



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2023CD00288

BETWEEN TON RICK ENTERPRISES LIMITED CLAIMANT

AND CSSI SEAFOOD PROCESSING LIMITED DEFENDANT

BETWEEN CLARENDON SEAFOOD LIMITED ANCILLARY CLAIMANT

AND TON RICK ENTERPRISES LIMITED ANCILLARY DEFENDANT

Contract – Bailment – Goods requiring special care - Duty of bailee - Whether duty delegable to third party - Whether bailee took reasonable care when loading container – Whether bailee took reasonable care to ensure container maintained or was capable of maintaining required temperature - Container owned by a third party - Whether container defective - Whether bailee liable - Whether sums due and owing to Ancillary Claimant.

Roderick Gordon and Kerine Smith instructed by Gordon McGrath for the Claimant/Ancillary Defendant

Denise Kitson KC and Christina Williams instructed by Grant, Stewart, Phillips & Co. for the Defendant and the Ancillary Claimant

Heard: 22nd, 23rd, 24th, 25th & 30th September, and 3rd October 2025.

In Open Court

Cor: Batts, J.

- [1] This case concerns events which occurred in relation to the harvesting, transport and export of Queen Conch, the scientific name for which is '*strombus gingas*'. It is an endangered species, see paragraph 6 of witness statement of Mr. Richard Francis, and its fishing is only permitted under license and by quota. Once harvested, for processing and ultimate shipment, conch must always be kept at minus eighteen degrees centigrade. This is common ground between the parties to this matter.
- [2] Issues arose because conch shipped from Jamaica to Martinique was discovered, by the authorities in that country, to be spoilt, see page 15 exhibit 1. The main players in the entire episode can be identified as:
- a. Ton Rick Enterprises Limited, the Claimant and Ancillary Defendant (which I will hereafter refer to as Ton Rick)
 - b. CSSI Seafood Processing Limited, the Defendant (which I will hereafter refer to as CSSI)
 - c. Clarendon Seafood Limited, the Ancillary Claimant (which I will hereafter refer to as Clarendon Seafood),
 - d. CMA/CGM Jamaica Ltd., Societer Anonyme au Capital (which I will hereafter refer to as CMA) and,
 - e. BEE GEE Authentic Seafood Inc. (which I will hereafter refer to as Bee Gee).
- [3] The uncontested facts are that Ton Rick had a conch fishing license. Ton Rick contracted Clarendon Seafood to fish and CSSI to process, freeze, pack and handle a part of its 2021 conch quota. The agreement was not formalized in writing however it was performed. CSSI handled and processed 1391 cases of conch which it cleaned and stored. On the 20th August 2021 (all witnesses say loading occurred on the 20th but the packing list, exhibit 1 page 5, is dated the 19th, see however, letter dated 19th August 2021, exhibit 1 page 28) the conch was loaded onto container number CGMU5567617. That container was the property of CMA.

It was a refrigerated container and arrived at CSSI's premises on the 19th August 2021. After being loaded it remained on CSSI's premises until on or about the 27th August 2021 when it was sent to the wharf to await shipment, see exhibit 1 pages 3 and 11. The container was then no longer in CSSI's possession or under its control. On the 1st September 2021 it was placed aboard the M/V Regula, see exhibit 1 pages 6 and 10. The container arrived in Martinique on the 7th September 2021. A rejection notice was issued on the 27th September 2021, see exhibit 1 pages 12 and 15 and, exhibit 7.

- [4] It is the case for Ton Rick that CSSI breached its duty of care in contract and/or as bailees. The duty was to keep transport and deliver wholesome conch. In order to do so the conch had to be kept at a temperature of -18° C. This was necessary to prevent spoilage. Ton Rick relied on temperature logs (page 13 of exhibit 2, and exhibit 4) to prove that the container did not reflect a temperature of -18° C for much of the period it was in the possession, and under the control, of CSSI. Counsel for Ton Rick asserts that the failure to at all times maintain the temperature at -18° C, breached statutory duties and regulations related to the handling of conch, see the **Regulations** made pursuant to the **Aquaculture, Inland and Marine Products and BY-Products (Inspection, Licensing and Export) Act**. The Claimant asserts that the conch was already spoilt before it was placed aboard CMA's vessel.
- [5] CSSI (and Clarendon Seafood) say, on the other hand, that the container was defective and that the readings in the temperature log, exhibits 2 and 13, were not reflective of those displayed on the container's external temperature gauge. They relied on the viva voce evidence of witnesses who assert that they regularly checked the gauge and that the temperature displayed was, at all material times, -18° C. CSSI had not kept any records of its own, nor had it independently verified the inside temperature of the container, prior to loading or at any other time. CSSI also relied on the fact that the temperature logs showed that, once powered up for the voyage, the temperature of -18° C was never achieved. This, it is asserted,

