

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2005/0112

BETWEEN:

ANTIGUA PORT AUTHORITY

Claimant

And

ANTIGUA AGGREGATES LTD

Defendant

Appearances:

Mr. Craig Christopher for the Claimant

Mr. Hugh Marshall Jnr and Mrs. Cherissa Roberts for the Defendant

.....
2007: February 28th

April 30th

JUDGMENT

- [1] Blenman, J, This is a claim for arrears of port charges and dues and a counterclaim for damages for loss suffered.
- [2] Antigua Port Authority (the Port Authority) is a Statutory Corporation which carries on the business of Sea Port Operations in Antigua and Barbuda. Antigua Aggregates Ltd (Antigua Aggregates) is a company which carries on the business of Trading in Aggregates.
- [3] The Port Authority contends that pursuant to the provisions of section 5 of the Port Authority Act it has set and collected dues and charges for the use of the Port Facilities. Further, the Port Authority alleges that the Antigua Aggregates owes it the sum of \$5,787,183.80 being arrears in relation to port charges and dues for the period January, 1999 to January 2005 and that despite numerous requests the Antigua Aggregates has

neglected, failed and or refused to pay Port Authority the said outstanding sum or any part thereof. As a result, the Port Authority alleges that it has suffered loss and damage.

- [4] The Antigua Aggregates denies that it owes the Port Authority \$5,787,183.80 or any monies at all even though Antigua Aggregates accepts that the Port Authority is entitled to charge for the carriage or warehousing of goods or any other service performed or facility provided by the Port Authority. It also acknowledges that the Port Authority is entitled to charges, dues, wharfage charges, harbour rates, fees and other charges to ships. Antigua Aggregates, however, contends that as consignee of cement shipments it received vessels at a private facility at Crabbs and the said cargo was pumped via private pipelines from the vessels to a private warehouse. The said port of dock and warehouse are not under the control or ownership of the Port Authority. It further contends that the vessel that conveys the shipments to the aforesaid facility has always paid for piloting facilities of the Port Authority when invoiced and that such invoices are duly settled in full.
- [5] Further, Antigua Aggregates states that the Port Authority without lawful authority has charged the Antigua Aggregates handling fees even though it does not provide that service. Additionally, Antigua Aggregates contends that for period January 1999 to September 2004 it has been presented with invoices by the Port Authority on behalf of its principals upon each shipment of cement. Each invoice has been settled in full.
- [6] In addition, Antigua Aggregates contends that in or about September 10, 2004 the Port Authority without explanation or lawful authority began charging the Antigua Aggregates for handling that it does not render, and tonnage dues for which the Antigua Aggregates as consignee is not responsible, and the Port Authority is not authorized to collect by action. Tonnage dues are imposed by reason of the Tonnage Act Cap 431 Laws of Antigua and Barbuda and by section 4 of that Act are due solely from the masters of vessels before clearance and on clearance.
- [7] By way of counterclaim, Antigua Aggregates alleges that the unlawful imposition of tonnage dues and handling charges by the Port Authority is causing irreversible harm to its

business by hampering its cash flow. By reason of the matters aforesaid the Antigua Aggregates has sustained substantial loss namely:

Handling charges from 16 th September, 2004 to 5 th April, 2005	\$304,068.45
Tonnage dues from 16 th September, 2004 to 5 th April, 2005	<u>\$ 80,288.00</u>
Total pecuniary loss of Antigua Aggregates	<u>\$384,356.45</u>

Issues

[8] The issues that arise for the Court's determination are as follows:

- (1) Whether Antigua Aggregates owes arrears to the Port Authority as claimed;
- (2) Whether the Port Authority has unlawfully imposed tonnage and handling dues on Antigua Aggregates.

Evidence

[9] Mr. Leslie Williams (Mr. Williams), Mrs. Editha Dyer (Mrs. Dyer) and Mr. Hugh Mack (Mr. Mack) testified on behalf of the Port Authority. In defence, Mr. Hugh Marshall Snr. (Mr. Marshall Snr.) and Mr. Paul Haywood (Mr. Haywood) testified. Four large bundles of invoices were also placed in evidence.

Claimant's Evidence

[10] It is essential that I reproduce Mr. Williams' evidence. In his witness statement Mr. Williams stated:

"That he is currently employed at the Claimant Company as at the Acting Port Manager. He has occupied that position since October, 2005.

That he has been employed at the Claimant Company for twenty-five (25) years and have occupied the following positions, namely, Accountant, Deputy Port Manager and Acting Manager.

Pursuant to the Port Authority Act, the Authority carries on the business of sea port operations in the jurisdiction of Antigua and Barbuda; part of this function is to collect the dues and charges authorized by the Act. The Act provides that the Authority with the approval of the Minister may make regulations for the fixing of such things as ship's dues, wharfage charges, harbour rates, fees, dues and charges.

The ports of Antigua and Barbuda by virtue of the Port Tariff Book are within the jurisdiction and under the authority of the Port Authority. The ports of Antigua include among others Parham Harbour which includes (a) Parham Town and (b) Crabbs Peninsula.

The Defendant has always operated docking and off-loading/loading facility at a berth situate at Crabbs Peninsula in Parham Harbour. The Defendant is an importer of cement and acts as shipping agent in respect of consignments of cement shipped to its facility at Crabs Peninsula.

The Port Authority has always presented the Defendant with invoices for its port services. From early in its operations the Defendant resisted paying certain port charges and dues on the premise that certain port charges and dues in relation to its operations had been waived by virtue of a Cabinet Decision. Despite numerous requests, the Cabinet Decision has never been produced by the Defendant.

Efforts were made from time to time to regularize the situation to no avail. On every occasion the elusive Cabinet Decision would be referred to but never produced. It was a rather difficult situation bearing in mind that the major shareholders and directors of the Defendant Company were at the same time Government Ministers who comprised the membership of the then Cabinet.

In or about the month of June, 2003, following the change of Government, there was a new Board of Commissioners at the Port and directions were given to management to prepare the Defendant's bill in accordance with the provisions and authority of the Antigua Port Authority Act and this was done. The Defendant promptly paid the invoices without any query. The Defendant has always refused to pay the said charges and dues for the period January 1994 to September 2004 as claimed in this action. The Defendant in its Defence has stated that as a privately owned loading facility it is exempted from certain charges and fees as its Crabbs facility does not fall within the jurisdiction of the Antigua Port Authority.

In the Tariff Book, Port or Harbour dues is defined as a charge assessed against a vessel on its tonnage using any harbour or port in Antigua and Barbuda. Tonnage or cargo dues are defined as the charges for the use of the wharf and do not include a charge for any other services.

According to the Tariff Book, cargo loaded or discharged at the public wharfs, piers or landings other than the Deep Water Harbour and for which the Port Authority is not required to supply labour or equipment will be assessed or charged \$15.00 per ton or fraction thereof, in lieu of handling charges.

According to the Tariff Book, ships using landing places other than the Deep Water Harbour for the purposes of loading or discharging goods, landing or embarking passengers and occupying a quay berth shall pay certain dues.

According to the Tariff Book, tonnage dues on all ships either loading or discharging goods or loading cargoes at any landing places other than Deep Water Harbour shall be paid on each ton or part thereof.

