

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0107

BETWEEN:

ROCK-HARD DISTRIBUTORS LTD

Claimant/Counterdefendant

and

KENNY'S TRUCKING & EQUIPMENT SERVICES LTD.

Defendant/Counterclaimant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Carah St. Paul and Ms. Chennelle Hyacinth for the Claimant

Mr. Anslem Clouden and Ms. Gerissa Rodney for the Defendant

2024: September 20th; 25th; 27th

ORAL DECISION

- [1] **ACTIE J:** On 15th March 2022, Rock-Hard Distributors Ltd (hereafter referred to as "RHDL") filed a claim for the sum USD\$1,861,705.00 being the unpaid value of cement supplied to Kenny's Trucking & Equipment Services Ltd (hereafter referred to as "Kenny's trucking") between 2019 – 2020. Kenny's trucking in its pleadings admitted part of the claim and the court by Order dated 13th July 2023 entered summary judgment in favour of RHDL for the sum of USD\$408,476.37.
- [2] Kenny's trucking counterclaims against RHDL for reimbursement of the sum of US\$584,532.09. It is the evidence of Mr. Kenny Forrester, Managing Director of Kenny's trucking, that he had dealings with Mr. Dev Maharaj whom he alleged was an agent of RHDL. The parties entered an oral contract for the purchase of cement on credit terms. Mr Forrester said he first met Mr. Maharaj at a meeting at the premises of Kenny's trucking in or about July 2019 where it was agreed that

RHDL would bear responsibility for the costs of spoiled cement, all port dues, bagging of cement and the rental cost for warehouses in Dusty Highway, St. George and Westerhall, St. David. It is also Kenny's trucking's evidence that the parties agreed for a shipment of cement to Carriacou be sold to a company called Beijing Construction Engineer Group Co. Ltd on behalf of RHDL at cost price and to be refunded by RHDL. Mr. Forrester states that his company acted and relied on the assurance given by RHDL in the oral contract made between the parties.

- [3] It is the evidence of Mr Forrester that most of the cement was for Kenny's trucking's use for construction purposes and that the company also sold to other customers on a very small scale. Mr Forrester said that he is assisted by his wife in the business, but he is the lead person making all the financial decisions relative to the said company.
- [4] RHDL in response, denies making any agreement to cover costs incurred by Kenny's trucking. RHDL states that any costs incidental to the purchase of its product are borne by the purchasers. RHDL denies agreeing to any terms with Kenny's trucking other than for the shipment of cement at the cost reflected in the invoices issued to the company. RHDL states that the parties did not have any other relationship other than that of buyer and seller, and that at no point in time was Kenny's trucking appointed as its agent.
- [5] Mr. Ryan Ramhit, managing director and majority shareholder of RHDL, both in his witness statement and at trial stated that Mr. Dev. Maharaj approached RHDL with a proposal to sell Rock Hard cement in Grenada and to act as a salesman on RHDL's behalf. Mr. Dev Maharaj issued the invoices to the purchasers and payments were made to RHDL. He states that the purchasers collected their shipments upon arrival at the respective ports and the purchasers were always responsible for their costs at the port and storage. He states that Kenny's trucking was responsible for the Rock-Hard cement upon arrival in Grenada.
- [6] Mr. Ramhit states that Mr. Dev Maharaj was responsible for following up with the payment of the invoices issued on RHDL's behalf. Mr Ramhit contends that at no point did RHDL receive any complaints in writing or otherwise from Kenny's trucking with respect to the said invoices.

