THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO: ANUHCV 1995/0300

BETWEEN:

CARLTON LEWIS
(Trading as 'Tyre Master') Claimant

and

WEST INDIES OIL COMPANY LIMITED Defendant

Appearances:
Mr. George Lake for the Claimant
Ms. Sharon Cort for the Defendant

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2006: October 23, 24
2007: July 31 October 02
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JUDGMENT

[1] Thomas J: On 24th August, 1995 Carlton Lewis, trading as 'Tyre Master', the Claimant, filed a Writ of Summons with an endorsement of claim seeking specific performance, alternatively damages for breach of contract, costs and such further or other relief as the Court may deem fit. In this action West Indies Oil Company Limited is named as the Defendant.

STATEMENT OF CLAIM

[2] On 19th February, 1996 a Statement of Claim was filed. In it the Claimant avers that on or about 30th June, 1992 an agreement, partly oral and partly in writing was entered into with the Defendant. Under this agreement the Claimant agreed with the Defendant to

dismantle 3 tanks on the premises of the Defendant in consideration for the sum of $32,500.00 cash and approximately 15,300 tons of ferrous and non-ferrous scrap metal then on the Defendant's premises.

[3] The Claimant pleads certain terms of the agreement and contends that pursuant to the agreement the 3 tanks were dismantled on or about 1st October, 1992 and that subsequently was paid the sum of $32,500.00.

[4] It is the further plea of the Claimant that the Defendant is in the breach of the agreement, the Defendant has refused to permit the Claimant to take possession of the said scrap metal and as a consequence the Claimant has lost the benefit of the agreement. And further the Claimant contends that he has suffered much inconvenience loss and damage as pleaded.

[5] It is the averment of the Claimant that on 17th May 1995 the Claimant's Solicitors reminded the Defendant of its obligations under the agreement and requested that the Claimant be permitted to enter upon the Defendant's premises and take possession of the said scrap.

[6] It is the further plea of the Claimant that by letter dated 22nd May [1995] the Defendant's Solicitor responded by denying the agreement for the removal of the scrap metal from the Defendant's premises.

DEFENCE

[7] In its Defence the Defendant admits the business of the Claimant and that of the Defendant, but denies the existence of an agreement whereby the Claimant was entitled to remove scrap metal after the dismantling of the 3 tanks. In this context the Defendant pleads that the sum of $32,500.00 was paid to the Claimant in consideration of the Claimant dismantling and removing 3 unused metal tanks from the Defendant's premises between July and September, 1992.

[8] The Defendant avers that the Claimant did dismantle and remove the 3 tanks from the Defendant's premises between July and September 1992. The Defendant however denies entering into an agreement (orally, in writing or otherwise) with the Claimant in respect of the Claimant removing approximately 15,300 tons of ferrous and non-ferrous scrap metal from the Defendant's premises.

[9] At paragraph 5 of its Defence the Defendant pleads as follows:

> *"5. The Defendant avers that it has from time to time allowed various persons, bodies and organizations to remove various pieces of scrap metal from its premises free of charge. The Defendant further avers that it did grant permission to the [Claimant] to take some of its existing scrap metal free of charge from its premises between July and September, 1992 but there is or was no contractual agreement between the [Claimant] and the Defendant regarding the removal of scrap metal from the Defendant's premises, save as stated aforesaid in respect of the three (3) metal tanks."*

[10] The items pleaded by the Claimant at paragraph 7 of the Statement of Claim regarding loss and damage suffered are denied by the Defendant.

[11] The matter of the correspondence between the Solicitors of the Claimant and the Defendant regarding the agreement of the removal of scrap metal are admitted by the Defendant.

REPLY

[12] The Claimant in his Reply pleads that save in so far as the same consists of admissions the Claimant joins issue with the Defendant on its Defence.

ISSUES

[13] The issues for determination are these:

1. The exact content of the agreement between the Claimant and the Defendant concerning the dismantling of three tanks and the removal of scrap metal from the Defendant's premises.
2. Whether the Claimant satisfied his obligations under the agreement.
3. Whether the Defendant satisfied his obligations under the agreement.
4. Whether the Claimant is entitled to damages.

ISSUE NO: 1

THE EXACT CONTENT OF THE AGREEMENT BETWEEN THE CLAIMANT AND THE DEFENDANT CONCERNING THE DISMANTLING OF THREE TANKS AND THE REMOVAL OF SCRAP METAL FROM THE DEFENDANT'S PREMISES

[14] Essentially, the Claimant's case is that he entered into an agreement with the Defendant for the dismantling of three tanks and the removal of the scrap metal therefrom plus some of the other ferrous and non-ferrous scrap metal on the premises of the Defendant.

EVIDENCE

CARLTON LEWIS

[15] At paragraph 3 of his witness statement filed on 22nd August 2005, the Claimant, Carlton Lewis says this:

> *"3. In or about the month of June, 1992, the Defendant and I had entered into an agreement which is partly oral and partly in writing whereby in consideration of the payment to me of the sum of $32,500.00 and my acquiring the right to remove and take away for my own use and business a quantity of scrap metal approximately 15,300 tons of ferrous and non-ferrous scrap located on the Defendant's premises I would dismantle and remove 3 disused tanks then standing on the Defendant's premises."*

[16] The Claimant says further that it was a term of the said agreement that the 15,300 tons of scrap metal would include some scrap metal from the tanks once dismantled and further that the same would be stored upon the Defendant's premises until such time as he was able to remove same.

[17] At paragraphs 6 and 7 of the said witness statement his evidence is as follows:

> *"6. On or about the 10th June … of 1992 Mr. Bernard De Nully, then Maintenance Superintendent approached me at my business place at the Old Sugar Factory, and opened discussions with me on behalf of the Defendant's company about dismantling some of their storage tanks at the Defendant's premises at Friars Hill, Antigua. He invited me to inspect the said tanks to determine the demolition costs and arrangements.*
>
> *7. Pursuant to the invitation, I met with the Defendant's representative in the person of one Luis Palmer, then General Manager of WIOC at the Defendant's premises at Friar's Hill on or about the 15th day of June 1992 and he showed me the tanks and allowed me to inspect the area … In the course of my inspection I saw a large amount of scrap metal that the Defendant had on its premises. I informed Mr. Palmer that due to the condition of the area where the tanks were situated the cost of dismantling the said tanks would be significant. I told him, that I was willing to dismantle the said tanks in return for part payment in return for part payment in cash and partly for my getting the scrap metal that was on the premises for my business. Mr. Palmer agreed to this."*

[18] The Claimant also says that by way of correspondence with the Defendant, acting through the said Mr. Palmer, his proposal concerning the dismantling and removal of scrap metal on the premises was accepted in a modified form. This meant that rather than getting all the scrap metal he would get some of it. The Claimant says that this modified proposal was submitted to the Defendant by letter dated 29th June, 1992. According to the Claimant, by letter dated 30th June 1992, the Defendant through its agent, Mr. Palmer, accepted his proposal. As the Claimant said, this was for the dismantling of the said tanks at the price of $32,500.00 and the removal of the agreed ferrous and non-ferrous scrap metal from the Defendant's premises at Friars Hill, St. John's, Antigua for my own use and benefit as consideration for the works."

[19] In an amplification on paragraph 9 of his witness statement and in particular the letter of 29th June, 1992 referred to therein, Mr. Lewis explained that this letter was similar to that of 25th June but it differed at paragraph 3 at the request of Mr. Palmer. The letter therefore reflected that the Claimant would get some of the scrap rather than all.

[20] At paragraphs 12 to 16 of his witness statement the Claimant describes the methods used to dismantle the tanks between July and September 1992, the expenditure incurred and the difficulties faced because of the lack of equipment to move the scrap from the premises of the Defendant.

[21] In cross-examination by Ms. Sharon Cort, learned counsel for the Defendant, Carlton Lewis, the Claimant, said that he started his business of demolition and selling new used tyres some twenty-five or twenty-six years ago. It was located at the Antigua Sugar Factory where he had both land and buildings. He went on to say that he started the scrap metal business in England and then continued it in Antigua where he exported 25 to 30 tons at a time and was very successful.

[22] Concerning the contract which the Claimant claims existed between the Defendant and himself, Lewis testified that it was partly oral and partly in writing. He said that Mr. Palmer

wanted to ensure that there was compliance with what he said so that he put certain things in writing.

[23] With respect to the figure of 15,500 tons mentioned in his witness statement, Lewis said that it was his estimate which could be more or less than that amount. He also said that this amount was never mentioned in any document by the Defendant.

[24] In further cross-examination the Claimant gave testimony that he was approached by the Defendant through a Mr. De Nully and another gentleman. It was then put to the witness that it was he who approached the Defendant for scrap and in the process offered his services to dismantle the tanks. This was his response: "I did not know they had scrap because nobody can go there willy nilly. I did not think Mr. Palmer knew the quality of the non-ferrous scrap when I got there. This is the reason I offered to dismantle the tanks free because I knew the amount of non-ferrous material that was there."

[25] The witness continued his testimony by saying that when he looked and saw the amount of non-ferrous scrap that was there this could mean a lot of money so that an agreement could be made to demolish the tanks free provided that there was assistance with acetylene and oxygen costs.

[26] It was then put to the witness that his agreement with the Defendant was solely in terms of the removal of the tanks. Lewis responded by saying that if this was so the amount of money would be larger and that this was not so.

[27] As to the matter of the cost involved, Lewis testified that he did not investigate the cost of the removal of the tanks as these costs were built into the cost of the removal of the ferrous and non-ferrous material.