The charges, dues, rates and fees charged by the Port Authority are recoverable as against the shipping agents who act locally for and on behalf of the ship's owner or master.

The Act allows for the Port Authority to make certain regulations in respect of the fixing of charges, and their collection. In accordance with this provision and in keeping with Standard International Port Operation Procedures, the Port's management, at an early stage of its operations under the Act set regulations requiring all ships calling at any Port in Antigua and Barbuda to be represented in its dealings with the Port Authority by a local agent. That local agent will conduct all business with the Port Authority on behalf of the ship or the ship's master. That means that the shipping agent will receive and settle all bills from the Port Authority in respect of the ship using any Harbour.

It would render the Port Authority's administrative mechanism useless if this were not the case. Most ships spend less than a day, more like half a day on average in the Port. The Port Authority's administrative procedures would require time to generate the necessary bills and present them for payment. If there is a dispute or some other operational or security issue it becomes necessary for the Port Authority to have some way to settle the matter with the ship. Rather than detain the ship or its master it is only logical and economically sensible that a local agent be the ship's representative to deal with Port officials. In the shipping industry time is of the essence, consequently, it is an age old standard practice worldwide in the shipping industry that all ships calling at a Port must be represented at that Port by a local agent.

It is well known and accepted that the Port Authority was always entitled to charge the regular port charges in relation to the Defendant's Company's operations at Crabbs. I have yet to be satisfied as to a factual or legal basis for the exemptions as claimed by the Defendant Company."

- [11] During cross examination by Learned Counsel Mr. Marshall Jnr., Mr. Williams said that during the period January 1999 – January 2005 he was not chiefly responsible for the collection of the Ports Authority's revenue even though he was the Deputy Manager. He

was clear that the Port Authority is authorized to collect tonnage dues; cargo tonnage, handling charges and pilotage fees. Initially, Mr. Williams had stated that the docking facilities at Crabbs were owned by Antigua Aggregates and that cement was pumped from ships to shore. Mr. Williams resiled from this position under strenuous cross examination and was forced to admit that he was not sure as to whether Antigua Aggregates managed or operated the facility at Crabbs. He said that it was possible that Antigua Masonry could have managed the facility. He later agreed that his earlier evidence on this aspect of the case was misleading.

- [12] Under further cross examination Mr. Williams said that when the ships arrive in Antigua assessments are made by the Port Authority; these assessments are given to the agents on behalf of the consignees of the vessels. He is familiar with the statutory provision which enables the Port Authority to impose harbour rates on vessels entering Antigua. Mr. Williams was clear that the charges as stipulated in the Tariff book are levied against the ships and that the agents are not ships. He was aware that the remedy specified in the legislation is to arrest the ship if the ships fail to pay the charges that have been assessed. However, Mr. Williams stated that they have always dealt with the agents and they had to assume that the charges levied were passed on to the ships. He said "we charge the bills to the ship so the bills should be passed on to the ship." Before a ship enters Antigua and Barbuda it must present its manifest signed by the master specifying the cargo and souls on board. Port Authority on receipt of the manifest assesses the rates and duties. Mr. Williams examined some of the invoices that were put in evidence and stated that the invoices were addressed to Antigua Aggregates in its capacity as agent on behalf of various vessels. He was clear however, that the Port Authority always invoiced Antigua Aggregates and it always paid the invoices in full.
- [13] Mr. Williams maintained, however, that Antigua Aggregates has outstanding moneys for the Port Authority. He admitted however that he has never invoiced Antigua Aggregates for the arrears in the sum of \$15,787,183.80, as claimed. In relation to the arrears he said that between 1999 – 2004, Antigua Aggregates was not billed for these charges because there was a Cabinet Decision that dealt with the matter. Mr. Williams stated further that

"we have always issued invoices and they were settled in full". Further, Mr. Williams said that their invoices were prepared in accordance with the Port Authority Act and that many of the bills were prepared under "his watch", he was sure that all of the bills/invoices that were forwarded to Antigua Aggregates have been settled in full. However, when the Government changed the Board of Commissioners of the Port also changed and "the New Board directed them to bill for what they were supposed to bill". The present action, Mr. Williams stated, was commenced under his supervision for moneys that the Port Authority had never billed Antigua Aggregates. However, it was his understanding that the law enables the Port Authority to charge for goods it handles and or warehouses. Mr. Williams stated that what the Port has done "is to go back and check all of the bills for ships and they are now charging handling fees." Mr. Williams was however, forced to admit under further strenuous cross examination that even if money was owed it would have been owned by the principals and not by Antigua Aggregates. He stated further that he has not sued the principals even though he knew who they were. He yet again admitted that all of the invoices that he had forwarded to Antigua Aggregates have been paid. However, he was subsequently directed by the Board to prepare "fresh bills" and also was directed by the Board to bring this action.

[14] During re examination by Learned Counsel Mr. Christopher, Counsel led Mr. Williams into saying that "Antigua Aggregates held themselves out as being responsible for the operation at Crabbs". He said the Port Authority's convention and practice is to deal with the agents; it is impossible to deal with the ships. The agents are responsible for settling the bills they are the intermediaries between the ships and the Port Authority. Mr. Williams stated that it was clear in his mind that Antigua Aggregates was not billed as it ought to.

[15] The next witness was Mr. Mack.

I will, likewise, state his evidence in some detail.

In his witness statement Mr. Mack said that:

"I am the Operations Manager and have acted in that position since 1992.
I have been employed at the Port since 1969 and have held various
positions including, Clerk, Tally Clerk and Electronics Data Processing
Administrator.

I am familiar with the Port's operations, rules, regulations, practice and policy. In particular, I am familiar with the provisions of the Port Authority Act Cap 333 which allow the Port Authority with the approval of the Minister to make regulations for, among other things, the payment and collection of Port charges.

I am aware that the Port's management with the approval of the Minister when necessary has in the past and continues so to do, set certain regulations for the efficient and effective operation of the Port within the parameters of the relevant and applicable laws.

Prior to the coming into force of the Port Act in April of 1973, I was employed as a Tally Clerk by the St John's Terminal Operating Company (STOC) which was acquired by the Port Authority thereafter.

From my thirty eight (38) years experience in Port operations, I am able to confirm that it is standard and accepted international shipping practice that ships calling at a port must deal with the Port's authorities through an agent.

Further, I am aware of and can confirm that upon the establishment of the Port Authority pursuant to the Port Authority Act 1973, the Port's management carried on the standard and accepted practice by way of an approved Port Management regulation requiring all ships calling at any Port in Antigua and Barbuda to be represented in its dealings with the Port by a local agent.

That is to say, from 1973 to present it has been a Port regulation observed by all ships, bar none, that a local agent will conduct all business with Port on behalf of the ship or the ship's master. In other words, the local agent will receive and settle all bills from the Port in respect of the ship using the Harbour and its facilities.

The reason for this regulation is self-evident as local agents are more easily accessible for the collection of Port charges and dues. Most ships spend no more than seventy two (72) hours at the Port and less than twenty-four (24) hour on average in Port. The Port's administrative procedures would require time to generate the necessary bills and present them for payment. In the event of a dispute on the bill, it would then become necessary for the ship's master to direct its local agent to settle this matter with a Port official so that he may get on with his business of getting the ship to the next port on schedule. In the shipping industry time is of the essence hence the reason why it would be impracticable to deal with ships other than through a local agent.

