

JAMAICA

SUPREME COURT CIVIL APPEAL NO: 23/2005

MOTION NO: 14/2005

**BEFORE: THE HON MR JUSTICE HARRISON, J.A.
THE HON MR JUSTICE PANTON, J.A.
THE HON MRS JUSTICE McCALLA, J.A. (Ag.)**

BETWEEN:	DYC FISHING LIMITED	APPLICANT/APPELLANT
AND	MINISTER OF AGRICULTURE	RESPONDENT
AND	AQUACULTURE JAMAICA LTD.	1ST INTERVENER
AND	B & D TRAWLING LIMITED	2ND INTERVENER
AND	WADWALD KNIGHT	3RD INTERVENER

R.N.A. Henriques, Q.C., Christopher Dunkley & Marina Stakhno instructed by Cowan Dunkley & Cowan for the Applicant.

Lord Anthony Gifford and Walter Scott instructed by Chancellor & Company for 2nd Intervener.

Patrick Foster, Mrs. N. Foster-Pusey and Miss Annaliesa Lindsay instructed by the Director of State Proceedings for the Respondent.

Andrew Irving for 3rd Intervener

February 28, March 2, 14, 17 & 18, 2005

HARRISON, J.A:

This is an application that the order of Reid, J made orally on February 10, 2005, releasing the 2nd Intervener B&D Trawling Ltd. and the

Respondent (Minister of Agriculture) from their respective undertaking be stayed until the hearing of the appeal herein.

This application is made pursuant to Rule 2.14 of the Court of Appeal Rules.

The relevant facts are that three (3) containers with frozen conch (*strombus gigas*) were processed, export health certificates were issued therefor, and they were shipped by B&D Trawling Ltd. to Martinique for sale. The Competent Authority cancelled the said export health certificates in December 2001, and had ordered that the three containers be returned to Jamaica. The products had not been processed under conditions required by European Union standards. The health certificates had therefore been invalidly issued.

The containers:

KNLU 471 599-7 (912 cartons) on October 10, 2001
KNLU 471 836-3 (966 cartons) on November 13, 2001

had been sent to Martinique, Fort de France on the ship "Guatemala" from Kingston via the Dominican Republic.

Ordered in December 2001, to be returned to Jamaica, the said two (2) containers were re-consigned to "B&D Trawling Limited, 1 Port Royal Street, Kingston, by Rene Lancry S.A. Martinique – agents of P&O Nedlloyd and "loaded/shipped on board PONL, Trinidad, from Fort de FRANCE on March 29, 2002".

The containers were destined for Kingston "via Port of Spain"

Trinidad.

Copies of the bills of lading:

PONL FDFOO 366431

PONL FDFOO 366432

as evidence of the departure from Martinique of the containers were exhibited.

A document headed "Prefecture de la Martinique" sent to "Dr E. Edwards" (Ministry of Agriculture) reveals that the said containers LLNU471836-3 & KLNU 471599-7 were loaded onto the "ship 'Stadt Cuxhaven' from Fort de France" on April 3, 2002.

A bill of lading is a document of title to goods. The consignee B&D Trawling as owner of the products of the said containers has the right of possession of the said containers and products wherever they are. The decision of Reid, J to release the 2nd Intervener and the respondent Ministry of Agriculture from their undertaking was based on the payment to B&D for the cost of the product. He said:

"The significance of the credit given for the consignment, which was never returned, demonstrates that retrieval is now for all practical purposes, impossible."

The exhibited accounts of B&D Trawling Ltd. with Beaver Street Fisheries, Florida, U.S.A., reveal that there were credits:

(1) On October 22, 2001:

(a)	for Martinique, Lancry, shipment	\$153,014.39
(b)	Guadeloupe Hippocompe	\$168,684.09

(The export health certificates were cancelled in December 2001) and subsequently, there were debits;

(2) On February 22, 2002:

(a)	Bill back shipment to Martinique	\$153,014.39
(b)	Bill back shipment to Guadeloupe	\$168,684.09

The payments to B&D Trawling Ltd. for the said products were therefore effectively rescinded. The property in the said products was thereafter residing in B&D Trawling Ltd. The company was from then on February 22, 2002, once again the legal owner of the products.

If Reid, J in his judgment was referring to the entry on July 5, 2002 namely "Payment from Prescados Mexicanos, on behalf of B&D Trawling Ltd. \$163,147.50" as "... the credit given for the consignment ...", that finding is fundamentally flawed. There is no indication in that latter entry that it was referable to the payment for the said two (2) containers.

On the basis of the evidence before us, and the arguments advanced we are unanimously of the view that it would be inappropriate for B&D Trawling Ltd. to be allowed to apply for export health certificates and for the Competent Authority to grant any to B&D Trawling Ltd., prior to the determination of the issues on appeal.

The application is therefore granted.

The Competent Authority and B&D Trawling Ltd. shall have liberty to apply to the Court of Appeal for a review of this Order in the event that any evidence becomes available as to the proper disposition of the products in question.

The Registrar, Court of Appeal, is hereby directed to give priority to the hearing of this appeal in order to effect its speedy resolution.

Costs to await the determination of the appeal.