

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2015-03254

BETWEEN

WOODFORD CONSTRUCTION LIMITED

Claimant

AND

READYMIX (WEST INDIES) LIMITED

First Defendant

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Second Defendant

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: November 22, 2018

Appearances: Claimant: Mr. Anand Ramlogan SC leads Mr. Kent Samlal and Mr. Douglas Bayley instructed by Mr. Jared Jagroo
First Defendant: Mr. Jason Mootoo instructed by Mr. Adrian Byrne
Second Defendant: Ms. Karel Douglas instructed by Ms. Amrita Ramsook and Ms. Jenna Gajadhar

JUDGMENT

Background:

1.This is a claim for damages for breach of contract. The claimant (“Woodford”) alleges breach of a written agreement between them and the first defendant (“Readymix”) dated 25th November 2013 (“the contract”). The contract governed the excavation of and payment for 1,000,000 cubic yards of high quality pitrun by Woodford from Readymix’s Bermudez Quarry (“the quarry”) for third party sales. Woodford accounted for the excavation of approximately 214,332 cubic yards of pitrun from the quarry between November, 2013 and July, 2015. Readymix, alleges, in return, they are not satisfied that Woodford verified the actual quantity of pitrun extracted and removed from the quarry.

2.To mine at quarries, licences are required. Readymix obtained a licence from the State, the second defendant, on the 7th May 2013. Subsequently, Readymix contracted with Woodford to extract and sell pitrun. Readymix was to be paid \$21.00 plus vat for a cubic yard of pitrun.

3.By Notice of Termination dated the 23rd June, 2015 Readymix advised Woodford that its contract was terminated with one month’s notice. The reason given in the notice was that Readymix “has embarked on a comprehensive review of its operations... the Company has decided that it would be in the best interest of all stakeholders to discontinue the current structure... the Company is constrained to terminate your current arrangement...”. No other reason was proffered by the first defendant.

4.The issues before the court are:

- i. could Readymix change the reason for terminating the contract dated 25th November 2013, if the reason given was not a valid ground;
- ii. did Woodford remove excavated pitrun from the quarry without first presenting for verification;

- iii. did Woodford thief pitrun from the quarry;
- iv. if yes to (ii) or (iii), was Readymix entitled to terminate the contract on those grounds; and
- v. if Readymix was not entitled to terminate the contract, what damages, if any, should accrue to Woodford.

The Claimant's Case:

5. Woodford contends that the case is based on the wrongful termination of the contract dated the 25th November 2015. The said contract provided specific grounds for termination. Notwithstanding the contract, Readymix issued a Notice of Termination dated the 23rd June 2015 which purported to terminate the contract. The reason contained in the Notice, the management restructuring exercise, was not one specified under the terms of the contract. Woodford asserts that this was not a valid basis for termination and Readymix's pleaded defence was an afterthought and plain untruths to support a non-existent defence in light of a belated realization that the justification contained in the letter of termination was invalid.

6. At the time of termination, the claimant was entitled to excavate a further 785,668 cubic yards of pitrun from the quarry. Woodford therefore claim against Readymix:

- i. damages including aggravated and/or exemplary damages for breach of contract and wrongful termination and/or misrepresentation and/or negligence;
- ii. damages including aggravated and/or exemplary damages for repudiation of the said written agreement;
- iii. interest at a rate of 12% per annum from the 23rd July 2015 and continuing;
- iv. costs; and
- v. such further and or other relief as this Honourable Court may deem just in the circumstances of this case.

7.The claimant also claimed against the second defendant (“the State”) in its capacity as legal representative of the State for damages as a result of negligent misstatement and/or misrepresentation and/or negligence. However, this claim was abandoned for reasons discussed below.

The Defendant’s Case:

8.It is Readymix’s case that there was an implied term of the contract which entitled them to terminate with immediate effect if the claimant carried pitrun past Readymix’s Checker without first stopping, presenting and having the same verified. Readymix asserted in their pleadings that on the 26th March 2015, 10th April 2015 and 27th April 2015¹ the claimant’s trucks exited the quarry after the removal of pitrun without being checked and without being issued any verification documents. This breach of procedure amounted to a “Theft of [Readymix’s] pitrun supply”, an expressed reason for termination. Therefore, despite the Notice of Termination’s failure to connote this reason for termination, they were nonetheless entitled to terminate Woodford’s contract.

