

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO.: SLUHCV2014/0309

BETWEEN:

ECONO PARTS LTD.

Claimant

and

THE COMPTROLLER OF CUSTOMS AND EXCISE

Defendant

CLAIM NO.: SLUHCV2016/0187

BETWEEN:

MR. PARTS LTD.

Claimant

and

THE COMPTROLLER OF CUSTOMS AND EXCISE

Defendant

APPEARANCES:

Vandyke Jude for the Claimants

George Charlemagne and Kurt Thomas for the Defendant

2017: 31st March
2017: 10th May

JUDGMENT

- [1] **SMITH J:** At the conclusion of the hearing of these consolidated claims for judicial review on 31st March 2017, I granted orders of certiorari quashing each of the Notices of Seizure dated 4th October 2014 and 10th December 2013, respectively, that had been issued to the Claimants. I said that the written judgment would be delivered later. I also directed the parties to file written submissions on damages and costs. This is the written judgment.
- [2] This case is about the exercise of the Comptroller of Customs' power of seizure and detention under section 130 of the **Customs (Control and Management) Act**¹ ("the Act") and the circumstances and manner of the exercise of that power.
- [3] The Claimants in these consolidated claims imported three containers of auto parts into Saint Lucia which were duty paid on Customs Entry C33447 of September 24th 2013; C30505 of September 3rd 2013 and C34940 of October 4th 2013. The total duties paid were \$30,434.90, \$26,445.01 and \$28,448.06, respectively.
- [4] Then on 4th October 2013 and 10th December 2013, respectively, the containers were seized by virtue of notices of seizure issued to the Claimants. This unleashed a dizzying flurry of correspondence and applications. Indeed the trial bundle comprised close to one thousand pages of pleadings, affidavits, exhibits, and other related documents. Fortunately, the nature of the claim and the issues that require determination make it unnecessary for the court to review the copious documentation of every single fact surrounding the decision set out with punctilious detail by Mr. Jude, counsel for the Claimants.
- [5] The Claimants sought to impugn the notices of seizure on a number of grounds including that the notices did not comply with statutory requirements as to summary of the facts supporting the charges, no particularization of allegations of fraudulent evasion and similar procedural defects. Their primary attack was, however, the unlawfulness of the decision to issue the notices of seizure without any hard evidence of under-invoicing. They sought various declarations and orders of mandamus and certiorari. The Court is of the view that since the primary relief sought was

¹ Chapter 15.05 of the Laws of Saint Lucia.

granted, namely an order of certiorari, it was not necessary, for the full and just disposal of the case, to consider the other arguments for the secondary reliefs claimed.

[6] The Defendant's case for seizure as set out in paragraph 3 of its submissions² was that:

“based on the information available from the investigation conducted, the comptroller of customs had reasonable grounds to believe that the Claimant was (i) involved in the improper importation of the items in the consignment; (ii) made an untrue declaration regarding the items in the consignment; (iii) attempted or made an attempt to evade the payment of chargeable duties on the items in the consignment. The Comptroller of Customs acting pursuant to the provisions of the Customs Act had a reasonable basis for issuing the notices of seizure for the consignments.”

[7] The three charges, namely improper importation, making an untrue declaration and evasion of customs duties, are offences under the Act each of which render the goods in question “liable to forfeiture”, among other possible penalties. The Comptroller was of the belief that the Claimants had made untrue declarations with a view to evading customs duties and issued the notices of seizure.

[8] The power to seize goods as liable to forfeiture is conferred by section 130 of the **Customs (Control and Management) Act**. Section 130 (1) provides that:

“Anything which is liable to forfeiture is seized or detained by any officer or police officer.”
(Underlining supplied)

[9] At the outset, it is instructive to observe that an alternative is provided between seizing and detaining. As will be discussed later in the judgment, there is a distinction between the two for the purposes of the interpretation of this Act.

[10] Schedule 4 of the Act then sets out the procedure that should be followed where notices of seizure have been issued. Section 3 of Schedule 4 provides that where the owner of the thing seized claims that it was not liable to forfeiture he shall within one month of the date of service of the

² Filed 17th March 2017

notice of seizure, give notice of his or her claim in writing to the Comptroller at any customs office. It is not in dispute that the Claimants made such a claim to the Comptroller within the stipulated one-month period.

