IN THE CARIBBEAN COURT OF JUSTICE

Original Jurisdiction

CCJ Application No TTOJ2018/001

Between

Trinidad Cement Limited	**Claimant**
And	
The State of Trinidad and Tobago	**Defendant**
And	
Rock Hard Distribution Limited	**First Intervener**
And	
Mootilal Ramhit and Sons Contracting Limited	**Second Intervener**

And

CCJ Application No TTOJ2018/002

Between

Trinidad Cement Limited &	**Claimants**
Arawak Cement Company Limited	
And	
The State of Barbados	**Defendant**
And	
Rock Hard Cement Limited	**Intervener**

And

CCJ Application No SLUOJ2018/001

Between

Rock Hard Distribution Limited	**Claimant**
And	
The State of Trinidad and Tobago	**First Defendant**
And	
The Caribbean Community	**Second Defendant**

And

CCJ Application No BBOJ2018/001

Between

Rock Hard Cement Limited **Claimant**

And

The State of Barbados **First Defendant**

And

The Caribbean Community **Second Defendant**

(Consolidated by order of this Court dated the 12th day of February 2019)

THE COURT,

composed of A Saunders, President and J Wit, W Anderson, M Rajnauth-Lee and D Barrow, Judges

Having regard to the Orders made by the Court on the 6th day of August 2019

And after considering the written and oral submissions made on behalf of:

- **Trinidad Cement Ltd** and **Arawak Cement Company Ltd**, by Mr Reginald Armour, SC, Mr Gilbert Peterson SC, Mr Gregory Pantin, Mr Miguel Vasquez and Mr Raphael Ajodhia, Attorneys-at-Law
- **Rock Hard Cement Ltd** and **Rock Hard Distribution Ltd**, by Mr Allan Wood QC and Ms Symone Mayhew, Attorneys-at-Law
- **The State of Barbados**, by Ms Donna Brathwaite QC and Ms Gayl Scott, Attorneys-at-Law
- **Mootilal Ramhit and Sons Contracting Limited**, by Mr Dinesh Rambally, Mr Kiel Taklalsingh and Mr Stefan Ramkissoon, Attorneys-at-Law
- **The Caribbean Community**, by Dr Corlita Babb-Schaefer and Mr O'Neil Francis, Attorneys-at-Law
- **The State of Trinidad and Tobago**, by Ms. Deborah Peake, SC, Ms. Tamara Toolsie, Mr. Brent James and Ms. Radha Sookdeo, Attorneys-at-Law

Delivers on the 28th day of November 2019, the following:

SUPPLEMENTARY JUDGMENT AS TO COSTS

[1] The Court must now decide the entitlement of the Parties to costs, arising from its Judgment dated 6th August 2019 awarding "costs to the successful parties in this

matter."[1] As directed, the Parties made submissions as to the quantum or percentages of costs to which they were entitled or liable, and were subsequently heard.

[2] It will be helpful to repeat the introduction in the Judgment:

> These proceedings mark the culmination of multifaceted litigation that began with the filing of an Application for Special Leave on 24 April 2018. That Application concerned the classification and tariff payable in respect of certain cement ('Rock Hard Cement') imported from outside the Caribbean Community (sometimes referred to in this judgment as 'CARICOM'). The Application spawned numerous other applications and claims which led to the delivery of five separate judgments and the prescription of myriad orders by this Court. The issue that remains for determination is the very narrow one with which this odyssey began, namely: whether Rock Hard Cement imported from Turkey and Portugal is to be classified as 'Building cement (grey)', thereby attracting a tariff of 15%, or as 'Other hydraulic cement', on which a tariff of 0-5% is payable.[2]

[3] The overarching determination of the Court was that the Council for Trade and Economic Development ('COTED') had validly classified Rock Hard cement as 'Other hydraulic cement'. The Court therefore disposed of the four cases as follows:

> -- The Originating Application No. TTOJ2018/001 Trinidad Cement Limited v The State of Trinidad and Tobago; Rock Hard Distribution Limited and Mootilal Ramhit and Sons Contracting Limited, Intervening ('OA No. 1') is dismissed;
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> -- The Originating Application No. TTOJ2018/002 Trinidad Cement Limited and Arawak Cement Company Limited v The State of Barbados, Rock Hard Cement Limited, Intervening ('OA No. 2') is dismissed;
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> -- The Originating Application No. BBOJ2018/001 Rock Hard Cement Limited v The State of Barbados and The Caribbean Community ('OA No. 3') is granted to the extent indicated in this Judgment; and
>
> -- The Originating Application No. SLU2018/001 Rock Hard Distribution Limited v The State of Trinidad and Tobago and The Caribbean Community ('OA No. 4') is granted to the extent indicated in this Judgment;

[4] Rule 31.1(2) of the Original Jurisdiction Rules 2019 recognises the general rule that costs follow the event and empowers the Court to order the unsuccessful party to pay costs for the successful party and where there are several unsuccessful parties,

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[1] *Trinidad Cement Limited v The State of Trinidad and Tobago and Rock Hard Distribution Limited and Mootilal Ramhit and Sons Contracting Limited Intervening; Trinidad Cement Limited & Arawak Cement Company Limited v The State of Barbados and Rock Hard Cement Limited Intervening; Rock Hard Distribution Limited v The State of Trinidad and Tobago and the Caribbean Community and Rock Hard Cement Limited v The State of Barbados and The Caribbean Community* [2019] CCJ 4 (OJ), [96].

[2] Ibid, [1].

to decide how the costs are to be shared among them[3]. In arriving at its present decision on costs, the Court has fully considered the course the proceedings took, including when and how the four cases commenced, who were Parties in which cases, the various issues that arose, how they evolved, the interim decisions and ultimately, the consolidation. The Court has decided that the fair approach for determining the entitlements and liabilities of the Parties is to do so on the basis that these were consolidated proceedings, while paying due regard to the course of the proceedings.

[5] On that approach, Rock Hard Distribution Ltd ('RHDL') and Rock Hard Cement Ltd ('RHCL') are the overall successful Parties. Each of these two entities, who are related parties, appeared in two of the four proceedings[4] and were represented in all proceedings by the same Attorneys-at-law, Mr. Allan Wood QC and Ms Symone Mayhew. The Rock Hard parties were not successful on all issues and the Court must take account of this.

[6] Trinidad Cement Ltd ('TCL') and Arawak Cement Company Ltd ('ACCL') are related parties. TCL appeared in only two of the original four cases[5] but was the leading protagonist, as was demonstrated after the consolidation. ACCL appeared in only the case against Barbados, as Claimants along with TCL.[6] The two companies were separately represented, each by Senior Counsel and a number of Junior Counsel but agreed that an order for costs made against them jointly would be reasonable. While the two companies were losing Parties, they did not lose on all issues.

[7] The State of Trinidad and Tobago was the Defendant in the first-commenced case, brought by TCL and was also Defendant in the claim brought by RHDL. The State was in essence a losing party but did not lose on all issues.

[8] The State of Barbados was the Defendant in the two claims brought respectively by TCL and ACCL[7], and by RHCL.[8] It won on the central issue of classification, but

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[3] Rule 31.1(2) of the Original Jurisdiction Rules, 2019 provides that:
(a) The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.
(b) Where there are several unsuccessful parties, the Court shall decide how the costs are to be shared among them.

[4] RHDL as the Intervener in TTOJ2018001 and the Claimant in SLU2018/001 and RHCL as the Intervener in TTOJ2018/002 and the Claimant in BBOJ2018/001.

[5] TTOJ2018/001 and TTOJ2018/002.

[6] TTOJ2018/002.

[7] TTOJ2018/002.

[8] BBOJ2018/001.

the unjustified stance the State took on the derogation issue unnecessarily increased costs.

[9] Mootilal Ramhit and Sons Contracting Ltd were Interveners in the first-commenced claim by TCL and had a common interest with RHDL as to classification. Their principal arguments at the beginning of the proceedings were that a domestic court and not this Court, or the Council for Trade and Economic development (COTED), should exercise jurisdiction to determine the rate of duty to be imposed on Rock Hard's cement. After the consolidation, Ramhit were content to file a notice stating they adopted the submissions filed by Rock Hard.[9] Although Ramhit had Senior Counsel and the largest number of junior attorneys in attendance, it was a limited contribution they were required to make on the substantive issues. The reality is that it was RHDL and not Ramhit who principally fought the case against TCL and bore the burden of making the major arguments in this regard. For these reasons Ramhit should be entitled, on the taxation of costs, to forty percent (40%) of costs for a senior and one junior counsel.