Procedural History:

9.Following is the relevant procedural history. On the 20th July 2015, Woodford issued a Pre-Action Protocol letter to Readymix indicating its intention to bring a claim against it for breach of contract and wrongful termination of the contract between them dated 25th November 2013. On the 21st August 2015, an extension of 14 days was requested by Readymix to respond.

10.By the 1st October 2015, after no response was received from Readymix, Woodford filed its Claim Form and Statement of Case in this matter. On the 2nd October 2015, after the claim was filed, Woodford

¹ Though they acknowledge that there is no evidence before the court with respect to events taking place on that day- Submissions of the first defendant filed 28 September 2018 at paragraph 6

received a substantial response dated 7th September 2015 to their Pre-Action Protocol Letter. The response from Readymix sought to justify the termination by alluding for the first time that:

- i. While the initial Notice of Termination dated the 23rd June 2015 was defective in not having given proper reasons for the termination, there existed at the time of notice, a good reason for termination. Namely, Woodford had breached the contract by failing to have a Checker employed by Readymix to inspect the quantity of pitrun being removed by Woodford, thereby allowing Woodford to remove substantial amounts of pitrun that were unaccounted for and unpaid for; and
- ii. Woodford lacked the requisite mining licence to mine and excavate pitrun pursuant to the Minerals Act Chapter 61:03.

11. Additionally, the validity of the contract dated 25th November 2013 was questioned. Readymix raised that there was a signed, but undated contract between the parties. This undated contract, entitled Woodford to excavate 500,000 as opposed to 1,000,000 cubic yards of pitrun.

12. In light of the aforementioned developments, the claimant caused its Amended Claim to be filed on the 15th October 2015 addressing the issues. After amendments and re-amendments, pleadings were closed the 19th October 2016 with the filing of Woodford's re-amended reply.

13. On the 21st May 2018, the day before this matter was scheduled for trial, Readymix's Attorney at Law indicated by letter that it would not be pursuing the point of illegality of contract, in its defence. Furthermore, they advised that of their five witnesses, they would only be relying on the evidence of one witness in support of its Defence namely, Mrs. Reshma Gooljar-Singh.

Narrowing of triable issues:

14. On the morning of the trial, 22nd May 2018, Readymix conceded that the issue of the mining licence was no longer relevant and was not being pursued. As a result, the second defendant was relieved from its participation in the trial. The court reserved the issue of cost occasioned by the unnecessary participation of the State.

15. Furthermore, Readymix accepted that the contract dated the 25th November 2013 was at the time of termination the valid and subsisting contract between Woodford and Readymix. However, they maintained that whilst the Notice of Termination did not contain a ground for termination under the contract, the Notice was still valid as a substantial reason for termination existed, at the time the Notice of Termination was served.

16. Senior Counsel for the claimant contended that 75% of the first defendant's defence was founded on negligent misstatement, negligent and fraudulent misrepresentation and submitted that the issue of cost occasioned by the pleadings and conduct of Readymix in pursuing a defence that was abandoned on the morning of the trial was one that should be dealt with on an indemnity basis, or *"where the Court decides that there is something in the conduct of the action, or in the circumstances of the case in general, which takes it out of the norm"*. Again, the court opted to reserve the issue of costs.

17. In light of these belated concessions by the Readymix, the claimant filed an application in court on the 22nd May 2018 requesting:

- i. An order that Readymix disclose the sales records and accounts for the balance of pit-run excavated and sold from the quarry after the termination of the claimant's contract;

- ii. An order that the claimant be allowed to call Mr. Darryl Boynes (former witness of the first defendant) former production engineer of Readymix to give evidence; and
- iii. An order for separate trials on the issue of liability and quantum of damages.

18. The court declined to grant the orders sought at i. and iii. above. Permission was however granted to Woodford to call Mr. Darryl Boynes to give viva voce evidence in support of their case.

Analysis and Findings:

19. The court will now consider the first issue:

- i. could Readymix change the reason for terminating the contract dated 25th November 2013, if the reason given was not a valid ground.

20. The UK Court of Appeal case *Glencore Grain Rotterdam BV v Lebanese Organisation for International Commerce* [1997] 4 All ER 514, confirms the established principle of law. A contracting party, who, after he becomes entitled to refuse performance of his contractual obligations, gives a wrong reason for the refusal, such wrong reason, does not deprive him of a justification which in fact existed, at the time he refused performance, whether he was aware of it or not.

