

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2006/0377

BETWEEN:

GRENADA RICE MILLS LIMITED

Claimant

and

GRENADA MARKETING AND NATIONAL IMPORTING BOARD

Defendant

Appearances:

Mr. Anselm Clouden with Mr. Dickon Mitchell for the Claimant

Ms. Lisa Taylor with Ms. Xiomara Cherubin for the Defendant

2010: January 19;
2011: October 10;
2014: December 4.

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant in this matter claims the following:

- "1 The sum of \$1,180,723.38 together with interest to be assessed thereon pursuant to Section 27 of the West Indies Associated States Supreme Court Act Cap 336 of the 1990 Revised Laws of Grenada being the amount due and owing from the Defendant to the Claimant pursuant to a contract dated 14th February 1995.
2. Costs.
3. Such further and other relief as this Honourable Court deems just."

- [2] The Claim is based on a written contract dated 14th February 1995 and according to the Claimant, a further (subsequent) set of oral agreements between the General Manager and Managing Director of the two entities. The claim is for monies due (allegedly) for several deliveries of milled rice and for milling fees.
- [3] In short the defence is that no monies are due and owing because there was never an agreement between the Claimant and the Defendant for the Defendant to pay the Claimant for milled rice or any rice at all and that they refuse to pay for the milled rice as claimed by the Claimant.
- [4] In pursuit of their claim, the Claimant called two witnesses, Jack Sampson and Winston Rupert Agostini.
- [5] Mr. Jack Sampson filed a witness summary as he was out of the jurisdiction at the time when the witness statement was to be filed. After he was sworn in, he adopted the contents of the witness summary and it was submitted as his evidence-in-chief. He was then tendered for cross-examination.
- [6] Mr. Sampson is the Managing Director of the Claimant. He testified about the written agreement entered into between the Claimant and the Defendant dated 14th February 1995.
- [7] He testified that the agreement was (in part) that the Defendant would purchase cargo rice (raw) and pass it to the Claimant for milling. For this service the Defendant would pay the Claimant a milling fee.
- [8] The Claimant was responsible for storing the cargo rice in silos, and milled rice not yet delivered to the Defendant would be stored in the Claimant's warehouse.

[9] It was also part of the agreement that whenever the Claimant supplied its own rice to the Defendant, the Defendant would return the loaned rice to the Claimant and pay a processing charge for it.

[10] The Claimant sometime imported rice to Grenada for export to CARICOM territories, and on occasion the Defendant stocks would be depleted and the Claimant would supply the Defendant with rice to cover the lack of product by the Defendant.

[11] He testified that on divers dates the Defendant brought in cargo rice under the terms of the said contract. They were as follows:

"September 1997	747.42 MT (metric tons)
12 March 1998	1,009.74 MT
September 1998	500 MT
November 1998	1,000 MT
11 February 1999	1,250 MT"

[12] He stated that in September 1997, both the Claimant and Defendant imported a similar quantity of rice that is 747.42 metric tons. The Claimant brought this rice in for export to the regional markets, but this was not a success as they were stopped from so doing by CARICOM as they lacked the necessary licence to do so. At the time of the ban the Claimant had approximately 336 tons of cargo rice left from that shipment.

[13] He testified that the Defendant would sometimes allow its stock to run out before the next shipment of rice would arrive and at times like that the Defendant would purchase rice from the Claimant at the full selling price.

[14] He further stated that this purchase of rice by the Defendant took place in January, February and March 1998 in the amount of EC\$488,898.20. The said amount he said was paid over a period of time.

- [15] In September 1998, the Claimant again supplied rice to the Defendant, whose stocks were exhausted in the following amount:

2/09/98	Bill No. 001097	Amount	\$6,661.36
3/09/98	Bill No. 001098	Amount	\$145,525.92
8/09/98	Bill No. 001099	Amount	\$21,007.14
21/09/98	Bill No. 001100	Amount	\$24,008.16
22/09/98	Bill No. 001151	Amount	\$162,440.76
TOTAL			<u>\$359,643.34</u>

He stated that the Defendant has not paid these invoices.