demonstrates that the container was malfunctioning. CSSI contends that, as the container was the property of CMA, the spoilage occurred through no fault of CSSI. They had discharged any duty of care by utilizing normal procedures and hiring a reputable carrier. It was therefore CMA, the owner of the container and the carrier, which was to be blamed for Ton Rick's loss. CSSI relied, as further proof of this, on the fact that another container with conch was treated in the same manner, loaded, shipped and arrived in good order and condition. It stands to reason they say, and I should find on a balance of probabilities, that it was the defective container (the property of CMA) which caused the loss. Clarendon Seafood, a company related to CSSI, has an ancillary claim for amounts due and owing from Ton Rick with respect to the 2021 and the 2022 seasons. CSSI counterclaims for amounts due from Ton Rick for the 2021 season, in which the spoilage occurred, as well as for the 2022 season.

[6] In this matter the evidence is fresh in my mind. To the extent necessary, I have reviewed all witness statements, the notes of cross-examination as well as all the documentation in evidence. It is unnecessary to recount it all in this judgment. It suffices for me to say, with brief explanations, that with respect to the Claim my findings of fact are as follows:

- i. The 2021 contract, between Ton Rick and CSSI involved, CSSI taking possession of conch, processing it for export and, delivering it to a carrier for export to Martinique. All on Ton Rick's behalf.
- ii. In doing so although acting as agents of Ton Rick, for the purpose of engaging CMA and having it delivered to Bee Gee, CSSI were bailees.
- iii. The conch was received and kept in good order and condition at CSSI's premises until the 20th August 2021.
- iv. Upon the arrival of CMA's container, on the 19th August 2021, CSSI inspected it by powering up the container and looking at readings on the container's external temperature display

gauge. CSSI thereafter concluded that the container could achieve and maintain an internal temperature of -18° C, see paragraph 7 witness statement of Stanley Mohammed and paragraph 8 of witness statement of Christopher Hylton.

- v. The container was unplugged (or turned off) at 19:00 hours (7:00 pm) on the 19th August 2021 until 21:00 hours (9:00 pm) on the 20th August 2021, see exhibit 4 and pages 20 and 21 of exhibit 2. ["P" indicates power is off and "Return" is the temperature of air coming from within the container, see the evidence of Mr. Conrad Wittick the operations manager of CMA who gave evidence as part of the Claimant's case]
- vi. The container was loaded with the conch on the 20th August 2021, between 11:00 am and 5:00 pm, see the evidence of Mr. Stanley Mohammed and paragraph 12 of the witness statement of Mr. Christopher Hylton.
- vii. At 21:00 hours (9pm) on the 20th August the container was powered up, see exhibit 4 and page 21 of exhibit 2. There was therefore a lag time of 4 hours between the completion of loading (5pm) and the powering up of the container (9pm) on the 20th August 2021.
- viii. The container remained in CSSI's possession, from the 20th August 2021 to the 27th August 2021. On the latter date it was delivered to the wharf and into the possession of either CMA or the customs authorities. The evidence on that is unclear. It was then placed aboard the M/V Regula, and into the custody of CMA, for the journey to Martinique. It was offloaded in that country on the 7th September 2021.
- ix. The container at no time from the 20th August 2021 to the 7th September 2021, when it was offloaded from the ship, achieved an internal temperature of -18° C, see exhibit 4 and, exhibit 2 pages 21 to 29 ("Return" temperature).