[28] In re-examination the Claimant told the Court that the tanks did not contain any non-ferrous material and that the letter of 29th June, 1992 did not refer to the tanks. He told the Court further that the first time, he went on the Defendant's premises was with Mr. De

Nully. And further still that he could not stay off the Defendant's compound and see the scrap metal or see that they wanted tanks demolished.

JOSEPH FERNANDEZ

[29] On 17th June, 2005 the witness statement of Joseph Fernandez was filed and in it the witness says that he is an employee of the Defendant from 1976 and is now its Chief Operations Officer Manager and that in June 1992 he was the Marketing Manager.

[30] At paragraph 8 of the said witness statement the witness details the Defendant's policy of allowing various persons, bodies and organizations to remove different types of pieces of scraps metal in its possession. Such crap was give away free of charge. He goes on to say that between July and September 1992 when the Claimant dismantled the 3 tanks the policy was in place and that on that account the Claimant remove some of the scrap metal from the Defendant's premises.

[31] At paragraph 9 of his witness statement Mr. Fernandez says that the 3 tanks totaled 54 ½ tons and that the Claimant was paid to remove them. The witness also says that he is not aware of any agreement between the Claimant and the Defendant other than for the removal of the scrap from the 3 tanks.

[32] The witness' evidence contained at paragraph 11 is this: "Between June 1992 and October 1992 at material times, all of the Defendant's then existing tanks and other metal substances on the Defendant's premises totaled less than 15,300 tons.

[33] At the trial the Court granted permission to amplify paragraphs 2 to 7 of the witness statements by virtue of the witness' new occupation and to comment on the evidence of other witnesses.

[34] With respect to paragraph 6 of this witness statement where mention is made of a total weight of the tanks being 15,300 tons, the witness said: "We know the surface area of the tanks we got the total area and got a calibration on the basis that it was all ¼ inch which

was on the high side. We knew that the weight of 10.2 lbs per square foot of ¼ inch steel plate. On that basis we arrived at a total weight of approximately 8,000,000 lbs."

[35] The witness continued his testimony by saying that the tanks have been in and out of service, that the tank farm totals 33 and 8,000,000 lbs is equivalent to 4000 metric tons. He also said that a factor of 25% was added for the purposes of the weight which gave a total of 5000 metric tons and we doubled that. Further, that the 5000 metric tons is the estimated weight of the total tank farm and this was doubled to provide an allowance for the refinery itself – pipes, columns and pumps. This he said would give a total of 10,000 metric tons – approximately.

[36] In cross-examination Mr. Fernandez said that in so far as the letter dated 30th June, 1992 appearing at page 7 of the Core Bundle, it was a response to an earlier letter of 29th June, 1992 but he said he could not make out the date on the later letter. And on the question whether Mr. Palmer had accepted the proposal mentioned in the letter, the witness said he was reluctant to accept that Mr. Palmer did as he did not know if the letter was written in June. He however agreed that if it was agreed on ferrous and non-ferrous material, this would include material other than the tanks.

LUIS PALMER

[37] On 21st June, 2005 the witness statement of Luis Palmer was filed. In it the witness says that between 1983 to 1996 he was Managing Director of the Defendant Company and is now a Director of and Consultant to, the said company.

[38] At paragraphs 3 and 4 of the said affidavit Luis Palmer says that the Defendant Company is in the business of inter alia, storing and providing petroleum products for the domestic market. He also explains the process or method by which metal become 'redundant' and unusable and the method by which such metal is disposed of by the company.

[39] At paragraphs 5 to 9 of Luis Palmer's witness statement the following evidence is recorded:

"5. In or around June 1992 I was approached by the Claimant who inquired as to whether the Defendant would grant him permission to remove some scrap metal from the Defendant's premises. I gave the Claimant permission to remove some of the existing scrap that was then on the Defendant's premises. It was also agreed that removal of scrap would be at no cost to the Defendant, nor would the Claimant be charged for the said metal.

6. While removing the aforesaid scrap metal, the Claimant sought permission to dismantle and remove the three (3) unused tanks from the Defendant's premises for use as scrap metal. These tanks from the Defendant's premises were for use as scrap metal. These tanks are particularly described as Tanks Nos. 10, 11 and 17. The Claimant further said that there would be associated with dismantling the said three tanks and that he wanted the Defendant to pay a portion of the said cost. I requested that the Claimant make a written proposal in respect of dismantling and removing the said three (3) tanks.

7. Pursuant to a letter dated 29th June 1992, the Claimant sought the requisite permission and submitted a proposal in respect of dismantling the aforesaid three (3) tanks and removing the metal therefrom for use as scrap.

8. Pursuant to a letter dated 30th June, 1992 I responded to the said letter of 29th June, 1992 I responded to the said letter of 29th June, 1992 and subsequent thereto, I, acting for and on behalf of the Defendant, agreed to pay the Claimant the sum of EC$32,000.00 for dismantling and removing the said three (3) tanks from the Defendant's premises.

9. Between the period of July, 1992 and September, 1992, the Claimant did dismantle and remove the aforesaid three (3) tanks from the Defendant's premises. In addition thereto and during the said period, the Claimant also removed some additional scrap metal from the Defendant's premises pursuant to any gratuitous agreement of June 1992 permitting the same."

[40] At paragraphs 13 and 14 of his witness statement two denials are made by the said Luis Palmer:

"13. The Claimant was never promised 15,300 tons of ferrous and non-ferrous scrap metal from the Defendant. In fact, if the Defendant were at the material time (June 1992 to 1st October, 1992) to convert all of its then existing tanks and all other substances then existing at its premises into scrap, the resulting scrap metal would total less than 15,300 tons.

14. The Claimant had absolutely no agreement (whether partly oral and/or partly written) with the Defendant in respect of removing any ferrous and/or non-ferrous scrap metal from the Defendant's premises save and except as I described above."

[41] At the trial the Court granted permission to the said Luis Palmer to amplify paragraphs 5, 7 to 11, 15 to 17 and 27 of his witness statement.

[42] With respect to the amount of scrap metal given to the Claimant, as referred to at paragraph 5, Palmer said he could not recall this amount but he went on to say that scrap metal has over the past been given to government agencies seeking pieces of pipe.

[43] In cross-examination Mr. Palmer testified that at the refinery there are certain procedures that are followed and he insisted that they are followed.

[44] With respect to the letter of May, 1995 from the Claimant's Solicitor, Mr. Palmer said that he knew from 1995 that the Claimant had a claim to the scrap metal.

[45] When it was put to the witness that the Claimant never approached the Defendant about scrap metal, he responded by saying: "I did not go to him." And when it was put to him that the Claimant saw the other material when he came to negotiate the demolition of the tanks, this was also denied by Mr. Palmer. It was also put to Mr. Palmer, by learned counsel for the Claimant, that the Claimant never received any scrap metal. This is how he responded: "This is not my information but I have nothing to prove it."

[46] Concerning the letter dated 25th June, 1992 from the Claimant, Mr. Palmer said he never received the said letter and he went on to say that he did not tell the Claimant he could get all the scrap since it was needed for repairs.

[47] Learned counsel for the Claimant put it to Mr. Palmer that the weight of the tanks was more than 54 tons Mr. Palmer's response was that he needed to confirm that. It was also put to him that there was scrap metal of more than 15,000 tons, not including the tanks, scattered all over the compound. Mr. Palmer said it was between 5000 and 6000 tons.

[48] Mr. Palmer went on to question the suggestion that the Claimant was going to bring in special equipment. The witness further denied any knowledge of the Claimant entering into a contract for the sale of the scrap metal. He also testified that he was not aware of High Point Dock. He however in the end agreed that the Claimant needed special equipment.

[49] Finally, Mr. Palmer denied that between August 1992 and January 1995 the Claimant came to him and informed him of the progress made with respect to the wharf and the equipment.

[50] In re-examination Mr. Palmer testified that he could not see the scrap metal for his office as there were buildings between, being the maintenance building and the laboratory.

BERNARD DE NULLY

[51] Bernard De Nully's witness statement was filed on 17th June, 2005. In it he says that he has been employed at the Defendant Company from 1976 and is presently the Company's Purchasing Superintendent. He also says that during the period June 1992 and April 1995 he held the position of Maintenance Superintendent.

[52] At paragraph 3 Mr. De Nully gives the policy of the Defendant regarding the public and the removal, free of cost, of the scrap metal derived from repairs to pipes and tanks. He continues by saying that this policy obtained between July and September 1992 when the Claimant dismantled and removed three tanks (Nos. 10, 11 and 17) and some scrap metal from the Defendants' premises.

[53] It is the evidence of Bernard De Nully that the scrap metal from the three tanks totaled some 54 ½ tons which the Claimant was paid to remove.

[54] At paragraph 5 of his witness statement Mr. De Nully states that he is not aware of the Defendant entering into any other agreement with the Claimant regarding the removal of scrap metal. He also says that between June 1992 and October 1992 "and at all material times" and other metal substances on the Defendant's premises totaled less than 15,300 tons.

[55] It is also the evidence of Mr. De Nully that the Defendant entered into an agreement in or around April 1995 for the removal of the then existing scrap metal.

[56] In an amplification on paragraph 6 of his witness statement, De Nully testified that he never approached the Claimant concerning the removal of the tanks. The witness however did admit that he approved a work plan for the Claimant after he was called by

Mr. Palmer and for this reason he did have dialogue with the Claimant towards the end of 1992.

[57] According to the witness the work plan involved the safety procedures to be followed as well as other matters relating to the cutting-up of the tanks and the removal of the pieces from the refinery.

