

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO: 765 OF 2005

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 17 OF
THE ARBITRATION ACT CH. 5:01

AND

IN THE MATTER OF AN ARBITRATION BETWEEN SEEREERAM, BROS. LIMITED
(CLAIMANT) AND THE TOBAGO HOUSE OF ASSEMBLY (RESPONDENT) WITH RESPECT
TO THE CROWN POINT AERODROME PROJECT

BETWEEN

TOBAGO HOUSE OF ASSEMBLY

PLAINTIFF

AND

RONALD NURSE

DEFENDANT



2005: September 28

2005: October 21

REASONS FOR DECISION

Before The Honourable Pemberton J.

Appearances:

For the Plaintiff: Mr. M. Campbell

For the Defendant: Mrs. B. Annisette-George

For the Interested Party: Mr. S. de la Bastide

BACKGROUND:

- [1] Sometime in September 1987 the Tobago House of Assembly ("The THA") invited tenders for works on the Crown Point Aerodrome, Tobago. At the completion of the tendering process, Seereeram Brothers Limited ("SBL") the Interested Party won and was awarded the contract to execute and complete the works.
- [2] Unhappy differences arose between the parties. On 14th February 1995 an Arbitration Agreement was concluded between the THA and SBL. Mr. Ronald Nurse was appointed as Arbitrator. The proceedings then began its tortured route. Appendix "1" sets out in table form the dates and a nature of the orders given and time-lines set by Mr Nurse for the conduct of proceedings. The documents span the period 1995 – 2005. These events were interspaced by correspondence the salient pieces of which are contained in Appendix "2".
- [3] From the chronology of events, both parties, THA and SBL were tardy. Mr Nurse endured, their conduct. His final Order came as Order #7, which was pre-emptory in nature.¹ Meanwhile THA had changed attorneys. On 3rd March 2005 the new attorneys contacted Mr Nurse at the telephone asking for further indulgences². Attorney for the THA renewed his request by way of letter dated 7th March 2005. That letter was written **'WITHOUT PREJUDICE'**³. However Mr Nurse's patience had expired by this time. By letter of 11th March 2005⁴ THA's application was refused. This brought the THA before the court seeking the following reliefs:

¹ See Appendix 1.

² See Appendix 2 Item #7 which recounts the contents of telephone conversation.

³ See Appendix 2 Item #9

⁴ See Appendix 2 Item #10

- (1) That the time for the Defendant **to make and publish his award** under the reference to the arbitration, pursuant to the Agreement in writing made between the Plaintiff and Seereeram Brothers Limited as agents for S.B. Tobago Limited as Claimants, on the 14th day of February 1995, be enlarged until the 31st day of October 2005 or anytime thereafter **pursuant to Section 17** of the Arbitration Act Ch. 5:01 on the grounds that the Plaintiff herein has not had adequate time and a fair and equal opportunity to respond to the Claimant's Amended Points of Claim, new witness statements and legal submissions;
[Emphasis mine].
- (2) That the Defendant be restrained whether by himself and/or his servants and/or agents from making an award in the Arbitration, the subject of the Arbitration Agreement dated the 14th day of February 1995, made in writing between the Plaintiff and Seereeram Brothers Limited as agents for S.B. Tobago Limited, until the hearing and determination of these proceedings and any extension or enlargement of time ordered by the Court pursuant hereto;
- (3) That the time for the Plaintiff to submit to the Defendant its Amended Points of Defence, witness statements in support thereof and legal arguments be extended to the 30th day of September 2005;
- (4) That the Defendant be required to consider the Plaintiff's Amended Points of Defence, witness statements in support thereof and legal arguments so submitted, in making his determination and/or award in the Arbitration, the subject of these proceedings;
- (5) That the time for hearing of this Originating Summons be abridged pursuant to Order 3 Rule 5 (1) of the Orders and Rules of the Supreme Court of Judicature of Trinidad and Tobago;
- (6) That costs of and occasioned by this application be borne by the Defendant herein.

[4] **ISSUE**

Let me state at the outset that there is no dispute relating to any of the provisions of the Arbitration Agreement executed by the parties. It is the procedure used by Mr Nurse to hear this matter that is complained about by THA. Despite the phrasing of the issue, the knob of the matter is the procedural directions given by the Arbitrator that has caused disaffection to the THA. The first hurdle to cross therefore is whether the Court has jurisdiction to entertain this application at all.

[5] **THA's POSITION**

THA did not address the issue of jurisdiction in its submissions. Their submissions were grounded in section 17 of **THE ARBITRATION ACT ("The Act")**.⁵ They contended that they did not have a fair and equal opportunity to meet the case presented by SBL. In the premises Order #7 issued by Mr Nurse was unreasonable.

[6] Mr Campbell submitted that the Order for directions was harsh and unreasonable and unfair and as such constituted a severe prejudice to THA. THA therefore has a right to an extension of time. That right is premised on various principles, the relevant one being that "The parties in the arbitration agreement have put a limit both on the time for making the award and this does not preclude the court from making a further enlargement. Time was not of the essence. The time allowed for preparation of Points of Defence was unreasonable". The only case quoted in THA's submissions that is connected to this issue was **KNOWLES AND SONS LTD. VS. BOLLON CORP**⁶. which dealt with the court's power to extend time for making an award, the time for which was fixed by Statute.

⁵ **ARBITRATION ACT CHAP. 5:10 LAWS OF THE REPUBLIC OF TRINIDAD AND TOBAGO.**

⁶ [1900] 2 Q. B. 253 at 257.