21. The applicability of the rule is not unrestricted. It is subject to qualifications. Four qualifications were identified in *Glencore Grain Rotterdam BV v Lebanese Organisation for International Commerce* (supra). The first qualification disapplied the rule in circumstances where, if a proper reason had been given at the relevant time of refusal, the matter complained of might have been put right. The second qualification, waiver and estoppel, disapplied the rule in circumstances where a party who failed or refused to perform the contract from relying

upon conduct by the other party which would otherwise have justify his doing so. The third qualification disapplied the rule where there was acceptance of goods (within the meaning of Section 36 of the Sale of Goods Act, Chapter 82:30). Where one party to a contract becomes aware of a breach of a condition precedent by the other, he is entitled to accept the failure and cannot outside of a reasonable time thereafter, change his decision to accept the goods. The fourth qualification disapplied the rule where it would be unfair and unjust to apply it; estoppel by conduct. This refers to fair conduct between the parties. Where, for instance, an unequivocal representation was made and acted upon by the other party, it would be unfair and unjust for the party who made the representation to rely on his contractual rights.

22. Readymix avow that the said principle is entirely apposite to their position. The Notice of Termination dated the 23rd June 2015 contained a wrong or invalid reason for termination, namely, the management restructuring exercise.

23. However, in justification of Readymix's position, it now relies on the removal of pitrun without first presenting the same for verification by Readymix's Checker. This was a breach of the agreed upon procedure that existed between the parties before the Notice of Termination was issued. There is not any evidence to satisfy the court that the qualifications to the basic rule in *Glencore Grain Rotterdam BV v Lebanese Organisation for International Commerce* (supra) should apply, or any other qualification should be applied. Readymix is therefore entitled to rely on the breaches now alleged to the extent that they are proved and are capable of supporting the termination notwithstanding their absence in the Notice of Termination.

24. The court will now consider the following two issues:

- ii. did Woodford remove excavated pitrun from the quarry without first presenting for verification; and
- iii. did Woodford thief pitrun from the quarry;

25. At Readymix's Bermudez Quarry, there exist a procedure governing the excavation and removal of pitrun which include checks and balances to safe guard against theft. Evidence relating to this process was given by Readymix's witnesses including Mr. Ravi Singh (Quarry Manager), Mr. Lorne Quintero (former Woodford Checker), Mr. Allan Liverpool (former Readymix Checker), Mr. Patrick Garcia (Woodford Director and Operations Manager) and Mr. Darryl Boynes (former Readymix Production Engineer). The undisputed evidence of this procedure is as follows:

- i. Measurement- before Woodford trucks were allowed to leave the quarry with pitrun, the trucks were measured at Readymix's head office. The load capacity for each truck was determined. A list of trucks were identified by their registration numbers and haulage capacity. That information was transmitted to Readymix's Checker. The information was then used to determine and record how much pitrun was leaving the quarry.
- ii. Prepayment- Readymix was required to prepay for pitrun before it was mined and excavated. An invoice, for the amount of the prepayment, would be sent to Readymix's personnel at the quarry. Woodford's trucks were then allowed to enter and remove pitrun and the amounts removed were drawn down from the prepaid totals.
- iii. Verification- after the truck was loaded with excavated pitrun, the truck driver stops at the entry and exit point where the Readymix and Woodford Checkers would be stationed. The Readymix Checker would then verify its contents by a physical inspection to ensure that the truck was not overloaded and was carrying the correct amount of pitrun. Once satisfied, a

confirmation slip (also referred to as “verification slip”, “a docket” or “inter plant transfer slips”) in duplicate, is issued. One to Woodford’s driver and Readymix’s Checker retained the copy. The Readymix Checker would also fill out the drawdown sheet and summary sheet which provides details of haulage, the truck driver, the quarry pitrun is being taken from and the truck’s registration number (which is also recorded on the confirmation slip). The amount of pitrun removed by Woodford’s truck is then subtracted from the original record of the quantity prepaid for by Woodford. This is done until the prepayment is exhausted. Woodford then makes another prepayment and the process is followed.

26.To determine whether “Theft of [Readymix’s] pit-run supply”, is a valid ground for termination under the contract, Readymix highlighted the following authorities:

27.In *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 Lord Clarke² provided guidance as to the construction of a contract:

“...in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances...”

