

IN THE SENIOR COURTS OF BELIZE A.D. 2025

CLAIM NO. CF 86 OF 2022

BETWEEN:

BELIZE SUGAR INDUSTRIES LIMITED

CLAIMANT

AND

[1] BELIZE SUGAR CANE FARMERS ASSOCIATION

[2] PABLO BURGOS

[3] FORTUNATO GONZALEZ

[4] DOROTEO CORREA JR

[5] CANUTO ALPUCHE

DEFENDANTS

HEARD TOGETHER WITH

CLAIM NO. CF 87 OF 2022

BETWEEN:

BELIZE COGENERATION ENERGY LIMITED

CLAIMANT

AND

[1] BELIZE SUGAR CANE FARMERS ASSOCIATION

[2] PABLO BURGOS

[3] FORTUNATO GONZALEZ

[4] DOROTEO CORREA JR

[5] CANUTO ALPUCHE

DEFENDANTS

Appearances:

Mr. Godfrey Smith SC, with Mr. Hector Guerra and Mr. Edgar Lord for the Claimants, in both claims.

Ms. Samantha Matute, with Mr. Jarvis Lou and Ms. Marissa Longworth for the Defendants, in both claims.

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2024: May 14, 15, & 16;  
July 28.

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## JUDGMENT

### *Liability in Tort – Damages for loss of earnings – burden of proof*

- [1] **GOONETILLEKE, J.:** The disputes, in both claim Nos. 86 and 87 of 2022, arise from an alleged blockade of the entrances of Belize Sugar Industries Limited (**BSI**) by farmers of the Belize Sugar Cane Farmers Association (**BSCFA**). It is alleged by BSI, the claimant in Claim No. 86 of 2022, that the sugar cane farmers using their trucks blocked its entrances commencing on the afternoon of the 28<sup>th</sup> of December 2021 for three days. BSI alleges that because of the blockade it was unable to operate the sugar mill. BSI claims for loss of earnings and damages for the period the mill did not operate due to the actions of the defendants. BSI quantifies the loss in Claim No. 86 of 2022 at Belize Dollars (BZD) 1,090,601.00.
- [2] Belize Cogeneration Energy Limited (**BCEL**), the claimant in Claim No. 87 of 2022, is a subsidiary company of BSI and situated on the same premises as BSI. BCEL is a power generation company that uses the residual material from the sugar cane processed by the BSI mill, to fuel the power plant. The residual material known as ‘bagasse’<sup>1</sup> is burned at BCEL to generate heat for boilers to produce steam which drives a turbine that produces electricity. BCEL sells the electricity to Belize Electricity Ltd. (BEL), the national power supplier. BCEL alleges that as result of the blockade of BSI by the defendants, it was unable to receive the bagasse to burn as fuel for the boilers. As a result, BCEL stated it had to shut down the power plant. BCEL claims for loss of earnings from the non-operation of the power plant during the blockade as well as costs in restarting the power plant using electricity from BEL. The loss claimed by BEL in Claim No. 87 of 2022 is quantified as BZD 564,926.00.

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<sup>1</sup> “Bagasse” is pronounced in English as “buh-gas”. The word has its origins in French (bagasse) and Spanish (bagazo), meaning the pulp or refuse or leftover material after the extraction of juice from fruit or sugar cane.

- [3] At the commencement of proceedings, the counsel for the claimants informed the court that the claimants would not be proceeding against the 3<sup>rd</sup> and 4<sup>th</sup> defendants in both claims. The counsel for the defendants accepted this position subject to costs being agreed.
- [4] Counsel agreed that both these claims should be heard together as the witnesses of fact in both claims were the same and their evidence in both claims was identical. The court also notes that the basis of both claims is the alleged blockade of the premises of BSI by the defendants. The only difference in evidence in the two claims is that of the expert witnesses. There was one expert witness who gave his opinion on the loss suffered by BSI, while the other witness gave his opinion on the loss suffered by BCEL. The court therefore heard both claims together.