- [16] Again in late 1998, early 1999 the Claimant provided rice to the Defendant. The Defendant was expecting a large shipment, some 1,250 metric tons of rice, and had residual stocks from previous shipments stored in two of the three silos owned by the Claimant.

- [17] Two of the Claimant's silos were of 500 metric tons capacity and the third was of 800 metric tons capacity.

- [18] The Defendant had stock from November 1998 still in the two 500 metric ton silos, but even if these were emptied, it would not have been sufficient to hold the 1,250 metric tons expected.

- [19] He testified that it was verbally agreed that the Claimant would mill out all of its stocks to make room for this 1,250 metric ton shipment. During this process the Claimant delivered 7,706.25 100lb bags and 4,910 25lb bags of rice to the Claimant. The invoices for these deliveries were as follows:

"8/12/98	Bill No. 001160	Amount \$68,612.88
18/12/98	Bill No. 001161	Amount \$17,020.42
21/01/99	Bill No. 001163	Amount \$60,870.88
10/02/99	Bill No. 001164	Amount \$41,378.24
23/03/99	Bill No. 001165	Amount \$16,387.34
TOTAL		\$204,270.34

[20] He confirmed that the arrangement was that the Defendant would repay the Claimant by providing unmilled rice equivalent to the amount of milled rice provided by the Claimant. This was confirmed in a letter dated 12th October 1998 from the Defendant.

[21] Due to the inferior quality of the rice imported by the Defendant, the Claimant refused to accept payment in kind.

[22] The billing invoices were changed for the period September 1998 – March 1999 because the original invoices were only for milling charges and not for the rice itself because the Claimant did not get payment in kind.

[23] The revised invoices were set out as follows:

"8/12/98	Bill No. 001160*	Amount \$83,349.34
18/12/98	Bill No. 001161*	Amount \$56,684.50
27/01/99	Bill No. 001163*	Amount \$247,689.00
10/2/99	Bill No. 001164*	Amount \$165,053.00
23/3/99	Bill No. 001165*	Amount \$61,539.00
TOTAL		\$614,314.84

[24] He further testified that the Claimant had failed and or refused to honour these invoices and the sums stated therein were owed to the Claimant. A settlement of \$350,803.82 was offered by the Claimant to settle debt (not pleaded) but the

Claimant declined the offer and wanted payment in full in the sum claimed in the claim form.

- [25] In cross-examination, Mr. Sampson stated that he became the Managing Director of the Claimant in 1994 and that his duties were to oversee the operations of the Claimant. He further stated the functions and operations of the Claimant.
- [26] Prior to the written agreement both the Claimant and Defendant had dealings with each other and prior to 1995, the Claimant had milled rice for the Defendant, the document of February 1995 formalised the arrangements between the parties.
- [27] With respect to the silo, rice from the Claimant was stored in the 800 metric ton silo and the Defendant's rice was stored in the two 500 metric ton silos. Both sets of rice were never intermingled.
- [28] He admitted that paragraph 2 (iv) of his witness summary was not part of the written agreement between the parties. Paragraph (iv) dealing with the Claimant supplying its own rice to the Defendant and the Defendant returning the rice and paying the processing charge therefore.
- [29] He could not recall whether the Claimant has been stopped from exporting rice in September 1997 or September 1998, but reiterated that at the time of the ban the Claimant had some 336 metric tons of rice in the 800 metric ton silo but it could have been more, he was not sure.
- [30] He admitted that the Claimant was required to notify the Defendant when its stocks were depleted, and said that the Claimant would call the Defendant and let them know of the depletion. He could not recall if this was ever done in writing as required by the agreement, but he recalled calling the Defendant's General Manager at least two months before stocks depleted. He said he gave the required specifications and this was done orally when he spoke to the Manager.