- x. The “Return” temperature is the temperature of air coming from the container and hence indicates the temperature within the container. All witnesses agree that this is the most important reading on the external gauge and in the temperature logs.
- xi. The conch was discovered spoilt on arrival in Martinique, see exhibit 7.
- xii. There is evidence, which I accept, that at the point of being placed in the container at CSSI’s premises the conch was frozen “rock solid” and wholesome. I accepted that on arrival, and while frozen at CSSI’s premises, the conch was fit for purpose and wholesome. CSSI’s freezers were capable of, and did keep conch, at the required temperature, see the evidence of Mr.Christopher Hylton. Furthermore, it is unchallenged that CSSI processed and froze conch successfully over many years. They loaded, and successfully transported, another container with conch at the same time on the 20th August 2021.
- xiii. On a balance of probabilities therefore, I find that the conch while in CSSI’s freezers was kept at -18° C and was wholesome. I therefore find as a fact that wholesome conch was placed in the container, owned by CMA, on the 20th August 2021.
- xiv I accept the evidence of Ton Rick’s witnesses that the best practice, when loading a container with conch, was to first power it up to -18° C then turn it off, then load, then power up to -18° C. The idea being to keep the container at that temperature while it is being loaded but not have the cooling mechanism operating. This is to prevent condensation. Sometimes it requires pausing the loading, and closing the door, while the container is returned to -18° C and thereafter

resuming loading. A sort of stop and start process, see paragraphs 13 and 14 of the witness statement of Mr. Richard Francis.

- xv. I find that this was not the procedure adopted by CSSI. They powered the container off then proceeded to load it before thereafter powering it up. Two containers were being loaded at the same time, and the process of loading took an entire day from 11:00 am to 5:00 pm.
- xvi. I find, on a balance of probabilities, that the inside temperature of the container was not maintained at -18° C while the conch was being loaded. When cross-examined on this Mr. Mohammed could only say that this was not so because the conch being loaded was frozen "*rock solid*". He also referred to the fact that the other container was treated in the same way. However, we have no details either, of exactly when the loading of the other container was completed or, when that container was powered up. There was also no measurement of the inside temperature of the container while it was being loaded. No reliance can be, or could at the time of loading, be placed on the external gauge as the container was off power during the loading process. My finding of fact in this regard is made possible because the burden of proof is on the bailee to establish spoilage occurred without its negligence, see discussion at paragraph 7 below. I find that, during the loading process, the container was not always maintained at -18° C.
- xvii. There is evidence to suggest that the container was defective. The gauge indicating the return temperature appears not to have reflected accurately the internal temperature of the container. This finding flows from my acceptance of Mr Christopher Hylton' evidence that, he checked the reading on the gauge regularly and, it displayed the required temperature

at all material times. The temperature logs on the other hand show that the return temperature was never minus 18 degrees. The said logs, exhibit 2 pages 13 to 30 and exhibit 4, reveal that the container did not or was unable to keep and maintain the set temperature, this is corroborated by the report from authorities in Martinique see exhibit 1 page 17:

“Repairs appear to have been performed on September 7, 2021, but the temperature did not fall below -7 C, so did not reach the required -18C”. I find, on a balance of probabilities, that the container was defective at the time it entered the premises of CSSI. When cross-examined on that Mr. Conrad Wittick, the representative of CMA who gave evidence as part of Ton Rick’s case, did not explain. After being taken meticulously through the temperature logs the following exchange: [“reefer” is another word for container]

“Q: Impossible to reasonably rely on the figures to show reefer functioning properly

A: Reefer was operating correctly in terms of what it was to do

Q: But providing hot air

A: Temperature to goods not, but question to ask is what caused this”

- xviii. I find as a fact, on a balance of probabilities, that both the process of loading, and the inability of the container to keep and maintain a temperature of -18° C, contributed to spoilage of the conch.
- xix. I find also as a fact that CSSI failed to take any or any adequate measures to verify that the container was able to attain and maintain a temperature of -18° C. Mr. Mohammed admitted there was a device which could do this but that it was not used:

“Q: Temperature gauge is it digital or analog

A: Think digital

Q: In 2021

A: Don't remember, they go bad easily

Q: Do you have separate temperature monitoring device

A: Yes, every room have one

Q: The container, did you put an additional temperature monitoring device

A: No, so we rely on CGM”