28.Nonetheless, in construing the language of a contract the court ought to favour a commercially sensible construction in order to give effect to the intention of the parties. It can safely be assumed that the commercial

² At paragraph 21

person is unimpressed with technical interpretations and does not excessively emphasize on the fine details of language: *Rainy Sky* [supra]³.

29. Lord Diplock⁴ in *Sydall v Castings Ltd.* [1967] 1 QB 302 cautioned on “terms of art”:

“...non-lawyers are unfamiliar with the meanings which lawyers attach to particular "terms of art," and that where a word or phrase which is a "term of art" is used by an author who is not a lawyer, particularly in a document which he does not anticipate may have to be construed by a lawyer, he may have meant by it something different from its meaning when used by a lawyer as a term of art.”

30. Interpreting the contract as a reasonable commercial person, it was submitted that the meaning the term “theft” should not be construed in its technical legal sense. The language of the agreement makes it plain to infer that the document was prepared for use by non-lawyers. The court is satisfied that the parties could not have intended that the word “theft” should have a definition subscribed by the criminal law, including for instance, the Larceny Act Chapter 11:12.

31. Therefore, the contract should be construed using all the information available to the parties and what a reasonable person in his position would have expected at the time the contract was entered into including: (1) the contract was for the sale of pitrun; (2) the parties agreed to the quantity of pitrun to be covered by the contract; (3) the parties agreed on a price for the pitrun; (4) the parties agreed on a process for measuring the pitrun mined and removed; (5) Woodford was required to prepay for the pitrun to be excavated with drawdown on prepayments to be effected when pitrun was actually mined and taken away; (6) Woodford could not remove any pitrun in the absence of a Readymix Checker; and (7) any pitrun leaving the quarry must first be physically

³ At paragraph 25 adopted from the guidance of Lord Steyn in *Society of Lloyd's v Robinson* [1999] 1 WLR 756

⁴ At page 314 at B and C

inspected by Readymix's Checker to enable him to accurately document and record the amount of pitrun leaving the quarry, which was subsequently deducted against Woodford's prepayment.

32.As a result, the court is satisfied that it was the common understanding between the parties, that if the verification procedure was not complied with and the trucks bypassed the Readymix Checker, the load of pitrun being removed by that driver would not be recorded and subsequently deducted from the prepaid amount. Therefore, Readymix would not have received payment for the truckload of unverified, unchecked pitrun. Clearly and without equivocation, that would amount to theft within the meaning of the contract. It was expressly stated that theft would be a ground for termination of the contract.

33.Whether or not Woodford complied with the verification process for the removal of pitrun, is a matter of fact, to be determined by the evidence and any reasonable inference the court can make from the evidence.

34.In circumstances where allegations of theft and fraud are made, the evidential burden shifts to the party responsible for the allegations, in this case Readymix. The standard of proof is on the balance of probabilities and the more outrageous the allegation, the more evidence is required to uphold them: Civil Appeal No. 276 of 2012 *Dr. Rohit Dass v Rosemarie Marchand* at paragraphs 49-50.

35.Ms. Reshma Gooljar-Singh is the sole witness for Readymix. She is the Marketing Manager. At the time of the alleged breaches by Woodford, between the 16th March, 2015 and 1st of May, 2015 she served as Acting General Manager. She alleges that she saw Woodford trucks bypassing the checkpoint without stopping to be verified. She states that during her acting tenure, she visited the quarry to observe operations on the 20th and 26th March, 2015 and 10th April, 2015.