- [31] He could not give specific dates when the Defendant depleted its stocks of rice and depended on the Claimant to supply it with rice, but he recalled that definitely between January – March 1998 the Defendant was out of rice and the Claimant supplied them with same.
- [32] He agreed that the Claimant was to give the Defendant the specifications for the rice to be imported and that this too was done orally. He repeated that there were many occasions when the Defendant's stocks were depleted and the Claimant supplied them with rice. He said this happened between January – March 1998 even though the Claimant had notified the Defendant about the depletion of their stocks.
- [33] He said that in November 1997 he called the Defendant Manager and told him that their stocks were going down, but the Defendant did nothing. As a result there was no rice in January 1998 (the Defendant had no rice) and the Claimant delivered milled rice from their stock to the Defendant.
- [34] The Defendant called in January 1998 and said that it needed a certain quantity of rice. The Defendant Manager told him the amount of rice he was sending for and the Defendant would pay for the rice. This was an agreement outside the written agreement that the parties had entered in February 1995.
- [35] He further went on to say that the parties agreed on a price for the rice supplied. The agreement for this price was made between himself and the Manager of the Defendant. But he could not recall what the price they had agreed was.
- [36] He stated that there was a document which had the stated price for the rice on it but he did not have it and it was never tendered as an exhibit.

- [37] He testified that even though the Claimant's claim stated that where rice was loaned to the Defendant, the Defendant promised to return the loaned rice, and pay a processing fee, he insisted that in January 1998 and the Defendant agreed to pay the Claimant for the rice loaned.
- [38] He also testified that even though he had signed the agreement for and on behalf of the Claimant he never went through the document before.
- [39] He also had never had sight of a letter dated 1st July 1999 addressed to him from the Defendant, dealing with the milled rice conversion ration, the rice quality and the storage of rice at the Claimant's facilities.
- [40] When shown invoice No. 001097 which represented a sale of rice to the Defendant, it read \$14,192.02, however he agreed that in his witness summary he referred to that invoice being for the sum of \$6,661.36. He could not account for the difference.
- [41] He stated that the Claimant delivered to the Defendant five times in 1998 despite the Defendant having imported 500 metric tons of rice in September 1998. In 1998 there were three shipments of rice into Grenada by the Defendant in March, September and November.
- [42] In September 1998, the Claimant delivered rice to the Defendant when in that same month the Defendant imported 500 metric tons of the commodity. The explanation proffered was that the rice brought in by the Defendant in March 1998 had been used up and the September shipment came not in the middle of September but at the end of September and the Defendant's stocks were depleted.

- [43] He insisted that the shipment for September 1998 came very late in September even though when shown the Defendant's rice reconciliation sheet it read 1st September 1998.
- [44] When the Claimant delivered rice to the Defendant between September and December 1998, at the time of that delivery they intended to recover the rice from subsequent shipments, but the rice that the Defendant brought in in February 1999 was so bad (of poor quality) that the Claimant refused to accept it as payment in kind.
- [45] He further stated that the shipment of rice in November 1998 was also bad, but admitted he had failed to say so in his witness summary and was testifying to this fact for the very first time. He insisted that this statement was not a fabrication but that it was the truth.
- [46] It was only after the February 1999 shipment, which was also bad, that he decided to treat the rice provided to the Defendant between September – December 1998 as a sale of rice.
- [47] After February 1999 the Claimant continued to mill rice for the Defendant in accordance with the written agreement. After February 1999 there were subsequent shipments of rice brought in by the Defendant, but the Claimant did not try to recover the rice loaned from these shipments.
- [48] He testified that the Claimant delivered its own rice to the Defendant in late 1998 because they were expecting the 1250 metric ton shipment and there was no storage space available. He said that he did so at the request of the Defendant, even though at the relevant time the Defendant had rice in the two 500 metric ton silos at the Claimant's premises which was available for milling.