It is within my knowledge that the Defendant has at all material times held itself and in all dealings with the Port as agent for and on behalf of all ships carrying cement to the Crabbs' Facility. To this end the Defendant

cannot resile from the fact that it has always operated as cement ship agent at the Crabbs' Facility, for that matter has in the past received and settled bills on behalf of ships delivering cement to Crabbs.

In the circumstances of this case, the Defendant acts in a dual capacity as the consignee of cement received at Crabbs' as well as the local agent for the ships discharging cement at the Crabbs' Facility. Since 2005 CariCement Ltd, an overseas company has started cement importation operations at Crabbs with Special Security Ltd as their local agents, in accordance with the Port's regulations on shipping agents."

Mr. Hugh Mack, during cross examination by Mr. Marshall Jnr. stated that he is familiar with section 33 of the Port Authority Act which provides for the exemptions; however he was unsure as to whether the cement facility at Crabbs is exempted. His office is responsible for providing all of the information or vessels entering or leaving Antigua and this information is then forwarded to the Accounts Department.

- [16] The final witness called on behalf of the Port Authority was Mrs. Dyer.

In her witness statement Mrs. Dyer said:

"I have been employed at the Port for the past 21 years. I started as a Statistics Clerk and remained in that position for 4 years. For the past 17 years I have worked in the accounts department as a Billing Clerk preparing bills for clients of the Port, including the Defendant Company. I have been Accounts Supervisor for the past 5 years.

Since my placement in the Accounts Department, I have been responsible for compiling the invoices, billing the Defendant Company for its operations at Crabbs' Peninsula.

Upon my taking up the responsibility of preparing the bills for the Defendant Company, I was made to understand that there was suppose to be a Cabinet Decision in place whereby the Defendant Company was exempted from certain Port charges and dues. I myself have never seen any such Cabinet Decision; however, I would only include in my preparation of the Defendant's Company's bills the following heads, namely; light dues and pilotage at 50% of the prescribed rate.

These bills were paid by the Defendant by way of an advanced deposit then the balance subsequent to confirmation of the relevant documents.

The revised invoices including these additional charges were promptly paid by the Defendant Company without query. I am also aware that demands were made of the Defendant Company for recovery of the amounts that ought to have been collected over the previous years but for the misdirection as to the charges to be included in the invoices. To date, that outstanding amount has not been paid by the Defendant. The amount for the period January 1999 to September 2004 is \$5,787,183.80 and is set out in a Summary "A" attached to my Witness Statement.

I was asked by my principal to go through a list of invoices presented by the Defendant as having been paid. I am able to confirm that those were some of the invoices presented to the Defendant and paid as set out above. The list, however, includes many duplications and errors. I carried out an audit of the said list and I am able to confirm the invoices and payments as set out in Summary "B" attached to my witness statement.

I am familiar with any regulation of the Port which exempts the Defendant Company from payment of the charges as claimed. Neither am I familiar with any statute, enactment, Cabinet Decision or anything else whatsoever which exempts the Defendant Company from payment of the charges as claimed."

- [17] Mrs. Dyer in the amplification of her witness statement said "there was supposed to be a Cabinet Decision that allowed for the waiver of some of the charges, however, I have never seen it" She said that "we were billing 50% of pilotage fees, light dues and crew overtime." The bills were revised in accordance with the tariff to reflect the full crew overtime and pilotage fees. The revised bills were sent out and they were paid. However, with respect to the period 1999 – 2000 the arrears have not been paid.
- [18] During cross examination by Learned Counsel Mr. Hugh Marshall Jnr., Mrs. Dyer was shown the bundle of invoices and admitted that they represented charges that were sent to Antigua Aggregates in relation to ships. She said that she has produced no invoices for the arrears claimed by the Port Authority against the Antigua Aggregates. Mrs. Dyer said that it was her responsibility to denote the services and charges on the invoices, as she did, which were forwarded to Antigua Aggregates and it has paid all of the invoices. She stated that it was her intention that Antigua Aggregates should have been able to rely on the invoices. Mrs. Dyer said that the facility at Crabbs is operated by Antigua Aggregates and that she was of that opinion because they brought in cement. This is the basis of her assertion. She admitted, however, that she has never visited Crabbs. She was

responsible for invoicing Antigua Aggregates and that she had met the situation where the invoices were prepared in the original manner and she continued to so prepare them because of a Cabinet decision. She has never seen the Cabinet decision or any written directive which authorized her to bill the way she did. Mrs. Dyer later stated that Antigua Aggregates was invoiced as the owner of the facility. She maintained that it only paid 50% of pilotage, crew overtime and light dues. However, when she was pressed by Counsel in cross examination, Mrs. Dyer resiled from her earlier position and said that Antigua Aggregates was billed crew overtime. She, too, said that the arrears that she is now claiming are as a result of a directive from the Board. After the general election a new board came into existence and she was directed to revise the invoices. She thereafter prepared a spreadsheet of the new charges.

Defendant's Evidence

[19] The main witness for the defence was Mr. Hugh Marshall Snr.

Mr. Hugh Marshall Snr. in his witness statement said as follows:

"I am the Managing Director of Antigua Aggregates Ltd.

Lester Bird and Robin Yearwood and I are shareholders of Antigua Aggregates Ltd. Together we can all be described as former members of the Antigua Labour Party Government.

Since the Elections of March 2004 and the change of Government, Antigua Aggregates Ltd is no longer in the cement business largely as a result of the Government's measures openly destroyed our business. This they have been successful at as the said business has been closed since August, 2005. I am of the view that this action is a further measure in that direction.

At all times Antigua Aggregates Ltd operated as a distributor of cement on the local market, most recently for the supplier "Holcim", a Company based in Madrid, Spain and Puerto Rico. Antigua Aggregates did not own the bagging facility nor did it guarantee the purchase of the cement prior to its arrival in Antigua. Acting as Agent, we were persuasive in keeping the price of cement down to a price below EC\$15.00 per bag. For such, we were given the cement at a special rate. When the cement ships came to Antigua they came in bulk and were bagged at the suppliers Cement Plant at Crabbs in the Parish of Saint Peter.

Antigua Aggregates Ltd, as part of the arrangements with "Holcim" would assist in the clearance of the ship for the Supplier, that is, pay the Port Invoices and the Custom Invoices for which we were reimbursed by the Supplier upon the presentation of an official receipt.

Then through its established network we would distribute the cement on agreement with the Retailer that he could not sell above a certain price. By this voluntary mechanism we kept cement price down for over 20 years below \$15.00 per bag.

This case; the unprecedeted charges the Port Authority imposed following the General Elections; and the Appointment of a new Board and its policies has caused the Company to be no longer in the cement business. At all material times when the Port Authority sent their invoices for payment each and every invoice was paid in full and there were times when there was overpayment on our behalf and the Port Authority would credit Antigua Aggregates Ltd. with the overpaid amount."