36. When questioned in cross-examination, Ms. Gooljar-Singh was clear. She only knew of Woodford mining at Bermudez. Woodford was the only contractor that she was aware of who retrieved material from the quarry. She was also clear that there is one entrance to Bermudez.
37. Her first visit to the Bermudez Quarry as Acting General Manager, occurred on the 20th March, 2015. She noted a high rate of sales of pitrun. Previous to her visit, the average daily rate of pitrun sales removed by Woodford from the quarry was 263.12 cubic metres per day. On the day of her visit the sales of pitrun for that day was 472.75 cubic metres. This represented an 80% higher rate of sales than was normal for any given day.
38. The court accepts and is satisfied with the accuracy of Ms. Gooljar-Singh's evidence on the rate of sale for pitrun for a number of reasons. Firstly, as Acting General Manager she would have been privy to those figures. Secondly, and most importantly, those figures would be the same figures that Woodford had and had privy too. The prepayment and verification process allowed for both Woodford and Readymix to have the same documentation and the same rates of daily pitrun sales.
39. Based on what had been the recorded rate of daily sale of pitrun, Ms. Gooljar-Singh was surprised by the traffic she encountered on her first visit to the quarry. The sales figures suggested that the quarry was not a busy quarry. On her visit, the number of trucks she saw hauling pitrun belied, in her mind, the hitherto record for pitrun sales.
40. When cross-examined, Ms. Gooljar-Singh said she saw no breaches on Woodford's part, during her visit to the quarry on the 20th March, 2015. In fact she did not observe any breaches of Readymix's rules and procedures either. She did not see any theft. She did not see any material being removed without a checker. Ms Gooljar-Singh also could not recall

how she got to the quarry or if she spoke to anyone but recalled, vividly that her presence was conspicuous.

41. The fact that she did not see any breaches on Woodford's or Readymix's rules and procedures is what, accounted for the massive increase in the drawdown figures for that day. The figures suggest, and the court finds, that the pitrun removed while Ms. Gooljar-Singh was present, was properly verified and drawn down from the pre-paid pitrun.

42. The great disparity is what led Ms. Gooljar-Singh to visit the quarry soon after. According to her, she visited the quarry again on the 26th March, 2015. She noticed approximately 11 of the claimant's trucks leaving the quarry without verification documents despite the presence of a Readymix's Checker and security. Ms. Gooljar-Singh was cross-examined about her visit on the 26th March, 2015. She said that she and the security observed 11 trucks belonging to Woodford leaving without checking with the security. The trucks were all filled with pitrun. The security officer stopped all 11 trucks, they returned to the Checker and they complied with the verification procedure.

43. Ms. Gooljar-Singh agreed that there was no audit report which proved that Woodford was taking pitrun without paying for it. The court is satisfied that any audit report prepared after verification, could only reflect what pitrun amounts were verified by the documents which were turned in. It could not audit records of what was not turned in. The documents provide the check and balance between what was paid for and what was removed. Therefore if Woodford was able to leave the quarry, without being seen and turned back, no audit could pick up what is not known.

44. Similar to what had occurred on her first visit, the sale of pitrun was up by 65% for the second day. The court accepts and is satisfied by the

evidence of Ms. Gooljar-Singh about her observations and the increase in sale of pitrun on her second visit. These figures are figures that Woodford would have in their records. After her second visit, Ms. Gooljar-Singh emailed Mr. Quinton about her observations and her concerns. Had the events Ms. Gooljar-Singh said she said she observed on the 26th of March, 2015 not occurred, this email would be totally bizarre and nonsensical. Instead, the court finds and is satisfied, that it corroborated Ms. Gooljar-Singh's evidence of what she witnessed.

45. Ms. Gooljar-Singh went to the quarry a third time. Her evidence is that upon her third visit to the quarry with Mr. Boynes on the 10th April, 2015 she noticed the same events unfolding whereby Woodford's trucks were exiting without the requisite documents. On this day it was a truck with the registration number TBW 1925. In her presence Mr. Boynes stopped the driver of the truck and demanded that he return to Readymix's Checker for the appropriate documentation. Ms. Gooljar-Singh also spoke to the driver and demanded that he return to Readymix's Checker. The driver returned to Readymix Checker and the verification process was completed. She subsequently emailed Readymix Finance Officer, Ms. Diane Warwick on the 29th April 2015 to alert her to the events.

46. Ms. Gooljar-Singh was uncertain who stopped the truck, however she was certain that the truck passed Readymix Checker and Woodford Checker and subsequently returned, on instructions, to comply with the verification process.

47. Woodford called a number of witnesses. The witnesses' evidence is that Woodford complied with their contractual requirements. Ravi Singh, was the Quarry Manager in the employ of Readymix up to December, 2013. It is clear that he cannot assist the court about the execution of the contractual obligations by either party. He however assumed that it was virtually impossible for a truck to leave the quarry without the verification that the load was pre-paid because the Checker at the gate

will not allow the truck to enter or leave the quarry without performing the necessary verification exercise. Mr. Singh's assumption does not hold up because there is evidence from both Ms. Gooljar-Singh and witnesses for the Claimant, that on the 10th of April, 2015, a truck left without complying with the verification process.