Legal Analysis

Whether the doctrine of promissory estoppel applies

- [7] Mr Anselm Clouden, counsel for Kenny's trucking, propounds the doctrine of promissory estoppel. The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced¹.
- [8] The authors of **Halsbury's Laws of England**² state that promissory estoppel may prevent a party to a contract from going back on a concession he made to the other party and so may modify contracts in the sense of suspending or even extinguishing contractual rights.
- [9] There is no dispute between the parties as to the existence of an oral contract with respect to the initial purchasing of cement. Mr Forrester states that RHDL billed Kenny's trucking which he accepted and never denied any of the invoices.
- [10] Counsel Mr. Anselm Clouden, made valiant efforts to challenge the invoices issued in the name of Rock-Hard St Marteen which he said were misconceived. Mr. Ramhit in his witness statement states that that Dev Maharaj was distributing to St. Maarten and to Grenada and would sometimes put RHDL St. Maarten on invoices.
- [11] This court does not accept counsel's contention as the invoices all expressly provided routing instructions for Rock Hard Distributors Ltd as the named beneficiary. It is Mr. Forrester's evidence that all payments were made to RHDL without dispute. All the invoices before the court reflect payments made by

¹ Combe v Combe [1951] 2 KB 215 at 220

² (5th edn., 2021) vol. 47, para 310

Kenny's trucking through bank wire transfers to RHDH which is keeping with the assertions made by Mr. Ramhit for RHDH.

- [12] The burden of proof lies with the Kenny's trucking to prove the knowledge and consent of RHDH of the purported agreement and the reliance on such assurance.
- [13] In the case of **Luis Jarvis v American Eagle Airlines**³, Blenman J., as she then was, opined therein that the claimant had not seen it fit to produce sufficient evidence to corroborate his position, and concluded by dismissing the claim. The learned judge held the following:

"This is a civil case and he who asserts must prove. This is known as the burden of proof. It is the law that the standard of proof is on the balance of probabilities."

- [14] Promissory estoppel arises only out of a representation or promise that is "clear" or "precise and unambiguous"⁴. In the absence of a written agreement, it is for court to find that an oral contract was valid and binding based on the conduct of the parties by some performance under the contract to prove the alleged promise and detriment reliance on the said promise.
- [15] It is Mr. Kenny Forrester's evidence that the company purchased the cement for its own use to complete construction contracts in Grenada and not to sell on behalf of RHDH. It is the further evidence that Kenny's trucking in a letter dated 12th November 2020, acknowledged its indebtedness to RHDH and proposed a payment plan of eight (8) scheduled payments via instalments in the sum of Two Hundred and Fifty Thousand Dollars (USD\$250,000.00) United States Currency commencing from 11th December 2020 and ending on 30th July 2021 towards the outstanding debt, which it failed to honour.
- [16] Mr. Ramhit states that RHDH has never received any written or oral communication from Kenny's trucking in relation to any of the deductions or dealings to supply cement to Beijing Construction Engineer Group Co. Ltd until the filing of the counter claim.

³ ANUHCv2004/0465

⁴ Treitel, The Law of Contract, 12th ed (at para 3-144)

- [17] The conduct of Kenny's trucking in making arrangements for payment without challenge to the invoices is a clear acknowledgement and acceptance of the existence of a binding commitment to pay the sums stated in the invoices based on the parties' oral contract.
- [18] It is worth repeating that reliance on the doctrine of promissory estoppel requires the existence of a clear and unequivocal promise or assurance. Kenny's trucking offered no documentary evidence as to the faint existence of an alleged assurance as pleaded that is favourable to the company, which it ought to have safeguarded by written evidence given the extent of money claimed. Additionally, none of the costs referenced by Kenny's trucking as incidental to the alleged assurance is substantiated by any documents presented to the court.
- [19] Kenny's trucking has failed to satisfy its counterclaim on a balance of probabilities to establish the operation of the doctrine of promissory estoppel. In the circumstances, the counterclaim stands dismissed and RHDL is successful on its entire claim.

ORDER

- [20] The counterclaim by Kenny's Trucking & Equipment Services Ltd stands dismissed with Prescribed Costs calculated in the sum of ECD \$111,141.81 to be paid to Rock-Hard Distributors Ltd within Sixty days (60) of today's date.

Agnes Actie

High Court Judge

By the Court

Registrar