

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

ANTIGUA AND BARBUDA

ANUHCVP2025/0032

BETWEEN:

**[1] ANTIGUA FLIGHT TRAINING CENTER INC.
[2] NORMAN AVIATION FLIGHT TRAINING ACADEMY INC.**

Appellants

and

ANTIGUA AND BARBUDA AIRPORT AUTHORITY

Respondent

Before:

The Hon. Mr. Trevor M. Ward	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence	Justice of Appeal

Appearances:

Mr. Warren Cassel for the Appellants
Mr. Hugh Marshall and Ms. Kema Benjamin for the Respondent

2026: June 29

Interlocutory appeal – Injunctions – Interim injunctive relief – Application to restrain airport authority from restricting access to flight training school – Part 17 of the Civil Procedure Rules 2023 (Revised Edition) – Discretion of chamber judge – Principles governing appellate review of exercise of discretion – Adequacy of damages – Quantifiable financial loss – Whether reputational harm to commercial training entity is compensable by damages – Multiplicity of proceedings – Directive to file application within existing substantive judicial review claim rather than fresh action

REASONS FOR DECISION

- [1] **CENAC-PHULGENCE JA:** On 29th June 2026, after hearing the arguments of the parties, the Court dismissed the interlocutory appeal filed on 5th January 2026 against the Order of the learned judge dated 31st October 2025 whereby the learned judge dismissed the notice of application for interim injunctive relief filed by the appellants on 19th September 2025 and awarded costs to the respondent to be assessed if not agreed within 21 days of the Order. The Court promised to provide written reasons for its decision. These are those reasons.

Background

- [2] The appellants had sought an interim injunction pursuant to Part 17 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** (“CPR”) (i) requiring the respondent to grant immediate access to its students, directors, and employees to their compound located in the airport’s restricted area and (ii) restraining the respondent, Antigua and Barbuda Airport Authority (“ABAA”) from taking further steps to restrict or impede or otherwise prevent their access to the appellants’ place of business pending determination of the substantive claim.
- [3] The substantive claim filed on 12th October 2022 challenges decisions of the respondent made in March and April 2022 regarding access permits and the refusal to grant permanent security passes to students and staff to access the flight training school located at the V.C. Bird International Airport. The application for interim injunctive relief was heard on 31st October 2025, and the learned judge delivered a decision on even date.

The Appeal

- [4] The grounds of appeal as advanced by the appellants are that:
- (1) the judge erred when she advised the claimants’ attorney to file the application for the injunction in the substantive claim rather than as a

new matter connected to the new cause of action as he had originally filed;

(2) the judge erred when she failed to consider that ABAA has no oversight, accountability or audits conducted by the Eastern Caribbean Civil Aviation Authority (“ECCAA”) and therefore the airports in Antigua and Barbuda are uncertified-there is and has not been any valid airport/aerodrome certificate since 1st November 2010;

(3) the judge erred in law/misdirected herself by failing to properly determine:

(a) whether there were substantial reasons given by the respondent for revoking the visitor passes for the appellants and their students and employees?

(b) whether reputational damage of the claimants was quantifiable and adequate as damages?

(c) whether the balance of convenience lay in granting the injunction in favour of the appellants?

(4) the judge failed to take into account that the respondent has failed to present a valid aerodrome certificate.

[5] Having assessed the grounds of appeal, the Court was of the view that the main issue for determination was whether the learned judge erred in the exercise of her discretion by refusing the application for the interim injunctive relief. Grounds (ii), (iii)(a) and (iv) are primarily concerned with matters which were not relevant to the learned judge’s determination of the application before her and may be more relevant to the determination of the substantive claim. As such there is no need to determine these grounds.

[6] For the avoidance of doubt, the appellants' submissions regarding the respondent's alleged lack of a valid aerodrome certificate or oversight by the ECCAA are entirely misplaced at this interlocutory stage. Whether or not the airport is technically certified does not confer upon the appellants an automatic right to bypass the security protocols of an active, functioning airport facility. These assertions raise regulatory issues that belong to the determination of the substantive claim and have no bearing on the adequacy of damages.

[7] As Lord Diplock in **American Cyanamid Co. v Ethicon Ltd**¹ pointed out, it is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to the facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations.

The Applicable Principles

[8] The grant or refusal of an application for interim injunctive relief is an exercise of a judicial officer's discretion. The applicable test in relation to the appellate court's approach to reviewing the exercise of judicial discretion is well established and set out in the case of **Michel Dufour et al v Helenair Corporation Ltd et al**.² An appellate court will seldom interfere with the exercise of a judicial officer's exercise of discretion and will do so only (i) if the court is satisfied that the judge erred in principle either by failing to take into account relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations and (ii) that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

¹ [1975] 1 All ER 504.

