IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 613 OF 1997

BETWEEN: THOMPSON SHIPPING CO. LTD. Plaintiff

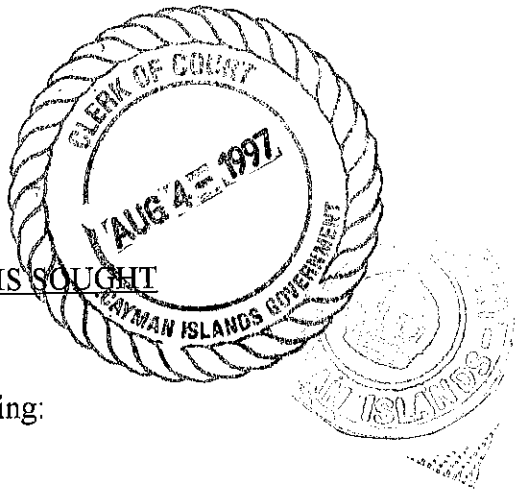
AND: (1) THE PORT AUTHORITY OF THE CAYMAN ISLANDS

AND: (2) THE PORT DIRECTOR Defendants

CLERK OF COURT
AUG 4 1997
CAYMAN ISLANDS

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant	Thompson Shipping Co. Ltd P.O. Box 1708 GT Grand Cayman B.W.I.
Proceeding in respect of which relief is sought	The alleged revocation of a permit issued under the authority of sec. 123(5) of The Port Regulations (1995 Revision)
Relief Sought Certiorari and a stay of proceedings	
Name and address of applicant's attorneys	Mrs. Karin M. Thompson P.O. Box 1708 GT Grand Cayman B.W.I.
Signed Karin M. Thompson	Dated 4 August, 1997



GROUNDS ON WHICH RELIEF IS SOUGHT

The grounds on which the relief is sought are the following:

1. The plaintiff is a Caymanian-controlled shipping company formed under the laws of the Cayman Islands.

2. The first defendant is established under the provisions of sec. 3 of The Port Authority Law (1995 Revision). It has the general management and control of all ports in the Cayman Islands, including the port of George Town.

3. The second defendant was appointed by the first defendant under the provisions of sec. 3(6) of The Port Authority Law (1995 Revision).

4. The first defendant is the proprietor of the lands which, together, constitute the area of the port of George Town ("the port area").

5. The plaintiff provides twice-weekly services to and from Miami, Florida and weekly services to and from Tampa, Florida and Little Cayman and Cayman Brac in and out of the port of George Town, using three ships and one barge.

6. The plaintiff carries in excess of 80% of the cargo which is unloaded and loaded in the port of George Town. The remainder is mostly carried by Kirk Line, a foreign-owned shipping line and a division of Seaboard Marine. Containers

carried on the Kirk Line ships are rolled thereon and thereof and, accordingly, that shipping company does not normally require crane services.

7. Other ships requiring crane services call at the port of George Town on a very occasional basis.

8. The plaintiff began its shipping service to and from the port of George Town in 1977 with a weekly sailing to and from the Miami area, using one container vessel.

9. The plaintiff, at that time, retained the services of Moxam Industries, which owned construction cranes, to unload and load its ship.

10. It became obvious to the plaintiff, some ten months later, that it needed its own crane. It accordingly applied to the first defendant, on 21st September, 1978, for a licence to operate the said crane on the port area and to give priority to its vessel. The plaintiff paid the first defendant, at the same time, a sum of CI$50.00.

11. The plaintiff claims, in the action referred to in paragraph 43 hereof as "the crane services proceedings", that, on 22nd September, 1978, the first defendant granted it a licence to operate a crane on the port area, subject to the payment of a fee of CI$100.00 per year, and that this grant was subject, *inter alia*, to the following conditions:

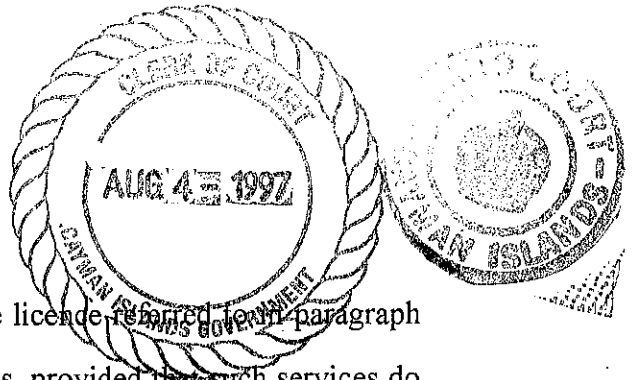
(a) The first defendant reserved for itself the right to review the terms of the licence annually and to renew it, vary its terms or revoke it "in accordance with Regulation 120(1)" of The Port Regulations (now sec. 130(1) of The Port Regulations (1995 Revision)).

(b) The plaintiff would be permitted to load and unload its vessel on a first priority basis and the first defendant waived the requirements of sec. 42 and 49(1) of The Port Regulations (now sec. 40 and 47(1) of The Port Regulations (1995 Revision)).

12. The plaintiff and the first defendant discussed, at that time, the plaintiff's rates for the use of its above crane to load and unload ships operated by other shipowners and a tariff was finally agreed upon.