[58] In cross-examination Mr. De Nully further denied that he approached the Claimant to seek his expertise in relation to the dismantling of the tanks.

THE CORRESPONDENCE

[59] The witnesses on both sides make reference to various pieces of the correspondence between the Claimant and the Defendant relating immediately to the agreement.

[60] The first document appearing in the Core Bundle is fax message to TYRE MASTER Attention Mr. Carlton Lewis from WIOC – Antigua. The subject is "SCRAP METAL" and it is dated June 17, 1992. The exact content is as follows: "Thank you for your fax of this date on above subject. It provides an interesting proposal to WIOC. Would like to have a second meeting with you so as to discuss in detail our priorities on the potential removal of existing scrap metal. Best regards, L. Palmer. cc: Mr. J. Fernandez, Marketing Manager, Mr. B.S de Nully, Maintenance Superintendent."

[61] Of immediate relevance is the fact that the correspondence refers to a prior fax from the Claimant and also the desire on the part of the sender for a second meeting. These matters will be analysed in context.

[62] The fax dated 25th June, 1992 from TYRE MASTER to the West Indies Oil Co. is for the attention of Mr. Luis Palmer, Managing Director. The fax is signed by Carlton Lewis. It is in these terms:

"Dear Mr. Palmer

We wish to inform you that in our judgment this proposal is the most appropriate way to proceed ahead. After taking a good look at the three tanks that you want dismantled, at the first stage of this project, we would like to state the following:

(1) A crane might be essential in dismantling the tanks.
(2) Due to the overall size of the structures a significant quantity of oxygen and acetylene will be required just to cut the tanks into large enough sections so its removal from your property presents no problem.
(3) A significant portion of two (2) of the tanks is rotten away which makes the dismantling a bit more awkward.

The cost to us for the dismantling of the tanks is significant but since you have agreed to give us all of the ferrous and non-ferrous scrap that you have all over your property it is only fair to us to consider this fact in making our final determination.
We have decided due to the above reasons, to ask you [to] cover a portion of the costs and that amount is EC$11,000 per tank making a total of EC$33,000 for the three tanks.
Naturally all the other scrap from your property, regardless of size, will be removed completely free of cost to you.
We would very much like to get your thinking on this matter.
As you might recall I mentioned to you that we would temporarily need a portion of land outside your compound but adjoining your property for the further dismantling of the scrap prior to its ultimate removal."

The fax is copied to Richard Markowitz

[63] Central to the fax are the questions of the dismantling of three tanks and an agreement to give "us" all of the ferrous and non-ferrous scrap all over the property.

[64] A further fax dated June 29, 1992 covers the same issues but there are some significant variations.

[65] The new paragraph 4 reads thus: "The cost to us for the dismantling of the tanks is significant but since you have agreed to give us some of the ferrous and non-ferrous scrap that you have all over your property it is only fair for us to consider this fact in making our final determination." And paragraphs 5 and 6 reads thus: "We have decided, due to the above reasons, to ask you [to] cover a portion of the costs and that amount is $9,500.00 E.C. per tank. We would very much like to get your thinking on this matter."

[66] The final two paragraphs contain the following:

"We are prepared to begin this project within thirty (30) days of receipt of your acceptance of this proposal.

Naturally since your entire compound is highly compatible it is perfectly understandable to us that upon acceptance of this proposal we will get together with Mr. De Nully and get his approval on a work plan that meets all of W.I.O.C concerns."

[67] Finally, there is a fax dated June 30, 1992 from W.I.O.C to Tyre Master attention Mr. Carlton Lewis. The subject is "COLLECTION OF SCRAP METAL" and it is signed by L. Palmer. The actual text of the fax is as follows:

"Thanks for your fax dated June 29, 1992 on above subject.
Your proposal as presented in the fax mentioned seems reasonable to us; however, there is one item we need to change. Instead of dismantling three tanks we will only provide you the two big tanks (No. 8 and 9) for the activity. Therefore, we expect you to reduce the cost of dismantling the tanks accordingly.
Hoping to meet with you at your earliest convenience to finalize our agreement.
Best regards."

SUBMISSIONS

CLAIMANT

[68] The following are the relevant written submission tendered on behalf of the Claimant:

"1. The Claimant contends that, on or about the 30th of June 1992 the Claimant and persons representing the Defendant entered into an agreement partly in writing and partly orally whereby it was agreed that the Claimant would dismantle 3 storage tanks belonging to the Defendants located on the Defendants premises. In consideration of this agreement it was agreed that for dismantling the above mentioned tanks for the Defendant the Claimant would receive EC$28,000.00 ($9,500.00 per tank) together with approximately 15,300 tons of the ferrous and non ferrous scrap metal then located on the Defendants premises. The agreement is evidenced by correspondence passing between the parties at this time.

2. Pursuant to this agreement the Claimant began to dismantle said tanks. This involved him hiring various sub contractors. Early in this process unforeseen difficulties became apparent and the parties further agreed to increase the cash component of the arrangement to EC$32,000.00. The other terms remained as before.

18. The Claimant gave evidence that the agreement between the Claimant and the Defendant was partly oral and partly in writing. The oral agreement is evidenced by the letters of 29th June 1992 and 30th June 1992.

19. The Claimant gave evidence that after he sent the letter of 29th June Mr. Palmer the agent of the Defendant spoke to him orally and told him that he needed to adjust the letter because he could not have all of the scrap metal since they would need some of it for repairs from time to time. So the letter of 30th June 1992 was dated and sent and its terms were agreed upon by Mr. Palmer as evidenced by his response dated 30th June 1992. At no time in the correspondence between the parties is Mr. Palmer or any other agent or servant of the Defendant seem to object to the terms as stated in the Claimant's letter of 30th June 1992.

38. Additionally of note are certain conclusions of Kenneth Benjamin J in his ruling on an application in this matter to discharge the original injunction sought by the Claimant against the Defendant on the 22nd and 25th of September 1995.

39. *At that early stage certain conclusions had been arrived at in this matter regarding certain evidentiary facts. At page 2 of the ruling at the penultimate paragraph Benjamin J found that "Luis Palmer had in his Affidavit admitted the existence of a gratuitous agreement permitting the removal of some additional scrap metal" other than the demolished tanks. "It is also noteworthy that a telefax from Luis Palmer to the Plaintiff dated June 17th 1992 does refer to the potential removal of existing scrap metal. Also Palmers telefax letter of June 30, 1992 in response to the Plaintiffs proposal embodied in his letter of June 29th 1992 only sought to reduce the number of tanks available for dismantling from three to two."*

42. *The Claimant's account of the events that lead to the partly oral and partly evidenced in writing agreement between the parties is to be believed. His account is logical and consistent. He had no knowledge of the Defendant Company and would have to have been told of the need of WIOC for his demolition services. He would have had to have visited the compound to know of the existence and quantity of scrap located there.*

43. *The evidence as to the existence of this agreement by the Defendants agents, Mr. Palmer, Mr. [De Nully} and Mr. Fernandez to a lesser extent is not believable. Their account is inconsistent, contradictory and proven by previous statements and Rulings to be untruthful. As found by Justice Benjamin there was an agreement for the Claimant to demolish the tanks and that he was to receive the scrap from the tanks and additional scrap metal that was on the premises.*

44. *Mr. Palmer now denies this, but in 1995 the parties were arguing that the real issue was the time the Defendant took to remove the scrap and that he had taken too long and so the Defendant was entitled to give or sell it to Dino Trading. It is only now in 2007 that their story has changed and they are now claiming that the Claimant is the person who took the scrap metal at the time he dismantled the tanks."*

[69] The following are the relevant submissions made on behalf of the Defendant:

"5. It is contended that the agreement between the parties was fulfilled by WIOC. The undisputed evidence is that the Claimant dismantled the tanks which were agreed to be dismantled and that the Claimant was paid $32,500 by WIOC for the 'taking down and transporting' the said tanks as per the Claimant's invoice dated 30th September, 1992.

6. *Based on the evidence of the Claimant, his letter of 29th June formed the basis of the agreement between himself and WIOC. The Claimant's evidence is that his letter of 25th June 1992 (which Mr. Luis Palmer denied receiving) was unacceptable to WIOC as he was asking for all of the ferrous and non ferrous scrap metal on the WIOC compound but this was not acceptable to the then General manager, Mr. Luis Palmer. The Claimant gave evidence that the word, 'all' was changed to 'some' in his new proposal of 29th June, 1992 also contains the intended costs to WIOC for the Claimant to fulfill his part of the agreement. This was stated to be EC$9,500.00 per tank. The taking down and transporting of three tanks would therefore amount to $28,500.00. However, the undisputed evidence is that $4000 more than this figure was paid by WIOC to the Claimant. The Claimant's letter of 8th September 1992 is instructive as top what reasonable inference may be drawn as to the excess payment made by WIOC to the Claimant. The Claimant in his letter of 8th September 1992 states inter alia that '… with the ground being wet a temporary road is necessary to take down and cart away three (3) tanks. If you agree to pay the cost of this road which would require 6 truckloads of gravel it would be less than EC$6,000.00 for the job. We will then proceed immediately and have those tanks removed without any problem whatsoever.' The Claimant in cross-examination said that the $6,000.00 would have been a contribution by WIOC. From the evidence of the Claimant and his witnesses, the actual dismantling of the tanks took place in August 1992. It is submitted that this letter of 8th September, 1992 infers that the road was necessary for the removal of the tanks from the WIOC compound. By the 30th September, 1992, several weeks later, WIOC paid the Claimant for the job, including the extra $4,000.00.*

