

Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana

Citation: [\[2009\] CCJ 6 \(OJ\)](#)
Date of Judgment: 27 October 2009
Nature of Judgment: Reasons on request for stay/variation
Composition of the Court: Judges: R Nelson, A Saunders, J Wit and D Hayton

CCJ Application No	Parties	
OA 2 of 2009	Claimants	Trinidad Cement Limited TCL Guyana Incorporated
	Defendant	The State of the Co-operative Republic of Guyana

Counsel

- Claimants:
Dr C Denbow SC, Attorneys-at-Law
- Defendant:
Mr Nareshwar Harnanan, Attorneys-at-Law

Nature of Dispute

The State of the Co-operative Republic of Guyana (Guyana) failed to re-impose the CET per the Court's Order in *Trinidad Cement Limited, TCL Guyana Incorporated and The State of Guyana* [2009] CCJ 5 (OJ). That Order had followed from a successful claim by the Claimants that Guyana (Guyana) violated Article 82 of the Revised Treaty of Chaguaramas (RTC) by removing the Common External Tariff (CET) on cement without the requisite authorisation from the Council for Trade and Economic Development (COTED). Guyana requested a stay of the Order or an extension of time for compliance.

Summary of Legal Conclusions and Orders

- The Court dismissed the Defendant's application for a stay and/or variation of the Court's order as the Defendant had failed to make full disclosure of material facts or to provide a sufficient evidential basis upon which the Court could act.
- The Court ordered the Defendant to pay the costs of the application to be taxed in default of agreement.

Legal Provisions at Issue

- Articles 82 and 83 of the RTC

Other Relevant Community Law / Material Relied on

- N/A

Past CCJ Case Law

- N/A

Other Sources of International Law

- N/A

Facts

The first Claimant, Trinidad Cement Limited (TCL), is a company incorporated in Trinidad and Tobago. The second Claimant, TCL Guyana Incorporated (TGI), is incorporated in Guyana and 80% of its shares are owned by TCL. In its Judgment of 20 August 2009 in *Trinidad Cement Limited, TCL Guyana Incorporated and The State of Guyana* [2009] CCJ 5 (OJ), the Court ordered Guyana to re-impose the CET on cement and to maintain it until and unless a suspension of the CET is authorised either by COTED, or the Secretary-General under Article 83 of the RTC. On 22 September 2009, Guyana sought a stay of execution of the Court's Order or an extension of time for compliance with that Order and/or a variation thereof.

Findings

In response to the request, the Claimants, TCL and TGI, invited the Court to refuse to hear the application or to dismiss it on the ground that the Defendant was in contempt of the Court's order; or, in the alternative, to postpone the determination of the Defendant's application until the hearing and determination of a further application by the Claimants that the Attorney-General of Guyana was in contempt for non-compliance with the Court's Order in the underlying substantive proceedings. Guyana responded that it had approached the Court before the time for compliance had expired, but that, as it had done so under the wrong procedure, it had replaced that application with the present application, pursuant to the "liberty to apply" clause.

The Court found that refusal to hear a party, even in contempt, without a hearing was draconian and that it had the discretion to hear a party in contempt of Court. In this case, the Court had the discretion to hear the Defendant in circumstances where the Defendant had approached the Court before the time for compliance with the Court's Order had expired under the "liberty to apply" clause.

Concerning Guyana's request for a stay of execution, the Court noted that Guyana's request was based on its allegation that reimposition of the CET within the time fixed by the Order would lead to severe financial hardship for importers of cement, and that the macro-economic stability of Guyana would be adversely affected.

The Court noted that the Defendant had failed to appreciate that the Court had made a peremptory order for reinstatement of the CET in a situation of a clear breach of Article 82 of the RTC. First, the Court found that, although the RTC permitted an application for authorisation to suspend the CET, its Order to reinstate the CET within 28 days remained. Accordingly, Guyana was not entitled to re-impose the CET in anticipation that its application for suspension would be successful. The Court concluded that the Defendant's reliance on its application for authorisation to suspend the CET was, thus, misconceived.

Further, the Court found that Guyana's request for an extension of time to re-impose the CET was open-ended, and Guyana was not able to provide evidence of the outcome of the application to the Secretary-General for authorisation to suspend the CET or for other facts alleged, including the impact on third parties and the macro-economic stability of Guyana. The Court highlighted that an application under a "liberty to apply" clause required full disclosure. It found that the Defendant failed either to make full disclosure of material facts or to provide a sufficient evidential basis upon which the Court could act. Accordingly, the Court would not entertain the application to extend the time for compliance.

The Court ordered the Defendant to pay the costs of the application to be taxed in default of agreement.

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