48. Woodford's next witness was Lorne Quintero. He worked as a dispatcher and Checker for Woodford. His evidence is that no breaches occurred on the 20th and 26th of March, 2015. With respect to the 10th of April, 2015, his evidence is that two trucks were leaving the quarry at the same time. He received both slips from Mr. Liverpool – Readymix's Checker. He handed both to one driver. He knew both drivers as father and son. He handed both slips to the father. He was certain that Readymix's procedures and processes were always complied with.

49. Mr. Quintero, when cross-examined, said that the father and son always operated that way, that the father always collected the slips for both himself and his son. However, if what Mr. Quintero asserts is correct, then the procedures that were put in place to ensure that there is verification of the pitrun being excavated and removed, were not being followed. Each truck driver had to comply with the verification process.

50. Allan Liverpool, was the next witness for Woodford. He was employed as a Checker for Readymix at the material time. He was retrenched in 2016. He too gave evidence about the accepted procedure for the measurement, prepayment and verification process. He detailed that when a truck loaded with pitrun approaches the container at the gate, he would physically leave the container, inspect the truck by climbing up to ensure that the truck was not overloaded. He would compare the vehicle number on the confirmation slip. This confirmation slip enabled him to record the amount of pitrun being removed and thus drawdown from the pre-paid pitrun.

51. He spoke of being present on the 10th of April, 2015 when two trucks were leaving the quarry at the same time. His explanation as to what occurred on the 10th does not conform to the explanation about the established and acceptable verification procedure. His evidence is that the truck would stop and the driver would come out of the truck and approach the container. Then the inspection would occur – by firstly an inspection of the vehicle number and a visual inspection of the size of the load. If, as he says, his verification process was premised on the fact that he knew the driver, then it must be deficient because he does not have the ability to verify that the truck is registered. His evidence is that he was familiar with the driver, not with the truck. How could he tell if the truck was registered? Ms. Gooljar-Singh's evidence is that the truck, in front, left the compound and was turned back. Without her intervention that truck would have left without proper verification.

52. The evidence of the witnesses Mr. Quintero and Mr. Liverpool, Checkers for Woodford and Readymix respectfully, leaves the court with one clear inference. There was agreement and co-operation between them which resulted in unaccounted loads of pitrun leaving the quarry.

53. Mr. Patrick Garcia, the Operations Manager for Woodford construction, was not in a position to assist the court with the critical area of dispute – whether there was theft of pitrun by Woodford. His duties did not put him on site at the quarry. Similarly, the next witness Mr. Ricardo Chuneesingh, Director, could not assist the court with fact findings as it relates to what is in dispute; the theft of pitrun from the quarry.

54. Woodford called Mr. Daryl Boynes, former Production Engineer for Readymix. By virtue of the court's decision, he gave viva voce evidence on the morning of the trial. His evidence is that he knew of the procedure for pre-purchasing and drawdown for the removal of pitrun. The witness's evidence is that he was responsible for ensuring that the two washing and crane plants were ready for each day's operations. He is

part of the verification process and he said he accompanies the trucks to the excavation site. After the trucks are loaded up they return to the gate where the two Checkers performed the inspection and verification. As far as he was concerned, the procedure was always followed. It cannot be, and the court does not believe, that this witness waits by the gate and accompanies each truck to the excavation site and then returns to the gate to be part of the verification process for each and every truck.

55. Mr. Boynes was cross-examined about his evidence, and the contents of a letter issued under his hand, to Mr. Liverpool. Mr. Liverpool performed the duties as Checker for Readymix on the 10th April, 2015. In the letter it states that the truck “TBW 9125 leaving with material (pitrun) without the corresponding RML Interplant Transfer Docket (RML IPTD) to evidence the material dispatched.” Further the letter states the guidelines had been communicated to Mr. Liverpool on several occasions prior to April 10, 2015 and he continued to disregard the Company’s procedures and policies which were directly linked to his job function.

56. This letter, under the hand of Mr. Boynes, was contemporaneous with the events of the 10th April, 2015. The court has to choose a version of events. The court is satisfied the contemporaneous record represents the truth about what occurred on that day. Further the letter also provides insight into Mr. Liverpool’s conduct as a person who “continued [to] disregard for the Company’s procedures and policies”.