- [49] Further, there was no explanation forthcoming from the Claimant as to why the Defendant would require the Claimant's rice when they had rice which was admittedly of fresher quality sitting in the two 500 metric ton silos awaiting milling.
- [50] He further stated that the Claimant delivered rice to the Defendant in December 1998 even though they had received 1000 metric tons in November 1998 because there was no storage space at the Claimant's premises.
- [51] After the CARICOM ban the Claimant did not bring in any shipments for themselves, and the rice the Claimant transferred to the Defendant in September 1998 to March 1999 was the remaining stocks from their 1997 importation of 747.42 metric tons.
- [52] All the rice delivered to the Defendant as stated in summary of invoices no. 1097, 1098, 1100 and 1151 came from the remaining 336 metric tons of rice which the Claimant had left from the September 1997 shipment.
- [53] He admitted that when the parties met in November 1998 the stocks held by the Defendant were fresher than those of the Claimant. He insisted that the Defendant had asked that they empty the silo containing their stock, and said that the Claimant's stock would have been depleted considerably due to the deliveries made to the Defendant in September 1998.
- [54] He was not certain how much stock the Claimant had when he met with the Defendant Manager in November 1998. He was also unaware of how much rice was in the two 500 metric ton silos used by the Defendant.
- [55] It was not unusual for them to empty the silos to make room for a shipment which was coming in. He agreed that the invoices for the September-December 1998 supply of rice and that a second set of invoices were sent representing the difference between the cost of the rice and the milling fee.

- [56] He recalled getting a letter from Mr. Sylvester of the Defendant in which it was stated "It should be recalled that there is no agreement (verbal or otherwise) for the Marketing and National Importing Board to purchase rice from Grenada Rice Mills" ...
- [57] This being so, one wonders how and why he came to the conclusion after the February 1999 shipment to treat the rice provided between September-December 1998 as a sale, when clearly the agreement between the parties did not envision such a relationship between the two.
- [58] He said he was aware that rice was price controlled in Grenada, and that the Defendant could not by itself determine the price for rice in the country. He said it required the agreement of the Ministry of Trade, and the Minister had to sign off on any price set for rice by the Defendant.
- [59] It begs the question, if so how then did the parties come to an agreement on what ought to be paid for the rice supplied by the Claimant to the Defendant.
- [60] No evidence was led by the Claimant showing that a price had been agreed between the parties or that the Ministry of Trade had given its stamp of approval on that price. The witness says that there was such an agreement but provided the Court with no documentation (apart from its invoices) showing the nature and extent of this price agreement.
- [61] Winston Agostini was the other witness for the Claimant. He is a chartered certified accountant and was the Claimant's accountant since the late 1980's.
- [62] He testified as to the written agreement between the Claimant and the Defendant and its contents.

- [63] Much of his testimony-in-chief was from his understanding of what had been told to him, but he testified from his own knowledge that the Defendant, over a period of time, paid the sum of \$488,898.20 to the Claimant for what he discloses as a sale of rice to the Defendant.
- [64] In cross-examination he said he had ceased being the accountant for the Claimant many years before and that the Claimant did not exist anymore. It had been closed. He was not nor had he ever been a shareholder in the Claimant Company.
- [65] His duties were to record the transactions of the Claimant, including revenue from sales, expenditure incurred by the Claimant including the purchases of raw material, staff wages and other operational expenditures.
- [66] He indicated that he had read the written agreement many times and was aware that the Claimant would transfer milled rice to the Defendant from time to time. He was also aware that the Defendant bought rice for milling by the Claimant.
- [67] He had seen the reports relating to the quantities of rice which passed between the Claimant and the Defendant but was not involved in the preparation of reports himself.
- [68] He had no involvement in the placing of the orders for rice for the Claimant neither was he involved in placing orders for the Defendant. Any statements he made with respect to these in his witness statement were made as a result of what was told to him.
- [69] The documentation he spoke of was with respect to the sale of rice to the Defendant between January – March 1998, but he did not attach any such documentation to his witness statement.