- [11] Section 6 of Schedule 4 provides that where a notice of claim in respect of anything seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to forfeiture, that court shall condemn that thing as forfeited.
- [12] The Comptroller's failure to institute proceedings for the condemnation of the goods seized is what prompted this claim for judicial review. Up to the time of this judicial review hearing, more than three years after the notices of seizure had been issued, the Comptroller had still not instituted proceedings for the condemnation of the goods.
- [13] The Comptroller's failure to institute condemnation proceedings elicited the following pointed remarks from Belle J in his judgment³ of 10th March 2016 granting one of the Claimants leave to file a judicial review claim in these proceedings:

"In this case it is clear that the failure of the Comptroller of customs to act is a troubling feature of the relevant transaction between the parties. Indeed the process is set in motion as long as the notice of seizure is served or if not served as long as the claim is made. The Comptroller of customs cannot reasonably expect in the circumstances where a customer has observed the statutory deadlines to ignore due process and sit back and do nothing. Such an approach makes nonsense of the scheme of the law and no reasonable decision maker put in the position of the Comptroller could expect not to be challenged and called upon to give reasons for failure to act pursuant to their own rules."

- [14] It is astonishing that even after this, no attempt was made at all to remedy what can only be described as a most deplorable abuse of power. The Defendant's insist that the Claimants contributed to the failure by refusing to cooperate with information requested by the customs

³ Claim No. SLUHCV2014/0309

department. But as Belle J observed at the leave stage, the customs department “has many weapons at its disposal in enforcing the law”; it has “a myriad of options when it comes to imposing sanctions on offenders”. Indeed it has wide powers of investigation. The department therefore cannot be heard to say that the Claimants refusal to cooperate caused or contributed to the delay.

[15] The essence of the Claimants’ argument for an order of certiorari to quash the notices of seizure is that they were issued without first obtaining sufficient evidence to justify the seizure. The power of seizure, they contended, should only be exercised when the Comptroller has sufficient evidence to justify the seizure and not on the basis of suspicion.

[16] The Defendant’s response is that the Comptroller “had reasonable grounds to believe” that the Claimants had breached provisions of the Act and therefore acted legally in issuing the notices of seizure.

[17] In relation to the failure to institute condemnation proceedings, the Defendant contended in his written submissions that:

“It is the Defendant’s argument that the supervening events i.e. the investigation of the breaches and limited resources contributed to the delay experienced in this matter.”

I understand this to mean that, following the issuance of the notices of seizure, the department could not proceed to institute condemnation proceedings for two reasons, firstly, the necessity to investigate the breaches and, secondly, limited resources to enable them to effectively carry out the investigations.

[18] Further, in oral argument before the Court, counsel for the Defendant, Mr. Charlemagne, when asked by the Court the reason for the delay replied that the matter “*was complex because of the amount of research needed to be done to find the true value of the goods seized*”. He also contended that there is no specific period under the Act within which the Comptroller has to commence proceedings for the condemnation of the goods.

[19] It is true that the Act does not prescribe any time within which the Comptroller, following the issuance of notices of seizure, must institute the condemnation proceedings. However, section 32 (10) of the **Interpretation Act** of Saint Lucia provides that:

(10) *An enactment requiring or authorizing the doing of anything but not prescribing or limiting the period within which that thing is to or may be done, shall be construed as requiring or as the case may be authorizing that thing to be done with all convenient speed and not otherwise.*

[20] I have no hesitation in finding that the failure to institute condemnation proceedings after three and a half years following the issuance of notices of seizure under section 130 of the Act, read together with Schedule 5, constitutes an unreasonable delay in the circumstances of this case. However, the order of the court granting certiorari quashing the notices of seizure is not based on this unreasonable delay.

