

## **Trinidad Cement Limited v The State of Trinidad and Tobago, Rock Hard Distribution Limited, Mootilal Ramhit and Sons Contracting Limited; and other Applications**

Citation: [\[2019\] CCJ 5 \(OJ\)](#)  
Date of Judgment: 28 November 2019  
Nature of Judgment: Judgment on costs  
Composition of the Court: President: A Saunders  
Judges: J Wit, W Anderson, M Rajnauth-Lee and D Barrow

<b>CCJ Application No</b>	<b>Parties</b>	
<b>TTOJ2018/001</b>	<b>Claimant</b>	Trinidad Cement Limited
	<b>Defendant</b>	The State of Trinidad and Tobago
	<b>Interveners</b>	Rock Hard Distribution Limited Mootilal Ramhit and Sons Contracting Limited
<b>TTOJ2018/002</b>	<b>Claimant</b>	Trinidad Cement Limited and Arawak Cement Company Limited
	<b>Defendant</b>	The State of Barbados
	<b>Intervener</b>	Rock Hard Cement Limited
<b>SLUOJ2018/001</b>	<b>Claimant</b>	Rock Hard Distribution Limited
	<b>Defendants</b>	The State of Trinidad and Tobago  The Caribbean Community
<b>BBOJ2018/001</b>	<b>Claimant</b>	Rock Hard Cement Limited
	<b>Defendants</b>	The State of Barbados  The Caribbean Community
<b>These Applications were consolidated by order of the Court dated 12 February 2019</b>		

## **Counsel**

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

## **Nature of Dispute**

The dispute involved separate claims by various Claimants as to the correct classification of, and related tariff assigned to, certain cement (Rock Hard Cement) imported into the Caribbean Community (CARICOM). Having resolved the matter of classification previously, the issue in these proceedings concerned the matter of costs.

## **Summary of Legal Conclusions and Orders**

- The Court found that Rock Hard Cement Limited (RHCL) and Rock Hard Distribution Limited (RHDL) had succeeded on the issues of classification, jurisdiction and whether CARICOM’s permission was required for a State to abandon a derogation which it previously granted. The Rock Hard entities therefore received the bulk of the award.
- The Court awarded costs to the remaining parties based on their success in respect of the substantive issues.

## **Legal Provisions at Issue**

- N/A

## **Other Relevant Community Law / Material Relied on**

- Rule 31.1(2) of the CCJ Original Jurisdiction Rules 2019

### **Past CCJ Case Law**

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

### **Other Sources of International Law**

- N/A

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### **Facts**

All of the Claimant companies are incorporated in CARICOM Member States and specialised in the manufacture and distribution of cement in CARICOM. The dispute involved separate claims by various Claimants as to the correct classification of, and related tariff assigned to, certain cement (Rock Hard cement) imported into the Caribbean Community (CARICOM) and whether decisions to suspend or alter the Common External Tariff (CET) adhered to established procedure under Articles 26 and 83(3) of the Revised Treaty of Chaguaramas (RTC) and the revised guidelines for the application of the suspension or alteration of the CET. The Court consolidated the cases and resolved the matter of classification in favour of Rock Hard Distribution Limited (RHDL) and Rock Hard Cement Limited (RHCL). The matter of costs was to be determined.

### **Findings**

The Court sought to apportion costs according to Rule 31.1(2) of the Original Jurisdiction Rules 2019. In doing so, the Court considered the course of the proceedings, including (i) when and how the four cases commenced; (ii) the identity of the parties in each case; (iii) the nature and evolution of the issues presented; (iv) the interim decisions; and (v) the consolidation of cases. Accordingly, the Court based its decision on the consolidated proceedings and considerations of the course of the proceedings.

The Court identified the overall winners and losers and the issues on which all parties succeeded, regardless of whether a party was designated winner or loser overall. The Court categorised the substantive issues as follows: (a) classification; (b) derogation; (c) jurisdiction; and (d) interim measures. It identified classification as the central issue.

First the Court considered the Rock Hard entities. It determined RHDL and RHCL, each of which was involved in two of the four proceedings, were the overall successful parties. Both entities were successful on the issues of (i) classification; (ii) jurisdiction; and (iii) whether CARICOM's permission was required for a State to abandon a derogation which it previously

granted. The companies lost on the issue of whether the Court should have granted and discharged interim measures. The Court discounted this loss, however, because Trinidad Cement Limited (TCL) was not entitled to the alleged right that the interim measures were granted to protect. Accordingly, the Court awarded the two companies eighty percent (80%) of the costs, as a singular award in the consolidated proceedings and not as individual awards in each of the four cases. Of that award, sixty percent (60%) was to be borne by TCL and Arawak Cement Company Limited (ACCL), twenty percent (20%) by the State of Trinidad and Tobago and twenty percent (20%) by the State of Barbados.

Next, the Court considered the situation of Barbados, and noted that Barbados had successfully defended the claims brought by TCL and ACCL but failed on the issue of derogation. This was characterised by Barbados' failure to (i) include 'other hydraulic cement' in the derogation it obtained from CARICOM and (ii) revoke statutory instruments that gave effect to that derogation after its decision to re-impose the CET of 5% on 'other hydraulic cement' in 2015. The Court, having due regard to an agreement by TCL and ACCL for an order for costs to be made jointly against them, ruled that Barbados should recover forty percent (40%) of its costs from TCL and ACCL.

In respect of the Intervener, Mootilal Ramhit and Sons Contracting Limited (Ramhit), its contribution to the substantive issues in the consolidated cases was limited by the company's filing of a notice expressing its adoption of the submissions filed by Rock Hard. Accordingly, RHDL was the principal and bore the burden of arguing its case against TCL. Based on the foregoing, the Court determined that Ramhit was entitled, on the taxation of costs, to forty percent (40%) of costs to be borne by TCL.

The Court considered TCL's submission at the post-judgment hearing on costs. By that submission, TCL argued that although it initiated proceedings, the benefit of the litigation to CARICOM in respect of the development of jurisprudence, the clarification of uncertainties and guidance in future dealings should operate such that TCL should not bear the burden of the costs. The Court did not countenance this argument based on the principle that the Rock Hard entities' participation in the litigation was a necessary result of TCL's initiating proceedings. Accordingly, the Court ruled that it could not revisit the costs order pronounced in its judgment even where that course was available otherwise.

In respect of CARICOM, no party sought costs from it, and it sought no costs from either party. Accordingly, CARICOM bore its own costs.

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