[7] **MR NURSE'S POSITION AND SBL'S POSITION**

I shall deal with these two positions together since the submissions were of the same tenor. Both Mr Nurse and SBL submitted that the court had no jurisdiction to entertain this application. The order complained against was procedural in nature and as such Section 17 of the Act is inapplicable. Section 17 can only be invoked when an extension of time is sought with respect to the making of an award. This is not the case here. Further, time can only be enlarged when the Arbitration Agreement between the parties itself prescribes such a time limit or the time set for making the award is prescribed by statute. In addition, the court has no inherent power to intervene in arbitration proceedings. The court's supervisory powers are limited to those prescribed by Statute⁷.

[8] **ANALYSIS AND LAW**

COURT'S JURISDICTION

What gives a court jurisdiction? The answer to that is clear. A court derives jurisdiction either by agreement between parties or by statute or under inherent powers of supervision and control.

[9] **THE AGREEMENT**

In this case I shall examine the agreement entered into by THA and SBL to determine whether the court has jurisdiction to intervene as requested by THA. It is therefore instructive to set out the terms of the Agreement made between SBL and THA:

We the undersigned hereby agree that RONALD NURSE.... Shall
decide all matters in difference between us and to that end shall have all
the powers given by the **ARBITRATION ACT CHAPTER 5:10** to

⁷ **RUSSELL AND ARBITRATIONS 19th edition at page 233; EXORMISIS SHIPPING S. A. V. THE DEMOCRATIC PEOPLES REPUBLIC OF NORTH KOREA AND ANOR. (1975) 1 LLOYD'S REP. 432. BREMER VULKAN V. SOUTH INDIA SHIPPING [1981] 1 AII ER 289; L'OFFICE CHERIFIEN DES PHOSPHATES AND ANOR. V. YAMASHITA-SHINNIHON STEAMSHIP CO. LTD [1994] 1 AII ER 20; ABU DHABI GAS LIQUEFACTION CO. LTD V. EASTERN BECHTEL CORP.**

arbitrators and may direct either of us to do or submit to any act or to sign or execute any instrument and may obtain such professional and expert assistance and may give such directions in his award or otherwise as to him shall meet the circumstances. He may proceed ex-parte if he thinks fit after such notice as he may deem reasonable.

It is clear that the court does not derive jurisdiction to hear a matter seeking the relief sought in these proceedings under the express terms of this Agreement. The only jurisdiction and powers of the Court incorporated in this agreement are those contained in the act.

[10] **THE ARBITRATION ACT OR OTHER STATUTORY PROVISIONS:**

I have not found, neither was I referred to any statute with respect to this matter save the act. An examination of which reveals that none of the provisions under which the court derives jurisdiction to intervene in arbitration proceedings are of relevance to this matter. THA has prayed in aid Section 17 which provides:

The time for making an award may from time to time be enlarged by order of the Court whether the time for making the award has expired or not.

In its written submissions THA did not exactly allude to the applicability to Section 17 of the Act to its position save to quote the **KNOWLES CASE** as an authority. In that case **THE PUBLIC HEALTH ACT (UK)** set a time limit for making an award by an arbitrator. The arbitrator sought to extend that time and the aggrieved party approached the court saying that such action by the arbitrator was not allowed under Section 9 of **THE ARBITRATION ACT (UK)**. It was held that since **THE PUBLIC HEALTH ACT** had set a time limit the arbitrator on his own could not extend the time set for making the award. Section 9, which mirrors our Section 17 allows the Court to extend the time for making the award since the time had been set under a statute. That is not the case here.

[11] Section 17 deals with the time for making **the award**, which may be extended from time to time by the Court. However the clear language of this section does not admit to interference by the court with procedural directions given by the arbitrator even if the effect would be to extend the time to make the award. Section 17 is intended to address those situations in which the arbitration agreement has set a time for making the award in which case time is of the essence as agreed among the parties or the time for making the award is prescribed by statute.

[12] It is clear that Order #7⁸ is procedural in nature only. In any event, the Arbitration Agreement does not prescribe the time for making the award. Had it done so, it would have been incumbent on the THA and SBL years before to approach the court for an Order having regard to the series of timetables set by Mr Nurse.⁹ THA cannot sit on its perceived statutory rights for such an extended period and only seek to enforce them when the tide is firmly risen against them.

[13] In addition there is no allegation or evidence of fraud on Mr Nurse's part. I find that throughout the process from 1995 to present Mr Nurse has exercised considerable restraint with both THA and SBL and has attempted his utmost to fulfill his duty incorporated in the agreement as provided for in Section 11 (1) of the Act.¹⁰

[14] **INHERENT JURISDICTION**

The Arbitration Act provides for the conduct of arbitrations in Trinidad and Tobago. It is essentially a **private process** governed by the Act and the ordinary rules of contract. It is basic that the court does not set aside an agreement between or among parties save on specified grounds. None of these grounds – mistake, misrepresentation for instance, are raised here. In addition, once a statute determines the powers and duties of parties, all parties are to conduct themselves within its confines. The court's inherent jurisdiction to

⁸ See Appendix "1" – Items #14 – 7.

⁹ See Appendix "1".

¹⁰ **Section 11: The court may, on an application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.**

supervise does not extend to arbitrations. Its powers are confined to those conferred by statute.¹¹

CONCLUSION:

In the premises, I must decline jurisdiction to hear this matter. There is therefore no need to go further.

ORDER:

- **SUMMONS FILED 31ST MARCH 2005 IS HEREBY DISMISSED.**
- **PLAINTIFF TO PAY DEFENDANT'S COST AND COSTS OF INTERESTED PARTY CERTIFIED FIT FOR COUNSEL TO BE TAXED IN DEFAULT OF AGREEMENT.**

CHARMAINE PEMBERTON
HIGH COURT JUDGE

¹¹ **EXORMISIS CASE** (*op. cit.*; **ABU DHABI CASE** (*op. cit.*))