57. Woodford challenged the evidence of Ms. Gooljar-Singh on the grounds that the emails were fabrications and that her evidence was inconsistent:

- i. With respect to the email of the 26th March 2015 they contended that the email appeared to be copied on its face to the sender⁵ and the email refers to approximately 10 trucks as opposed to 11 as

⁵ Transcript of the 23rd May 2018, page 253 at line 4 to line 14

referred to in Ms. Gooljar-Singh's witness statement⁶. Inconsistent evidence was given during cross-examination as she alluded that on the 26th March 2015 she could not recall the presence of a Readymix Checker at the quarry but contrarily, when checked against the contemporaneous email evidence to Nigel Quinton later that day, she clearly states that she spoke to the Readymix Checker. Additionally, in Ms. Gooljar-Singh's second email of the 26th March 2015, it is obvious that she reviewed and was familiar with the contract between the parties as she made specific reference to its terms and conditions along with the grounds for termination. Yet, under cross-examination Ms. Gooljar-Singh persisted that she could not recall whether she did in fact review a copy of the contract, how she came into possession of it, or when she viewed it and with whom she consulted.

- ii. In relation to the email dated 29th April 2015, Woodford argued that in the witness statement of Ms. Gooljar-Singh she refers to the email being sent at 3:05 on the afternoon of the 10th April 2015⁷; the front of the email was different from that sent on the 26th March 2015⁸; the email not copied to herself unlike that of the 26th March 2015⁹; and notwithstanding that this was the third time Ms. Gooljar-Singh had witnessed matters of concern regarding Readymix, she waited 19 days to send the email¹⁰. Contradictory evidence was noted relating the events which occurred on the 10th April 2015 which was in conflict with her account given under cross-examination. Under cross-examination Ms. Gooljar-Singh related that she did not see a Readymix Checker, nor did she exit Mr. Boynes vehicle. When the actual email was put to her, she was forced to admit that she only

⁶ Transcript of the 23rd May 2018, page 255 at line 25 to pages 256 line 25

⁷ Transcript of the 23rd May 2018, page 274 line 26 to page 278 line 7

⁸ Transcript of the 23rd May 2018, page 278 line 16 to line 27

⁹ Transcript of the 23rd May 2018, page 279 line 8 to line 16

¹⁰ Transcript of the 23rd May 2018, page 285 line 14 to page 286 line 4

observed a truck leaving without a dispatch docket and not without being checked by a Readymix Checker. She attributed her inconsistency with regards to her stopping the truck as a “mistake”. She was further forced to admit that her statement regarding the increased sales during her visits in the email is unsupported by any relevant audit report.

58.The first defendant in response to Woodford’s allegations regarding the emails as contrived, firstly reiterated the fact that Gooljar-Singh’s account of events occurring on the 10th April 2015 in the email of the 29th April 2015 was confirmed by Mr. Boynes. This was so despite the shortcomings alleged by Woodford as the email was merely recounts in summary form and does not add to them in any significant respect. Secondly, Readymix contended fact that an email is copied to the sender cannot possibly be evidence of fraud or fabrication. Thirdly, it was Woodford’s evidence through Quintero that one truck can make several journeys to the Bermudez Quarry each day¹¹. Therefore, when Ms. Gooljar-Singh states in her email that the Readymix Checker told her “*only few trucks came daily and I observed approximately 10*” she was plainly referring to the number of individual trucks seen by her and not the number of trucks which left the quarry without any verification documents¹². Fourthly, Readymix stated that if they were really perpetrating a fraud through the emails as alleged, then it would be expected that she would have taken care to ensure that the number of trucks in her email and paragraph 10 of her witness statement was consistent.

59.The court prefers and accepts the explanations proffered by Readymix to explain the evidence of Ms. Gooljar-Singh. Woodford relied on the

¹¹ Transcript for the 22nd May 2015, page 77 line 9 to line 17

¹² Trial Bundle 2 Volume 2, page 1381 at paragraph 10 of her witness statement

case of *The Attorney General v Anino Garcia* CA Civ. 86/2011 where Bereaux JA spoke to credibility of witnesses and the considerations judges ought to take into account when having the advantage of evaluating the graphic demonstrations and demeanours of such witnesses at trial. He adopted the guidance of the Privy Council in *Horace Reid v Dowling Charles and Percival Bain* Privy Council Appeal No. 36 of 1987 at page 6:

“where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

60. However, the court did not rely solely on the witness’s demeanour. Much of the witness’s testimony is about information within Woodford’s knowledge. Other parts of the witness’s evidence was supported by evidence from the witnesses called on behalf of Woodford. Still other parts of her evidence was supported by the contemporaneous emails sent by her. The court was satisfied that Ms. Gooljar-Singh was a credible witness.

