 1) the Defendant caused to be taken out an insurance policy, a state of affairs that is prohibited by item nine;
- 2) on or about 24th October, 2004, the Defendant caused the locks to be changed on the said aircraft, thereby depriving the Plaintiff and his pilot Roger Smyth access thereto;
- 3) the Defendant caused the Plaintiff’s pilot Roger Smyth to be removed from the insurance for the said aircraft;
- 4) the Defendant excluded the Plaintiff from all decision related to the said aircraft including but not limited to the settling of the insurance claim made on the aircraft’s policy resulting from damage sustained as a result of Hurricane Ivan. All decisions regarding the repair and maintenance of the aircraft and the decision by the Defendant to repaint the aircraft;
- 5) the Defendant having stated his intention to use the aircraft upon it becoming air worthy to the exclusion of the Plaintiff;
- 6) the Defendant commissioned major repairs to the aircraft and its engines without the agreement of the Plaintiff.

32 The Plaintiff alleges that these facts are sufficient to ground an action for conversion.

33 The Defendant on the other hand says that some of these facts are not even particularized

34 sufficiently and that they can not ground an action for conversion, as pleaded.

1 The Law

2

3 One co-owner of property may sue another co-owner for conversion. A donee of
4 property may not sue for conversion of it, unless the gift has been perfected by the
5 execution of a deed or by delivery.

6

7 The mere fact that one co-owner takes possession of a chattel will not be sufficient to
8 amount to a conversion because obviously he is entitled to possession of it; but of course
9 he is not entitled to take exclusive possession of it.

10

11 The question therefore is, do these acts amount to the Defendant taking exclusive
12 possession of this aircraft to the detriment of the Plaintiff. The facts in this case are (and
13 conceded by the Plaintiff), that the Plaintiff has had more use of this aircraft than the
14 Defendant. The acts alleged by the Plaintiff as excluding him from possession are
15 several but are they sufficient to ground conversion?

16

17 The courts of course have power at any stage of the proceedings to allow the amendment
18 of any originating process, pleadings or any other document. In exercising this power,
19 Bowen, L.J., in *Cropper v. Smith* 3 (26 Ch. D. at page 710) stated -

20

“It is a well established principle that the object of courts is to
21 decide the rights of the parties and not to punish them for mistakes
22 they make in the conduct of their case by deciding otherwise and
23 in accordance with their rights.”

24

25

1 As the parties seeking leave to amend need the exercise of the courts discretion, the court
2 is obviously competent to refuse to exercise its power if the proposed
3 amendment will serve no useful purpose. An amendment will be useless if it is
4 unarguable on its merits.

5

6 I bear in mind that the evidence on the merits of a substantive claim will usually be
7 incomplete and untested by cross-examination. In this case on an examination of the
8 proposed re-amended Statement of Claim I hold as follows:

- 9 1) the proposed re-amendments are insufficiently particularized
10 and embarrassing;
11
12 2) the proposed re-amendments are in any event hopeless in
13 that there is no real prospect that the Plaintiff will succeed at
14 trial in persuading the court that the pleadings as worded are
15 capable of being regarded as conversion.
16

17 In the circumstances the Application is dismissed. Costs to the Defendant to be agreed or
18 taxed.

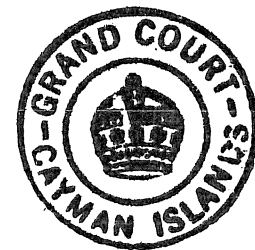
19

20 Dated this 12th day of April, 2006

21

22

23 Levers, J.
24 Judge of the Grand Court
25



26

27

28