- [70] He said that up to the last accounting that he had done the Defendant still owed monies to the Claimant.
- [71] It is interesting that both Mr. Agostini and Mr. Sampson in their witness statement and summary have invoice 001097 as showing a balance of \$6,661.36, but the exhibit tendered showed a figure of \$14,192.02. No satisfactory explanation was given to the Court as to why this discrepancy existed.
- [72] He spoke of a verbal agreement between Mr. Sampson and Mr. James with confidence even though he admitted that he was not present when those discussions took place and he was not aware that this verbal agreement of which he speaks was ever reduced to writing.
- [73] He stated that to the best of his recollection the loaning of rice to the Defendant was not covered by the written agreement and if this arrangement existed it could only have arisen through some verbal agreement.
- [74] He was aware of the inferior quality of rice imported by the Defendant, in February 1999 (to the best of his recollection). He said that he had seen documentation relating to the loan transaction but agreed that he had failed to mention such documentation in his witness statement.
- [75] The defence called two witnesses, Mr. Fitzroy James and Mr. Elvis Young. Mr. James is the General Manager of the Defendant and had been so since 1992.
- [76] He testified as to the agreement dated 14th February 1995, and stated that the agreement detailed the procedures to be followed for the importation costing and delivery of rice to and from the Claimant.
- [77] Prior to the agreement of 14th February, the Defendant had been importing milled rice through a tender process and the Claimant unmilled rice for milling. The

Claimant had the right to import unmilled rice to mill for export and for packaged rice for the domestic market.

[78] The Claimant and Defendant agreed on a further arrangement, in the event that the Defendant stocks were exhausted it would purchase bulk packaged milled rice from the Claimant to meet the shortfall in the market until its stock of unmilled rice arrived.

[79] The Defendant would negotiate a price for the rice with the Claimant and agreed on a quantity before any deliveries were finalized. Because of rice being a controlled item, the Ministry of Trade had to confirm all purchase agreements between the Claimant and the Defendant.

[80] All parties were to keep their own running account relating to deliveries of rice and payments made.

[81] Up until September 1998 the arrangements went well, however discrepancies arose at around that time. The Defendant claimed that the Claimant had overbilled them with respect to a number of deliveries of rice during that month. The Defendant was of the view that they were being charged for a sale of rice rather than the processing fee. This discrepancy covered invoices 1097, 1100 and 1151.

[82] Discussions were held and the accounts were adjusted accordingly. The arrangement between the parties continued with small discrepancies thereafter but these were settled between the accounts departments of both entities.

[83] In September 1999 the Claimant submitted invoices for milling fees amounting to \$204,270.34. These invoices were numbers 1160-1196. The Claimant also submitted duplicate invoices bearing the same numbers but which contained additional billing for rice sold to the Defendant during September 1998, being the

difference between the milling fee and the sale price of the rice. Those revised invoices totalled \$614,314.80.

- [84] Also in September 1999, the Claimant presented a further invoice to the Defendant number 1185 for \$287,182.00 described as an adjusted invoice. It once again purported to be for rice delivered to the Defendant in September 1998, stating that rice had been sold to the Defendant. This invoice like the other revised invoices were rejected by the Defendant.
- [85] The problems with the parties, he alleges, began after the CARICOM ban was placed on the Claimant. Further problems developed in February 1999 with respect to the Defendant's importation of the 1250 metric tons.
- [86] Among the assurances given by the Claimant in respect of this shipment was that the silos holding 1000 metric tons would be available to accept the shipment of rice in February 1999. The remainder was to be stored on pallets on the Claimant's premises.
- [87] The assurances were not kept as the Claimant was not in a position to accommodate the shipment; several complaints were raised about the storage and transportation of this shipment.
- [88] He admitted that the rice was not of the expected quality. It was not US#1 cargo rice as specified in the contract.
- [89] Meetings were held and agreements were reached in how to deal with the shipment. The Defendant claims that the Claimant did not adhere to these agreements. They claim that the rice from the shipment was mixed with rice which had been in storage at the Claimant's premises for some time. This was evidenced by the appearance of yellow grains which were "cooked" from extended exposure to the heat and the cold.