61. The claimant also argued that in its assessment of the witness in determining the truth of Ms. Gooljar-Singh’s evidence, the court should be guided by Lord Goff at page 57 in the case of *Armagas Ltd v Mundogas S.A. (the “Ocean Frost”)* [1985] Vol. 1 Lloyd’s Rep.1. It provides that the witness’s account must be examined in light of the evidentiary documents, motives and the overall balance of probabilities:

“Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses’ motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.”

62. In its dispute as to the witness’s credibility, Woodford raised issue with the lack of documentary evidence submitted by Readymix in proof of its allegations of theft. This is especially so in light of the evidence provided by Ms. Gooljar-Singh under cross-examination. Ms. Gooljar-Singh did not tender into evidence the rules and regulations which govern contractors to which Woodford is allegedly in breach. This is the crux of the defence yet, she concedes to never having seen such a document. The court is then led to contemplate whether such a document even exists. Documents which she claims existed but which were not disclosed in evidence includes:

- i. The investigative reports from Readymix’s departmental heads after her first visit to the quarry;
- ii. The report from Readymix’s Human Resources Department;
- iii. The report from Readymix’s Security Department;
- iv. The report from Readymix’s Finance Department;
- v. The report from Readymix’s Accounting/Audit Team;
- vi. The report from Readymix’s Materials Department concerning their findings and preventative steps taken;
- vii. Written statements of persons who witnessed suspicious activity at the quarry;
- viii. Readymix’s rules, policies and procedures which regulate their relationship with contractors;

- ix. The record/notes of her visit to the quarry on the 20th and 26th March 2015 and 10th April 2015; and
- x. The comparative pricing schedule comparing Readymix's prices to that of its competitors for pit-run derived products.

63. It may be that the documents Ms. Gooljar-Singh spoke about would have assisted the court. However, in the absence of those documents the court is still required to assess the evidence before it. Much of the evidence is not in dispute. There is agreement that there was a verification procedure. They also agreed what the verification process entailed. As explained, the court is satisfied that Woodford did not follow the contractual obligation for verification. There is sufficient evidence for the court to find that the only reasonable inference is that Woodford was removing pitrun without accounting for it, as the contract described, there was theft of pitrun.

64. It did not escape the court's attention that a number of the witnesses called by Woodford, were at one time, in the employ of Readymix. The court is aware that there is no property in a witness, however, the number of such witnesses seemed peculiar and did cause the court to question the motivations of some of those witnesses. On the other hand, Ms. Gooljar-Singh was acting as General Manager for a short time. It can therefore be inferred that she would not have had any motive to make up these allegations.

65. The next issue for the court is:

- iv. if yes to (ii) or (iii), was Readymix entitled to terminate the contract on those grounds; and
- v. if Readymix was not entitled to terminate the contract, what damages, if any, should accrue to Woodford.

66. The contract terms requiring "Absolutely no material is to be sent from the mining site(s) without the presence of an RML checker" and that the

contract can be terminated for “theft”, are naturally related. Leaving the quarry without a Checker verifying the load can be a good indication that there is theft.

67. Based on the evidence, the court is satisfied that Readymix did discharge the burden, to the requisite standard, of on a balance of probabilities, proving that Woodford did remove pitrun from the site without presenting for verification and also proving theft of pitrun. Consequently, the court finds that Woodford’s contract with Readymix was not prematurely and wrongfully terminated. The court is satisfied on a balance of probabilities that Readymix had good cause to terminate the contract.

68. Based on the court’s findings, there is therefore, no need for the court to consider the issue of damages.

69. IT IS HEREBY ORDERED that there be judgment for the First Defendant against the Claimant.

70. In default of agreement, the assessment of Costs is adjourned to the 18th January, 2019 at 1 p.m. courtroom POS 04.

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Avason Quinlan-Williams

Judge

Romela Ramberran (JRC)