13. The plaintiff claims, in the action referred to in paragraph 43 hereof as "the crane services proceedings", that the licence referred to in paragraph 11 hereof was not granted "under" The Port Regulations and was not and is not subject to sec. 120(1) thereof (now sec. 130(1) of The Port Regulations (1995 Revision)).

14. The first defendant, on 27th September 1978, issued to the plaintiff a permit to conduct the business of "Mobile Crane Operation" from 26th September, 1978 until 31st December, 1978 under the provisions of sec. 114(4) of The Port Regulations (which has become, after two amendments, sec. 123(5) of The Port Regulations (1995 Revision)).



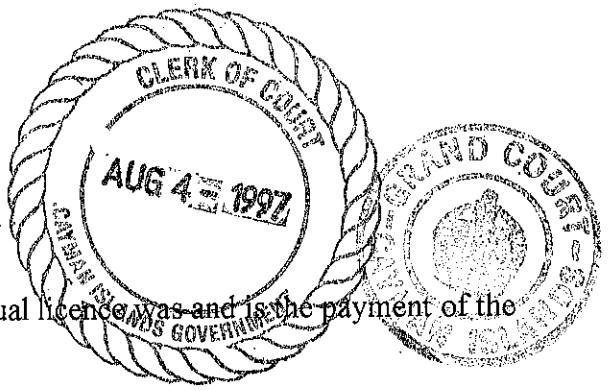
15. The plaintiff is obligated, under the terms of the licence referred to in paragraph 11 hereof, to provide crane services to other ships, provided that such services do not conflict with the loading or unloading of its own ships .

16. The plaintiff requested the first defendant's permission, on 8th May, 1980, to bring a second crane on the port area.

17. The Principal Secretary, Communications, Works and Local Administration, granted the plaintiff permission, on 12th May, 1980, to bring in a second crane.

18. The plaintiff has paid the fees claimed by the first defendant under the authority of sec. 114(4) of The Port Regulations and of sec. 123(5) of The Port Regulations (1995 Revision) for a permit similar to that referred to in paragraph 14 hereof ("the permit") each year since 1978 after receiving a yearly invoice therefor from the first defendant. The plaintiff holds such a permit for the year 1997 and it relates to the operations of its two cranes.

19. The plaintiff claims, in the action referred to in paragraph 43 hereof as "the crane services proceedings", that the first defendant granted it, in 1978, a contractual licence to keep and operate, on the port area, a crane for the loading and unloading of vessels ("the contractual licence") and that, in 1980, the contractual licence was amended to allow the plaintiff to keep and operate two cranes on the port area. The plaintiff also claims, in the said proceedings, that:



(a) The consideration for the contractual licence was and is the payment of the prescribed fee for the permit.

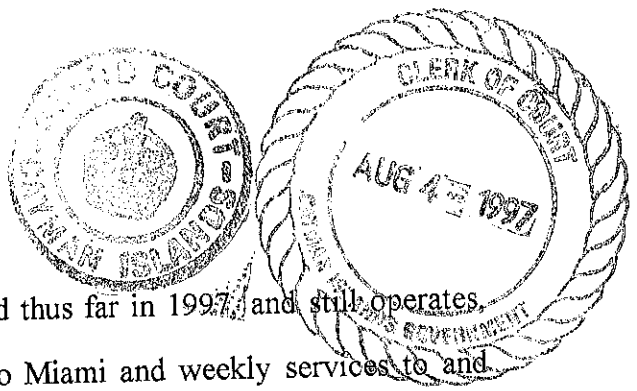
(b) The period of time for which the contractual licence was granted was the period of time during which the plaintiff is the holder of the permit.

(c) The first defendant may review the terms of the contractual licence annually.

(d) The contractual licence was not granted "under" The Port Regulations and, consequently, the renewal thereof was and is not discretionary, its terms cannot be unilaterally varied by the first defendant and it cannot be revoked under the provisions of sec. 130(1) of The Port Regulations (1995 Revision).

(e) The plaintiff is obligated to provide crane service to vessels of other shipowners, provided such service does not conflict with the unloading and loading of its own ships.

20. The plaintiff has always provided crane service to vessels other than its own on the port area when required in accordance with the terms of the contractual licence.

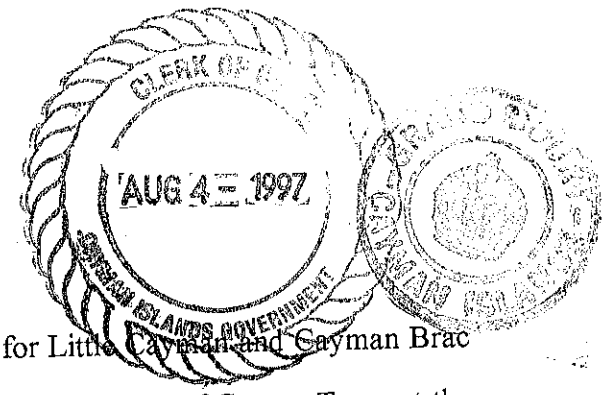


21. The plaintiff operated, in 1995, in 1996 and thus far in 1997, and still operates, twice-weekly shipping services from and to Miami and weekly services to and from Tampa and Little Cayman and Cayman Brac in and out of the port of George Town, as set out above. It uses its two cranes to load and unload its ships. Its first vessel of the week normally arrives from Miami in the port of George Town early in the morning on Mondays. Approximately 100 crane lifts are needed to unload it and approximately 120 lifts are required to load it. The unloading and loading thereof usually takes 9 working hours, i.e. all of Monday and a very few hours on Tuesday morning, for an average, for the plaintiff's two cranes, of 24½ lifts per hour. The plaintiff's said vessel is usually loaded and ready to leave the port of George Town, bound for Miami, at mid-morning on Tuesdays.