### **BACKGROUND TO THE DISPUTE**

- [5] The growing of sugar cane and processing of sugar is an important industry in Belize. BSI's mill is the oldest sugar mill in Belize. While BSI grows some sugar cane on its own, the bulk of the sugar cane processed at the BSI mill is produced by independent farmers, who through their associations, sell the sugar cane to BSI. The relationship between the farmers and the mill owners is a symbiotic one; the mill owners cannot produce the sugar without the cane the farmers supply and the farmers would be at a loss to sell their cane if BSI did not buy it from them. In order for the mill to have a steady supply of cane and for the farmers to have an assurance of the purchase of their cane and the price, BSI and the farmer associations periodically enter into supply and purchase agreements.
- [6] There have, however, in the past, been disputes between BSI and the farmer associations in regard to the sale and purchase of sugar cane. There are presently four (4) farmer associations in Belize, with Belize Sugar Cane Farmers' Association (BCSFA) being the oldest and largest association.<sup>2</sup>
- [7] Sugarcane is grown by the farmers and then harvested and supplied to the mill. The milling takes place from late December to June or July the following year, approximately coinciding with the dry season in Belize. The commencement of the milling or 'grinding season' is announced officially by the Sugar Cane Industry Board (**SCIB**), after consultation with the mill and the farmers' associations. Thereafter, a schedule or timetable is prepared according to which the farmer associations will deliver cane to the

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<sup>2</sup> Paragraph 12 of the witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

mill. During the grinding season, the mill operates continuously throughout the day and the night. The supply of cane takes place accordingly on a continuous basis, on a 24-hour schedule.

- [8] The dates for commencement of the grinding season and the delivery schedule of sugar cane are important as sugar cane once harvested loses its quality, if there is a delay in milling. Hence, based on the supply schedule, the farmers will harvest the sugar cane by cutting and burning a couple of days before the supply is due.
- [9] The farmer associations other than the BSCFA, had sale and purchase agreements with BSI that covered the entire 2021/2022 grinding season and beyond. The agreement that BSCFA had with BSI was due to expire in January of 2022. The BSCFA had on the 10<sup>th</sup> of July 2021 given notice to BSI of its desire to terminate that agreement and enter into a new agreement with BSI for the crop season 2021/2022.<sup>3</sup> There was, however, no agreement reached between BSI and BSCFA at the time that the SCIB decided to announce the grinding season. This resulted in the farmers of BSCFA having no assurance that their sugar cane would be bought by BSI after January 2022, which caused them anxiety for the significant loss they could face. Therefore, BSCFA had lobbied the SCIB to delay the start of the grinding season till such time as an agreement could be reached with BSI.<sup>4</sup> However, the SCIB by notice published in the gazette on 24<sup>th</sup> December 2021, declared the grinding season commencing on 27 December 2021 and ending on 31 July 2022.<sup>5</sup>
- [10] Prior to the formal announcement of the grinding season, the attorneys of BSI, by letter dated 17<sup>th</sup> December 2021, wrote to the legal representative of BSCFA stating that the then chairman of the BSCFA, Mr. Andy Westby, had at a meeting with BSI on 16<sup>th</sup> December 2021 threatened action against BSI. The letter stated, Mr. Westby had threatened that BSCFA would not be delivering sugarcane at the start of the grinding season, nor would the other associations. The attorneys of BSI stated further in their letter that “*any attempts by BSCFA to frustrate the delivery of cane by the remaining three associations would amount to a tortious act and would be considered an unlawful interference...*” (with the business of BSI). The letter concluded by stating that BSI would pursue legal means to recover monetary damages and any loss suffered.