[21] The order of certiorari has been granted quashing the notices of seizure on the ground that the notices were unlawfully issued. My reasons for so finding, which immediately follow, are based on the reasoning in **R (On the Application of Eastenders Cash and Carry plc and others (Respondents) v The Commissioners for Her Majesty's Revenue and Customs (Appellant); R (on the application of First Stop Wholesale Limited) (Appellant) v The Commissioners of Her Majesty's Revenue and Customs (Respondent)**. In that 2014 judgment from the United Kingdom Supreme Court, Lord Sumption analyzed similar powers of seizure and detention under the United Kingdom's Customs and Excise Management Act. His analysis and reasoning appear to me to be wholly applicable to the interpretation of section 130 of the Act. The reasons for quashing the decision are therefore that:

- (1) Section 130 of the Act confers two distinct powers on the Comptroller, a power of seizure and a power of detention.
- (2) Detention is an alternative to the seizure of the goods in question. It differs from seizure in that it is a temporary assertion of control over goods which does not necessarily involve

any seizure with a view to forfeiture. It does not trigger the commencement of proceedings for the condemnation of the goods.

- (3) The purpose of detaining goods without seizing them is to enable the goods to be examined or secured, pending investigations, which might lead to their seizure later. It is to enable the Comptroller to retain control over the goods temporarily until he has arrived at a conclusion as to the duty payable or as to whether the goods are liable to forfeiture.
- (4) The right to seize or detain property under section 130 of the Act is dependent on that property actually being liable to forfeiture. This turns on the objectively ascertained facts and not on the beliefs or suspicions of the Comptroller, however reasonable.
- (5) On the Defendant's own case, the Comptroller issued the notices of seizure based on a reasonable belief that breaches had occurred. The fact that the Defendant voluntarily states that it could not bring condemnation proceedings because it was researching the "true value" and because of "limited resources" to facilitate the investigation demonstrate that the decision to issue the notices of seizure was based on suspicion – or even a reasonable belief – but not on having ascertained that the goods were in fact actually liable to forfeiture.
- (6) It is not in dispute that the goods in question were seized as opposed to detained. But even if it was only detained, the detention of goods for a period of three and a half years in order to complete the investigation necessary to make a determination of whether to seize can hardly be considered reasonable, especially given the wide investigative powers of the customs department under the Act.
- (7) On the above reasoning, the notices of seizure were unlawfully issued and were quashed on 31st March 2017.

[22] In their respective fixed date claims for judicial review, the Claimants each set out particulars of special damages for expenses incurred in warehouse rental for the storage of the goods seized and related expenses. Their claims for special damages totaled XCD \$274,333.47.

[23] In the closing paragraph of their fixed date claims the Claimants set out their prayer for relief which included Orders for certiorari, mandamus, various declarations and costs. Damages were not a relief claimed. In their respective fixed date claims, the Claimants also stated that should they be able to prove this misconduct during the Judicial Review proceedings, the Claimant would ask for exemplary and punitive damages to avoid such future misconduct.

[24] The Defendant relied on **Ilkiw v Samuels and Others**⁴ for the proposition that where a party claimed special damages the claim must be strictly pleaded, particularized and strictly proved. I am satisfied that the claim for special damages was pleaded and particularized in the Claimants fixed date claim forms. However no documentary evidence of any kind whatsoever was exhibited to the supporting affidavits or otherwise introduced into evidence. Under the circumstances, I find the words of the Lord Chief Justice in **Bonham-Carter v Hyde Park Hotel Ltd**⁵ apropos:

“On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down the particulars, so to speak, throw things at the head of the court saying “this is what I have lost; I ask you to give me damages”. They have to prove it. The evidence in this case with regards to damages is extremely unsatisfactory.”

I am quite unable, in the absence of proof, to make an award for special damages claimed by the Claimants.

[25] In any event, the Defendant relied on section 133 (2) of the Act which provides that:

⁴ [1963] 1 WLR 991.

⁵ 64 TLR 177.

“Where any proceedings are brought against the Government of the Comptroller on account of the seizure or detention of anything as liable to forfeiture, and judgment is given for the plaintiff or prosecutor, then if either –

- (a) a certificate relating to the seizure has been granted under subsection (1); or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs.

[26] Having read the affidavits of Grantley Promesse and Albert V Sandy filed on behalf of the Defendant, I am satisfied that the customs department had reasonable grounds for detaining the goods. Where, in my view, the department went wrong was to have gone on to issue the notices of seizure, on the basis of its belief and before its investigations were concluded, without ascertaining that the goods were actually liable to forfeiture. I therefore make no award as to damages or costs.

**JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE**

BY THE COURT

REGISTRAR