[10] That determination of issues and proportion of recovery leads to an overall consideration of the substantive issues in the proceedings and success on them. The four substantive issues were broadly: classification, derogation, jurisdiction and interim measures.

[11] Classification was the major issue and the two Rock Hard entities were successful on it, as they were also on the jurisdiction of the Court to decide the dispute as to classification. They were also successful on the issue of whether permission was needed from CARICOM for the State to abandon a derogation that has been granted to it. However, they lost on the competence of COTED to make a non-judicial determination on classification. Their loss on the issue whether the Court should have granted interim measures and should have discharged them does not count against them because, in the end, TCL was not entitled to the alleged right that the interim measures were granted to protect.

[12] Having considered the matter of costs in the round, the Court orders that the two Rock Hard entities shall recover eighty percent of their costs, fit for senior and one junior Counsel. For certainty, the Court clarifies that the Rock Hard entities are

[9] TTOJ2018/001 dated 18 April 2019 p 8023.

entitled to one award of costs in the consolidated proceedings and not individual or separate awards in each of the four cases. The taxing officer will ensure there is no double recovery. Sixty percent of those costs shall be borne by TCL and ACCL, twenty percent shall be borne by the State of Trinidad and Tobago, and twenty percent shall be borne by the State of Barbados.

[13] As stated above, the State of Barbados successfully defended the claims brought by TCL and ACCL but unnecessarily protracted the litigation by failing:

(i) to accept that the derogation they obtained from CARICOM included 'other hydraulic cement' and;

(ii) to revoke the statutory instruments[10] that gave effect to that derogation following their decision in 2015 to reimpose the CET of 5% on 'other hydraulic cement'.

In those circumstances, the Court therefore orders that the State of Barbados shall recover from TCL and ACCL forty percent (40%) of its costs of defending the claims, fit for a senior and a junior Counsel.

[14] Costs for Ramhit have already been awarded at the rate of forty percent (40%) and these costs are to be borne by TCL.

[15] A final observation concerns the submission made by TCL at the post-judgment hearing on costs. TCL argued that the litigation initiated by them had led to the pronouncement of judgments on a number of matters of great importance to CARICOM, resulting in the development of the jurisprudence, the clarification of doubts and uncertainties and guidance for future dealings. They, therefore, argued that it was unfair that they should bear the costs burden for the attainment of that result. The argument has substance. However, the Rock Hard entities were forced to resist TCL's claims as a matter of necessity and not choice. They cannot, therefore, be required to bear the costs of participating in litigating issues that they did not initiate. It is because of this fundamental principle that the Court cannot revisit the costs order it pronounced in its judgment, even if that course were otherwise available.

[10] Customs Tariff (Amendment) (No. 5) Order, Gazetted 31 December 2004 and Customs Tariff (Amendment) (No. 9) Order, Gazetted 31 December 2009.

Orders

[16] In summary, the Court makes the following Orders for costs:

(1) Rock Hard Cement Limited and Rock Hard Distribution Limited shall jointly recover 80% of their costs incurred in the proceedings to be paid:

i. 60% by Trinidad Cement Limited and Arawak Cement Company Limited.

ii. 20% by The State of Trinidad and Tobago;

iii. 20% by the State of Barbados.

(2) Trinidad Cement Limited to pay 40% of the costs incurred by the Second Intervener Mootilal Ramhit and Sons Contracting Limited in the proceedings.

(3) Trinidad Cement Limited and Arawak Cement Company Limited to pay 40% of the costs incurred by the State of Barbados in the proceedings and

(4) The Caribbean Community shall bear its own costs.[11]

/s/ A Saunders

The Hon Mr Justice A Saunders (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ W Anderson

The Hon Justice W Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow

[11] Appropriately, they did not ask for costs and no Party sought costs from them.