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<sup>3</sup> Paragraph 14 of the witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

<sup>4</sup> Paragraph 21 of the witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

<sup>5</sup> Paragraph 22 of the witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

[11] The BSCFA though not having an agreement with BSI covering the entire grinding season, nevertheless published a notice in the press on 24<sup>th</sup> December 2021, discouraging “*any cane farmer from withholding cane deliveries or from taking any action which will disrupt the cane delivery schedule*”.<sup>6</sup>

[12] The cane delivery schedule for 27<sup>th</sup> December 2021 did not have any supplies by BSCFA. The schedule for 28<sup>th</sup> December 2021 listed delivery by farmers of BSCFA commencing at 12.32 in the afternoon, going on continuously to the 30<sup>th</sup> of December 2021. While deliveries of cane on 27<sup>th</sup> of December and the morning of 28<sup>th</sup> December 2021 took place by other cane farmer associations (there were some delays, however delivery took place), the scheduled delivery of cane by BSCFA beginning in the afternoon of 28<sup>th</sup> December 2021 and thereafter, did not take place. Some farmers of the BSCFA brought their trucks with sugar cane and parked them in front of the factory’s cane receiving gates, while other farmers parked their trucks across the gates of the BSI staff and residential complex. Some other trucks are also alleged to have blocked the access road to BSI.

[13] In the meanwhile, due to this impasse at the premises of BSI, the Sugar Cane Producers Committee (SCPC)<sup>7</sup> gave notice to farmers to stop burning the sugar cane, till such time as they were notified that supplies could resume. The manager of the SCPC wrote to the famers’ association by email stating:

*“I would like to inform the association leaders and zone controllers to inform your farmers to cease from burning. Due to the current circumstances **some farmers have blocked the gates of the mill and we don’t have defined time when they will unblock or deliver their cane.** Hence the reason for this request as we would not want [a]mount of old cane to be brought to the mill”.*<sup>8</sup> [Emphasis added]

The reason for that message is clear. Once the sugar cane is harvested it loses value if not supplied in time.

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<sup>6</sup> Annex AO 3, witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

<sup>7</sup> The SCPC is a statutory body

<sup>8</sup> Annex AO 7, witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

- [14] The blockade was cleared on the 31<sup>st</sup> of December 2021 upon BSI reaching agreement with BSCFA on the commercial agreement to supply cane. The legal representative of BSCFA wrote to BSI stating:

*“Based on BSI’s written acceptance of the addendum, and as at 3.30 pm today, the Committee of Management had begun communications to members to have the blockade of all entrances to BSI completely removed. The Chairman of the Committee of Management will be onsite in person to urge the compliance of those present”*.<sup>9</sup> [Emphasis added].

The mill, however, did not restart immediately thereafter. Supplies of cane to the mill recommenced on 3<sup>rd</sup> January 2022.

## **SUMMMARY OF THE POSITIONS OF THE PARTIES**

### The Claimants’ position

- [15] The claimant’s position regarding Claim No. 86 of 2022 is that it is not only the individual farmers that blocked the gates of BSI, but that the BSCFA was also responsible for the blockade. BSI’s position was very simple: the blockade was done in an organized manner with the sole intention to bring about a commercial agreement with BSCFA. BSI alleges that the defendants by blocking of the gates of BSI caused a disruption to the operation of the mill and thereby, BSI suffered a loss of income. The loss to BSI arose from the lack of production of sugar by the mill and the loss of sales due to the inability of its customers to access the BSI premises to buy sugar during the days of the blockade. BSI argues that this loss was foreseeable.
- [16] The claimant’s position regarding Claim No. 87 of 2022, is that due to the blockade, BCEL was prevented from obtaining bagasse from BSI that was required for fuel, to keep the boilers and turbines operating. BCEL alleges that the power plant had to be shut down as a result of the blockade. BCEL therefore claims damages for loss of electricity sales during the period that the plant was shut down and for the cost of importing electricity to restart the power plant. BCEL also claims damages for the delay in commissioning its second boiler which was to be done by an overseas consultant who turned away and left Belize due to the blockade.

