THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2017 – 02013

IN THE MATTER OF THE JUDICIAL REVIEW ACT, CHAP 7:08

AND

IN THE MATTER OF THE CUSTOMS ACT

AND

IN THE MATTER OF THE DECISION OF COMPTROLLER OF CUSTOMS AND EXCISE TO SEIZE FOUR CONTAINERS OF ROUGH SQUARED TEAK

BETWEEN

GUISEPPI B.C. LTD

Claimant

AND

THE COMPTROLLER OF CUSTOMS AND EXCISE

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Kelvin Ramkissoon and Mr Leon Kalicharan for the Claimant

Ms Nadine Nabie, Ms Tricia Ramlogan, Ms Nicol Yee Fung and Ms Janine Joseph for the Defendant

Date: 25 April 2018

JUDGMENT

1. This case concerns a shipment of teak wood which the claimant was attempting to export to India. The defendant's officers seized the goods to be shipped. The claimant has brought these judicial review proceedings challenging that seizure. Evidence was filed on both sides. Written submissions were also filed. There were some conflicts in the evidence, but I have not found these to be material in deciding this case.

2. Legal Notice No. 19 0f 2017 prohibits "the exportation of teak timber and pine logs harvested from the forests located in State lands or Forest Reserves". There is no dispute that at the material time this order was in force.

3. The claimant had followed a process to pursue the shipment of the teak wood. The claimant says it bought the teak from different saw mills. Their shipping broker had consulted the Customs website and noted there was no prohibition on "squared teak". They prepared shipping documents and lodged them with the Customs department. These were stamped and signed and the goods were entered on the Customs system. The approved documentation can be called the eC82. The bill of lading was also stamped "OK to ship". The goods were packed in 4 containers and transported to the Port to be shipped.

4. Zaid Mohammed, a Customs and Excise Officer, deposed that on 7 April 2017 he received an anonymous tip that a container bearing a specified number contained teak which was prohibited from being exported. He and another Customs Officer, went to the Port to investigate. The container with the specified number was opened and certain markings noted. The container was detained to investigate whether the goods were from State lands. Having obtained the bill of lading, the Officer saw there were 3 other containers in the shipment. On 10 April 2017, representatives of Customs, the Forestry Department and the claimant met. The claimant's representatives were told of the Legal Notice. Various events followed leading to the seizure of the goods. This was based on the report of Mr Kip Daniel, Forestry Officer, who, based on his observations of the hammer markings on the wood surface, concluded the wood was from State lands.

5. Subsequently condemnation and forfeiture proceedings under section 220 of the **Customs Act, Chap. 78:01**, were begun. A complaint was also filed that the claimant attempted to export prohibited goods under section 154 of the Customs Act. This matter is now pending before the Magistrates' Court.

6. The claimant contends that having regard to the approval of the eC82 documents and the marking of the bill of lading as "OK to ship", the approvals were already in place and all that was left to be done was to ship the items. The defendant could not after that change its decision, as it were, and seize the goods. Even if they could do that, the threshold to do so had to be a very high one and this has not been satisfied in this case. Having regard to the approval process, the claimant further contends they had a legitimate expectation that they would be allowed to ship the teak items.

7. Nothing put before me suggests that Customs Officers have any specialised training in the identification of types of wood or whether wood has been taken from State lands or Forest Reserves. Logically, it seems to me that such expertise would reside in the Forestry Division, and, in terms of definitively identifying State lands, in the Office of the Commissioner of State Lands. It is both sensible and logical to surmise that the Forestry Division Officers would have some training and knowledge on the types of wood and the ability to identify where the wood is from. This must be so because it is to them that the job of administering the forestry legislation falls. This includes the harvesting of wood and the regulations applicable to this.

8. The evidence about the type of wood and its source comes from the affidavit of Kip Daniel filed 10 November 2017, where he sets out how he concluded the wood was from State lands. He also stated how he concluded the wood was teak. He is a forester for 18 years. At paragraphs 7, 10, 12, 15, 16, 17, 18 and 22, the basis is set out. He described a system of marking by forestry officers, the sales initials marked on the wood, examples of the teak plantations they emanated from, the insignia implanted on the logs. He attached a report which indicated the contractors who would have purchased wood from State plantations. His affidavit annexed a report which he compiled by using his own knowledge and the records of the Forestry Division and matching them with the markings on the wood in

question. He concluded that most of the wood in the different containers were from State lands and they were all teak. He personally conducted the investigations in question.

9. There were certain evidential objections made by notice by the claimant to the contents of Mr Daniel's affidavit. I did not think there was any merit to these objections. The substance of the evidence is that there was in place a clear process to identify the origin of teak wood. For the judicial review court, the task is to determine if there is a justifiable basis to impugn the decision taken by the decision maker. There was more than sufficient evidence put before me to show how he arrived at his conclusion. Further, there was no evidence led which refuted or undermined the basis for his conclusions.

10. It is evident that some of this evidence was not put to the claimant's representatives on 10 April 2017. It does appear that the detailed investigations took place after the goods were detained. Given the circumstances this probably could not have been avoided. The Customs Officers did not have the relevant expertise to make a conclusion. However, it is clear that there was an examination shortly after the shipment was stopped, which has been explained in the affidavit of Mr Daniel.

