



CARIBBEAN COURT OF JUSTICE

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CCJ AFFIRMS THAT KAHTAL RESORTS LTD CAN SEEK TO RECOVER COMPENSATION FROM INSURANCE COMPANY

Port of Spain, Trinidad and Tobago. In a judgment released on Friday, 1st March 2024, the Caribbean Court of Justice (CCJ) dismissed the appeal in the case *Insurance Corporation of Belize Limited v Kahtal Resorts International Limited* [BZCV2023/004], thereby upholding the decision of the Court of Appeal of Belize. Thus, Kahtal Resorts International Limited were not prevented from recovering compensation under the insurance policy with the Insurance Corporation of Belize for damage to a vessel.

The insured vessel sank due to entry of water into the vessel during a thunderstorm. Kahtal sought to be indemnified under the policy covering loss or damage to the vessel. The insurers denied the claim, and relied on an exclusion clause (Exclusion Clause 15) that stated no claim would be allowed for loss or damage while the vessel is moored unless it resulted from a collision with another vessel. The High Court agreed with the insurers, reasoning that a vessel tied to a dock was moored and, therefore, the exclusion clause applied.

On appeal, the Court of Appeal disagreed, stating that when the vessel was tied to a dock, it could not be considered moored within the strict meaning of the word, which can be interpreted as a vessel tied at the bow and that could swing freely on the tide. The Court of Appeal, therefore, reversed the High Court decision, holding that the trial judge had erred in applying the exclusion clause. The insurance company then appealed to the CCJ, requesting the decision of the Court of Appeal to be set aside and the High Court's decision restored.

The CCJ, by a majority decision of three to two, sided with the insured. Justice Andrew Burgess applied this Court's approach to contractual interpretation in *Blairmont Rice Investments Inc v Kayman Sankar Co Ltd*, emphasising an objective and contextual method and adopted the technical meaning of the word "moored" in the context of marine insurance. The majority highlighted that Exclusion Clause 15 must be read in the context of the entire insurance policy.

In a concurring judgment, Justice Peter Jamadar agreed with Justice Burgess; he highlighted the importance of the *contra proferentem* rule (law that dictates how ambiguous clauses in a contract may be interpreted against the drafter) in insurance contracts, especially in cases with unequal

bargaining power. Justice Jamadar reviewed the jurisprudence on the *contra proferentem* rule, identified features in the case indicating ambiguity in the wording of the exclusion clause and stressed the principle of good faith in insurance contracts: insurers must draft terms with clarity and precision.

In dissent, Justice Denys Barrow argued that the exclusion clause aimed to exclude coverage for stationary vessels, regardless of the term used. Justice Barrow decided the proper approach was to determine what cover the insurers were selling and this was the basis for deciding the meaning of "moored". Justice Barrow stressed that the contrasting meanings recognised by the courts below did not affect the conclusion that the policy was not intended to cover a vessel while it is stationary and, by whatever word it is described, such a vessel is excluded from cover.

In the final analysis, the Court upheld the Court of Appeal's decision and dismissed the appeal on the preliminary point. The insurers were directed to pay costs.

The members of the panel were CCJ President Adrian Saunders, and Justices Rajnauth-Lee, Barrow, Burgess, and Jamadar. Mr. Darrell S. Bradley, Ms. Julie-Ann Ellis-Bradley, and Ms. Kimberly Wallace appeared for the Appellant. Ms. Magali Marin Young SC and Mr. Allister Tre Jenkins appeared for the Respondent.

The full CCJ judgment is available on its website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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