

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 122 OF 2010



BETWEEN:

MARRIAQUA PETROLEUM CO-OPERATIVE SOCIETY

Claimant

v

SOL EC LIMITED

Defendant

Appearances: Mr. Ronald Marks., for the Claimant
Mr. Akin John., for the Defendant

2012: 12th July

DECISION

[1] **JOSEPH, Monica J:** This is a notice of application filed 25th May 2012 seeking an injunction that the respondent be mandated by itself, its servants and agents or however to continue to supply gasoline to one 2,000 gallon storage tank at the Marriaqua Petrol Station owned and operated by the applicant (Station).

[2] The grounds of the application are:

a) By virtue of a court order dated 10th May 2010 the court ordered inter alia that the interlocutory injunction granted on 3rd May 2010 be continued until trial of the matter or until further order of the Court.

b) The respondent about 25th July 2010 procured the services of a company, Petroleum Maintenance Services Ltd to conduct a test of the underground gasoline tank and the underground diesel tank at the station.

c) The test revealed that the gasoil tank was satisfactory whilst the test conducted on the gasoline tank could not be carried out to the standard requirements due to the evidence of several leaks visible from the tank top.

d) The respondent immediately ceased delivery of gasoline to the applicant. By a consent order 28th February 2011 injunction granted on 3rd May 2010 be varied as follows:

- (i) The respondent shall forthwith continue to supply diesel to the applicant.
- (ii) The applicant do apply to the respondent for permission to test the tanks within 6 weeks thereof
- (iii) That the matter be referred to mediation no sooner than 8 weeks hereof.

e) About 8th April 2011 the respondent gave the applicant permission to test one 2000 underground gasoline tank at the station. The applicant procured the services of Brian Da Silva an engineer who conducted the test on 9th and 10th August 2011. The test revealed that very small leaks were observed to the cover of the tank and not to the tank itself.

f) On 4th May 2011 the parties attended mediation and by consent it was agreed that an independent engineer from the Company Industrial and Marine Services Ltd. will conduct a pressure testing of the 2000 gasoline storage tank. An engineer from the company tested the tank on 19th July 2011 and it was concluded that the test was satisfactory with no leaks to the tank.

g) To date despite the respondent being furnished with three different testing reports on the 2000 gasoline storage tank stating that the tank is not leaking the respondent has failed or refused to supply gasoline to the tank.

h) The applicant currently has one functioning tank which holds a capacity of 1000 gallons of diesel at the station.

[3] Mr. John's submission is that it is not safe to operate relative to supply of gas as the tank is defective.

[4] There are: one underground gasoline tank and one underground diesel tank. I consider the reports of the experts.

BRIAN PYPE'S REPORT DATED 30TH JULY 2010

"On pressure testing the gasoil tank, the gauge fell to three PSI within 15 minutes. Pressure test was subsequently repeated and maintained the required standard six PSI for one hour. The finding upon final pressure testing of the gasoil tank was satisfactory. The gasoil tank was refitted and put into service. Test conducted on the ULG tank on Sunday 25th July 2010 could not be carried out to the standard requirements due to the evidence of several leaks visible from the tank top, resulting in a failure of the tank to with hold the standard test pressure of six PSI."

RECOMMENDATIONS

"The underground substructure where these tanks are directly buried is surrounded by a lot of stones, hence, in such cases these tanks should be vaulted."

BRIAN DASILVA'S REPORT DATED 17TH APRIL 2011

"The test pressure was held for an hour and thirty minutes. Confirmation of test outcome at the Sol Representative after one hour time period was not possible since he was not present during the test. The test was restarted in his presence but was stopped after approximately 17 minutes since the representative again left."

RECOMMENDATIONS

"That the cover of the tank either be replaced or removed and the small leaks be repaired by welding off site."

- [5] The submissions made by both Counsel turn on a narrow issue: Mr. John submitted that there is a leaking while Mr. Marks submission is that the tank top is defective and what was seen came from the tank top and not from the tank which was intact.

BRIAN HADAWAY DATED 20TH JULY 2011

- [6] I accept the report of the expert Mr. Brian Hadaway which seems to be the latest report which is as follows:

"A pressure testing of one 2000 ULG buried tank was carried out on Tuesday 19th July 2011 at Marriaqua Petroleum Co-operative Society Service Station. This was done in accordance with the proposed standard air testing procedure stated in our method statement to check the integrity of the tank."

Bertram Walker, SOL Operations Supervisor, and Brian DaSilva were two of the persons witnessing the procedure.

All equipment were inspected and tested and yielded the following findings:

"After application of 5 PSA compressed air pressure held after the duration of the one hour test period an inspection of the tanks, piping and manifold was further carried out with the application of a soapy water formula. Bubbles were seen escaping from the welded on vent pipe nozzle which is part of the manway cover attached to the flange on top of the tank. Test was satisfactory with no leaks to the tank."

- [7] It is common ground that SOL is responsible for maintenance under the agreement that guides the dealings between the parties. The exercise recommended by Mr. Hadaway falls under maintenance. SOL is hereby required to carry out the required maintenance forthwith. On conclusion of this maintenance work, Mr. Hadaway is to check that the equipment is in good safe working condition and report to Court.

ORDER

[8]

- (a) I grant the injunction sought but suspend its operation until expert Mr. Brian Hadaway submits a written report on 19th July 2012 that the tanks and equipment are in good safe and working condition.
- (b) SOL is required to carry out the required maintenance work on the equipment forthwith and report to the court on 19th July that that work has been carried out.

A handwritten signature in black ink, appearing to read 'Monica Joseph', is written over a horizontal dotted line.

High Court Judge (Acting)

12th July 2012