- [20] In amplifying his witness statement Mr. Hugh Marshall Snr. stated that he was the Managing Director of Antigua Aggregates and that it never owned the cement operations at Crabbs. He was aware of who are the current owners and are the past owners but was clear that Antigua Aggregates never operated or managed the Crabbs facility.
- [21] During cross examination by Learned Counsel Mr. Christopher, Mr. Marshal Snr stated that he did not "deal" with Port Authority himself but rather Antigua Aggregates had an agent who interfaced with the Port Authority. The agent uplifted the bills and invoices and took them to the Board. He was sure that when the bills and invoices were presented to the Board, he (Mr. Marshall Snr.) would sign the relevant cheques and this was after someone in the accounts department had verified the accuracy of the bills/invoices. Antigua Aggregates' role was to clear ships and to make arrangements for the arrival of ships. Antigua Aggregates also paid dues which the principals were obligated to pay and they were reimbursed. Antigua Aggregates was the agent for shipping lines. It has always paid the dues charged, by the Port Authority, on behalf of its principals and it has also recovered moneys from the principles. The Port Authority was responsible for determining the charges or rates to be levied on the vessels. In fact, Antigua Aggregates never had any dispute with the Port Authority and always paid the charges that the Port Authority levied.

- [22] More recently, Antigua Aggregates received a letter from the Port Authority which indicated that the charges were revised and it has paid the revised charges. Mr. Marshall Snr said that he was not familiar with the various heads under which the Port Authority charged since it was not part of his duty to do that. There was an employee who specifically dealt with those matters; the person dealt with the port for over 20 years and was therefore more competent than he was. Mr. Marshall Snr was adamant that at no time was he ever aware that Antigua Aggregates was not paying all of the charges due, according to law. Mr. Marshall Snr. stated that it was only in 2004 that the revised bills came to his attention and this was because there was a huge increase. The ship was in Antigua and he had received information from the Port Authority that the invoice was to have been paid or the ship would have been denied entry. As a result of the large increase, he contacted the consignee and advised them of the large increase and sought directions as to the way forward. He said that he accepted the charges under protest. He telephoned the Port Authority and enquired about the new rates. He did not think that the new rates were lawful. Mr. Marshall Snr maintained that the Port Authority is charging handling fees even though it does not handle the vessels that arrive in Antigua and Barbuda. Later, under vigorous cross examination, he conceded that it was not open to him to state which charges are unlawful.
- [23] Mr. Marshall Snr said that he was unaware that the Port Authority had a long practice or policy that the agents were solely responsible for ships. He maintained that Antigua Aggregates acted as agent for principals and that Holcim was the last of those principals. He said the revised charges were in effect approximately 100% increase and that there was a hue and cry in Antigua and Barbuda. As a result the Port Authority "rolled back the charges on the cruise ships but did not roll back theirs." Mr. Marshall said that he was concerned about what the increase would have meant to the working class persons and to Antigua Aggregates. Mr. Marshall Snr. denied that Antigua Aggregates had a monopoly on the importation of cement. He denied that they got out of cement business due to the correct duties being imposed. Rather it was because the Government had allowed other cement to be imported into Antigua and Barbuda and sold at a far cheaper price; Antigua Aggregates was getting commissions for every bag of cement they sold so the competitive

prices were reflected in its commission. Port charges were the responsibility of Holcim. Holcim owned the ship and was responsible for paying Port charges; Mr. Marshall reiterated that he had no responsibility to pay port charges. Further, he stated that Antigua Aggregates paid all of the charges demanded of it.

- [24] The next witness for the defence was Mr. Haywood

In his witness statement he stated as follows:

"I was employed by Antigua Aggregates Ltd in excess of 20 years and was responsible for doing their agency work for the clearance of the cement ships.

Prior to the arrival of a cement ship I would attend the offices of the Port Authority and supply them with the information of the ship and its cargo. That is the tonnage of the ship and the tonnage of the cargo, the name of the ship and the name of the master, the date of arrival and the expected date of departure. The Port Authority would present me with an invoice and I would present them with a cheque in the full amount of the invoice presented to me. This, I have done for years and all invoices were generated by the Port Authority. Every invoice was paid in full as it was my responsibility to deliver the payment to the Port Authority and for which I obtained a receipt.

At all times it was my understanding that Antigua Aggregates was the Agent for the Supplier."

Mr. Haywood said in amplification of his witness statement that Antigua Aggregates did not own the Cement Operation at Crabbs, in fact it never owned, operated or managed it.

- [25] Mr. Haywood, during cross examination by Learned Counsel Mr. Christopher said that he received the invoices in relation to charges levied by the Port Authority on ships and cargoes and understood that Antigua Aggregates was responsible for paying the charges. He admitted that from 2004 the bills he received were different from the earlier bills and that the later bills were all paid.

Claimant's Submissions

- [26] Mr. Christopher submitted that after a review of the evidence adduced from the several witness statement, it is clear that certain matters are no longer issues in dispute that is to

say, notwithstanding the Defence and Counterclaim, the Antigua Aggregates' witnesses Messrs. Hugh Marshall Snr. and Paul Haywood in their evidence in chief and under cross examination admitted that all material times Port Authority did have the jurisdiction to levy charges and dues in respect of the cement importation operations at Crabbs. Antigua Aggregates at all material times were and held itself out to port Authority as agents for and on behalf of the ship owners in relation to the importation of cement at Crabbs. As agents for and on behalf of the principal, the Antigua Aggregates would accept and discharged the liability to the Port Authority in respect of the cement importation operations at Crabbs. Mr. Christopher stated that it is accepted that the Antigua Aggregates Ltd does not own the facilities at Crabbs but acts as agents for the present owner and former owners, Holcim Ltd, DecCon Ltd and CariCement Ltd, who were principals of the Antigua Aggregates Ltd. Next, Mr. Christopher stated that the Tonnage Duties Act which deals with "duties" to be paid to Customs on the tonnage of vessels which has no implication for the Port Authority. Mr. Christopher said that Port Authority is responsible for the collection of "dues" in connection with the operation of port facilities in Antigua and Barbuda pursuant to sections 5(1)(c), 14 and 53 of the Port Authority Act No. 9 of 1973 as accepted by the Antigua Aggregates Ltd. From the matters pleaded in the Defence and Counterclaim it is clear that Antigua Aggregated Ltd takes the position that the "head of charge" being claimed by Port Authority are unlawful and that the invoices presented by the Port were always paid in full.

[27] Mr. Christopher argued that the uncontested evidence of Mrs. Dyer, billing clerk directly responsible for the Antigua Aggregates' account at the Port for the past 17 years and that of Mr. Williams who presently acts as Port Manager, formerly Port Accountant and employed at the Port for the past 25 years is as follows: The port charges that would normally apply to shipments at Crabbs' according to the Port Act and Tariff Book are

- i Pilotage dues
- ii Tonnage dues
- iii Light dues
- iv Harbour dues
- v Hire of tug and pilot boat
- vi Crew overtime

[28] Both Mr. Williams and Mrs. Dyer both came to the port and met a system of billing the Antigua Aggregates Ltd Company for shipments at Crabbs where only the following port charges were included in the bill.