22. The turnaround time for the plaintiff's vessels is crucial to its operations. Any late departure from the port of George Town disturbs the relevant ship's schedule for the entire week.

23. The plaintiff's second ship of the week usually arrives from Tampa in the port of George Town on Tuesday mornings. The plaintiff begins unloading it at mid-morning on Tuesdays and it is unloaded in a few hours.

24. The unloading and loading of the Tampa ship usually takes 100 crane lifts, i.e. 50 to unload it and 50 to load it. The lift rate per hour is the same as that for the Miami ship.

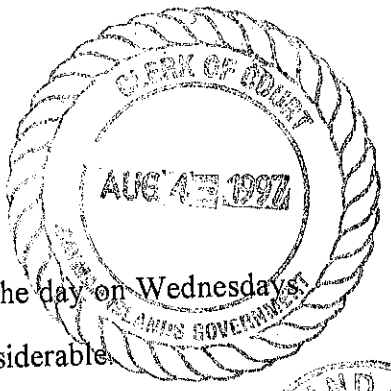


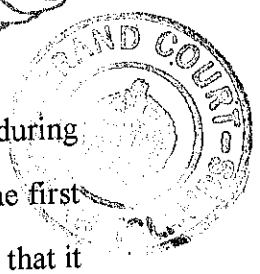
25. The plaintiff normally loads its barge bound for Little Cayman and Cayman Brac on Tuesday afternoons. That barge usually leaves the port of George Town at the end of the day on Tuesdays and arrives in Little Cayman at sunrise on Wednesdays and in Cayman Brac around noon that day. The plaintiff's barge service to Little Cayman and Cayman Brac is the only surface transportation service to the Sister Islands and is vital to those Islands, their inhabitants and their economy.

26. The plaintiff's vessel bound for Tampa is usually loaded on Wednesdays, when it departs.

27. The plaintiff has substantial experience in late unloading and loading. Public holidays fall on Mondays a number of times during the year and, in addition, inclement weather sometimes prevents vessels from arriving and/or docking on time in the port of George Town. The plaintiff, on those occasions, requires its employees to work longer hours and the first defendant must then keep a number of its employees working longer as well. The plaintiff must pay overtime rates to its employees and reimburse the first defendant for its own additional costs in such cases.

28. When the unloading and loading of its ships is delayed by no more than 24 hours, the plaintiff still manages to unload and load its first vessel of the week arriving from, and bound for, Miami by the end of the day on Tuesdays and to perform its other operations relating to the ship arriving from, and bound for, Tampa and to





the barge which sails to the Sister Islands by the end of the day on Wednesdays. The additional costs to the plaintiff, in such cases, are considerable.

29. The plaintiff's managing director heard from a well-placed civil servant, during the course of a social conversation towards the end of August 1995, that the first defendant intended to operate its own crane in the port of George Town and that it was taking measures to that effect. He met with the second defendant, on 30th January, 1996, in order to enquire as to the truth of that allegation.

30. The plaintiff received a letter from the second defendant that very day, in which the latter confirmed that the first defendant had decided to operate its own crane in the port area. That letter contains, *inter alia*, the following statement:

> "The Authority resolved that the Authority's crane would be the only working crane on the dock, but in the event of a disruption of service due to crane failure the Director would have discretionary authority to allow other operators on the property."

31. The plaintiff authorised the loading of its Little Cayman and Cayman Brac cargo by the first defendant's crane as a test in mid-1996, at the first and second defendants' express request.

32. The Governor in Council made, on 4th March, 1997, The Port (Grand Cayman Crane Services) Regulations, 1997 which were published with the Cayman Gazette no. 7 of 1st April, 1997. The Port (Amendment) Regulations, 1997 were

made and published at the same times and were corrected in the Cayman Gazette no. 10 of 12th May, 1997.

33. The second defendant sent the plaintiff a letter dated 5th May, 1997 in which he advised:

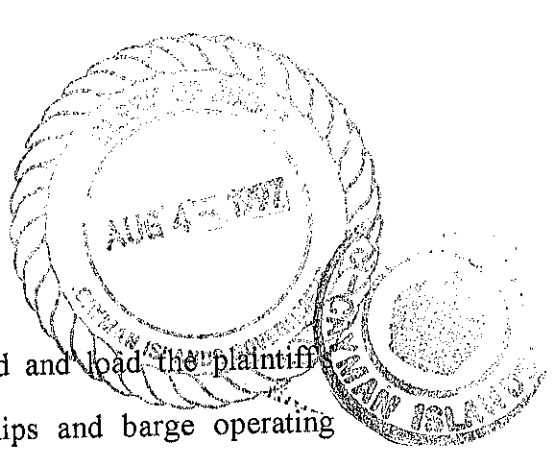
(a) That it was the first defendant's intention to commission its crane for use in the loading and unloading of vessels requiring crane service in the port of George Town as of Monday, 23rd June, 1997.

