

Rock Hard Distribution Limited v The State of Trinidad and Tobago and The Caribbean Community

Citation: [\[2018\] CCJ 3 \(OJ\)](#)
Date of Judgment: 12 November 2018
Nature of Judgment: Judgment on special leave
Composition of the Court: President: A Saunders
Judges: J Wit, W Anderson, M Rajnauth-Lee and D Barrow

CCJ Application No	Parties
SLUOJ2018/001	Applicant Rock Hard Distribution Limited Respondents The State of Trinidad and Tobago The Caribbean Community

Counsel

- Applicant:
Mr Allan Wood and Ms Symone M Mayhew, Attorneys-at-law
- Respondent:
Ms Deborah Peake SC, Ms Tamara Toolsie and Ms Radha Sookdeo, Attorneys-at-Law

Nature of Dispute

The dispute concerned an alleged misclassification of Rock Hard cement by the State of Trinidad and Tobago (Respondent 1) and the alleged referral by the State of Trinidad and Tobago to the Council for Trade and Economic Development (COTED) for the classification of Rock Hard cement. In these proceedings, the Applicant sought special leave to commence proceedings against the Respondents under Article 222 of the Revised Treaty of Chaguaramas (RTC).

Summary of Legal Conclusions and Orders

- The Court granted special leave to the Applicant under Article 222 of the RTC.

Legal Provisions at Issue

- Articles 79 and 222 of the RTC

Other Relevant Community Law / Material Relied on

- Part 1.3 of the CCJ Original Jurisdiction Rules 2017
- Rule 14.6 of the CCJ Original Jurisdiction Rules 2017

Past CCJ Case Law

- *Shanique Myrie v The State of Barbados* [2012] CCJ 3 (OJ)

Other Sources of International Law

- N/A

Facts

The Applicant, Rock Hard Distribution Limited (RHDL), sought special leave to commence proceedings against The State of Trinidad and Tobago and the Caribbean Community, concerning an alleged misclassification of RHDL's product as grey cement instead of “other hydraulic cement”, in circumstances where the alleged misclassification operated to subject RHDL to less favourable tariffs. As background, the Applicant was an Intervener in at least two other related disputes concerning the proper classification of Rock Hard cement (that is, in Applications TTOJ2018/001 and TTOJ2018/002).

Findings

The Applicant sought special leave under Article 222 of the RTC to commence proceedings against the Respondents. The Respondents objected to this application on the basis that the Applicant failed to establish an arguable case that the Revised Treaty intended that a right or benefit conferred thereunder shall enure to it and that it sustained prejudice in respect of the State of Trinidad and Tobago's alleged misclassification of Rock Hard cement. Further, the Respondents argued this matter would add to a multiplicity of claims regarding the classification of Rock Hard cement and that allowing this application would amount to an abuse of process.

The Court recalled that to satisfy the requirements under Article 222 of the RTC, an arguable case must be made out. Turning first to the requirement under the chapeau that the applicant must be a person natural and/or juridical of a Contracting Party, the Court found that the applicant satisfied this requirement because it is a company duly incorporated under the laws of St Lucia. It is also a regional distributor of Rock Hard cement which is a non-community good imported from Turkey into several Community States including Trinidad and Tobago through its local distributor, Mootilal Ramhit and Sons Contracting Limited.

Second, under Article 222(b), the Court found that the Applicant had a right and/or benefit and that it had been prejudiced. The Court found that as a regional distributor, it had a sufficient interest in the rate at which its cement is imported into the other Member States as any misclassification would affect the tariffs applied to its product.

Third, under Article 222(c) the Court found that the Contracting Party, St Lucia, had declined or omitted to espouse the claim.

Fourth, the Court addressed Article 222(d) regarding the interests of justice. Before this application for special leave was made, issues relating to the classification of Rock Hard cement were considered in other hearings (in TTOJ2018/001 and TTOJ2018/002). The Court found that by its limited legal status as an Intervener in those matters, RHDL was precluded from widening the scope of those proceedings in respect of the classification of its cement and could only accept the cases as it found them. Therefore, RHDL's status as Intervener did not preclude it from filing the application to formalise its interest in the classification of cement. Accordingly, RHDL's filing of this application was neither inconsistent with the interest of justice nor an abuse of process.

For the reasons outlined above, the Court granted special leave for Rock Hard to commence proceedings against the State of Trinidad and Tobago and the Caribbean Community.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.