² Saint Lucia Civil Appeal No. 4 of 1995, (delivered 12th February 1996, unreported).

[9] In the CCJ case of **Shir Affron Nabi et al v Ashmidphiraque Sheermohamed et al**,³ the court referred to the case of **Hadmor Productions Ltd v Hamilton**⁴ in looking at the principles to be applied on appeal of a grant or refusal of an interlocutory injunction. In **Hadmor**, Lord Diplock stated:

“An interlocutory injunction is a discretionary relief and the discretion whether to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, ... is not to exercise an independent discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of the law or the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified, the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own.”

Discussion

Serious Issue to be Tried

[10] The learned judge applying the well-known principles enunciated in the case of **American Cyanamid**⁵ found that there was a serious issue to be tried given the diametrically opposed views and fundamental conflicts of evidence requiring determination at trial. The learned judge determined that she was satisfied that there

³ [2020] CCJ 15 (AJ) GY.

⁴ [1983] 1 AC 191 at p. 220.

⁵ Ibid at p 511.

was a serious issue to be tried as to the entitlement of the appellants to be issued with security passes and whether the respondent was wrong to make a decision to deny same.

Damages an Adequate Remedy

[11] The appellants contend that the learned judge erred in law and misdirected herself by failing to determine whether reputational damage of the claimants was quantifiable and adequate as damages.

[12] On the question of whether damages would be an adequate remedy, the learned judge found that damages would be an adequate remedy noting that the appellants in their statement of claim filed in the substantive claim themselves had quantified their damages which they have suffered as a result of the respondent's failure to issue security passes to students and vehicles at \$16,000,000.00. The learned judge remarked that it was unclear how the appellants could now resile from their pleadings and state that damages were unquantifiable and that they would not provide an adequate remedy if it were determined at the end of the trial that the injunction ought to have been granted. She also found that the respondent would have been in a position to pay any damages quantified by the court in the circumstances in favour of the appellants.

[13] The learned judge at paragraph 17 of her decision stated:

“...this court is satisfied that if the Applicant were to succeed at trial they would be entitled to a permanent injunction, that by their own admission and relief sought, [sic] be adequately compensated by an award of damages for the loss that they would possibly suffer as a result of the Respondent's failure to provide the passes up [to] the determination of the matter.”

[14] The appellants argue that the learned judge erred in associating the damages claimed in the substantive claim to the reputational damage they would suffer by creating a situation where the appellants had no choice but to file their application for interim injunctive relief within the substantive claim and that the sum of sixteen

million dollars (\$16,000,000.00) does not and cannot possibly account for the reputational damage that would be caused to the appellants.

[15] In the affidavit in support of the fixed date claim form filed on 12th October 2022 at paragraph 17 in a table setting out the damages claimed, the appellants state a figure of \$16,000,000.00 as the total amount of damages to which they are entitled. Nowhere in this table is any claim for damages for reputational damage made.

[16] Counsel for the appellants pointed the Court to paragraph 24 of the affidavit in reply of Grace Norman, director of the appellants as showing that evidence of reputational harm was before the court. This is to counter the respondent's submissions that the issue of reputational harm was not before the court. Paragraph 24 states:

“That the evidence provided and the facts raised indicate that Mr. Samuel has attempted to effectively shut down the Claimants'/Applicants' legally registered business and create a quandary for the Claimants/Applicants as they are now opened to financial burden, future lawsuits by the Claimants'/Applicants' students for failure to provide contractual obligations and inevitably incur losses as a result of Mr. Samuel's vindictive actions and decisions.”

[17] However, this does not advance the appellant's arguments.

[18] Furthermore, unlike personal reputation which may suffer non-pecuniary harm, reputational harm to a commercial or training entity such as the appellants' ultimately manifests as financial loss (such as a reduction in student enrolment or loss of business revenue), which is inherently capable of being quantified and adequately compensated by an award of damages.

The Judge's Instruction

[19] The appellants' counsel argues that given that the learned judge had instructed that the interim application be filed in the substantive existing judicial review claim (ANUHCv2022/0312) as opposed to being filed in the new claim for tortious interference with contract (ANUHCv2025/430) she ought not to have taken the sixteen million dollars (\$16,000,000.00) into account as part of the consideration of

whether or not the application for interim relief should have been granted. The interim application had originally been filed as part of the new claim (ANUHCv2025/430).