7. *It is instructive to note that paragraph 17 of the Claimant's Witness Statement refers to the demolished tanks being moved to the alternative location within the WIOC compound in or about the month of August 1992. However, it was on 8th September, 1992 that the Claimant wrote to Mr. Palmer telling him that a temporary road was necessary to take down and cart away the three tanks. It is therefore submitted that from the evidence, this process was indeed done during the month of September 1992 after which the Claimant submitted his invoice on September 30th, 1992 for "taking down and transporting three (3) tanks and unknown steel foundations that were protruding above the ground after the tanks were disassembled", when, it is submitted, the job was completed.*

8. *Mr. Luis Palmer and Mr. Joseph Fernandez both gave evidence for WIOC that at the time of the agreement with the Claimant, WIOC had a policy in place where they would allow various organizations and persons who approached WIOC requesting scrap metal to remove scrap from the WIOC compound without charge as long as there was no cost to WIOC in the removal. Mr. Palmer gave evidence that this policy was extended to the Claimant while the Claimant carried out the job of cutting and removal of the three tanks. Mr. Fernandez gave evidence that the Claimant had completed the job and removed the pieces of tank from the WIOC compound. Mr. Palmer's evidence is that he was satisfied of this, so he made payment to the Claimant. It is therefore contended that WIOC had fulfilled its contractual obligations to the Claimant."*

ANALYSIS

[70] It is a principle in the law of contract that a contract may be evidenced by in writing as well as oral statements[1]. It is a further principle that an agreement may be complete although the terms are not agreed in detail, see: FOLEY v CLASSIQUE COACHES LTD [1934] 2 K.B. 1. This case falls within both of these principles and it is for this reason that the exact nature of the agreement must be determined.

[71] It will be recalled that the Claimant's contention in this regard is that the essence of the agreement between the parties is that the Claimant would dismantle three tanks on the Defendant's premises and that in consideration for this agreement the Claimant would be paid $28,000.00 and would also be given some 15,300 tons of ferrous and non ferrous scrap metal lying on the Defendant's premises. For the Defendant the agreement ends at the payment of the sum of $28,000.00 plus the additional sum of $4,000.00.

[72] But in the view of the Court the Defendant's contention cannot be maintained in the face of cogent evidence to the contrary, especially the correspondence.

[1] See: Couchman v Hill [1947] K.B. 554

[73] The Court is of the further view that a substantial part of the answer to the issue lies in the cross-examination of the Claimant. In one such instance learned counsel, Ms. Sharon Cort, put it to Lewis that the agreement with the Defendant was solely with respect to the tanks. He responded by saying that if that was the case the amount of money would have been larger. Credence is given to this contention by the fact than an examination of some of the expenditure incurred by the Claimant in the dismantling of the three tanks actually exceeds $32,000.00 (Core Bundle pages 12-15).

[74] Some of the payments are as follows: 1. George Phillip - $16,050.00; Monroe Spencer & Sons Enterprises Ltd $7,000.00 and $8,100.00 for rental of crane and dump truck and Ricardo Wiltshire $10,500.00 for the rental of tractor and low boy. These items yield a total of $31,000.00. Further, the persons concerned were duly cross-examined by learned counsel for the Defendant.

[75] The other aspect of the evidence in this regard lies in the faxes between the Claimant and Luis Palmer. They are dated 25th June 1992 and 29th June 1992. They deal with the issue of the dismantling of the tanks and also with the matter of the scrap metal.

[76] In paragraph 4 of the fax dated 25th June 1992 from the Claimant to Mr. Palmer it speaks to an agreement to "give us all of the ferrous and non ferrous scrap that you have all over your property." However in the letter fax to Mr. Palmer the word "all" is changed to "some". In cross-examination Mr. Lewis testified that the change came after discussion between himself and Mr. Palmer. In any event a further fax from Mr. Palmer to Tyre Master dated 30th June 1992, referred to the previous fax of 29th June 1992 but did not reject or object to the issue of the agreement to give the Claimant some of the scrap metal on the Defendant's premises.

[77] The foregoing is cogent, notwithstanding the fact that Mr. Palmer said in evidence that he did not receive the fax of 25th June 1992. This the Court does not accept as being truthful and in any event the critical faxes are those of 29th and 30th June 1992 which are not in doubt and are fully addressed by learned counsel for the Claimant.

[78] Some reliance is placed on certain findings of fact arrived at by Benjamin J at the interlocutory stage in the proceedings. But such findings cannot be sustained or relied upon to any great extent having regard to Lord Diplock's ruling in the AMERICAN CYANAMID CO v ETHICON LTD [1975] 2 WLR 316 that at this stage there is no requirement for findings of fact given the absence of cross-examination[1].

[79] It is therefore the conclusion of the Court that the agreement between the parties concerned the dismantling of the three tanks by the Claimant in consideration of the payment of $32,000.00 and some of the ferrous and non-ferrous scrap metal on the Defendant's premises.

ISSUE NO: 2

WHETHER THE CLAIMANT SATISFIED HIS OBLIGATIONS UNDER THE AGREEMENT

[80] The Court has determined that under the agreement it was the obligation of the Claimant to dismantle and remove three tanks together with some of the ferrous and non-ferrous scrap, from the premises of the Defendant.

[81] Concerning his obligations under the agreement, the Claimant gives the following evidence at paragraphs 12 to 14 of his witness statement:

> *"12. In pursuance of the Agreement between the Defendant and me, I set about the dismantling and removing of the said tanks and the demolition of them was complete on or about the 30th September, 1992. To accomplish this task I had to engage other services of Mr. Robert Spencer and Mr. George Phillip to assist me with the use of their cranes and heavy duty equipment in dismantling the said tanks and working fill as necessary to facilitate their demolition and removal. For this service I had to incur costs in excess of $16,000.00. See exhibit CL(a) receipts for crane rental.*
>
> *13. The area around the tanks was waterlogged and it was not possible to bring the heavy machinery that was required for said demolition near to the tanks. In order to get alone enough I had to engage Mr. Cardo Wiltshire to bring fill and create work areas and access roads up to the said tanks from site A to site B on the Defendant's compound. The cost of the said works was $14,000.00. See exhibit CL(c) copies of receipts for the fill and road works.*
>
> *14. Pursuant to the said Agreement I did in fact dismantle the said three tanks, between July 1992 and September 1992. Pursuant to our agreement I sent an invoice to the Defendant for the agreed [sum of] $32,000.00 and prepared to remove the said scrap metal from the Defendant's premises.*

[1] See also: Series 5 Software v. Clarke [1996] 1 All ER 853

At that time however, I had not yet received the necessary equipment for the cutting up, sorting and packaging of the scrap metal for removal from the Defendant's premises."

[82] Ricardo Wiltshire in his witness statement filed on 22nd August 2005 gives evidence of his provision of trucking services to the Claimant with respect to the demolition of three tanks at West Indies Oil premises. He also says that other services were provided in terms of the transport of fill and the provision of crane services.

[83] At the trial the witness was permitted to elaborate on a document at page 15 of the Core Bundle. In this connection Wiltshire explained that it relates to the rental of trucks to haul material to West Indies Oil premises on the dates indicated.

[84] In cross-examination Mr. Wiltshire re-stated the fact that he rented some equipment to the Claimant and added that the tractor and the truck are the same thing.

[85] Concerning his presence on the Defendant's premises, Ricardo Wiltshire testified that he did so to see how his boys were getting on and did so at least once or twice per day. He also testified that he was paid cash for his services.

[86] On the question as to who was present on the premises at the material time Mr. Wiltshire testimony is that he did not recall seeing anyone from the Defendant but that he did see other customers of the Defendant at the site at the time when the equipment was being used.

[87] Francisco Thomas also gave evidence on behalf of the Claimant. His witness statement was filed on 22nd August 2005. In it he says that is a businessman/heavy duty equipment contractor and has known the Claimant since the 1980's. He says further that in or about June 1992 the Claimant engaged his company to provide fill and crane services for a job he was at West Indies Oil Company premises. According to the witness the job involved the demolition of three tanks constructed on the said premises.

[88] It is the evidence of the witness that the Claimant rented two cranes from his company while the dismantling was taking place over several weeks. He said further that the cranes were used to transport the large pieces of metal which was impossible without the crane.

[89] In cross-examination Mr. Francisco Thomas said that while the job was in progress he attended the Defendant's compound and did so because he operated the crane of which there was more than one.

[90] With respect to the pieces of metal into which the tanks were cut, the witness' testimony is that they were instructed by Mr. Lewis to move them to another site within the compound. This, according to Thomas, would have been the northern side of the compound in an open area. The witness also said that he could not recall if the Claimant told him when further cutting would take place which in any event was necessary if they were to be used. He went on to say that: "If the tanks were cut further the cranes would be needed to load – not to transport. A load per truck would have been approaching $1000 to $1200, but now it is about $1500 to 1800. The size of the truck would be 30 to 40 feet being a flat bed truck."

[91] In re-examination Mr. Francisco Thomas testified that the West Indies Oil compound is large but that he had no idea as to the size. He ended his testimony by saying that the size of the pieces cut from the tanks were about 30' x 40' with the tanks themselves being 50' tall but could not remember the width.

[92] Another witness to give evidence in relation to the dismantling of the three tanks is Sylvester Jackson. His witness statement was filed on 22nd August, 2005. In it he says that he has worked for the Claimant since the 1980's and later in June 1992 in the dismantling of three tanks belonging to West Indies Oil Company.