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<sup>9</sup> Annex AO 9, witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

- [17] The claimants produced three witnesses. Mr. Shawn Chavarria, the Director Finance of both the claimant companies gave evidence of the blockade and the loss suffered by the respective companies as a result thereof. Mr. Josue Cajun, the Chairman of the Progressive Sugar Cane Producers Association (PSCFA) gave evidence to state that the members of his association were ready and prepared to deliver cane to BSI but that due to the blockade of the gates of the BSI mill by the BSCFA, other sugar cane farmer associations including the PSCFA, were unable to sell cane to BSI during the blockade. Likewise, Mr. Vladimir Puck, the chairman of the Corozal Sugar Cane Producers Association (CSCPA) gave evidence to state that members of his association were also ready to deliver cane to BSI, but that due to the blockade of the BSI mill by the members of the BSCFA, they were unable to sell their cane to BSI.
- [18] The claimants relied on the case of **OBG v Allan** ([2007] UKHL 21) to base their case on the tort of unlawful interference with economic interests. That tort has four elements: interference with trade or business; use of unlawful means; intention to injure the claimants; and damage due to the defendants' actions.

#### The Defendants' position

- [19] The BSCFA takes up the position that as an association it did not instigate or organise a blockade of the BSI mill and that some disgruntled farmers may have blocked the entrances to BSI. The BSCFA also takes up the position that there were alternate means of access to the mill using the entrance of BCEL which also had at its entrance a scale to weigh the trucks.
- [20] Mr. Alpuche, the 3<sup>rd</sup> defendant, states that his truck was to deliver cane on 28<sup>th</sup> December 2021 and that the truck had proceeded to the BSI to do so. He states that his driver informed him that there was *"a mass movement of trucks in the queue towards the gates of the [BSI] mill"*. He stated further that he was informed by the driver of his truck that he had moved his truck and parked it in front of the 'BSI Residencies'. The BSI residential community adjoins the sugar mill and has a separate gate of its own. Mr. Alpuche states that his truck was not blocking the gate to the sugar mill. He states that he went to the site on the following date (29<sup>th</sup> December 2021) but did not attempt to move the truck because he did not want to get anywhere close to mill gate or the source of the protest.

- [21] Mr. Burgos, the 2<sup>nd</sup> defendant took up the position that he was to deliver cane to the mill and that his cane left his premises for the mill in his truck driven by his brother. His brother giving evidence stated that his truck was the first at the gate of the mill to deliver and was parked at the BSI mill gate, and that BSI had locked them out by closing its gates. He stated that “*drivers of other trucks had blocked the gate of the [BSI] mill*”. It was his position that he remained in his place in the queue and that he was blocked by the other trucks.
- [22] As regards Claim No. 87 of 2022, the defendants take up the same defences taken up in Claim No. 86 of 2027 and state that they were not responsible for blocking the gate of the BSI mill. The defendants also take up the position that there was sufficient bagasse available for BCEL to continue its operations during the three days that BSI’s gates were closed due to the farmers protests.
- [23] The defendants also relied on the same case of **OBG v Allan** (above) but denied that the elements of the tort of unlawful interference with economic interests had been met. The defendants stated that their action were not unlawful and that any damage that resulted was not caused by the defendants.

#### Expert opinion

- [24] The court suggested to the parties at case management that it would be useful to have a quantum expert calculate the losses. Mr. Gordon C. Alert, a sugar technology consultant who has experience with the sugar industry in Guyana, Jamaica and St. Kitts, was appointed for that purpose regarding the claim by BSI, in Claim No. 86 of 2025. He presented an expert report, answered written questions posed by the parties and gave *viva voce* evidence by video link. An important point of his evidence was that the alleged loss suffered by BSI due to processing ‘old cane’, (i.e. cane that was cut but not processed due to the blockade) could not be seen when compared with previous data of the same volume of cane that was processed.
- [25] Mr. Jose Ortez, an accountant, gave his expert report regarding the losses suffered by BCEL in Claim No. 87 of 2022. He answered written questions by parties and gave *viva voce* evidence regarding the losses suffered by BCEL due to shutting down of the power plant. A summary of his findings is that BCEL lost; (i) BZD 48,888 caused by loss of energy production due to the blockade; (ii) BZD 60,000 as energy imported to start up the power plant upon resumption, and (iii) BZD 455,636 as a loss of sales due to the delay in commissioning the second boiler. The total loss is estimated at BZ\$ 564,524.



