Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E507/1998

BETWEEN	**FACEY COMMODITY COMPANY LTD.**	**PLAINTIFF**
A N D	**THE BUREAU OF STANDARDS**	**DEFENDANT**

Mr. Dennis Goffe Q.C. for the Plaintiff instructed by Messrs. Myers, Fletcher & Gordon.

Mr. Hugh Small Q.C. and Mr. Lancelot Cowan for the Defendant instructed by Messrs Alton Morgan & Company.

Heard: 16th June, 1999 and 22nd December, 1999

RECKORD J.

In this originating Summons the Plaintiff is asking the Court for the determination of the following question:-

> Whether upon a true construction of the relevant legislation a 45 kilogram bag of rice such as is referred to in the Supporting Affidavit falls within the description of "goods prepackaged for retail sale" contained within Part 20 of the Jamaican Standard Specification for the labelling of Commodities.

The Summons referred the Court to the relevant legislation being

a. The Standards Act, 1968

b. The Standards (Labelling of 3 Processed Food) Regulations 1974

c. The Labelling of Commodities, JS1; Part 1: General Principles

d. The Labelling of Commodities JS1: Part 20: Labelling of prepackaged goods.

The question arose in the following circumstances:

The Plaintiff is a distributing company and imports food items including rice in bulk. A consignment of rice from Pakistan was shipped to the Plaintiff containing 58,333 bags of 45 kilograms each in March 1997.

The Defendant wrote to the Commissioner of Customs and Excise asking that this consignment of rice be detained on the grounds that it was not properly labelled and was in violation of Jamaica labelling standards.

The Plaintiff protested against the detention, but was advised to provide labels which conformed with the requirements of the Defendant as failure to do so would result in the consignment remaining at the wharf. The Plaintiff complied and the shipment was released but only after substantial delay and expense to the Plaintiff.

The Plaintiff in a supplemental affidavit of the 15th of June, 1999 states that they complied with the request purely on commercial considerations as the rice was urgently needed and not that they were accepting that there was any violation on their part.

There seems to have been no urgency in this matter since this originating summons was not filed in the Supreme Court until October, 1998.

In attempting to answer the question I think that resort should first be made to the Jamaica Standard Specification for the labelling of commodities Part 20: Labelling of prepackaged goods, the scope of which is set out in paragraph 1 (1) which states:-

> "This standard sets the requirements for the information to be included on labels of goods prepackaged for retail sale, the method of display of such information, and where necessary the wording to be used;
>
> Paragraph 2.16 gives the defination of package and states that it does not include 'bulk container' etc. not customarily displayed to the consumer or purchaser at the point of retail sale.
>
> Prepackaged goods are defined in paragraph 2.18 as 'Goods that are placed in advance of sale in the final package to which it is intended for retail sale, and in which it may be sold, used or purchased without further repackaging.'

A 'bulk container' is defined in paragraph 2.2 as 'a container in which packages or commodities are placed, and in which packages or commodities are not intended to be retained when they are sold by way of retail.'

A 'shipping container' is defined in paragraph 2.22 as 'Any

container intended to protect goods during transport and which is not customarily used to store the goods when displayed for sale.

From the definition given of a 'bulk container' and a 'shipping container' the 45 kilogram bag of rice would seem to qualify as both a bulk container and a shipping container.

On the standards (Labelling of Processed Food) regulations, 1974, made under the Standards Act, 1968, container includes any can or other receptacle containing or used for packaging any food that is manufactured or processed for export or for sale but does not include -

(a) any receptacle into which food is placed by a retailer in the presence of the purchaser; or

(b) a shipping container or any other receptacle used solely for the transportation of food in bulk;

Counsel for the plaintiff Mr. Goffe Q.C. after outlining the law in this Originating Summons asked the Court to declare that a 45 kilogram bag of rice does not fall within the description of "goods pre-packaged for retail sale".

Mr. Small Q.C. for the defendant submitted that the Court should decline to grant the application sought by the applicant on the ground that the material on which it has relied in support involves matters of evidence that are not pertinent for the consideration of the Court in construing the legislation outlined in the Originating Summons.

Based upon the way in which the applicant has asked the Court to consider the matter, Mr. Small submitted that this

consideration could only take place in a witness action and not in a construction summons. The proper course was for a writ to have been served including pleadings, to be the subject of viva voce evidence. Applying the normal canon of construction, the court should not grant the declaration that is sought by the plaintiff. The plaintiff only seeks construction particularly of the term "prepackaged goods for retail sale."

Mr. Small further submitted that the intent of the legislators there is merely to provide information for the end user of the goods. The use of the term retail in the phrase ought not to be constrasted with the term wholesale because there is nothing in any of the legislation that indicates that that is context in which it was used. The context in which it was used is the context of a consumer who acquires goods for direct use or ownership rather than for resale or use in production or manufacture.

Finally, Mr. Small asked the Court to consider the entire provision of the 1974 Regulations including Regulation 5 (3) and 8 (i)(c) which provides that the Bureau may grant permit in writing with reference to processed food.

At the outset I wish to say that I do not agree with Mr. Small's comment that this matter should have been commenced by a Writ of Summons, together with Statement of Claim and all the other attendant reguirements of that process. In my view the Originating Summons is imminently suited for dealing quickly with matters of this nature. It would be most unlikely that a Writ of Summons could come up for trial within three years.

The Jamaica Standard Specification is pursuant to section 7 of the Standards Act, 1968. It deals with the labelling of commodities - PART 1 gives the General principles - The scope in paragraph 1 says "The purpose of this standard is to describe general labelling requirements for commodatives. It is applicable to all commodities which are customarily labelled in the course of trade except those for which more specific requirements have been elsewhere prescribed."

The labelling requirements are set out under paragraph 3.1 which requires that 'a label shall conform with section 3 of JS 1: Part 20 and with the following requirements; these requirements are set out under sections 3.1.1 to 3.1.9.

Section 3 of JS 1: Part 20 reads:

> "3.1. No label declaration, method of preventation or publicity concerning the product shall be made in such a manner as is likely to mislead the purchaser and/or consumer as to the true nature of the composition of the product as a whole."

Section 4.8.3.1, provides that goods which are repackaged by the retailor need not be labelled with the information required by. 3.2. Also exempted are prepackaged goods of less than 15 g (½ oz.) net weight - section 4.8.3.2.

Part 20 deals with the labelling of goods prepackaged for retail sale. Prepackaged goods are described in paragraph 2.18 as "goods that are placed in advance of sale in the final package for which it is intended for retail sale and in which it

may be sold, used or purchased without further repackaging."

Section 3.1.4 of the 1992 standard requires all labels to provide information enabling the manufacturer or supplier to be traced and shall state the country of manufacture or origin. However, regulation 2 of the Proclamations, Rules and Regulations, 1974, exempts shipping containers used solely for the transportation of food in bulk.

It appears that the 45 kilogram bag of rice falls well within exemption (b) of this Regulation and is therefore exempt from the labelling requirements of section 3.1.4 of the JS 1 part 1 standard.

As JS 1 PART 20 of 1988 standard defines pre-packaged goods as "goods that are placed in advance of sale in the final package for which it is intended for retail sale ---." I hold that this 45 kilogram bag of rice does not fit into this description.

The answer to the question posed in the Originating Summons is therefore in the negative.

There shall be cost to the plaintiff against the defendant to be agreed or taxed.

Certificate for Counsel granted.