11. As indicated, Customs Officers are not experts in where wood comes from. They would be entitled to rely on the expertise of persons from the Forestry Division. It follows from this, where they suspect that prohibited wood items are being exported, they would be entitled to seek the advice and guidance of the experts in the field. The goods were detained for a forestry officer to examine and report on. Furthermore, they gave notice of their suspicions to the claimant's representatives shortly after the goods were detained. It was open to the claimant at that stage to provide evidence to refute the conclusions which the Customs Officer had come to, based on the expert advice of the Forestry Officers.

12. The claimant has also advanced that the defendant failed to pursue an obvious line of inquiry as only the Commissioner of State Lands could definitely identify where State lands are located. This, however, goes against the evidence provided

by the Forestry Officer, Mr Daniel, of the system in place to identify teak from State lands. The hammer marking shows the logs were sold from State lands and the officer who carried out the sale. The affidavit of Carlton Roberts also confirms discussions with the claimant's representative about the prohibition order. It was clear that the claimant was keeping itself informed about when the order would come into effect.

13. I also did not think it was necessary to go the way of identifying and considering the removal permits from State lands for the Customs Officer to conclude that the wood was from State land. To require the removal permit to be retrieved where the wood had been sold to the claimant by saw-millers would be highly impractical. When wood is being transported, the authorised markings would ordinarily be a clear indication of the origin of the wood. It is one of the reasons the wood is marked. This denotes that an identifying system is in place.

14. It seems to me that there was enough information available at the time for the Customs Officers to act to detain the goods pending the proceedings which were initiated: see **para 30, Omar Singh v The Comptroller of Customs and Excise, CV 2013 – 02301**, unreported, before Aboud J. It also cannot be said that given the information and examination by the Customs Officers and the Forestry Officer that it was unreasonable in all the circumstances for the goods to be detained at the time when it was done.

15. The next plank of the claimant's case is whether having signed off on the documentation, namely the eC82 and noting "OK to ship" the Customs could, as it were, reverse that decision. In my view, the Customs are entitled to do so once they have sufficient evidence to make a determination that there is reasonable and probable cause that there is an attempt to export a prohibited good. Investigations and the availability of evidence can continue. Information may be obtained after a process has occurred which renders the circumstances different so that a different outcome follows.

16. It is noteworthy that the claimant has said through its deponent Mr Guiseppi that it purchased the lumber from various saw-millers some with cash order

consignments. He has deposed that the defendant has not shown the items have been harvested from State plantations. At the same time, there has been no evidence before me to dispute the affidavit of Mr Daniel about the source of the wood being from State plantations.

17. I also do not agree with the claimant's submissions that the authorisation given to export could not in these circumstances be revoked. It was reasonable in these circumstances for the change to be made to the previous order approving the export. There was an important change in circumstances which was the tip off obtained and the examination by Mr Daniel whose conclusions the Customs Officers accepted. It would be wrong for the court to impose a rigid rule on the ability of the Customs or investigative and enforcement agencies preventing them from reviewing or revoking previous decisions where the circumstances warrant. Of course, changes cannot be made arbitrarily. There must be some justifiable basis for changing decisions.

18. It follows that there must also be proper oversight at every stage of the approval process in decision making where the decision may not be as straightforward or may require some other expertise not resident in the Customs department. A person or company can be put to significant expense in proceeding along (such as loading and transport costs) if decisions are changed late in the process. This could be avoided if necessary investigations are undertaken earlier on.

19. On the issue of legitimate expectation, in my view, it does not arise in this case. There are wide powers under the Customs Act. There is good reason for this. One important core function of the Customs is to ensure that prohibited goods are not exported or imported. As noted, at one time information available may suggest there is no issue with the exportation of a particular item. New information may be obtained that casts doubt on the earlier decision. There is a strong public interest element to ensure the laws are upheld. Thus, the law must reasonably allow an approval to be revised or revoked in appropriate circumstances.

20. In **United Policyholders Group and Others v The Attorney General of Trinidad and Tobago [2016] UKPC 17** Lord Neuberger stated:

37. In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453, para 60.

38. Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty - see eg *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or *a fortiori* should, reasonably decide not to comply with the statement.

39. Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context (see again *Ng Yuen Shiu* [1983] 2 AC 629, 636). However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called "the macro-political field" (in *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115, 1131), or indeed the macro-economic field. As the cases discussed by Lord Carnwath show, such issues have been considered by the Court of Appeal of England and Wales, perhaps most notably, in addition to *Begbie*, in *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213, *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363, and *R*

(Niazi) v Secretary of State for the Home Department [2008] EWCA Civ 755, and also by the Board in *Paponette v Attorney General of Trinidad and Tobago* [2012] 1 AC 1.

21. It cannot be said that the approval could be devoid of relevant qualification. It must be open to the Customs to reverse its decision in appropriate circumstances. In doing so it would be complying with its statutory duties under the Customs Act, to act to prohibit the export of goods which are not allowed. In doing this the Customs department is entitled to work alongside other State agencies, such as the Forestry Division, to obtain the relevant expertise necessary to make informed decisions. This is what they did in this case.

22. On the facts of this case, the detention and seizure of the goods pending the on-going proceedings before the Magistrate can be considered to be reasonable. The result is that the claim fails. I note, however, that there are proceedings before the Magistrate at this time. It is not for me to determine whether that complaint will succeed or fail. This claim considered the decision of the Customs relating to the stoppage of the export of the shipment in April 2017.

23. There is no reason to depart from the usual rule on costs that costs follow the event. The claimant must therefore pay to the defendant the costs of this claim to be assessed by a Registrar in default of agreement, on application of either party.

Ronnie Boodoosingh

Judge