

SAINT LUCIA

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

SLUHCV2003/0600

BETWEEN:

**PHOENIX SERVICES LIMITED
Trading as HEWANORRA AIR CARGO SERVICES**

Applicant/Claimant

and

GLOBAL CARGO SERVICES LIMITED

Respondent/Defendant

Appearances:

Mr. Kenneth Monplaisir QC for the Applicant/Claimant

Mr. Peter Foster for the Respondent/Defendant

2003: August 13
August 18

**INTERLOCUTORY APPLICATION FOR INJUNCTION TO RESTRAIN RESPONDENT
FROM PREVENTING APPLICANT FROM HAVING ACCESS TO ITS LEASED
WAREHOUSE...WAREHOUSE LEASED FROM ST.LUCIA AIR & SEA PORTS
AUTHORITY...WHO HAS CONTROL OVER GOODS HOUSED AT
WAREHOUSE...SLAPSA OR CUSTOMS?...INTERPRETATION OF 45 OF SLAPSA'A
ACT, NO. 10 OF 1983...EFFECT OF C 47 AND C 58 BONDS.**

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This is an application for an injunction to restrain the Respondent, Global Cargo Services Limited from preventing the Applicant, Phoenix Services Limited trading as Hewanorra Air Cargo Services (HACS), its servants or agents

from having access to and from the Respondent's leased warehouse known as the Hewanorra Cargo Facility in Vieux Fort and to remove cargo from it.

Background Facts

2. HACS operates as an air cargo sales and handling agency for Air Jamaica, Air Canada, British Airways, Virgin Atlantic and BWIA at the Hewanorra International Airport, Vieux Fort. HACS has contracts with these airlines. As part of their contract, HACS has to provide, among other things the warehousing of goods/freight and the transfer of cargo for the airlines which is regulated and controlled by law by the St. Lucia Air & Sea Ports Authority (SLASPA). From 1994 to January 2003, HACS leased the Hewanorra Cargo Facility from SLASPA. The lease was terminated in early 2003 when Global Cargo successfully tendered for and was granted the lease of the said Cargo Facility. Global Cargo then became the Air Cargo Facility Operator. By letter dated 15th January 2003, the Customs & Excise Department acknowledged Global Cargo as the new Operator of the said Cargo Facility and apprised the Company of the requirements to be observed prior to commencing operations.
3. One of the requirements was the establishment of Customs Bonds C58 and C47. Global Cargo possesses both bonds (Exhibits AN2 and AN3). The C58 Bond is a general bond for securing duty on goods warehoused in a private warehouse or customs area. The C47 Bond is a bond for the removal of goods landed at one port or place for entry at another port or place.
4. The grant of the lease by SLASPA to Global Cargo seemed not to have gone down well with HACS. After all, HACS was the lessee of the said warehouse for approximately 10 years. It seemed that HACS resisted the fact that it no longer occupies the Cargo Facility and certain obstacles were created preventing the smooth operations of Global Cargo.
5. One of the responsibilities of Global Cargo by virtue of its leased agreement is the cartage or transportation of goods from one bonded warehouse being the Hewanorra Cargo Shed to another bonded warehouse being George F.L. Charles Shed at Vigie for entry into St.

Lucia. It is for this responsibility that Customs mandated that Global Cargo establish a C47 Bond.

6. A problem arose with the issue of cartage between Global Cargo and HACS when HACS wanted to remove freight from the said warehouse and Global Cargo objected on the basis that HACS no longer occupies the warehouse and as such, it has no right to the removal of freight in accordance with Global Cargo's contract with Anchorage Investment Ltd, a subsidiary of SLASPA (Exhibits AN5 and AN6).
7. As a result, a meeting was convened on 24th February 2003 with a view to resolving the issue of cartage. The meeting was attended by both parties as well as a representative from SLASPA and Customs. It is acknowledged by Mr. Eldridge Stephen, Managing Director of HACS that his Company's C47 Bond for the transfer of freight would be revoked and consequently HACS will no longer move cargo from Hewanorra to Vigie.
8. After the meeting, an agreement was reached between Mr. Arthur Neptune, Managing Director of Global Cargo and Mr. Stephen of HACS that HACS would commence the cartage of freight from Hewanorra to Vigie and that HACS would settle the cartage invoices 2 weeks after the presentation of the invoices.
9. Following the 24th February meeting, a further follow-up meeting was convened on 23rd April by SLASPA to address several unresolved issues. It was resolved that Global Cargo would be responsible for the movement of freight from Vieux Fort to Castries under its C47 Bond and HACS would pay Global Cargo for the freight within 21 days of submission of invoices. This arrangement commenced on 29th April. Global Cargo operated approximately 7 trips but discontinued the operation due to the tardiness of HACS in settling invoices. By letter dated 24th July, Global Cargo wrote to HACS stating their willingness to resume services and reminding HACS that they must adhere to the payment arrangements so as to avoid further disruption in the transportation of cargo.