## **ISSUES**

[26] As regards both claims, the central issue is the tortious liability of the defendants regarding the loss allegedly caused to the claimants' businesses due to blockade of the gates of the BSI mill and premises. As both claims revolve around the same set of circumstances, the issues in Claim No. 87 of 2022 are in fact consequential issues that arise from the issues in Claim No. 86 of 2022.

[27] The issues as regards Claim No. 86 of 2022 would be as follows:

- a) Did the defendants sanction, aid or participate in a blockade of BSI?
- b) Did such blockade interfere with the business operations of BSI?
- c) Did BSI suffer losses due to interference with its business operations?
- d) Could BSI have mitigated such losses?
- e) If so, what is the quantum of loss suffered by BSI?

[28] The issues as regards Claim No. 87 of 2022 would be as follows:

- a) Did the defendants' actions cause an interference with the business operations of BCEL?
- b) If so, did BCEL suffer losses due to interference with its business operations?
- c) Could BCEL have mitigated such losses?
- d) If so, what is the quantum of loss suffered by BCEL?

[29] It is therefore necessary to first discuss the issues arising in Claim 86 of 2022.

### **DISCUSSION AND ANALYSIS – CLAIM 86 of 2022**

#### First issue – Did the defendants sanction, aid or participate in a blockade of BSI?

[30] Even though the defendants take up the position that BSI closed its gates and locked out the farmers' cane trucks, there can be no doubt that there was a protest by the farmers with their trucks at the gates and premises of BSI. The evidence taken as a whole confirms this fact.

Mr. Alpuche's (5<sup>th</sup> defendant's) truck

[31] Mr. Alpuche, the 5<sup>th</sup> defendant states at paragraph 10 of his witness statement that:

*"On the 30<sup>th</sup> of December 2021, I travelled to Orange Walk and went to the area outside of the gates of the Claimant's mill at Tower Hill where hundreds of people were gathered in protest of the lack of an agreement between the Claimant [BSI] and the 1<sup>st</sup> Defendant [BSCFA]...I then left the gate area of the Claimant's mill and where people gathered and went to the area of the BSI residence gate where [my] the truck was parked. I saw the truck but did not make any efforts to enter and or even move my truck because I did not want to get it anywhere close to the mill gate or the source of the protest."* [Emphasis added]

[32] Clearly therefore there was a mass protest at the gate of the BSI mill and Mr. Alpuche's truck was parked outside the residence gate of the BSI. It is common sense and courtesy that one does not park in front of anybody's gate let alone leave a vehicle there for several days blocking the ingress and egress of persons. Mr. Alpuche is also aware that in this instance it is a gate of the residences of BSI, and he is aware that there is a protest against BSI for not signing an agreement with BSCFA of which he is a member.

[33] There is no reason for a truck to be placed either partially or wholly in front of gate of a residential complex and to park it there for several days except with intent to block it. Mr. Alpuche takes up the position that he did not block the gates of the mill, presumably to demonstrate that he did not cause a loss to BSI. However, he is responsible for his truck blocking the entrance to the BSI residences and he makes no excuse for that. The only excuse he can rely on is that his driver parked it there and that the driver is now deceased and cannot give evidence. That, however, is a lame excuse if any. Mr. Alpuche has control over his driver, and nowhere does he state that he asked the driver to move the truck and that the driver did not do so. In his witness statement Mr. Alpuche himself states that he did not make any attempt (give instructions) to move it.

[34] Such blocking of the BSI residential complex gate by Mr. Alpuche's truck must be construed as a measure to impede ingress and egress from BSI, inconveniencing its staff. A man with full knowledge of what is going on has to intend the consequences of his acts. Therefore, the blocking of the BSI

residential complex gate by Mr. Alpuche's truck also constitutes a participation by Mr. Alpuche in the protest that was going on. It constituted an act of trespass.