[93] At paragraphs 3 to 6 Sylvester Jackson gives an account as to what had to be done in order to reach the tanks in order to dismantle them, the equipment hired and the place

where the pieces of metal were taken on the compound using Ricardo Wiltshire's tipper trucks.

[94] In cross-examination Jackson said that the equipment used to carry the pieces of the tanks was some low boys. The witness also said that the pieces were large and there were about 4 or 5 pieces. According to the witness the pieces could not pass through the gate at the compound and in order to move then again they would have to be cut further.

[95] With respect to the scrap metal on the compound, Mr. Jackson said that there was lots of it on the Defendant's compound with much of it being on the northern side. He said that he saw brass, copper, steel and pipes which were covered with grass which he removed to identify them.

[96] With respect to the scrap metal on the compound, Mr. Jackson said that there was lots of it on the Defendant's compound with much of it being on the northern side. He said that he saw brass, copper, steel and pipes which were covered by grass and which he had to remove in order to identify them.

[97] Bernard De Nully gave evidence on behalf of the Defendant and at paragraph 3 of his witness statement speaks of the Claimant dismantling and removing three tanks and some scrap from the Defendant's premises.

SUBMISSIONS

[98] The following submissions were made on behalf of the Claimant:

> *"At no point in the Defendant's Defence did it plead that the Claimant failed to remove the scrap in a timely manner. The Defence clearly states that the Claimant remove the scrap metal from the three tanks and other existing scrap between July and September 1992. This is an area of much confusion in the Defendants case as it has claimed on one hand that the Claimant cannot rely on the alleged agreement as he tool too long to remove the said scrap and then on the other hand their witnesses, have claimed that he removed it by September 1992. Yet Mr. Fernandez gave evidence that it was on the compound for a long time and then he noticed it was gone. The Defendant has been proposing two contradictory accounts of what has transpired and has produced no tangible evidence to support either contention."*

[99] The submissions on behalf of the Defendant are as follows:

> *"10. The Claimant himself in his evidence in cross-examination said that his business premises are located on four or five acres of land. It is averred that the Claimant at the time of entering into the agreement with WIOC clearly had the capacity to remove and ship out scrap metal from Antigua in the course of his business. The Court is asked to infer from the evidence that the Claimant having the means and opportunity to remove and sell at the material time the metal from the dismantled tanks and other scrap in what the Claimant himself describes as a successful scrap metal business which he operated, he would not have simply left the said scrap metal unclaimed for a period in excess of three (3) years. The Claimant's witness, Francisco Thomas, gave evidence in cross examination that the equipment on site would have been capable of moving the dismantled pieces of tank off of the WIOC compound if the tanks were cut up into smaller pieces. Further, Sylvester Jackson, the Claimant's employee who was engaged in the dismantling process, gave evidence in cross examination that he was capable of cutting up the dismantled pieces of tank into smaller pieces with the equipment that he had there (at WIOC). He also admitted that some of the smaller pieces of the scrap metal could fit in the trucks which were driven away from the WIOC compound. Mr. Jackson also confirmed that the Claimant had been packaging scrap metal for shipment out of Antigua prior to the job at WIOC and that he, Mr. Jackson, was sometimes involved in this process.*
>
> *11. The witnesses for WIOC in their evidence assert that the Claimant approached WIOC about getting scrap metal and made an offer to dismantle the three (3) redundant tanks when he realized that they were unused. Although the Claimant said that it was WIOC who approached him, the Court is asked to conclude that based on all the evidence, it is more probable than not that the Claimant being in the scrap metal business would have identified various sources of scrap metal, including WIOC, the same way that the witnesses for WIOC confirmed that many other organizations and groups approached WIOC for scrap metal, not having been in the compound previously. The Claimant in fact, did admit in cross examination that he usually operated to source his scrap by approaching various persons. In this regard, it is suggested that the Claimant would have already made arrangements for the removal of the scrap from the WIOC compound upon his proposal of 29th June, 1992. The Claimant himself in cross examination confirms this when he said "this matter about storage wasn't part of my proposal because I was under the impression that he would cut them up and take them away to our own premises …"*
>
> *12. The letter of 1st November, 1994 to the Claimant from Surrey Plant Export is instructive in that it confirms that by that date, the Claimant had in fact prior to the beginning of November, 1994 already paid for or purchased the items listed as 1 to 7, including: a Toyota Pick Up truck, one bob Cat, two mobile compressors, one Plasma Cutter & compressor to operate cutter, one welding plant, one ten ton Leyland Truck and one 20 ton flat bed truck mounted with crane for lifting scrap. Based on the evidence of the Claimant and his witnesses regarding the equipment used for the dismantling of the tanks and the moving of the metal, it is submitted that the aforesaid equipment would have enabled the Claimant to move out the scrap from WIOC's premises prior in the event that it was not removed in 1992(which WIOC denies).*
>
> *13. It is further contended that for the Claimant to wait for a period of almost three (3) years before alleging that he did not receive the scrap metal anticipated under the agreement of June 1992 (which allegation WIOC denies) is unreasonable in any event, and it would have been a reasonable inference for WIOC to conclude that the Claimant had abandoned any further rights he may have had under the said agreement by his own inactions, had the agreement not been fulfilled: (Chitty on Contracts, 28th edition, Vol. 1, paragraph 2-088); G.H. Treitel, The Law of Contract, 6th edition, p. 36; Andre & Cie SA v. Marine Transocean Ltd. (The Splendid Sun) [1981] 2 All E.R. 993). However, the evidence of Mr. Joseph Fernandez, the then Marketing Manager of WIOC, in cross examination is that "we had no one else there to remove scrap metal between them and Dino Trading. Nobody else came into the compound to do that, and when Dino Trading arrived, they (the pieces of metal from the tanks) were gone." It is therefore averred that the contract between the parties was concluded in any event."*

[100] The Defendant's submissions may be summarized by saying that the Claimant had the physical space to store the scrap metal, coupled with the technical ability to remove the scrap and did in fact remove the scrap metal. And as such the contract was concluded.

[101] It will be recalled that Luis Palmer in his witness statement at paragraph 9 did indicate that between July, 1992 and September, 1992 the Claimant did dismantle and remove the three tanks as well as some additional scrap from the Defendant's premises pursuant to a gratuitous agreement of June 1992 permitting the same. There can hardly be any doubt regarding the dismantling of the tanks but the matter of the removal of scrap must await further evidence and analysis.

[102] It is therefore the conclusion of the Court that the Claimant dismantled the three tanks in accordance with his obligations under the contract. However, as regards the removal of the scrap, this determination is contingent on the conclusion on the third issue.

ISSUE NO: 3

WHETHER THE DEFENDANT SATISFIED ITS OBLIGATIONS UNDER THE AGREEMENT

[103] As determined above, the obligations of the Defendant were to pay the Claimant the sum of EC$32,500.00 in connection with the dismantling of the three tanks and to permit the Claimant to have access to its premises in order to remove the scrap from the said tanks and other scrap within a reasonable time.

[104] In so far as the payment is concerned, it is common ground that this was done following the dismantling of the tanks. Therefore as matters stand the issue turns on whether the Defendant granted the Claimant a reasonable time within which to remove the scrap or at all. It is a matter of great complexity. The basic position of the Defendant is that the Claimant was granted permission to remove some of the existing scrap and at a later date, being between July 1992 and September 1992, further permission was granted to the Claimant to remove the scrap resulting from the dismantling of the tanks. This is vehemently denied by the Claimant.

[105] In this regard this is what the Claimant says at paragraphs 27 to 29 of his witness statement:

> *"27. In or about the month of September, 1992 and on numerous occasions thereafter I called on the Defendant for permission to remove some of the scrap metal from their premises in accordance with their procedures for entry upon their premises, but the permission was always denied. I wanted to take some of the non-ferrous metal but was informed by the Defendant's agents that I would have to take all of it if I wanted to take any. As I had not received the necessary equipment, I was not in a position to deal with all of it yet so I left it all there. At no time did I remove any scrap metal from the Defendant's premises pursuant to our agreement; the large pieces of the tank were merely moved from one site within the premises to another site shown to us by Mr. Palmer within the Defendant's compound. It was important for us to remove the tanks in large pieces to avoid unnecessary cutting in close proximity to the other tanks that [were] still in use by the Defendant.*
>
> *28. By May 1995, I was firmly in a position to commence the removal of the said scrap metal from the Defendant's premises. Pursuant to this I visited the Defendant's premises to work out the logistics of the said removal. It was at this time that I observed that persons unknown to me were actively engaged in working the said scrap in preparing it for removal from the Defendant's premises.*
>
> *29. In or about the said month of May 1992, I spoke to the Defendant's managing director Luis Palmer and reminded him that I was entitled to the said scrap under our agreement of July 1992. He thereupon objected to my assertion of my right to the said scrap metal and I was unable to convince him as to my rights under the contract."*

[106] In re-examination the Claimant testified that in terms of the removal of the scrap Mr. Palmer refused to allow him to take away non-ferrous scrap. He continued thus: "I did not take away any scrap from the tanks. After moving the tanks from the site A to site B, I did not cut them down any further. The pieces of the tanks were too large to get them through the gate."