[20] However, when the interim application came up for hearing it had now been filed in the substantive judicial review claim as had been directed by the learned judge and that was the underlying claim which she would have had to consider. There was no claim for reputational damage and in any event, the learned judge considered the fact that the appellants had quantified their damages which would flow from the loss they suffered as a result of the respondent's decisions in the affidavit in support of the claim, as a clear indication that the damages were quantifiable.

[21] The appellants also complain that the judge erred when she advised the claimants' attorney to file the application for the injunction in the substantive claim rather than as a new matter connected to the new cause of action as he had originally filed. The learned judge accepted that this was the case at the hearing as seen from the transcript.⁶ However, it is an established case management principle that the Court should actively manage cases to avoid a multiplicity of proceedings arising out of the same underlying facts. The learned judge's directive to utilise the existing substantive claim was a practical exercise of her case management powers under the CPR which was clearly open to her. This Court therefore sees no reason to address this ground any further given its finding that the learned judge properly considered the applicable principles on an application for interim injunctive relief which was before her.

[22] The learned judge having considered the underlying claim properly took into account the evidence which was before the court and considered the relevant principles and properly determined that damages would be an adequate remedy. In so doing, the learned judge was entitled to infer from the appellants' own evidence in support of the underlying substantive claim that damages would have been an

⁶ Page 12, Lines 1-4 of the Transcript.

adequate remedy. In fact, the learned judge did point out during the hearing that it was passing strange that the appellants would have quantified their damages and then be arguing that the damages were not quantifiable. The respondent correctly submits that the findings made by the learned judge were open to her on the evidence before her.

- [23] In addition, it was always open to the appellants to amend the substantive claim to include a claim for reputational damages which they did not do. The Court can discern no reason to interfere with the exercise of the learned judge's discretion.

Balance of Convenience

- [24] The appellants contend that the learned judge erred in law/misdirected herself by failing to properly determine whether the balance of convenience lay in granting the injunction in favour of the appellants. They argue in the main that the fact that the respondent had recognised the appellants' operations from 2006 with the granting of permanent passes to its students and employees and for the last three (3) years they have been given visitor passes with the respondent not providing any adequate reason for denying the visitor passes, suggests that the balance of convenience lies in favour of the appellants.
- [25] The learned judge also considered that the balance of convenience although not required to do so, given that it had been found that damages would be an adequate remedy. It is well established that if damages are found to be an adequate remedy, an injunction will normally be refused, making a detailed assessment of the balance of convenience strictly unnecessary; however, the learned judge decided to address the issue of the balance of convenience as a matter of completeness. Applying the dicta in **British Virgin Islands Electricity Corporation v Delta Petroleum (Caribbean) Ltd.**⁷ that ultimately the court must consider which course is likely to involve the least risk of injustice if it turns out to be wrong, she found that the balance of convenience lay in the respondent's favour.

⁷ BVIHCV2015/0158 (delivered 14th July 2015, unreported) [54].

[26] At paragraph [20] of the judgment, the learned judge found that the appellants had failed to persuade the court that the risk of injustice to them on the injunction not being granted was not outweighed by the risk of injustice to the respondent if it was granted. The learned judge was of the view that the grant of the injunction would bind the respondent to a bargain with which they were not in agreement and would hold them bound to a situation that would have a ripple effect for their effective functioning as an entity which must oversee and manage its own security.

[27] Having evaluated the judge's treatment of the balance of convenience, it is clear that the judge weighed the evidence before her and determined that the balance lay in favour of not granting the injunction. The appellants' complaint with the learned judge's determination on the balance of convenience is simply that they disagree with her assessment. They have not shown that she took into consideration irrelevant factors or omitted relevant factors or that her decision was blatantly wrong. The appellants have fundamentally failed to demonstrate that the learned judge's assessment of the competing risks of injustice was flawed in principle, or that her conclusion exceeded the generous ambit within which reasonable disagreement is permissible.

Disposition

[28] This Court having considered the notice of appeal filed on 5th January 2026, the written submissions in support of the appeal and the record of appeal filed by the appellants on 27th February 2026, the hearing and supplemental hearing bundles filed on 15th June 2026 and 26th June 2026 respectively, the written submissions in opposition filed by the respondent on 22nd May 2026 and the oral submissions of Counsel for the appellants and respondent, was not persuaded that this was a proper case meriting the Court's interference with the exercise of the learned judge's discretion.

Order

[29] The Court therefore made the following order:

- (1) The appeal is dismissed.
- (2) Costs to the respondent to be assessed if not agreed within 21 days.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Deputy Chief Registrar