(b) That the plaintiff was required to remove its two cranes from the dock "no later than Sunday, 22nd June 1997" "unless otherwise agreed between your Company and the Authority".

That letter contained no reference at all to the permit.

34. The first defendant's new crane, during the test referred to in paragraph 31 hereof, achieved an average of 6 lifts per hour under perfect conditions.

35. The first defendant's new crane cannot possibly perform more than 13 lifts per hour under normal conditions. It would therefore take the first defendant approximately twice as long to unload and load the plaintiff's ships as it takes now, using the plaintiff's two cranes.

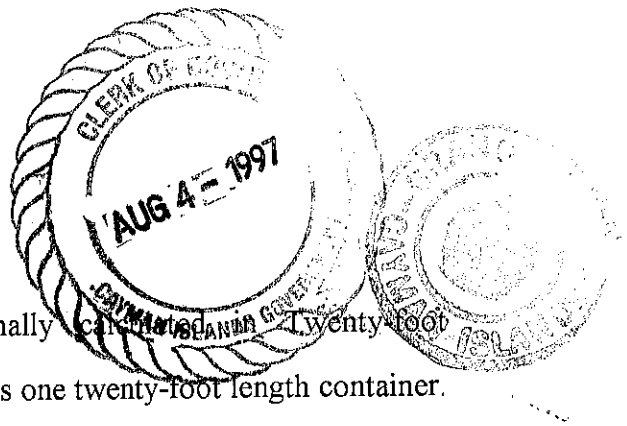


36. It would be possible for the first defendant to unload and load the plaintiff's vessels with its crane and to keep the plaintiff's ships and barge operating reasonably on schedule. That would require the plaintiff, however, to pay additional amounts of approximately CI$44,000 per year to its employees and of approximately CI$170,000 per year to the first defendant for overtime rates.

37. The first defendant could not possibly unload and load the plaintiff's ships and barge within a sufficient time to allow them to keep to their schedules when public holidays fall on Mondays or when the weather is inclement at the beginning of the week.

38. The plaintiff could keep one of its present cranes and an operator on stand-by in order to unload and load its ships when the first defendant's new crane is not operational, which is bound to happen at least a few time each year. The cost to the plaintiff of keeping one of its cranes and an operator available, although idle most of the time, would be approximately CI$87,000 per year.

39. The additional costs to the plaintiff which would result from the first defendant's breach of the contractual licence if it is permitted to compel the plaintiff to remove its two cranes from the port area and, thus, to use the first defendant's crane for the loading and unloading of its vessels would amount to approximately CI$513,000 per year.



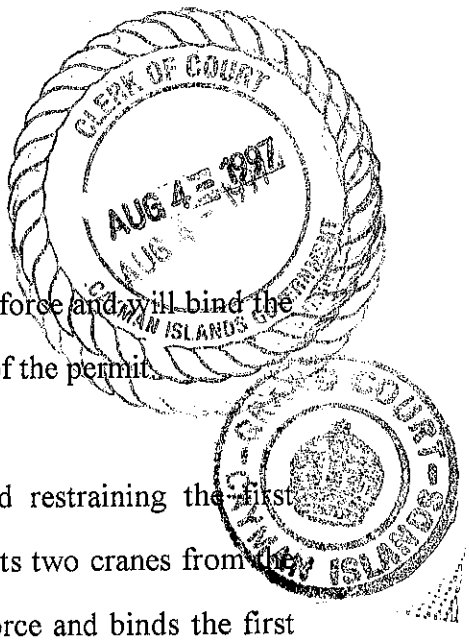
40. Loading and unloading charges are normally calculated in Twenty-foot Equivalent Units ("TEUs"), one of which equals one twenty-foot length container. Some containers measure twenty feet and others, forty feet. The number of lifts is relevant to the time which it takes to unload or load a vessel. The number of TEUs is relevant to the cost of such unloading or loading.

41. The plaintiff unloads and loads approximately 28,600 TEUs per year from and onto its ships at the port of George Town at the present time.

42. The plaintiff's profits do not allow it to absorb the additional costs set out in paragraphs 36, 38 and 39 hereof. Such costs would have to be passed on to the plaintiff's customers and, as a result, it would cease to offer competitive rates. The plaintiff would likely, after some time, be driven out of business. Its service would likely be replaced by that of Kirk Line or that or those of one or several new entrants in the market or by a combination of both.

43. The plaintiff herein began an action against the first defendant herein before the Grand Court in Cause No. 367 of 1997 on 9th June, 1997 ("the crane services proceedings"). The plaintiff herein, as plaintiff therein, claims against the first defendant herein, as the defendant therein, in the said proceedings:

(a) A declaration that the first defendant has granted the plaintiff a contractual licence ("the contractual licence") to keep and operate two cranes on the George Town dock.