- [90] At a meeting on 1st July 1999, the Claimant stated that they had supplied the Defendant with milled rice from their stocks in order to cover the shortage as a result of the inferior rice contained in the 1250 metric ton shipment.
- [91] This rice was to be replaced by the Defendant with their stocks, however the Claimant decided that this was no longer acceptable as the quality of the Defendant's rice was not up to standard and the Claimant was treating the supply of rice as a sale and would be billing the Defendant accordingly.
- [92] The Defendant was of the view that no such arrangement was discussed or agreed and they were not going to pay for the rice.
- [93] The Defendant carried out a reconciliation of the accounts and found discrepancies amounting to \$329,337.57, this figure related to the Defendant being charged for purchasing rice rather than the processing fee it agreed to pay.
- [94] Settlement discussions were held but they failed to solve the differences between the parties.
- [95] In cross-examination, he testified that at the meeting dated 1st July 1999, several matters were discussed including the arrangements for the storage of rice in February 1999, the conversion of unmilled rice to milled rice and the handling of defective rice. He denied that there was any discussions about the Defendant purchasing milled rice.
- [96] He denied that there was a shortage of rice between September – December 1997 and in January – February 1999. He thought that certain silos had to be emptied in order to accommodate the 1250 metric ton shipment in February 1999.

- [97] The offer made of \$350,803.82 was not related to the Claimant's claim for the purchase of rice. He agreed that part of the Claimant's claim is for rice sold, but denied that in 2000 the Defendant agreed that it owed \$350,000 plus to the Claimant. He said that the Defendant agreed to pay the stated sum to settle the matter, but the sum was rejected by the Claimant and was never paid.
- [98] It was his recollection that there was only one specific occasion when the Defendant purchased rice from the Claimant and on that one occasion the Defendant had paid for the rice received. He said that according to his recollection that was sometime between December 1997 and March 1998, and that ahead of the supply the parties had agreed the cost or sale price for the rice.
- [99] There was a general agreement for the Claimant to supply milled rice to the Defendant and the Defendant promised to return the loaned rice to the Claimant and a processing fee and be paid by the Defendant for that rice. Rice was in fact transferred from the Claimant to the Defendant in September 1998.
- [100] He denied that the Claimant had delivered rice in excess of the amount required by the Defendant.
- [101] He denied that the Defendant loaned rice from the Claimant so that the Defendant did not have to return any rice to the Claimant.
- [102] He implied that the Defendant had its own rice stored at the Claimant's premises at the relevant times and therefore had no need to loan rice from the Claimant. The Claimant supplied rice to the Defendant, but it was the Defendant's rice being supplied to it and the only charge to be paid by the Defendant was the processing or milling fee.

[103] He admitted that he was not sure whether the invoices totalling \$204,270.34 were paid. These represented milling fees but he stated he could not definitely state that these were paid.

[104] The final witness was Elvis Young. He is employed by the Defendant as an accountant.

[105] As the Defendant accountant he had opportunity to review all available documents and correspondence relating to the financial dealings of the Defendant.

[106] He was aware that problems developed between the parties in or about September 1998 as he was working with the Defendant as an accounts clerk since December 1990.

[107] The invoices which he had seen for the September 1998 delivery were numbered 1097-1100 and 1151 for deliveries made between 1st and 22nd September 1998. These invoices were entered into the Defendant's books at the agreed milling price in keeping with the agreement. The Defendant settled these invoices by paying the milling price.

[108] During the period 8th December 1998 – 23rd March 1999 the Claimant submitted invoices 1160–1165, these invoices claimed milling fees for rice delivered between 8th December 1998 – 23rd March 1999 in the amount of \$204,270.34. This was entered in the Defendant's books as \$185,960.77, the difference of \$18,309.57 was due to a lower milling fee. How the lower fee was arrived at was not explained to the Court.