[107] Ricardo Wiltshire, Francisco Thomas and Sylvester Jackson all gave evidence in support of the Claimant's case as they provided a variety of services to the Claimant in connection with the dismantling of the tanks. In the course of their evidence they all denied that the Claimant took any scrap metal from the Defendant's compound. In particular, Ricardo Wiltshire in cross-examination testified that after the tanks were cut the pieces were too large to pass through the gate at West Indies Oil Company. Francisco Thomas said in cross-examination that he operated the crane and as far as he knew the pieces from the tanks were not removed. And Sylvester Jackson also under cross-examination said that he operated the cutting torch with which the tanks were cut into pieces and moved to another area of the compound and left there. He testified further that in order to move the pieces again they would have to be cut further which was not done. The witness went on

to say that he doubted that any of the scrap metal was moved out by the Claimant. When it was put to Mr. Jackson that the truck took away scrap he responded that the truck could only take the pieces to the storage site after which they left the compound empty. The witness testified further that after the tanks were cut up he went up to the sugar factory but there was none of the material from the West Indies Oil compound there.

[108] On the side of the Defendant Joseph Fernandez in his witness statement says that the Claimant removed the three tanks from the Defendant's premises. According to him these totaled 54 ½ tons. This implies that the Claimant was permitted to enter the premises. He however went on to say that he did not give the authorization. And later in his cross-examination Fernandez testified that the Claimant's people moved the scrap metal although he did not see him do it; but he did see when they were cut and relocated at a predetermined location.

[109] In terms of the time involved in the removal of the scrap Mr. Fernandez testified that such removal could not be done in an hour, a day and probably not a week.

[110] Concerning the exact time when the Claimant could have been authorized to remove the scrap metal, Mr. Fernandez gave evidence as follows:

> *"Between September 1992 and the filing of this action I did not tell the Claimant to remove scrap metal. We could not contact him. The last time we tried to contact him was when we went to his home. I cannot recall the date. Mr. Lewis was out of contact for over two years. It was perhaps months that we could not contact Mr. Lewis on another matter. To my knowledge no one did so – also Mr. De Nully. To my knowledge nobody did contact him to remove scrap metal."*

[111] Yves Bernard De Nully in his witness statement at paragraph 4 also says that the Claimant removed 54 ½ tons of scrap metal resulting from the dismantling of three tanks.

[112] In commenting on paragraph 27 of the Claimant's witness statement, De Nully said that in September 1992 he did not have any discussion with the Claimant about scrap metal. And in cross-examination the witness said that he could not recall seeing the Claimant removing scrap metal on or after October 1992.

[113] In his witness statement at paragraphs 5 and 9 Luis Palmer says in or around June 1992 and again between July 1992 he gave the Claimant permission to remove existing scrap metal and scrap metal derived from the dismantling of the tanks plus other scrap metal. According to Mr. Palmer the total scrap derived from the dismantled tanks was 54 ½ tons.

[114] In cross-examination Mr. Palmer testified that by 1st October the pieces were gone but he did not see them go. At a later stage in the cross-examination it was put to Palmer that the Claimant never received any scrap metal. His response was this: "This is not my information, but I have nothing to prove it."

[115] In re-examination Mr. Palmer said that he could not see the scrap metal from his office as there are buildings between his office and the site where the scrap was located.

[116] As matters stand it is open to the Court either to believe the Claimant contention that he was never permitted to remove any scrap metal or to accept the Defendant's evidence that he did. But there are two other circumstances which can bring the matter to a fairer solution. They are the question of the procedures followed at the Defendant's premises and the size of the pieces of scrap into which the tanks were cut.

PROCEDURES FOLLOWED

[117] At the start of his cross-examination this is what Luis Palmer said:

> *"I was the managing director of West Indies Oil Company. The company is engaged in bulk storage and refining operations. There are certain procedures at the refinery and I ensure that they are followed. The business involves flammable liquids and as such fire is a major concern. As such there is control of things that can cause fire. When the Claimant came to the refinery he was subjected to these procedures. It is part of the procedures that fire equipment is logged and the log would reflect any activity of the fire department. This is necessary where people are using torches. At all times the fire tender is there when torches are being used and this would be noted in the log."*

[118] Joseph Fernandez also gave evidence regarding the procedures followed. In cross-examination and in reference to the last sentence of the third paragraph of his witness statement concerning the removal of scrap metal, he said he gave no authorization. It is his further testimony that any such authorization would be given in writing to the gate

person. He then added, that to his knowledge Mr. Palmer did so, but that the security building where the documents were stored suffered severe damage during one of the storms and had to be removed. The witness added further that as far as he was aware there was no duplication, and further still that the books kept by the security are thrown out. Mr. Fernandez ended his cross-examination of this issue by saying that the only record of the removal of scrap metal by the Claimant was destroyed or thrown away. He added that he did not see Mr. Palmer write the document but he saw it nevertheless. And when it was put to him by learned counsel for the Claimant that there was no such document, Fernandez reiterated that such a document did exist with a copy going to security and one kept by Mr. Palmer but that it is unlikely that it is available.

[119] In relation to the procedures followed by the Defendant, Fernandez said that standard procedures are followed and that he is a chemical engineer by profession. With respect to the procedures followed he said that fire extinguishers and fire trucks are in service 24 hours per day and the movements of the latter are logged. He also said that after September 1992 if the Claimant went to cut up the tanks that event would be logged but that he did not bring the fire log with him. The witness said further that when someone is coming on the premises, it is insisted that they do so during working hours.

[120] With respect to the telefax message at page 25 of the Core Bundle, Mr. Fernandez accepted that the document reflects the procedure followed at the refinery. The witness also accepted that the document is copied to four persons and agreed further that if such a letter was sent to the Claimant, it is possible that there should be a copy somewhere.

SIZE OF THE PIECES OF SCRAP

[121] With respect to the size of the pieces of scrap into which the tanks were cut there are variations.

[122] Sylvester Jackson in cross-examination said that there were about four or five large pieces which fitted on the low boy. He also said that the pieces at those sizes could not pass through the gate at the Defendant's premise and that the crane was required to lift the

pieces on the low boy in order to transfer them to the other site. It was also put to the witness that the pieces were cut further and this was denied by Mr. Jackson.

[123] Francisco Thomas on the other hand was more specific in that he gave the measurement of the pieces to be 30' x 40' and also in his estimation that the tanks were 40' to 50' tall. The witness went on to say that the pieces on the Defendant's premises were 6' to 8' in two halves and when opened it measured about 10'.

[124] It is to be noted that Luis Palmer in the course of cross-examination on the size of the tanks that were dismantled conceded that the measurements shown at page 11 of the Core Bundle as being 30' tall was correct and not 18' as he sought to say. At the same time he did testify that with a size of 10' x 30' the pieces of scrap metal could not be driven out of the West Indies Oil compound.

[125] Yves De Nully also gave evidence in this regard. As far as the dismantling of the tanks is concerned, De Nully said he could see it and some of the pieces were 6' x 4' and some could be longer but not by much. He added that you could not handle the larger pieces and they were handled by the single crane. He said further that he could not recall that there was more than one crane.

[126] When it was put to the witness that the pieces of scrap metal being 6' x 4' was incorrect, he insisted that he was correct and went on to say that there would be no difficulty in getting such a size of scrap metal through the gate.

[127] It was put to the witness that if the pieces were 6' x 4' and the surface area of the tanks was 20,000 sq ft there would be 800 to 900 pieces. The witness' response to the proposition was that there was a significant pile of scrap lying on the premises.

[128] In re-examination Mr. De Nully said this: "The documents were kept in the security building. In 1999 hurricane Luis destroyed that building. The roof came off and everything

was water soaked and I imagine that some documents were blown away. I know for sure that some documents were water soaked."

[129] The conclusion reached before with respect to the Defendant's action through Mr. Luis Palmer must be repeated. It is simply that neither Mr. Palmer nor any other person gave permission to the Claimant to remove the scrap metal. This conclusion rests on the fact that there are a host of security procedures followed at the Defendant's premises and no documentary evidence could be adduced to show that permission was in fact granted. In any event the Court cannot accept that in the context of these security measures the evidence, if it existed, could not be adduced.

[130] But the question of permission did not really arise since as the evidence shows there was never any further reduction in the size of the pieces into which the tanks were cut so as to be able to be moved through the gate on the Defendant's premises. The further technical point made by learned counsel for the Claimant is that the Defendant in its defence did not plead that the Claimant failed to remove the scrap in a timely manner.

[131] It follows, therefore, that the Defendant was in breach of its obligation under the contract on account of its failure to permit the Claimant to remove the scrap metal within a reasonable time having regard to all the circumstances. It also follows that the Claimant was not in breach of his obligation under the contract.

ISSUE NO: 4

WHETHER THE CLAIMANT IS ENTITLED TO DAMAGES

[132] The rule is that where one party to a contract acts in breach of that contract, the other party is entitled to damages. A related rule is that the purpose of damages in that context is to put that party he would be in had there not been a breach of contract[1].

[1] See generally McGregor On Damages (16th ed).

SUBMISSIONS

[133] The following are the submissions on behalf of the Claimant:

"53. As a result of the Defendants breach of contract the Claimant has suffered loss of scrap valued at (as per the estimate of costs at page 51 of the Core Bundle)

15,000 tons of steel scrap (ferrous) @ $100 US/ton	*US$1,500,000.00*
150 tons of non ferrous scrap copper @ $1630 US/ton	*US$ 40,000.00*
Total	*$1,740,000.00*

Even if the court was to discount this by 25% to take into consideration that the final agreement was for most the Claimant is still entitled to at the least US$1,200,000.00 plus interest at the commercial rate of 13% from July 1992 until Judgment.

54. Additionally the Claimant pursuant to this agreement purchased plants and equipment material and works totaling some $750,000.00 EC.