[7] What is the legal consequence of these findings? At common law the bailee has a duty of care relative to the goods bailed. The requirements and extent of that duty are determined by the circumstances of each case, see ***Houghland v R. R. Low (Luxury Coaches) Ltd [1962] 1 QB 694; East West Corporation v DKBS 1912 A/S et al [2003] 2 AllER 700 per Mance LJ at para [28]; and para 1803 Vol 2 Hals 4d Reissue***. The legal burden to disprove negligence is on the bailee once it is proved that damage occurred to the goods during the bailment, see ***Houghland*** per Wilmer JA at page 700. A bailment is created whenever goods are delivered to another who voluntarily accepts them, whether gratuitously or for reward or under contract, for the purpose of redelivery or delivery to another, **para 1801 Vol 2 Hals 4d Reissue**. It used to be that the duty of care differed as to whether the bailment was gratuitous or for reward. This is no longer the case. It is the circumstances of each case which determine the standard of care required. A sub-bailment does not extinguish the duties of the original bailee although the sub-bailee owes a duty of care to the bailor, ***Morris v C.W. Martin & Sons Ltd [1965] 2 AllER 725, and para 1841 Vol 2 Hals 4d Reissue***. A sub-bailment is to be distinguished from a substitutional bailment in which the new bailee replaces the original bailee. If loss or damage occurs to the goods during the bailment the onus (or burden of proof) is on the bailee to show there was no negligence or, if there was, that the loss or damage was not caused by that negligence. The test of

negligence is the care and skill which a prudent or careful person in his position and with his knowledge would have adopted, see generally the cases cited above and **para 1843 (n.3) Vol 2 Hal 4d Reissue**. The bailee's duty has been held to be non-delegable. In the context of commercial arrangements, with property of great value, business efficacy resulted in an implied term that the bailee will himself take care of the goods and he was not relieved of liability because a competent independent security company had been retained, see ***British Road Services Ltd v Arthur V. Crutchley & Co Ltd (Factory Guards Ltd, Third Parties) [1968]1 AllER 811 at 820 E and 824 H.***

[8] Conch is a very valuable product. It is also very fragile. The legal duty to maintain it at -18° C is statutory and well known in the industry, see section 2 of the **Regulations to the Aquaculture, Inland and Marine Products (Inspection, Licensing and Export) Act**. It seems to me that the standard of care required is one which demanded that CSSI make more than a cursory examination of the container before loading. It certainly would not suffice to power up and rely solely on the readings from an external gauge. The temperature inside the container ought to have been checked. This was possible by using a device to take readings within the container. It was reasonably foreseeable that the external gauge may not accurately reflect the container's internal temperature by reason, for example, of a defect in the gauge or in the sensors within the container. Indeed, the witness for CSSI spoke of the temperature gauges in its own freezers often going bad. Given the amount at stake, the importance of its proper functioning to the preservation of the conch, and the relatively simple way to check, the container's actual internal temperature ought to have been checked. By failing to independently verify the internal temperature of the container CSSI failed to take reasonable care. Had that been done the defect in the container could have been discovered. I have also found, at paragraph 6 (xv) above, that CSSI failed to load the conch using best practices and that this resulted in the container being less than minus eighteen degrees whilst being loaded. This is referred to by the witnesses as "*hot stuffing*". It is an independent cause of the loss and was likely to

result in spoilage even if the container was functioning properly. CSSI therefore breached its duty of care as a bailee in two respects.

- [9] I am also of the view that the use of CMA's container did not release CSSI from its obligations as bailee. CSSI, in the circumstances of this case, remains liable as bailee to Ton Rick. It was their responsibility to keep the conch at a particular temperature. They do not escape this duty by hiring a container or engaging an independent contractor or agent. When loaded onto CMA's container the conch remained in CSSI's possession. It is no answer to say reasonable care was taken to hire a reputable firm to supply a container. It would mean a bailee transporting goods could escape responsibility if a truck it hired lost a wheel or if a security guard it contracted fell asleep, see the discussion at paragraph 7 above and the judgments of Lord Justices Pearson and Sachs in ***British Road Services Ltd*** (cited at paragraph 7 above).
- [10] On the Ancillary Claim, I find as a fact that Ton Rick failed to pay Clarendon Seafood for services rendered in the 2021 conch season. Amounts were also due to CSSI and Clarendon Seafood for the 2022 season which Ton Rick decided not to pay due to the loss of conch in 2021. I accept Mr. Sydney Francis' evidence that the reason CSSI and Clarendon Seafood were again retained in 2022, notwithstanding the loss in 2021, was because initially Ton Rick thought only CMA was to blame. However, the email of 11th October 2022 (exhibit 5) brought to their attention facts which lead to a contrary conclusion. Ton Rick gave written instructions that the amount owed be paid from the 2022 sales, see exhibit 3. However, I accept the evidence of Mr. Stanley Mohammed that this was never paid in full. It is no defense, to a claim for sums lawfully due, to say a third party was instructed to make the payment.
- [11] On the matter of the quantum of loss, it is clear Ton Rick lost the entire container of conch, see exhibit 1 page 15. Exhibit 1 page 27 contains an invoice in the name of Ton Rick which indicates a value of US \$225,380.03. This commercial invoice

