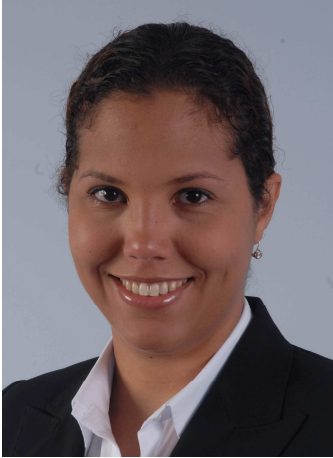


The importance of Trinidad Cement Limited vs. The State of the Co-operative Republic of Guyana

By: Cindy Lightbourne



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In this case held in the Caribbean Court before The Rt Hon Justice M.A de la Bastide (President), the Applicants Trinidad Cement Limited (TCL), one of the region's leading cement manufacturers, is claiming compensation from and/ or injunctive relief against the State of the Co-operative Republic of Guyana.

TCL is contending that Guyana breached Article 82 of the Revised Treaty of Chaguaramas (which established the CARICOM Single Market and Economy) by suspending the Common External Tariff on cement imported into that country from third states. TCL maintains that as a result of this suspension it has been prejudiced and has suffered damage.

During earlier proceedings, Guyana, through its Attorney General, admitted the suspension but makes it clear that the suspension had not been authorised by the appropriate entity, which is the Council for Trade and Economic Development.

Guyana's Attorney General rejects TCL's claim and contends that the Trinidadian company is not entitled to bring this action before the court because it cannot be considered State Parties to the Revised Treaty of Chaguaramas and has not satisfied the conditions laid down by the Treaty for the institution of proceedings by a private entity.

The case is of particular importance to the Caribbean's corporate landscape because it will determine whether a company in its capacity as a limited liability can seek legal redress against a sovereign state that forms part of CARICOM.

Therefore the question before the Caribbean Court of Justice is whether TCL established locus standi and so can establish a claim against the Republic of Guyana. The requisite conditions for establishing locus standi can be found in Article 222 (21) of the Revised Treaty of Chaguaramas which states:

"Person, natural or judicial, of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where:

(a) the Court has determined in any particular case that this Treaty intended that a right or benefit conferred by or under this Treaty on a Contracting Party shall enure to the benefit of such persons directly: and

(b) the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the right or benefit mentioned in paragraph (a) of this Article and

(c) the Contracting Party entitled to espouse the claim in proceedings before the Court has:

(i) omitted or declined to espouse the claim, or

(ii) expressly agreed that the persons concerned may espouse the claim instead of the Contracting Party so entitled; and

(d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

The Attorney-General of Guyana refutes Trinidad Cement Company's claim declaring that it does not fall within the definition of "national" as contained in Article 32 of the Revised Treaty of Chaguaramas. As far as the Attorney-General is concerned when the Treaty speaks of "persons, natural or juridical of a Contracting Party" the Article 32 definition of "national" is to be inferred.

The Court regarded the Attorney-General's contention as spurious at best and his invoking of the definition of "national" in Article XXIV has no bearing in this situation and is in fact superceded by the later Revised Treaty of Chaguaramas.

The Court holds that for a company to fall within the meaning of the phrase "persons, natural or juridical, of a Contracting Party," it is sufficient for such an entity to be incorporated or registered in a Contracting Party and Trinidad Cement Limited did indeed meet those criteria, by being a limited liability company incorporated under the Companies Ordinance Chapter 31:01 of the laws of Trinidad and Tobago and continued under the Companies Act 1995.

A point of note that did not escape the Court's attention is that when Guyana's legislature enacted the Agreement as the Caribbean Court of Justice Act, interpreted the expression "nationals" in relation to a company as an entity incorporated or registered under the its Companies Act 1991.

Therefore the Court concluded that it was not the intention of the member states of CARICOM to prevent entities from bringing proceedings against its own countries because such a move would frustrate what the Revised Treaty of Chaguaramas was established to achieve. If the Attorney-General's contentions were to be upheld it would mean that companies would be disadvantaged "on grounds of nationality only" and it would not be a case of justice for all. As such, the Court holds that Trinidad Cement Limited has complied with the provisions of Article 222 (c) of the Revised Treaty of Chaguaramas.

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