[109] In September 1999 the Claimant presented an Invoice no. 1185 for \$287,182.00 which was an adjusted invoice, for rice delivered in September 1998, for invoices 1097–1100 and 1151.

- [110] In March 2000, the Defendant conducted a reconciliation and there showed a difference of \$329,337.21 between the ending balance on the Claimant's accounts and that of the Defendant. The difference being the Claimant's claim to be paid for a sale of rice to the Defendant rather than a milling fee.
- [111] He further testified that the Claimant submitted a claim for additional billing for rice delivered during the period 8th December 1998 and 23rd March 1999 being the difference between the selling price and the milling fee totalling \$54,314.80.
- [112] This claim he testified duplicated invoices 1160-1165, and according to him the Claimant reinstated its claim for the sale of rice rather than the cost of milling the commodity.
- [113] He stated the only monies owed by the Defendant to the Claimant from the records of the Claimant is the sum of \$21,466.25 for rice up to June 2000.
- [114] In cross-examination he stated that even though he started a degree programme he never completed and admitted that he was not a qualified accountant by degree. He does not belong to any accounting associations.
- [115] He admitted that he was not the accountant who prepared the reconciliation which he referred to in paragraph 9 of his witness statement, but he reiterated that he had personal knowledge of all the matters he deposed to in his witness statement.
- [116] He was aware that the amount of \$329,000 plus was resolved in favour of the Claimant. He did not personally prepare the records he referred to in paragraph 11 of his witness statement, but he knew that the Defendant made an offer to the Claimant to settle all outstanding accounts with the Claimant.
- [117] The evidence of the Claimant in this matter was unsatisfactory; Mr. Jack Sampson the Claimant Managing Director gave evidence but was not a credible witness.

- [118] He had not read the agreement of 14th February 1995 even though he had signed it. He could not recall the dates on which rice was imported by the Defendant for milling; he could not say why the Claimant had to deliver rice to the Defendant when the Defendant had its own stocks stored at the Claimant's premises.
- [119] He could offer no explanation as to why the Claimant failed to recover the rice which it loaned to the Defendant from shipments brought in by the Defendant subsequent to the loan except for the first time to say to the Court that the November 1998 shipment of rice was bad. He said this in court for the first time even though he felt it was important to say that the February 1999 shipment was bad, but he failed to mention the November 1998 shipment.
- [120] He further testified that the Defendant could not agree to purchase rice for sale to consumers without the permission of the Ministry of Trade, as rice was a controlled item.
- [121] At no time was he able to say to the Court the price which was agreed for this sale of rice to the Defendant, and the impression from his evidence is that the decision to treat the rice provided to the Defendant as a sale was one taken unilaterally without any discussion or consultation with the Defendant.
- [122] In at least one instance the record of the sale transaction for September 1998 read one figure \$14,192.02 but in his witness summary he stated it at \$6,661,36.
- [123] The explanation given by Mr. Sampson with respect to the 1250 metric ton shipment of February 1999 was incredulous. That the Defendant would ask the Claimant to mill out the Claimant's stocks of rice to fill up the 800 metric ton silo, when the Defendant itself had rice in the two 500 metric ton silos is illogical. That the Defendant's rice was fresher and of better quality than the Claimant's stock makes the explanation even harder to believe.

- [124] It must be remembered that at February 1999 the Claimant had some 336 metric tons of rice which it could not export due to the CARICOM ban.
- [125] Winston Rupert Agostini's evidence was largely hearsay as he admitted that much of what appeared in his witness statement was not from his direct knowledge, and though he testified that there was an abundance of documentation no such documentation was placed before the Court. He also admitted that he was not present when the alleged arrangement to mill out the stocks to make room for the new shipment took place.
- [126] The Defendant through Mr. Fitzroy James was a more credible witness than either Mr. Sampson or Mr. Agostini, even though he too was at times not totally sure or aware of matters that transpired between the parties.
- [127] He confirmed and the Court accepts that there were times between September 1998 – December 1998, and December 1998 – March 1999 when the Defendant borrowed rice from the Claimant company, and that the borrowed rice was replaced by the Defendant's incoming stock.
- [128] He further admitted that there was one occasion and one occasion only when the Defendant purchased rice from the Claimant with conditions attached. The parties having agreed ahead of time the cost of the rice so supplied.
- [129] I accept the evidence of the Defendant, that there was no general agreement for the Defendant to purchase rice from the Claimant and as I have stated before, I find that the decision to have the Defendant pay for rice supplied by the Claimant between September 1998 and December 1998 was made unilaterally that there was never an agreement for the Defendant to purchase rice from the Claimant. In fact in their letter dated October 12 1998, the Defendant clearly stated to the Claimant:

"With regards to your statement of account it should be recalled that there is no agreement (verbal or otherwise) for the Marketing and National Importing Board to purchase rice from the Grenada Rice Mills."

There can be no clearer statement of the Defendant's position.

[130] Discussions were held between the parties to resolve the issues which had arisen between them. As a result, an offer to settle was made by the Defendant to the Claimant in the sum of \$350,803.32. The sum was made up as follows:

\$21,466.25 - Closing balance per Marketing & National Importing Board
Accounts as at 30 June 2000

\$42,155.47 - Agreed differences in billing

\$287,182.00 - Invoice # 1185

Bill # 1185 is a re-statement of Invoices 1097 – 1100 and 1151; the figure includes the additional value of the rice originally transferred to the Defendant.

[131] I do not find that this is an admission of liability by the Defendant as the letter in which the offer was made, made it clear that the Defendant did not accept the Claimant's assertion that the rice delivered came from the Claimant stocks.

[132] The letter is in effect an offer to settle in the course of negotiations between the two parties, and I accept that the correspondence should be covered by this without prejudice rule.

[133] I refer to Lord Walker in **Unilever v Proctor**¹:

¹ [2001] 1 All ER 783 at 789

"The without prejudice rule is a rule governing the admissibility of evidence and is founded on the public policy of encouraging litigants to settle their differences rather than litigate them to a finish. It is nowhere more clearly expressed than in the judgment of Oliver LJ in **Cutts v Head** [1984] 1 All ER 597 at 605-606. "That the rule rests, at least in part on public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations ... may be used to their prejudice in the course of the proceedings ... The public policy justification, in truth, essentially rests on the desirability of preventing statements or offers made in the course of negotiations for settlement being brought before the court of trial as admissions on the question of liability". The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence."

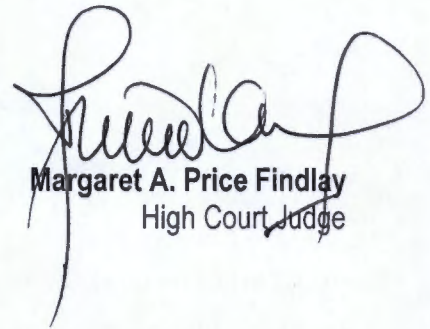
[134] The Claimant in their closing submissions have broken down the amounts claimed into two components. The first component being the milling fees of \$204,270.34. I am satisfied that these were fees which were properly incurred and billed for by the Claimant. However, I accept the evidence of Elvis Young supported by the letters from the Defendant to the Claimant that the figure of \$185,960.77 was paid on this figure leaving a balance of \$21,466.25, and I award the Claimant that sum with respect to the milling fees.

[135] The second component was for unrecovered rice and is made up of a claim for \$359,643.34 and \$614,314.84. This is the claim for rice sold by the Claimant to the Defendant.

[136] From my earlier findings, I cannot make an award under this head as I have found that there was no agreement between the parties for the purchase of rice, and as a result this part of the claim fails.

[137] In the circumstances, it is ordered as follows:

1. Judgment for the Claimant in the sum of \$21,466.25 with interest at 3% from filing to the date of judgment and 6% from the date of judgment to payment.
2. Prescribed costs of \$3,220.00.



Margaret A. Price Findlay
High Court Judge