- i 50% pilotage
- ii Light dues
- iii Hire of tug or pilot boat
- v Crew overtime

The larger heads of charge, namely, tonnage dues and harbour dues were not included in the bills and upon inquiry of their supervisors they formed the understanding that there existed a Cabinet decision which waived those charges, however, the said document was never produced to either of them. Upon the advent of a fresh Board of Commissioners in or about June 2004 and upon the instructions of the Board, the system of billings at the Port was reviewed and the Antigua Aggregates was issued revised bills to include the previously omitted heads of charge, namely: full pilotage dues, tonnage dues and harbour dues.

[29] Mr. Christopher stated that it was confirmed by Mr. Marshall Snr. under cross examination that the inclusion of these heads caused the bills to be substantially higher but that they were paid without Antigua Aggregates making any formal query of or request for explanations by to the Port Authority. Mr. Christopher said that from its pleadings and the evidence of its witnesses, the Antigua Aggregates appears to be advancing the argument that it had no knowledge or notice of the appropriate heads of Port Charges in relation to cement operations at Crabbs for which it had agency responsibility for over 20 years; and that this matter only came to Mr. Marshall Snr's attention upon the presentation of revised bills in 2004. Mr. Christopher said that it is important that the Court's attention is drawn to the fact that for the entire period that the Antigua Aggregates enjoyed and benefited from the favourable billing process at the Port, Mr. Marshall Snr. and all the other directors of the Antigua Aggregates Ltd, namely former Prime Minister Lester B. Bird and former Deputy Prime Minister, were among the most powerful politicians in the ruling Government. Both Mrs. Dyer and Mr. Williams, witnesses for the Antigua Port Authority

gave uncontroverted evidence of receiving directions from higher authorities of the waiver of certain Port Charges which excluded the largest heads to tonnage and harbour dues. The elusive document which purported to be a Cabinet Decision was never produced during the relevant period or since; and it was upon this understanding that the bills were drawn as they had been for the years prior to a change of Government in 2004.

- [30] Mr. Christopher therefore submitted that the matter before this Court turns on the narrow issue as to whether Antigua Aggregates, through its several officers and agents, was aware as to the proper legal and relevant Port charges that it ought to have been paying and that the Antigua Aggregates by whatever means avoided paying the said legal and relevant Port charges. Mr. Christopher argued that the Port Authority Act together with its Regulations and Tariffs are public documents relied upon by both the Port and its users or customers to determine the appropriate charges for any particular operation. These documents provide the terms for the contractual relationship which exists between the Port and its users or customers.
- [31] Notwithstanding the self serving evidence given by the managing Director, Mr. Marshall Snr. stated Mr. Christopher, the Court is asked to draw the obvious inferences from all the circumstances and find that the Antigua Aggregates, particularly through Mr. Marshall Snr., at all material times had or ought reasonably to have had knowledge of the appropriate heads of charges from the public documents available to all users of the Port facilities and services. Mr. Christopher stated that, it is rather curious and certainly instructive that from in or about October or November of 2007 the Antigua Aggregates received and paid the revised bills from the Port Authority which included the appropriate heads of charge. Mr. Christopher therefore, submitted that this is a clear and unequivocal acknowledgement and acceptance by Antigua Aggregates of its liability to pay the appropriate heads of charge in the first instance. In addition, the matter of the propriety and legality of the revised bills was first raised by Antigua Aggregates in its pleadings in answer to the Claim filed herein. Accordingly, Mr. Christopher stated that Antigua Aggregates cannot now be heard to say that the charges were illegal and a political design to destroy the business of the owners when in fact the Antigua Aggregates' business was predicated and constructed

upon its ability to operate without having to pay the full and legal compliment of Port charges.

- [32] Mr. Christopher further said that Antigua Aggregates in its Defence has relied upon irrelevant and inapplicable laws together with political innuendoes to convince the court that the Port Authority is not entitled to recover heads of charge which it has the authority and jurisdiction to charge and which Antigua Aggregates Company in words and actions have acknowledged and accepted. Finally, Mr. Christopher submitted that Antigua Aggregates through its officers and agents employed similar extra-legal means and colorable political devices to facilitate its operations. In this connection, Mr. Christopher stated that it is a fact that the Antigua Aggregates' operation could not survive once it began to pay the legally and properly constituted invoices from the Port Authority. The proper bills were on average ten (10) times greater than what was customarily billed (that is evidence of both Mr. Marshall for the Defendant and Mrs. Dyer for the Claimant). This, Mr. Christopher, submitted, is powerful and compelling evidence as to the true state of affairs at the Antigua Aggregates.
- [33] Mr. Christopher opined that from the foregoing it is clear that Antigua Aggregates enjoyed a period of some twenty odd years during, which its operation were infact being subsidized by the Antigua Port such that for the said period the Antigua Aggregates was unjustly enriched. The broad legal principle is that a constructive trust must be imposed, regardless of established legal rules in by equity, justice and good conscience. This principle was stated in *Hussey v Palmer [1972] 7 WLR 1289*. It is a trust imposed by law whenever justice and good conscience require it and is an equitable remedy by which the Court can enable an aggrieved party to obtain restitution.

Defendant's Submissions

Cause of Action

- [34] Learned Counsel Mr. Hugh Marshall Jnr argued that the Port Authority's Claim Form does not say how the arrears have arisen other than the broad and sweeping statement that this sum represents arrears of port charges and dues for the period January 1999 to January 2005. Arrears are defined by Blacks Law Dictionary as money which is "overdue and

“unpaid” within the context of the claim these would therefore be port charges that are overdue and unpaid by the Antigua Aggregates. The Claim form gives no particulars of these and it is difficult to comprehend how the Court can be expected to adjudicate on a claim that has no particulars

- [35] Learned Counsel Mr. Hugh Marshall Jnr submitted that the Port Authority in its Statement of Claim alleged that the Antigua Aggregates at all material times is a company carrying on the business of trading in aggregates and is a regular user of the Port Authority’s facilities; at no point in the Claim Form or even in the evidence adduced on its behalf has the Port Authority alleged or sought to insinuate that the Antigua Aggregates is a “master” of ships, the ships that have brought cargo into the ports of Antigua. In fact, in the evidence of Mr. Williams given in cross examination he stated that “even if the money is owed Antigua Aggregates would not owe the money, it would be the principals.” He goes on to say “yes I agree we have not sued the principal, yes we have known at all times whom the principals were.” The importance of the above statement cannot be overlooked. The Port Authority has acknowledged that it is a body that derives its authority to impose dues and charges by reason of statute. Antigua Aggregates at all times was a mere agent and Mr. Marshall Jnr. stated therefore that its principal must be the Master of the various vessels.
- [36] Further, Mr. Marshall said that it is important to note that on the pleadings the Port Authority has not brought the “relationship of the ordinary course of dealings” as an exception to the general rule by which they allege the Antigua Aggregates is liable. In adhering to the obiter statement of the Honourable Justice Barrow in **Knowles v Knowles Civil Appeal No. 17 of 2005** at para 13 where he states “the Statement of Claim is pellucid in its claim that at the time”There was no case made out in the Statement of claim that the respondent was induced or led to believe, by silence and inaction” it cannot be satisfactory situation that one case is pleaded and the judgment is pronounced on a different case. The Statement of Claim should either have been amended or, if it was too late to amend, the Antigua Aggregates should have been confined to the case contained in the Statement of Claim.” Mr. Marshall further submitted that the Port Authority has not sued the Antigua Aggregates as an agent of a disclosed principal having personal

liability. The Claimant has sued the Antigua Aggregates as the principal debtor who has benefited from the use of its ports and has arrears of port charges and dues. This claim as pleaded must fail. Firstly, the Antigua Aggregates is not a master of ships and the Port Authority are solely empowered to proceed against masters of ships. Secondly, the Antigua Aggregates is the agent for such masters and the Port Authority despite having this knowledge sued the Antigua Aggregates but has not pleaded nor established any basis under which Antigua Aggregates could be liable. Mr. Marshall said that the Antigua Aggregates in its own persona has no liability towards the Antigua Port Authority.