was used for the purpose of the Bill of Lading and shipping. In evidence, as part of exhibit 4, is another invoice, for the same product, issued by Bee Gee, which reflects a value of US \$336,124.06. Ton Rick wishes to rely on the latter invoice. When asked about this Mr. Sydney Francis, Ton Rick's witness, said it was "*under invoiced*". This court will not condone illegality. The witness' meaning is not ambiguous or unclear. It is apparent that the document at exhibit 1, page 27, signed by Ton Rick's principal, was used to represent the value of the items for the purpose of export. Ton Rick is bound by that representation even if it was made on its behalf by CSSI. Ton Rick will have benefitted from lower duties or fees charged in that regard. To assess damages on another basis, will be to reward Ton Rick for its complicity with the undervaluation of the cargo to the authorities. I will therefore use the invoice on page 27 exhibit 1 to determine the value of cargo lost.

[12] I find there was no loan of US \$13,000 by either CSSI or Clarendon Seafood to Ton Rick. I accept the evidence of Mr. Sydney Francis in that regard. One would expect that for such a transaction there would be documentation. Furthermore, he who alleges must prove. The onus is on CSSI/Clarendon Seafood, making the counterclaim and/or Ancillary Claim, to satisfy me on a balance of probabilities. There is no credible evidence of such a loan.

[13] I accept that the loss to Ton Rick consisted of the value of the conch US \$225,380.03 (see paragraphs 10 and 11 above), the fees paid to the Ministry of Agriculture US \$13,246.16 (see exhibit 1 page 18) and freight charges of the container US \$3,280.00, see exhibit 1 page 20. The counterclaim by CSSI for amounts due for 2021 is dismissed. Having caused the loss of the entire container CSSI is not entitled to payment as there has been a total failure to perform. There is no evidence which can enable me to determine whether the negligence and breach of contractual duty by CSSI caused only partial loss of the conch or whether their failure led to 100% loss. The onus of proof being on the bailee, I find that their negligence was sufficient to lead to the loss of the entire container load. That being

so CSSI is not entitled to payment for the shipment. To put it in legal terms there has been an entire failure of consideration on their part as they have not done that which they contracted to do. CSSI also counterclaimed for sums due to them for the 2022 season. This they are entitled to recover.

[14] With respect to the Ancillary Claim Clarendon Seafood, although sharing the same directors, is a separate legal entity. Clarendon was not a party to the contract which CSSI failed to perform. There is no legal basis therefore to set off or hold Clarendon Seafood to account for Ton Rick's loss in 2021. The evidence, and the allegation in the ancillary claim, supports an award of US \$33,481.61, for amounts due in 2021 and 2022, in favor of Clarendon Seafood against Ton Rick.

[15] In the result there is judgment as follows:

- i. On the Claim in favour of the Claimant (Ton Rick) against the Defendant (CSSI) in the following amounts:
 - a. Total value of conch lost US \$225,380.03
 - b. Fees paid to Ministry of Agriculture and Fisheries US \$13,246.16
 - c. Freight charges US \$3,280.00
- ii. On the Counterclaim in favour of the Defendant (CSSI) against the Claimant (Ton Rick) in the amount of \$189,338.06. On the Ancillary Claim in favour of the Ancillary Claimant (Clarendon Seafood) against the Ancillary Defendant (Ton Rick) in the amount of US \$33,481.61.
- iii. There will be submissions made, on costs and interest, on the 24th October 2025 at 10:00 am for 1 hour.
- iv. A stay of execution of this judgment is granted for 6 weeks

David Batts
Puisne Judge