(b) A declaration that the contractual licence will be in force and will bind the first defendant so long as the plaintiff is the holder of the permit.

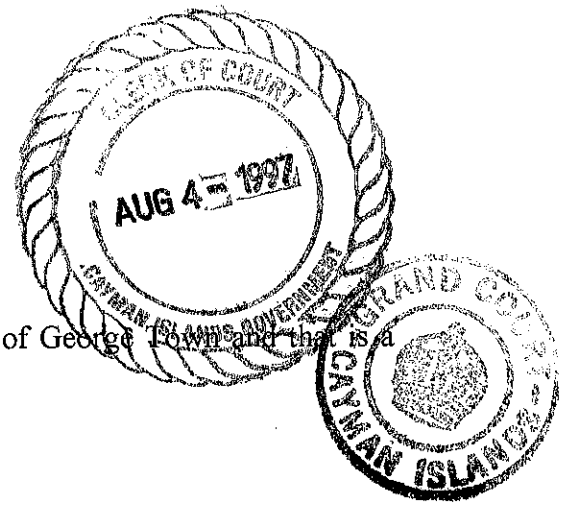
(c) An order of permanent injunction preventing and restraining the first defendant from compelling the plaintiff to remove its two cranes from the port area so long as the contractual licence is in force and binds the first defendant.

44. The plaintiff has also issued, in the crane proceedings, a summons wherein it seeks that the first defendant be enjoined and restrained from compelling the plaintiff to remove its two cranes from the George Town port area until final judgement or further order therein. The hearing of that interlocutory application is fixed to begin on 20th August, 1997.

45. On 18th June, 1997, the first defendant gave this Honourable Court, in the crane proceedings, an undertaking, by way of an interim measure only and without prejudice to any position which it might take on jurisdiction or on any other ground, that it would not remove or compel the plaintiff to remove the plaintiff's two cranes from the George Town port area pending determination by this Honourable Court of the plaintiff's summons referred to in paragraph 44 hereof.

46. The first defendant claims, *inter alia*, in the crane services proceedings, that:

(a) The plaintiff has, for some years, enjoyed a virtual monopoly in the



loading and unloading of ships in the port of George Town and that is a matter of concern to the first defendant.

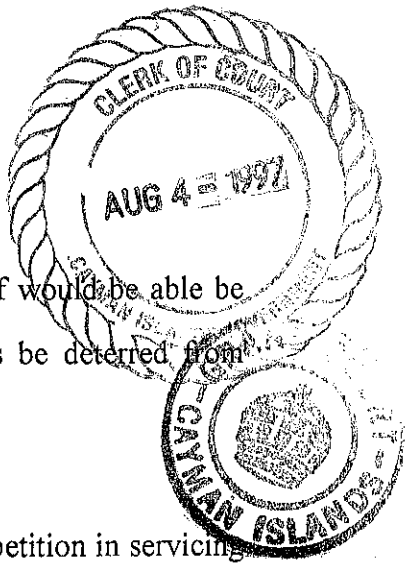
(b) That virtual monopoly is made significant because the plaintiff, as a shipping line, has also enjoyed, for many years, a dominant position in the carriage of goods to and from these Islands.

(c) The plaintiff's ships have enjoyed priority in the use of its cranes in the George Town port area and such priority is a derogation from the scheme of sec. 40 and 47 to 50 of The Port Regulations (1995 Revision).

(d) The first defendant has, for some years, been concerned that what it has called the conspicuously favourable position occupied by the plaintiff has given the latter an advantage in trading and discouraged competitor shipping lines from operating into these Islands and, in particular, into Grand Cayman.

(e) It is concerned that other shipping lines do not seem to be coming forward to compete with the plaintiff.

(f) The priority of crane services which the plaintiff enjoys may appear to give it a potentially significant advantage with regard to scheduling and reliability of service as well as in operating costs.



(g) A potential competitor might perceive that the plaintiff would be able be disrupt its business in any number of ways and thus be deterred from entering the market.

(h) It is considered desirable that there should be free competition in servicing the shipping needs of these Islands.

(i) The first defendant should do what it can to encourage such competition.

(j) Were the first defendant to be the provider of crane services at the George Town dock and were the priority in working the plaintiff's vessels referred to in paragraphs 11(b), 15 and 19(e) hereof to be removed then any potential competitor could readily see that it would be competing "on a level playing field" and that it is desirable.

(k) It was always open to the first defendant to provide and/or operate a crane and stevedoring services in the port area under the provisions of sec. 6(d) and (g) of The Port Authority Law (1995 Revision).

(l) The plaintiff was informed, as long ago as 12th May, 1980, that the first defendant had plans for the provision of a crane or of cranes for its operations.

(m) It was well known, by 1995, that the first defendant intended to provide its own crane service on the George Town dock.

(n) The first defendant resolved, on 25th August, 1995, to buy a crane to install it on the George Town dock and to use it to unload and load vessels.

(o) The plaintiff was advised of that decision as alleged in paragraphs 29 and 30 hereof.

(p) The first defendant purchased a new crane for which it paid US$2,220,104.90, which price was largely funded by a commercial loan of CI$1,826,204.70 (the equivalent of US$2,191,445.60).