(a)	*concrete slabs*	*(p 46 of core bundle)*	*$120,000.00*
(b)	*Heavy equip rental*	*(p 47 " ")*	*$151,880.00*
(c)	*" "*	*(p 48 " ")*	*$ 85,200.00*
(d)	*work done by Claimant*	*(p 49 " ")*	*$133,500.00*
(e)	*Heavy equipment rentals*	*(p 50 " ")*	*$ 66,360.00*
(f)	*Hotel accommodation*	*(p 19-20 " ")*	*$ 476.00*
(g)	*Surrey Plant Purchase of equipment approximately*	*(p 18 " ")*	*$240,000.00*
(h)	*Wiltshire*	*(p 15 " ")*	*$ 10,500.00*
(i)	*Monroe Spencer*	*(p 14 " ")*	*$ 8,000.00*
(j)	*" "*	*(p 13 " ")*	*$ 7,000.00*
(k)	*George Phillip*	*(p 12 " ")*	*$ 16,050.00*

55. Loss of reputation with business associates. Damages claimed are all related to the failure of the Defendant to fulfill his obligation under the contract. The Defendant knew or should have known that a breach of the agreement would cause the Claimant to suffer the loss as indicated above. The Defendant at all times knew that the Claimant was purchasing equipment and rehabilitating the dock at high point specifically for this project. And that the Claimant expected to recoup his expenses from the sale of the said scrap metal overseas. The Claimants losses are neither remote nor unrelated to the agreement between the Claimant and the Defendant.

56. It is submitted for the Claimant that the evidence before the Court supports the Claimants claim that there was an agreement between the parties for the Claimant to demolish the said tanks and in consideration of his doing so he would receive $32,500.00 in cash and the scrap metal from the tanks approximately 100 tons of ferrous scrap and most of the remaining ferrous and non ferrous scrap metal. Most being all except for a small amount to be used by the Defendant for repairs. Most of the 15,000 tons of ferrous and the 150 tons of non ferrous. Scrap. The terms of the contract were certain between the persons negotiating the Agreement. Between themselves they knew what amounts they would have left behind for repairs. The agreement was for most of the scrap. If the Court is of the view that it cannot assess the amount that was agreed upon the Claimant is still entitled to payment on a quantum merit basis. For work done. The Defendant cannot be unjustly enriched at the Claimant's expense."

[134] On behalf of the Defendant the following submissions were tendered:

> *"15. It is contended that any loss suffered by the Claimant was not as a result of any breach of contract by WIOC. The Claimant's purported losses were £80,700.00 allegedly spent on equipment acquired, "over EC$80,000.00 allegedly spent on renovating the High Point Dock at Coolidge, 1995 hotel bills for a Mr. Tyrone Young of CAL.B. Co., purported loss of benefit of contracts with F.J. Church & Sons and CAL B. Co. threatened legal action from the said companies and purported damage to reputation.*
>
> *16. It is contended that based on the evidence before the Court, the amount of ferrous and non-ferrous scrap that the Claimant was to get from WIOC based on the agreement was far less than the scrap that the Claimant alleges he lost the chance of getting. The Claimant in paragraph 3 of his Witness Statement refers to a right to remove and take away for his own use and business a quantity of scrap metal being approximately 15,300 tons of ferrous and non-ferrous scrap metal located on WIOC premises. However, under cross examination, the Claimant admitted that this figure was never mentioned to him by WIOC or agreed with WIOC, but was the Claimant's own estimate. The evidence of Mr. Yves Bernard de Nully, the maintenance superintendent of WIOC at the time that the Claimant dismantled the tanks, is that the three tanks totaled 54 ½ tons and that in or around 1992 there would have been about 60 tons of scrap on the WIOC compound, the majority of it being carbon steel and copper tubes. According to the evidence of both Mr. de Nully and Mr. Fernandez, all the existing tanks (in use) at WIOC and other metal substances on the compound totaled less than 15,300 tons. The Claimant in cross examination agreed that Mr. Palmer had told him that he could not get all of the scrap metal on WIOC compound. It is submitted that beyond the metal from the dismantled tanks which WIOC avers was taken by the Claimant, the Claimant has not established with any degree of reasonable certainty, the amount of non ferrous scrap metal that he claims he could have gotten from WIOC. The Claimant accepted in his evidence that he was not entitled to all of the said scrap metal, and there is no conclusive evidence as to how much non ferrous scrap metal the Claimant would have been entitled to take from the WIOC compound. In any event, it is contended that the Claimant did remove the scrap metal from the WIOC compound before he was paid by WIOC at the beginning of October 1992.*
>
> *17. Further, the e-mail of Friday August 19th, 2005 from Patrick Church of F J Church to the Claimant gave prices at which scrap (copper and steel) was purchased during 1995/96. It is submitted that these prices do not relate to any agreement between the Claimant and WIOC, as these prices reflect the price of the materials three to four years after the contract between the parties had concluded. Alternatively, it is submitted that the Claimant could not reasonably be entitled to take the benefit of having scrap metal stored on the WIOC compound for so many years without cost to the Claimant while the value of the metal may have increased. It is submitted that the Claimant would have had a duty to remove the scrap within a reasonable time frame (not seek to do so three years later) in the event that he had not taken the scrap in 1992 (which WIOC avers that he did).*
>
> *18. Both Mr. Fernandez and Mr. Palmer gave evidence that they tried to contact the Claimant during the nearly three year period between the completion of the job and when they heard from him again in 1995, but to no avail. According to Mr. Palmer, he sought to find the Claimant concerning another matter involving the Claimant. They deny that the Claimant tried to contact or kept in contact with them in the interim. Mr. Fernandez gave evidence that after trying to find the Claimant at his home during the said period, it was discovered that he was in England.*
>
> *19. It is contended that the equipment which the Claimant ordered were for the Claimant's general use in his business and not specifically related to his previous agreement with WIOC. The Claimant admitted in cross examination that "these goods were nothing to do with WIOC, it's to do with me. They were to do that job and others." The Claimant also admitted that he had already had cutting gear and some of the items he ordered from Surrey Plant Export previous to the order and while he was doing the dismantling of the tanks at WIOC. It is therefore submitted that the Claimant suffered no loss by reason of his order of the said equipment, as they were for use in his business.*

20. *It is also submitted that any renovations of the High Point dock undertaken by the Claimant had no direct nexus with the agreement he had with WIOC. This is clear from the evidence and documentation surrounding the said renovations. By letter dated 17th May, 1995, Messrs Lake & Kentish had written to Mr. Palmer making a claim on behalf of the Claimant with respect to the matter of the scrap metal, and by letter dated 22nd May, 1995 from Messrs Cort & Cort, the Claimant's assertions were denied. However, the Claimant's documents concerning the renovations clearly show that these took place after this date. It is submitted that the Claimant could not reasonably have proceed to expend monies on a project where his purported rights to receive further scrap metal from WIOC had already been denied by WIOC. The Claimant presented an invoice of August 11, 1998 from Mr. R. Joseph, General Manager of Jolly Castle Hotel for the purchase of concrete slabs in the amount of $120,000.00, an unsigned letter from Myles Codrington regarding work on High Point Dock which confirms that work commenced on September 4th and went until September 23rd, 1995. There is also a letter/invoice from J & J Construction & Heavy Duty Services dated September 7th, 1998 which is for work beginning on 3rd July, 1995 until 15th July, 1995, a letter from the Claimant himself "to whom ever it may concern" stating that work commenced at the High Point Dock on July 3, 1995 to February 9, 1997, and a further invoice from George Phillip dated September 23, 1998 for work done at the High Point Dock from January 8 to 27, 1996. It is submitted that on the face of this evidence, it is clear that none of these works touched and concerned the contract with WIOC. Further, the Claimant's own evidence that he had previously shipped out scrap metal from Antigua prior to his agreement with WIOC confirms that no renovations to the said dock were needed for any scrap which may have been obtained from WIOC by the Claimant to be shipped out by him. In any event, it is contended that based on the evidence before the court, there was never any indication by the Claimant to WIOC as to what he was going to do with the scrap metal obtained from WIOC or any agreement with WIOC in this regard.*

21. *Further, it is contended that the Claimant suffered no losses in relation to the purported threatened legal action by Cal. B. Co. and F.J. Church with whom the Claimant admitted in cross examination that he continues to do business and has been able to maintain a working relationship. The Claimant further admitted that no legal action was taken against him by the said businesses. The Claimant also gave evidence that he is still in the scrap metal business and that he would describe himself as been successful in that business in Antigua.*

22. *It is also submitted that the Claimant has not made any cogent link between the hotel invoice for Mr. Tyrone Young in January and March 1995 and the agreement for WIOC. The Claimant said at paragraph 24 of his Witness Statement that Mr. Young came to Antigua to hold discussions with him in respect of the proposed shipment of a quantity of scrap metal to the USA. It is contended that this was almost three years after the contract with WIOC was concluded, and since the Claimant was involved in the scrap metal business, it is suggested that any such discussions would be relative to the Claimant's business in general. It is submitted that there is no reasonable evidence to suggest that these visits related at all to scrap metal from WIOC, as the Claimant admitted that he had other sources of scrap metal.*

CONCLUSION

23. *WIOC contends that its agreement with the Claimant came to an end when it made payment to the Claimant of $32,500.00 on 1st October, 1992. it is contended that at such point the Claimant had moved out the dismantled tanks from the WIOC compound along with any other scrap metal which the Claimant was entitled to remove by virtue of the agreement entered into with WIOC.*

24. *It is submitted that any non ferrous scrap metal which was to be removed from WIOC by the Claimant would have been removed pursuant to the gratuitous agreement and policy that WIOC had in place. There was no consideration in respect thereof, and there must be some valuable consideration for such an agreement to be legally binding: Combe v. Combe [1951] 1 All ER 767; Chitty on Contracts, 28th edition, Vol. 1, paragraph 3-013; G.H. Treitel. The Law of Contracts, 6th ed., p. 51.*

25. It is, however contended that the Claimant did take the benefit of the said gratuitous agreement and any obligation of WIOC to the Claimant was discharged. Nonetheless, it is submitted that there is an implied condition that the Claimant would act in a reasonable time to take the benefit of any such arrangement: Chitty on Contract, paragraph 22-020. The Claimant's failure to take any action for a period of almost three years would imply an intention not to be bound further by any agreement: Chitty on Contracts, 28th edition, Vol. 1, paragraph 2-088; G.H. Treitel, The Law of Contract, 6th edition, p. 36.