- [37] Mr. Marshall further stated that the Port Authority's witnesses have alleged that the Antigua Aggregates operated a facility at Crabbs Peninsula. He said in cross examination it was clearly established that this statement resulted from uninformed and a misguided opinion of the witnesses, an opinion they had no authority to give. In the words of Mr. Williams in cross examination "I assumed they operated the facility so my statement is misleading". This is relevant, since by reason of section 53 the Port Authority Act, the Port Authority may impose charges on the consignee of goods for their warehousing and handling. The Port Authority now admits that they have no knowledge of the Antigua Aggregates in this regard. In addition, Mr. Hugh Marshall Snr. stated in cross-examination that "we have never participated in any cement operation at Crabbs. I am familiar with such operation. I know who owns them: Holcim which is a Spanish company which took over approximately 5 to 6 years ago. Previously Devcon or a company owned by Hadeeds. ... there was no role by Antigua Aggregates in the operations at Crabbs." This evidence was also corroborated by Mr. Haywood the second witness of the Antigua Aggregates. This position is not in any way contradicted by the Port Authority's own witnesses as none of them was able to establish a basis for asserting that the operations at Crabbs were that of the Antigua Aggregates. Thus they were not able to establish any liability on the part of the Antigua Aggregates as consignee of any shipment. In any event the evidence is clear and unambiguous. On all occasions the Port Authority delivered to the Antigua Aggregates an invoice to be paid by the ship. These invoices were all paid in full. There are no outstanding invoices whatsoever. On each occasion that the Port Authority presented an invoice it represented that the amount invoiced was the sum that

was due and owing in respect of the particular vessel. Each invoice speaks for itself in clear terms. At all times, in the preparation of the invoices it was intended that the Antigua Aggregates would act upon them and treat them as the total amount due.

- [38] Mr. Marshall therefore argued that this amounts to estoppel in Pais. Accordingly the Port Authority is barred from now seeking to claim monies that they have already by their representations stated are not due they cannot now claim them in circumstances where not even an invoice has been produced to be able to do this would be unconscionable.
- [39] Finally, Mr. Marshall Jnr. said it is sufficient to summarize the evidence of the Port authority on the reasons why they have brought the current proceedings, the Government changed, the Board changed and they were directed by the board to bring these proceedings. It is respectfully submitted that is not a legal basis for the commencement of proceedings in the High court against the Antigua Aggregated Ltd.

Law

- [40] I find it convenient to address the relevant law at this juncture. The relevant law is the Port Authority Act Cap 333 Laws of Antigua and Barbuda (Port Authority Act):

Section 3(1) of the Port Authority Act states:

"There is hereby established a body to be called the Port Authority which shall be a body corporate with perpetual succession and a common seal with power to purchase, take, hold and dispose of land and other property, to enter into contracts, to sue and be sued in its said name and to do all things necessary for the purposes of this Act.."

Section 5(1) (c) of the Port Authority Act provides:

"That its function is to collect the dues and charges authorized by the Act or by regulations made thereunder."

Section 14 of the Port Authority Act states:

"The rates, dues, charges and fees to be charged by the Authority shall be in accordance with such rates, dues charges and fees as may, from time to time, be fixed by regulations made under section 53."

Section 35(1) of the Port Authority Act stipulates that:

"There shall be levied upon every ship entering a harbour such harbour rates and charges as the Minister after consultation with the Authority may by regulations prescribe, and different rates and charges may be prescribed for different ships or classes of ships, and any such regulations may provide for the exemption of any ship, or class of ship, from all or any harbour rates and charges or for the remission thereof or any part thereof."

Section 36(1) of the Port Authority Act says:

"Where any harbour rates or charges owe in respect of any ship, an authorized employee may arrest the ship and the tackle, apparel and furniture thereof, and may detain it until the amount of such rates or charges is paid."

Section 36(2) of the Port Authority Act stipulates that:

"Where, after such arrest, any such harbour rates or charges remain unpaid for a period of seven days, the authorized employee may cause the ship and the tackle, apparel and furniture thereof arrested to be sold, and out of the proceeds of such sale he shall retain the amount necessary to meet the expenses of the detention and sale thereof and shall, after paying the amount of any harbour rates or charges which are owing to the Authority, deliver the balance, if any, to the master of the ship."

Section 37 of the Port Authority Act states that:

"Before the master of any ship in a harbour shall request outward clearance from the proper officer of Customs of such harbour, he shall first obtain from an authorized employee a certificate stating that:

- (a) all harbour rates and charges due in respect of the ship, and all penalties and expenses to which the ship and her master are liable under this Act or any regulations made thereunder have been paid or secured to the satisfaction of the authorized employee".
- (b) he has complied with the provisions of this Act and of any regulations made thereunder.

Section 39 of the Port Authority Act Provides;

"(1) Where any goods have been landed at a harbour and accepted by the Authority for carriage or warehousing or for delivery to a consignee, the Port Manager shall retain the goods and refuse delivery thereof to the consignee or any other person until.

- (a) The payment of any rates, charges and customs duties due in respect of such goods, and
 - (b) The production of a written authorization for a release of the goods signed or purporting to be signed by or on behalf of the ship owner.
- (2) Where the Port Manager causes to be delivered any goods to a person producing such authorization as referred to in paragraph (b) of subsection (1), the Authority shall be freed from all liability to any person in respect of the goods.
- (3) An authorized employee shall be entitled to levy such charges as maybe determined under this Act or any regulations made thereunder in respect of the custody of any goods delivered to him in accordance with this section, and he may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and preservation of the goods, and the Authority shall have a lien on the goods for such charges and any other expenses so incurred.
- (4) Nothing in this section shall be construed as requiring any person to take into the custody of the Authority any goods which would not otherwise be receivable under the provisions of this Act or any regulations made thereunder."

Section 41of the Port Authority Act states that:

"The master of a ship shall be responsible for the compliance in respect of such ship with the provisions of this Act and any regulations made thereunder and, in the event of a contravention thereof, he may be proceeded against and held responsible for the contravention."

Section 53(1) of the Port Authority Act states:

"The Authority with the approval of the Minister may make regulations for the fixing of rates and other charges for or in connection with the carriage, or warehousing of goods by means of the Authority, or any other service or facility performed or provided by means of the Authority and for the fixing of ships' dues, wharfage charges, harbour rates, fees, dues and charges, and for the payment, exemption from payment, refund or remission thereof; and such regulations may fix different rates or dues, or rates or charges, or fees for different classes of goods, or for different ships or classes of ships or in relation to different circumstances or conditions."