(q) The first defendant's crane arrived at the port of George Town in June, 1996 and it was visible to all.

(r) The first defendant's new crane did not become fully operational until the spring of 1997 because, in part, of delays in the making of the necessary Regulations.

(s) The first defendant never granted the plaintiff a contractual licence .

(t) Further and in the alternative, any such licence which might have been issued or granted by the first defendant to the plaintiff would have been so issued or granted subject to the provisions of the relevant Regulations in force from time to time.

(u) The contractual licence referred to in paragraph 19 hereof is, in fact, and was dealt with by the plaintiffs and the first defendant as, the permit referred to in paragraphs 14, 17, 18, 19(a) and (b) and 33 hereof.

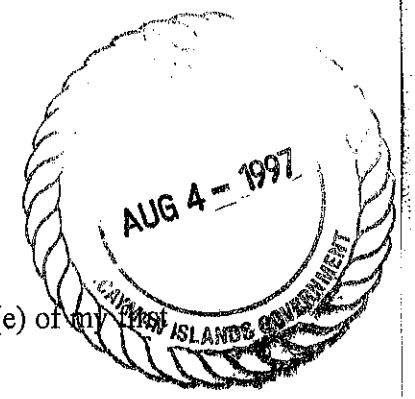
(v) The permit was issued expressly subject to the power of the first defendant to revoke it whenever it thought fit.

(w) The letter from the second defendant to the plaintiff of 5th May, 1997 referred to in paragraph 33 hereof, together with another letter from the second defendant to the plaintiff of 13th May, 1997, whether taken alone or in combination, were effective to terminate any licence and/or permit which the plaintiff then held or of which it enjoyed the benefit.

47. The plaintiff denies the claims or averments set out in sub-paragraphs 46(d), (f), (g), (i), (j), (m), (s), (u), (v) and (w) hereof.

48. The first defendant did not raise the issue of the provision of crane services by anyone other than the plaintiff with the latter between 12th May, 1980 and January, 1996.

49. The plaintiff has never wished to enjoy a virtual monopoly in the loading and unloading of ships in the port of George Town. All that it has ever wanted is the right to unload and load its ships with its cranes. The defendant required of the plaintiff, in 1978, that the latter make its cranes available for the unloading and

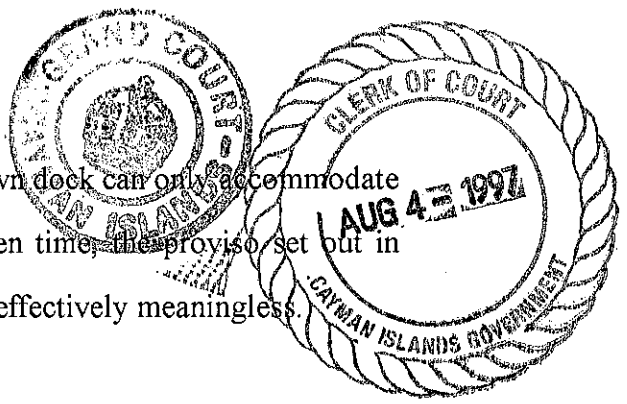


loading of other ships, subject to the proviso set out in paragraph 24(e) of my first affidavit herein, and the plaintiff agreed.

50. The fact that the plaintiff has operated the only crane service on the George Town dock since 1978 has not discouraged competition. Seaboard Marine Ltd ("Seaboard Marine"), the foreign-owned shipping line referred to in paragraph 6 of my first affidavit herein, began its scheduled shipping service to Grand Cayman approximately two years ago in direct competition with the plaintiff. I note, in passing, that Seaboard Marine appears to have dropped the name "Kirk Line" from its service, as appears from a memorandum from Cayman Freight Shipping Services Ltd of 12th June, 1997, a copy whereof is now shown to me and marked "WMT-29".

51. Only two vessels can berth at the same time in the port of George Town, one on the south side of the dock, where it can be unloaded and loaded by means of a crane or of cranes, and one to the north side thereof, where cranes cannot gain access. The plaintiff's vessels dock on the south side and Seaboard Marine's ships dock on the north side. The port of George Town can also accommodate another very small ship, such as the plaintiff's barge referred to in paragraph 30 of my first affidavit herein, in addition to two normal-size vessels, although such small ships are not really suitable for an overseas shipping service.

52. Section 40 of The Port Regulations (1995 Revision) provides that vessels arriving at the port of George Town with the intention of discharging cargo have priority in order of their time of arrival. That time determines the order in which each



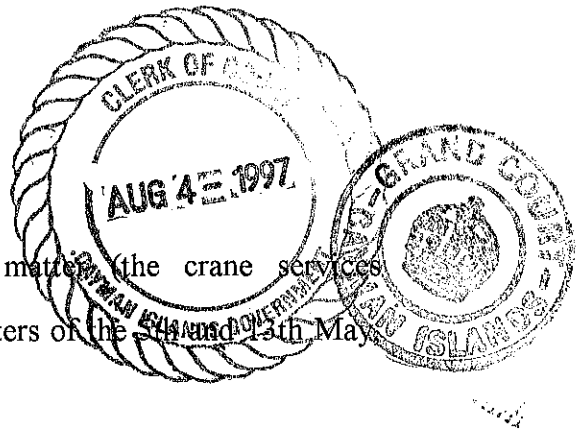
ship is unloaded and loaded. Since the George Town dock can only accommodate one ship which requires crane service at any given time, the proviso set out in paragraph 24(e) of my first affidavit herein is now effectively meaningless.