26. In all the circumstances, it is submitted that the Claimant has no entitlement from WIOC, and this Honourable Court is asked to dismiss the Claimant's claim and grant costs to WIOC."

[135] The submissions on behalf of the Defendant can be narrowed to these propositions: 1. Any loss suffered by the Claimant in purchasing equipment has no bearing on any breach of contract by the Defendant. 2. The Claimant did remove scrap metal from the Defendant's premises. 3. In any event the total amount of scrap from the tanks was around 54 ½ tons. 4. The prices of the scrap metal quoted by the Claimant do not relate to the time of the contract but rather some three years later and in any event the Claimant has a duty to remove the scrap metal within a reasonable time. 5. The Claimant suffered no loss as a result of the ordering of equipment. 6. There is no nexus between the contract and the renovations to the High Point dock. 7. The Claimant suffered no loss as a result of threatened legal action by persons with whom the Claimant does business. 8. The contract came to an end on the payment of the sum of $32,500.0 to the Claimant by the Defendant.

[136] While the Court agrees with some of the propositions advanced, others are contradicted and by the findings of fact and conclusions of law that the scrap metal was part of the consideration for the dismantling of the tanks and the Defendant's actions amounted to a breach of contract. Damages therefore become part of the equation.

[137] Given the fact that the Claimant is in the business of exporting scrap metal, it is the view of the Court that the equipment ordered and the expenditure in the High Point dock now constitute a functional part of the Claimant's business. And at another level the mere threats of legal action are not items for the award of damages in this context. In any event the 'threat' from CAL. B Co. which is unsigned, can be easily dismissed as being anything but genuine.

[138] Damages are therefore confined to the loss of the scrap metal which was supposed to be part of the consideration.

[139] Learned counsel for the Claimant proceeds on the premise that the amount of scrap involved is 15,000 tons of ferrous and 150 tons of non ferrous metal. But the Claimant himself admitted in cross-examination that the figure of 15,300 tons pleaded was not a figure agreed and documented but simply a gestimate on his part. And although it was not said the same random guess must have been applied to arrive at the figure for the non ferrous scrap in the amount of 150 tons.

[140] Various weights have been assigned to the three tanks. De Nully and Fernandez advance a weight of 54 ½ tons. On the other hand, Luis Palmer puts the other scrap at between 5000 and 6000 tons. In the absence of any other evidence in this regard the Court accepts the weight of 54 ½ tons as the weight of the scrap from the tanks and determines that the figure of 3000 tons as the weight of "some" of the other ferrous scrap to which the Claimant was entitled. The Court further determines the weight of 25 tons with respect to the non ferrous scrap metal.

[141] The reasonableness of the figures can be measured against Joseph Fernandez's estimate of the weight of the entire tank farms, consisting of some 33 tanks, as being approximately 10,000 metric tons.

[142] Learned counsel for the Defendant in her submissions has raised the issue of the implied legal requirement that the Claimant should have removed the scrap within a reasonable time. The response to that proposition is that reasonableness takes its colour from its context. And in this context regard must be had to the quantity of scrap involved, the fact that the Claimant's export scrap averaged 30 tons, the logistics of taking the scrap to the Sugar Factory, the fact that there is no evidence that the Defendant required the space urgently and the fact that the Claimant was actively making plans to store and then export the scrap from the High Point dock. These circumstances warrant a term being implied by

the Court that the Claimant should be given a reasonable time, see: CHESHIRE & FIFOOT, THE LAW OF CONTRACT (7th ed.) pages 156-161[1].

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[143] Against the foregoing the Court does not consider the Claimant's delay to be unreasonable. In fact, as early as April 1995 (Core Bundle pages 22-25) the Defendant was actively engaged in negotiations with MDC & Associates Ltd for the sale of scrap metal which the Claimant was supposed to have removed from the Defendant's premises, unless in the meanwhile the Defendant was able to generate another 5000–6000 tons of scrap metal of which there is no evidence before the Court.

[144] At paragraph 7 of his statement of claim, the Claimant pleads the particulars of damage including the frustration of sales to F.J. Church & Sons. These are denied by the Defendant. However as part of its evidence is a letter from the said F.J. Church & Sons indicating the prices at which various scrap metals were purchased from the Caribbean in 1995/1996. However there is no other evidence in this regard before the Court.

[145] The email from F.J. Church is in these terms:

> *"Dear Tyremaster,*
>
> *I have checked back in our records. During 1995/96 we were purchasing scrap from the Caribbean at the following prices:*
>
> *Copper (birchcliffe) 95% Scrap @ GB£1400 -1500 per metric tonne, depending on the level of LME*
> *Steel (HMS1/2) @ US$100 per metric tonne ex Antigua.*
>
> *At the moment, Copper scrap is worth: GB£1630 pmt*
> *Brass 1040 pmt*
> *Aluminum Wire 840 pmt*
>
> *I hope this assists and we look forward to hearing about new business.*
>
> *Regards*
>
> *Patrick Church"*

[146] The difficulty with this aspect of the evidence is that the pieces are given United States and English currency and there is no clear measure of the types of non-ferrous scrap metal

[1] For an alternative formulation of "terms implied in fact" see: G. H. Treitel, *Law of Contract* (8th ed.) pp 185-189.

involved. But even in these circumstances the Court must do the best it can, see: THOMPSON v SMITHS SHIPREPAIRERS [1984] 1 ALL ER 881, 910; BIGGIN & CO v PERMANITE LTD [1950] 2 ALL ER 859. This is the manner in which Lord Mutsill[1] articulated the issue:

> *"What justice does demand to my mind is that the Court should make the best estimate which it can in the light of the incomplete evidence making the fullest allowances in favour of the Plaintiffs for the uncertainties known to be involved in the apportionment."*

[147] The uncontradicted evidence of the Claimant and Sylvester Jackson is that the non ferrous scrap consisted of brass and copper. And the Court's solution is as follows:

1. Treat the prices quoted in sterling as being an error given the vast disparity between the prices of steel on the one hand and copper and brass on the other. In fact the Claimant in re-examination gave the price of copper scrap as being US$1400 to 1500 per ton.

2. Given the non-specificity regarding the two metals, calculate an average price of the two pieces of copper and brass as the price for the purposes of damages.

3. Thus US$1400.00 plus US$1040.00 yield US$1335.00.

[148] Therefore the damages for the ferrous and non ferrous scrap metal is as follows:

1. Ferrous scrap – 54 ½ tons from the tanks plus 3000 tons of other scrap @ US$100.00 per ton yields US$305,450.00 or EC$824,715.00.

2. Non-ferrous scrap (copper and brass) – 25 tons @ US$1335 per ton yields US $33,375.00 or EC$90,112.50.

INTEREST

[149] It is common ground that the Claimant is engaged in business of, inter alia, exporting scrap metal. These proceedings were filed on 24th August 1995 and came to a conclusion some twelve years later.

[150] In the case of ALSTONS ENGINEERING SALES & SERVICES LTD [2003] UKPC (PC) the Privy Council re-stated the principle of damages that in the circumstances a person is wrongfully deprived of a business asset and the case is decided in his favour, the interest on the damages should be adjusted accordingly.

[1] Thompson v Smiths Shiprepairers [1984] 1 All ER 881, 910, *supra*

[151] In that case the appellant, through no fault of his own, was deprived of his backhoe for a period of some eleven years. Interest was awarded at the rate of 12%.

[152] Mr. Luis Palmer, the former General Manager of the Defendant, in his witness statement admits that negotiations with respect to the "removal" of the existing scrap began around April 1994, and the agreement was concluded about one year later and the scrap was in fact removed thereafter. By implication this is the same scrap which the Defendant contended was removed by the Claimant.

[153] Learned counsel for the Claimant is seeking interest at the rate of 13% from July 1992 until judgment. However the reality is that at that date the Claimant was not in a position to remove the scrap and there is no evidence to suggest that it was removed before that date.

[154] However, while the Court agrees on the interest rate of 13%, it does not agree that it should run from July 1992. Indeed in his witness statement at paragraph 28, the Claimant does say that he was in a position to remove all of the scrap in May 1995. The interest will therefore run from May 1995 until judgment at the rate of 13%.

ORDER

[155] IT IS HEREBY ORDERED AND DECLARED as follows:

1. The Claimant satisfied his obligations under the contract to the extent that he was permitted so to do by the Defendant.

2. The Defendant is in breach of the contract by failing to permit the Claimant to enter on its premises to remove the scrap metal as required by the said contract and by disposing of the said scrap metal other than to the Claimant.

3. The Defendant is liable in damages in the amount of US$338,825.00 or EC$914,827.50.

4. Interest on the damages awarded will be at the rate of 13% from May 1995 to judgment.

5. Costs to the Claimant in accordance with Part 65.5 of CPR 2000.

Errol L. Thomas
Judge