10. Global Cargo subsequently received a letter from HACS dated 31st July wherein they claimed that they would resume the management of the movement of cargo from Vieux Fort to Castries effective 4th August 2003. HACS in this letter gave as its authority for doing so a ruling by the Comptroller of Customs dated 30th July 2003. It states: "...there are no legal impediments for your involvement in the transfer of cargo from one port to another."
11. In the meantime, HACS made two consecutive attempts on 4th and 5th August to remove cargo from the warehouse and were prevented from doing so by Global Cargo. This impasse led to the institution of the present application for an injunction. This application turns on one simple straightforward issue: who is charged with the responsibility of goods being transported from one port to another?

The Law

12. Mr. Kenneth Monplaisir Q.C. appearing for the Applicant argued that any transportation of goods from one port to another resides with Customs and not SLASPA and as such, Global Cargo acted wrongfully and irresponsibly as a warehouse keeper. He argued that HACS was issued with a C47 Bond which allows HACS to transport goods from one customs area to another and that Global Cargo cannot do so without a C47 Bond.
13. This fact is not disputed but like HACS, Global Cargo does have a C47 Bond. But the C47 Bond still does not give the bearer an absolute right to remove or cause to be removed any goods from one port to another as a bearer can only act on a C47 Bond after securing the authority of SLASPA to transport goods.
14. Mr. Peter Foster appearing for Global Cargo submitted that the arguments advanced by Mr. Monplaisir is premised on a misunderstanding of what obtains in the secured area of SLASPA. Mr. Foster submitted that Learned Counsel misunderstood the relationship between SLASPA and Customs in relation to the custody of goods. I agree.
15. Section 45 of the St. Lucia Air & Sea Ports Authority Act, No. 10 of 1983 states as follows:

“Notwithstanding anything enacted in the Customs Act 1967 or in any other enactment all goods except goods mentioned in section 136 of that Act shall on importation or exportation by sea or air be deemed ***to be in the custody of the Authority.***”(Emphasis mine).

16. Section 46 empowers the Authority to determine conditions and carriage or warehousing of goods or other service or facility.
17. It is crystal clear that the cargo at the Hewanorra Cargo Facility is in the custody of Global Cargo. Global Cargo is responsible for the security of the cargo and as such, cannot allow HACS to remove and transport the cargo from the said Cargo Facility to Castries. With the authority of SLASPA and with the C47 Bond, Global Cargo is permitted to do so. Customs has no authority in respect of goods in the custody of SLASPA. In my judgment, the letter written by the Comptroller of Customs to the effect that there is no legal impediment does not give HACS the authority to transport goods from Vieux Fort to Castries. The responsibility for transportation resides solely with Global Cargo. Being the agent for most if not all of the airlines, HACS must however be involved in the process.

Conclusion

18. In the premises, I will dismiss the application for an injunction. I will order that HACS pay Costs of \$3,000.00 to Global Cargo Limited. There is no doubt that this amount is extremely generous given the fact that Mr. Foster had to muster up some courage and discipline over a hectic weekend in preparation for this trial.
19. One final comment. I would encourage both Mr. Stephen and Mr. Neptune to try to resolve the current impasse as soon as practicable. Any further delay in the transportation of goods could only have crippling effects for both companies. A harmonious relationship is vital to good business. If the sole problem is the tardiness by HACS in the payments of invoices, I think this could easily be resolved by the inclusion of a clause to make provision for the payment of interest.

20. I am certain that if these two companies do not resolve their impasse without delay, SLASPA would not sit back and allow for disruption of the services to be provided at the facility. This was made abundantly clear by SLASPA's General Manager at the meeting on 9th April 2003.

INDRA HARIPRASHAD-CHARLES

High Court Judge