

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006- 01367

A6 of 2004

ADMIRALTY ACTION IN REM AGAINST

THE MOTOR VESSEL “SENATOR”

BETWEEN

TRINIDAD SALT COMPANY LIMITED

CLAIMANT

AND

THE OWNERS AND/OR PARTIES INTERESTED

IN MOTOR VESSEL “SENATOR”

DEFENDANT

Before the Honourable Mr Justice R. Boodoosingh

APPEARANCES:

Mr F. Hosein SC leading Mr R. Dass instructed by Mrs N. Alfonso for the Claimant

Mr K. Kampta for the Defendant

Dated: 12 July 2013

REASONS

1. An oral decision was given in this matter on 29 January 2013. This claim concerns a shipment of 1,000 metric tonnes of salt on the “MV Senator” (the Senator) from Venezuela to Trinidad. The claimant got one Henry Beal to locate a ship willing to carry the cargo. He in turn contacted Devika Bissessar who was concerned with the Senator. The issue is whether there was a proper contract for the transportation of the salt. The claimant says yes and makes a claim for damages the salt not having been brought by the Senator. The defendant says there was no contract.
2. A writ was filed in this matter in 2004. Pleadings were filed and the claim was converted to one under the CPR.
3. Three witness statements were filed by the claimant. There were witness statements of Juan Navarro, Hector Martinez and Henry Beal. Two witnesses gave evidence. Henry Beal, who resides in Martinique, could not be present to give evidence and there was service of a hearsay notice to use his statement. The defendant called no evidence. Part of the record of the proceedings, however, included an affidavit from Devika Bissessar.
4. The first issue raised by the defendant concerned the court’s jurisdiction to hear the claim. I considered the submissions of the parties on this matter and I concluded that the

court does have jurisdiction to entertain this claim. I rely also on the reasons of Stollmeyer J. (as he then was) at the interlocutory stage of proceedings in this regard. The claim for breach of contract was brought against the owners/parties interested in the ship “MV Senator”, which is contemplated by the relevant sections of the legislation as set out in the claimant’s written submissions: see section 9 of the **Supreme Court of Judicature Act**, Chap. 4:01 and section 384 of the **Shipping Act**, Chap. 50:10.

5. The issue of the appropriate forum was raised by the defendant but no evidence was adduced on this matter. I considered the factors set out by Mr Justice Sheen in **The Sidi Bishir [1987] 1 Lloyd’s Rep 42** and concluded that no proper basis was raised by the defendant for the court to decline jurisdiction on the forum point. This essentially was a claim for breach of contract for failure to deliver a shipment to Trinidad to the claimants.

6. Another issue was whether Henry Beal had authority to act for Devika Bissessar in terms of the negotiations for the shipment. The contract here was an agreement to carry a quantity of cargo on a defined voyage. I accept there was some informality about the arrangements but considering all of the documentary evidence available it is clear that there was an oral agreement for the carriage and that this was confirmed by various email communications between the parties. In my view, the parties were at ad idem with what was to be done, the price and the circumstances. In particular, I accepted the claimant’s case that Henry Beal, and Devika Bissessar as ‘owner’ of the Senator, had agreed on the port of loading, port of delivery, quantum and nature of the freight, the payment method

and the amount to be paid. And this was followed by Mr Beal's agreement with Mr Martinez of the claimant. The email correspondence also supported this. See for example Ms Bissessar's and Mr Beal's email correspondence of 19 February 2004, 20 February 2004, 24 February 2004 and 1 March 2004 and 3 March 2004.

7. I concluded therefore that a proper contract was reached between or on behalf of the parties and that the terms were sufficiently defined even though all the terms were not necessarily settled.
8. I accepted the evidence given by the claimant's witnesses on a balance of probabilities.
9. On the issue of damages, the claimant has claimed damages of \$204,395.43 as loss of profits for 1 March to 14 March 2004 in the sum of \$188,595.43 and jetty costs incurred for off-loading in March 2004.
10. Mr Navarro with the assistance of the company's accountant calculated the loss of profit figure minus expenses. This was set out in a table. He explained the damages figure at paragraphs 8 to 10 of his witness statement.

11. I have examined the costs claimed and the cost for the crane rental and I consider these to be reasonable in all the circumstances. The only matter is that he, Mr Navarro, said in cross-examination that the shipment was to leave on the 4 March 2004 and would be ready for use on the 6 March 2004. I would award damages therefore pro-rated based on the period 6 to 14 March 2004 which would be for 9 days. The figure of \$188, 595.00 which is applicable for 14 days loss of profit is accordingly reduced to \$121,240.00. This, of course, is not intended to be exact. The damages are based on the likely loss of profit established by the claimant.

12. I will therefore award damages for breach of contract on this basis as the estimated losses incurred by the claimant on account of the defendant's breach.

13. There is accordingly judgment for the claimant in the sum of \$121,240.00 plus the rental of the crane for \$15,800.00 making a total of \$137,040.00.

14. Interest is awarded at the rate of 6 % per annum from the date of the writ on 14 May 2004 to the date of judgment.

15. This matter was converted to CPR. Costs are awarded therefore on the prescribed scale
in the sum of \$29,556.00.

Ronnie Boodoosingh

Judge