Court Analyses and Findings

- [41] I have given careful consideration to the submissions made by both learned Counsel and have perused the evidence adduced in the matter in its entirety, while paying particular regard to the relevant statutory provisions.

Civil Case

- [42] This is a civil case and the standard of proof is that of proof on a balance of probabilities; the onus of proof as in all civil cases lies on the Claimant. It is therefore for the Port Authority to prove to the Court that Antigua Aggregates owes the moneys claimed. Similarly, Antigua Aggregates has the burden of proving its counterclaim against the Port Authority on a balance of probabilities.

Evidence

- [43] I propose to deal firstly with the evidence adduced on behalf of the Port Authority. I must say that it became very clear to me during the cross examination of the witnesses called on behalf of the Port Authority, that they were not convincing in their testimony as to whether or not Antigua Aggregates either owned or managed the facilities at Crabbs. In this regard, I was struck by the fact that, during the skilful cross examination of the witnesses that sought to test their earlier evidence, not one of the witnesses who testified on behalf of the Port Authority was able to state positively that the debts were incurred by Antigua Aggregates. I propose to deal a little bit more in detail with the evidence that was adduced in the matter and very shortly.

- [44] As stated earlier, I am of the view that it is necessary to pay some attention to the evidence presented by the Port Authority. Let me say straight away that it was very apparent to me that none of the witnesses who testified on behalf of the Port Authority had personal knowledge of the facility at Crabbs nor had any of them actually visited the facility. Not one of the witnesses was familiar by way of first hand knowledge of the operations, management or ownership of the Crabbs facility. In my opinion, while the main

witness, Mr. Williams struck me as a decent and intelligent man, he was on several occasions, during cross examination, visibly embarrassed when much to his discomfort, he was forced to resile from earlier positions he had taken. He appeared to be very reluctant in stating things that he could not substantiate. In my respectful opinion, Mrs. Dyer knew very little about what had transpired and it was very apparent under cross examination that much of what she had said earlier was hearsay and was inadmissible. Her evidence also conflicted in material aspects with that of Mr. Williams'. The final witness, Mr. Mack could be regarded as a formal witness, who added very little to the Port Authority's case.

- [45] Be that as it may, Mr. Williams, the main witness for the Port Authority, was very clear that any arrears would be owed by the principals and not the agents. In addition, Mr. Williams was clear that Antigua Aggregates has paid all of the invoices presented to it as agent for different shipping lines. He was also clear in stating that he did not sue the principals who would be the persons, if at all, who are indebted to the Port Authority even though he is aware of their identity. With respect, it is obvious to me that Mr. Williams is aware and knew that, if at all, the suit should not have been instituted against Antigua Aggregates. This leaves me to question his "bona fides" in allowing the Port Authority to institute the present proceedings. In the totality of the circumstances, I was therefore only able to attach very little weight, if any, to the evidence adduced on behalf of the Port Authority, in relation to its claim.
- [46] On behalf of the defence, Mr. Hugh Marshall Snr painted the picture of an intelligent witness whose evidence was not shaken in cross examination. He was very consistent in his testimony and was adamant that Antigua Aggregates was the agents for principals; it neither owned nor operates facility at Crabbs. However, he was not convincing in advancing the Counterclaim, I have no doubt that this was a belated effort to "launch a counter attack on the Port Authority". It is very clear to me that the Counterclaim was brought out of pique and Mr. Marshall Snr did not strike me as having any belief in his counterclaim; in my view his counter claim was much of an after thought since he admitted that it is not in his purview to question the level of rates or charges that the Port Authority imposes. The next witness, Mr. Haywood was a mere formal witness and added very little

if, any, to the counterclaim. With respect, very little evidence was adduced by the witnesses in support of the counterclaim.

Findings of Facts

- [47] Having listened to the evidence I have no doubt that Antigua Aggregates neither owned any vessel that docked at the Crabbs nor was it the master of any vessel. I am also convinced that Antigua Aggregates did not manage or operate the facility at Crabbs as the Port Authority would have me believe. I am sure that it acted as agents for various shipping lines that came into Antigua and Barbuda and docked at the Crabbs facility. I am also of the considered view that when the vessels came to Antigua and Barbuda Antigua Aggregates, acting in its capacity as agent of the vessels, facilitated the clearing of the vessels and, paid on behalf of the vessels the numerous invoices that it received on behalf of its principals. I pause to state that invoices numbering in excess of 1000 pages were placed before the Court in support of this finding.
- [48] Be that as it may, it seems as though the charges which the Port Authority levied against the vessels were not the full charges and several years after, and in some cases as much as (five) 5 years after, the Port Authority headed by a new Board of Directors has sought to recover the charges and dues which were not charged and /or levied against those vessels. Interestingly, the Port Authority in the case at bar seeks to recover "the arrears" from the Antigua Aggregates the agent and not the principals. I am satisfied having examined the large volume of invoices produced in the matter that all of the invoices which the Port Authority forwarded to Antigua Aggregates (as agent) for the period under review invoices were settled in full. At no time did the Port Authority seek to send invoices to the vessels or masters all of whom by now had long left Antigua and, who were well known to the Port Authority's main witness. I also find it passing strange that the Port Authority did not see it fit to forward the invoices to Antigua Aggregates for onward transmission to its respective principals (even though it may well be that the principals may have argued that they had caused to be paid the rates and charges that were levied on their vessels and should not be made to pay any additional charges).

[49] Accordingly, and in my respectful view, I am far from persuaded, as the Port Authority would have me believe, that Antigua Aggregates held itself out as being liable/responsible for the charges or rates due. The invoices tendered into evidence, in addition to the testimony of the Port Authority's witness, which was buttressed by the evidence presented by Mr. Marshall Snr. paint an entirely different picture. In fact, the several invoices clearly support my conclusion that they were sent to Antigua Aggregates in its capacity as agents of the shipping lines. I therefore have absolutely no doubt that at all relevant times the Port Authority was aware that Antigua Aggregates was the agent of the shipping lines and that all of the material transactions between the Port Authority and Antigua Aggregates were carried out by Antigua Aggregates in that capacity.

The Claim

[50] I now turn to address the Port Authority's claim. The entire thrust of the Port Authority's claim is that Antigua Aggregates is a regular user of its port and therefore owes the Port Authority a sum of money which represents arrears of dues and charges covering the period January 1999 to January 2005. The statement of claim clearly states that Antigua Aggregates owes the Port Authority arrears; however, a perusal of the relevant statutory provisions indicates that the legislature has made provision for the Port Authority to levy rates and charges against vessels and/or their masters. I specifically refer to section 35, 36 and 37 of the Port Authority Act. The joint effect of these provisions is that the charges and rates are levied against the vessels and it is the master who has the responsibility to ensure that there is compliance with the Port Authority Act. See: section 41 of the Act which states that failure by the master to ensure compliance with the Port Authority Act can result legal proceedings being brought against the master. I am therefore at a loss to understand the basis upon which the Port Authority has instituted this claim against Antigua Aggregates.