53. Far from having any incentive to unload and load competitors' ships slowly, the plaintiff has every reason to make its cranes readily available to other vessels and to unload and load them as quickly as possible in order to make room at the dock for its own ships.

54. The real deterrent to further competition in shipping services to the Cayman Islands is the shortage of cargo, the needs of these Islands for goods carried by sea being, of necessity, limited by their small population of approximately thirty-two thousand inhabitants.

55. The plaintiff did not understand that the letters of 5th and/or 13th May, 1997 referred to in sub-paragraph 46(w) hereof, whether read alone or in combination, conveyed, or had the effect of conveying, anything relating to the alleged revocation of the permit and the said letters did not, in fact and/or in law, deal with such alleged revocation.

56. The second defendant stated, in a letter to the plaintiff of 15th July, 1997, as follows:



"I refer to the above-mentioned matter (the crane services proceedings) generally and to my letters of the 5th and 13th May, 1997 to you specifically.

Without prejudice to the revocation of permission for your company to keep and/or operate cranes on the George Town dock as set out in the two letters referred to above, if, which is not admitted, your company holds any Licence and/or Permit to keep and/or operate cranes on such dock, then any such Licence and/or Permit which might be held by your company as at the date hereof is hereby terminated pursuant to its terms and/or the Port Regulations with effect from 12:00 noon on the 16th day of July 1997".

57. The second defendant's letter of 15th July, 1997 referred to in paragraph 50 hereof is signed by the second defendant in his capacity as Port Director and does not purport to have been given on behalf of the first defendant.

58. The first defendant claims, in the crane services proceedings, that the plaintiff is acting unlawfully in using its cranes on the dock for the purpose of loading and unloading its ships and that it is not complying with sec. 4, 68 and 130(2) of The Port Regulations Law (1995 Revision). The plaintiff denies that claim.

59. The first defendant claims, in the crane services proceedings, that its new crane has a capacity of twenty-two to twenty-four lifts per hour and that such capacity comfortably exceeds that of the plaintiff's cranes. The first defendant does not go so far, however, as to assert that the capacity of its new crane exceeds that of the plaintiff's two cranes combined. The first defendant, in the crane services proceedings, also questions the accuracy of the figures set out in paragraphs 36, 38 and 39 hereof and of the averment contained in paragraph 42 hereof. The plaintiff denies the first defendant's claims set out in the first sentence of this paragraph.

60. The first defendant claims, in the crane services proceedings, that the plaintiff's contention as to its loss of ability to compete set out in paragraphs 39, 40, 41 and 42 hereof is flawed since, according to the first defendant, the plaintiff's stevedoring costs would continue to be markedly less than those incurred by Kirk Line even if it removes its two cranes from the George Town dock and makes use of the first defendant's new crane to unload and load its ships. The plaintiff denies that claim.

61. The first defendant claims, in the crane services proceedings, that it is presently losing substantial revenue whilst not operating its crane, that 14,275 TEUs were offloaded and loaded at the George Town port in the first six months of 1997, representing gross revenue of CI$35,687.00 per month, that it has already contracted with an operator to work its crane on its behalf, that the only costs

saving as a result of the non-operation of its new crane is fuel oil, which amounts to some CI$1,000.00 per month, and that its net loss, in monetary terms, as a result of its inability to operate its crane and to unload and load the plaintiff's vessels, is CI$34,687.00 per month. The plaintiff says that it is not responsible for this state of affairs.

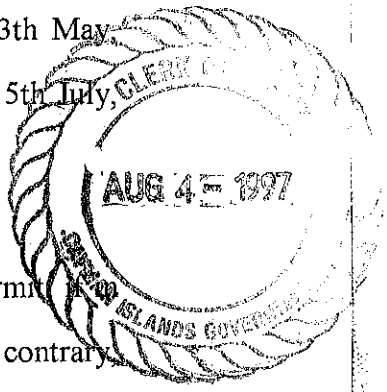
62. The first defendant claims, in the crane services proceedings, that, in "the unlikely event" of the plaintiff being entitled to any relief therein, it would have "no entitlement beyond 31st December 1997 when its 'permit' will expire" and that, "(i)n the circumstances any loss which the Plaintiff may suffer will be confined to a period of about 4 months". The plaintiff denies that claim.

63. It is the first defendant's contention, in the crane services proceedings, that the permit has been revoked, that such revocation necessarily arose from the second defendant's letters to the plaintiff of 5th and 13th May, 1997 referred to in paragraph 33 hereof (in the case of the first such letter) and in sub-paragraph 46(w) hereof (in the case of both letters), whether taken alone or in combination, and that, in any event, it certainly was so revoked by the second defendant's letter to the plaintiff of 15th July, 1997 referred to in paragraph 50 hereof.