[51] I am fortified in my view since the entire scheme of the legislation clearly indicates that the legislature intended the vessels to be levied on with the rates and charges, and the master of the vessel should be liable for the non payment of the rates and charges. In my respectful opinion, it was incumbent on Port Authority to frame its case and to provide the

Court with evidence in support of its argument that the rates and charges were incurred by Antigua Aggregates. The Port Authority failed in my view to do so and its omission is fatal to its claim. Antigua Aggregates must know the case that it has to meet and if need be it was open to it to have other persons joined in the suit as ancillary defendants. However, this was not to be since the Antigua Aggregates were sued as the wrongdoers, where as it emerged during the evidence, if at all it was a mere agent. By way of emphasis, the statute imposes liability on the principals for breaches of its provisions. It is the law that where an agent is sued on behalf of a principal the agent is able to seek compensation from its principal in relation to the alleged wrongful act but in the case at bar, the Port Authority has not named any principal in the matter, and the clear impression that is given both in the pleadings and in the witness statements is that Antigua Aggregates is the principal. In fact, Mrs. Dyer one of the witnesses for the Port Authority stated that Antigua Port Authority owned the facility at Crabbs and this was the basis for her stating that it owed the arrears. As stated earlier, it is clear to my mind that at no time could Antigua Aggregates have incurred the charges and rates claimed by the Port Authority.

- [52] Let me hasten to re emphasize that in the case at bar Antigua Aggregates was not sued in their capacity of agents. It is the law that the parties to claim must plead their case in such a manner as to allow the opposing side to know the case they have to meet. A good claim should enable the parties and the Court to narrow down and identify the central issues in dispute. In **McPhilmey v The Times Newspapers Ltd [1999] 3 ALL ER 755** Lord Woolf Mr. stated that:

“ the statement of case is required to mark out the parameters of the case that is being advanced by each party. It is important that they identify the issues and the extent of the dispute between the parties. They should state concisely the general nature of each party's case.”

- [53] There is no way stated in the claim form or in the statement of claim that the arrears were incurred by Antigua Aggregates in its capacity as agent. Neither was the Court's attention adverted to the possibility in any of the witness statements filed on behalf of Port Authority that the arrears were incurred in a situation of agency. I repeat for the sake of emphasis that it is incumbent on a party to state clearly the nature of his case See: **Debenture Trust Corporation Ltd v Lexington Insurance Co. [2002 EWCA Civ 1824]**. It is highly

unusual, that in the case at bar, it was only during the cross examination of the witnesses that it emerged that Antigua Aggregates was not the owner of any vessels but rather was the local agent. Yet in the face of that revelation the Port Authority's entire case proceeded on the basis that Antigua Aggregates incurred the dues and charges.

- [54] I come now to address another plank in the Port Authority's case, which did not arise on its pleadings but, which Mr. Christopher skillfully sought to introduce during the re examination of Mr. Williams, namely "course of dealings". I am of the view that I need say no more than a party to a claim cannot simply seek to alter its case in such a manner particularly when no way in its pleadings or witness statement was there any indication given to the other side that this was a ground on which it intended to rely that is "the course of dealings between the parties". In any event, the evidence overwhelmingly points to a totally different picture, namely that at all times the Port Authority knew that Antigua Aggregates was the agent and not the principal.
- [55] This brings me, next, to the legal submissions advanced by both Learned Counsel. With respect, I find the arguments urged on the Court by Learned Counsel Mr. Marshall Jnr. to be more attractive than those advocated by Learned Counsel Mr. Christopher and I therefore accept Mr. Marshall's submissions in preference of Mr. Christopher. It bears repeating that it is very clear to me that the various provisions of legislation impose obligations on the vessels/ships to pay charges and dues for the utilization of docks, wharves and ability to avail themselves of other facilities in Antigua and Barbuda. There is nothing in the legislation that imposes any obligation on the agent to pay the charges and rates levied on vessels. Further in the absence of any reliable evidence that Antigua Aggregates owed or managed the Crabbs facility, I am of the view that it did not incur any liability to pay any outstanding charges or rates.
- [56] The Court must give statutory provisions their ordinary and literal meanings and there is no ambiguity in the statutory provisions. Further section 36 of the Port Authority Act also empowers and authorize employees of the Port Authority to seize the tackle and apparel of

the ship for non payment of dues. I have no doubt there is no legal basis for instructing the claim against the agent. I am nevertheless, cognizant that for business efficacy it is convenient and more desirable for the Port Authority to collect the rates and levied charges on vessels, from the masters, through their agents rather than to collect the rates and charges from the masters of vessels themselves since to do otherwise may impact negatively on trade and commerce and result in delays; that is a separate and distinct matter from the issue as to who is liable for the failure to pay the requisite rates and charges. As stated earlier the master of ship is liable for failure to ensure that the vessels pay the charges or rates that are levied on vessels.

- [57] Accordingly, I have no doubt that the Port Authority should have instituted its claim against the principals (Masters) and/or the vessels but definitely not against Antigua Aggregates. Accordingly, the Port Authority has failed to establish a cause of action against Antigua Aggregates. It has therefore failed to prove its claim against Antigua Aggregates.

Counterclaim

- [58] I have reviewed the counter claim that Antigua Aggregates has brought against the Port Authority and am of the respectful view that Antigua Aggregates has failed to establish a cause of action against the Port Authority. It is unclear to me what if any cause of action Antigua Aggregates alleges against the Port Authority; however, Learned Counsel Mr. Christopher did not take the point in any great detail.
- [59] In any event, I am satisfied that Antigua Aggregates has failed to adduce any credible evidence to substantiate its claim that the Port Authority has since September 10, 2004 charged tonnage dues which it was not entitled to charge. I note that Mr. Marshall Snr. during skilful cross examination, by Learned Counsel Mr. Christopher was forced to concede that it is not within his power to determine whether the dues or charges levied by the Port Authority are exorbitant. I go further to state that the Court has no jurisdiction to determine the rates or charges that ought to be levied by the Port Authority. Matters of economic policy are without the purview of the Courts. In any event, I found the evidence of Mr. Williams very compelling on this aspect of the case and I accept his evidence.

Therefore I am far from persuaded, as Mr. Marshall Snr would have me believe, that the charges and the rates were improperly imposed. Matters of the appropriate rates and charges to be imposed fall exclusively within the purview of the executive and it is no part of my function, to determine whether the rates are too high or low. In passing and for what it worth, similarly it is exclusively within the domain of the executive to determine which rates or charges it waives and in relation to which categories of persons. It is exclusively for the executive to determine whether or not it should "roll back" charges on cruise ships.

- [60] In view of the foregoing, Antigua Aggregates Counterclaim against the Port Authority fails.

Conclusion

- [61] In view of the foregoing, I hereby dismiss Antigua Port Authority's claim against Antigua Aggregates Ltd. I also dismiss Antigua Aggregate Ltd's counterclaim against the Antigua Port Authority.
- [62] In exercise of my discretion, I order that each party bear its own costs.
- [63] I commend all learned counsel for their industry.

Louise Esther Blenman
High Court Judge