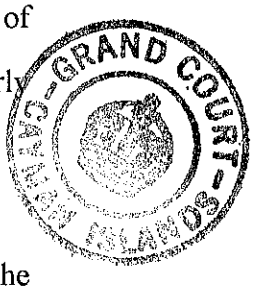
64. The plaintiff avers:

(a) That only the first defendant could cancel the permit under the provisions of sec. 130(1) of The Port Regulations (1995 Revision) and that it has not taken any decision to do so.

(b) That the second defendant exceeded his jurisdiction if he purported to cancel the permit in his letters to the plaintiff of 5th and/or 13th May, 1997 and in purporting to do so in his letter to the plaintiff of 15th July, 1997 (all referred to in paragraph 00 hereof).



(c) That the alleged decision of the first defendant to revoke the permit, if in fact such a decision was taken (which is not admitted but, on the contrary, is expressly denied), is void and of no effect because, in the process of taking such a decision, the first defendant failed in its duty to act fairly towards the plaintiff in that:



(i) It did not give the plaintiff prior notice of its intention to take the formal step of revoking the permit.

(ii) It did not give the plaintiff an opportunity of being heard prior to taking such step.

(d) That the alleged decision of the first defendant to cancel the permit, if any such decision was made (which is not admitted but, on the contrary, is expressly denied), is void and of no effect or cannot stand and should be quashed on the ground that, when such decision was allegedly made, the first defendant and/or all its members were disqualified from making it because:

(i) The first defendant had, at all relevant times, a pecuniary interest in the outcome of such decision.

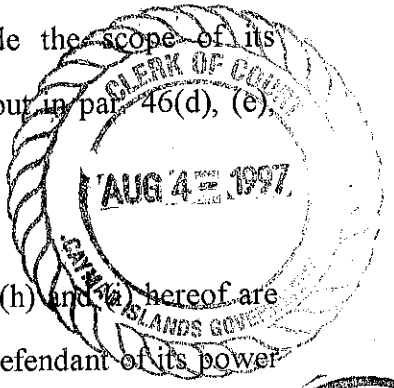
(ii) There was a real danger that the members of the first defendant were biased because the first defendant had, at all relevant times, a pecuniary interest in the outcome of such decision.

(iii) Further and in the alternative, there was a real danger that the first defendant and all its members were biased because the first defendant had decided, in 1995, to purchase and operate its own crane, because it had effected such purchase and because it had clearly announced to the Government of the Cayman Islands and to the plaintiff, prior to making such decision, its intention to order the plaintiff to remove its two cranes from the George Town port area and to give the plaintiff no choice but to make use of the crane services which the first defendant intends to provide.

(e) THAT the alleged decision of the first defendant to cancel the permit, if any such decision was made (which is not admitted but, on the contrary, is expressly denied), is void and of no effect on the ground that, when such decision was allegedly made, it acted without jurisdiction, or exceeded its jurisdiction, in that:

(i) Its powers under The Port Authority Law (1995 Revision) do not included the matters set out in par. 46(d), (e), (h) and (i) hereof or the consideration thereof.

(ii) It had regard, in arriving at its alleged decision to cancel the permit, to considerations which are outside the scope of its functions under the said Law, i.e. those set out in par. 46(d), (e), (h) and (i) hereof.



(iii) The considerations set out in par. 46(d), (e), (h) and (i) hereof are irrelevant to the proper exercise by the first defendant of its power under sec. 130(1) of The Port Regulations (1995 Revision).

(f) Further and in the alternative, if the second defendant was authorised by law to cancel the permit and if he, in fact, did so, such decision is void and of no effect because, in the process of taking such a decision, the second defendant failed in his duty to act fairly towards the plaintiff in that:

(i) He did not give the plaintiff prior notice of his intention to take the formal step of revoking the permit.

(ii) He did not give the plaintiff an opportunity of being heard prior to taking such step.

(g) Further and in the alternative, if the second defendant was authorised by law to cancel the permit and if he, in fact, did so, such decision is void and of no effect or cannot stand and should be quashed on the ground that, when such decision was made, the second defendant was disqualified from making it because:

(i) There was a real danger that the second defendant was biased because the first defendant had, at all relevant times, a pecuniary interest in the outcome of such decision.

(ii) Further and in the alternative, there was a real danger that the second defendant was biased because he and the first defendant had resolved, in 1995, that it would purchase and operate its own crane, because the first defendant had effected such purchase and because it had clearly announced to the Government of the Cayman Islands and to the plaintiff, prior to the second defendant making his decision to cancel the permit, its intention to order the plaintiff to remove its two cranes from the George Town port area and to give the plaintiff no choice but to make use of the crane services which the first defendant intended to provide.

(h) That by reason of the matters aforesaid, the alleged cancellation of the permit is void.

Dated this 14 day of August, 1997

Karin M. Thompson
Attorney-at-law for the plaintiff

To: The Clerk of the Court

REQUEST FOR A HEARING

The plaintiff respectfully requests a hearing of its above application.

TIME ESTIMATE: The estimated time of the hearing of this application is one and one-half (1 ½) hour.

THIS APPLICATION was filed by Karin M. Thompson, the attorney-at-law for the plaintiff, whose address for service is The Thompson Shipping Building, P.O. Box 1708, George Town, Grand Cayman, Cayman Islands, B.W.I.