Mr. Pablo Burgos's (2<sup>nd</sup> defendant's) truck

- [35] It is not disputed that Mr. Burgos's truck was parked outside the gate of the BSI mill. Both Mr. Chavarria on behalf of BSI and Mr. Pablo Burgos's brother, Cristino Burgos who drove the truck, confirmed this fact in their *viva voce* evidence to court.
- [36] Evidence was given by Mr. Chavarria about the process by which farmers bring the sugar cane to the mill. First, a truck approaches a ticket booth known as the "SCPC Ticket booth" some distance away from the mill gate. The driver is given a printed ticket at this booth. This ticket has the Tare weight of the truck, previously weighed, and is in the computer system of BSI. The ticket also has other data such as farmer's number and area. The truck is then driven with this ticket from that booth to the mill gate. Upon entering the premises from the mill gate, there is a scale on which the truck with the cane is weighed. By deducting the Tare weight of the truck (which is on the BSI computer system and on the ticket first issued), it is then possible to arrive at the weight of the sugarcane being delivered. A second ticket with all this information is then printed by the booth near the scale, on the factory side of the mill gate (an example of such a ticket is to be seen at Annex SA – 3 attached to the witness statement of Mr. Alpuche). The truck then proceeds for delivery of the cane.
- [37] Therefore, there is no point for a truck to drive to the mill gate for weighing and delivering cane without first having obtained a ticket from the SCPC ticket booth. Mr. Cristino Burgos who drove Mr. Pablo Burgos's (2<sup>nd</sup> defendant) truck is himself a cane farmer. He said in court that he has done such deliveries before and was aware of the process of obtaining a ticket from the outside booth (SCPC ticket booth) before going to the mill gate. When asked whether he got a ticket from the outside booth to deliver cane on the 28<sup>th</sup> of December 2022, he responded that he did not get one. Then, when asked why he approached the mill gate without a ticket, he responded that he went there because other trucks went there. It is to be noted, however, that Mr. Burgos's truck is the first truck that is at the mill gate. So Mr. Cristino Burgos, the driver of the truck, would have had to make the first move or a simultaneous move with the other truck that is front of the other parallel gate of the mill (there are two parallel gates at the mill to permit simultaneous operations).

[38] In cross examination, when pressed, Mr. Cristino Burgess conceded that he was there as part of a protest. Therefore, all these circumstances taken as a whole establish that Mr. Pablo Burgos had knowledge of and did participate in the blockade of BSI through his brother Cristino Burgos. On a balance of probability, it is more probable than not that Mr. Burgos's truck was parked in front of the BSI mill gate to block it in protest, rather than to deliver cane as suggested by Mr. Burgos and his brother Cristino Burgos, who drove the truck. Therefore his actions are also an act of trespass on BSI property with intent to block the BSI premises, impeding access to it and thereby interfering with the business operations of BSI.

#### BSCFA's action and/or inaction

[39] The next issue of fact to resolve is the degree of involvement of BSCFA in the blockade, if any.

[40] The position taken up by the BSCFA is that they it did not instigate the protest and were not responsible for the blockade but that some disgruntled farmers did so.

[41] The BSCFA on the 24<sup>th</sup> of December 2021 issued a press release (Annex AO – 3) discouraging farmers from withholding cane deliveries to the mill. The BSCFA was not scheduled to make deliveries till the afternoon of 28<sup>th</sup> December 2021. On that date, from the very first scheduled delivery, no supply of cane took place. Instead, the trucks of the farmers of the BSCFA blocked the gates of the BSI mill and the BSI residential compound. On behalf of BSI, Mr. Chavarria, in his evidence to court, stated that due to previous experiences of protests by farmers and with a view to preventing damage to BSI, they closed the gates of the mill and placed their vehicles on the inside of the gates as measure to prevent damage to BSI.

[42] Was it therefore a lock out? or a protest and blockade? The evidence taken as a whole, as discussed above, indicates that it was a blockade by the farmers and not a lock out by BSI. If it was a lockout, there was no reason why a discussion by BSCFA with BSI could not have resumed the supply of cane. The resumption of cane supply took place only after an agreement was signed by BSI and BSCFA. This fact indicates that BSCFA did not take any action to persuade its farmers to remove the blockade on the 28<sup>th</sup> or 29<sup>th</sup> of December 2021 when it could have done so, similar to its previous press release on the 24<sup>th</sup> of December 2021 asking its members not to withhold the supply of cane.

[43] Mr. Andy Westby, the then Chairman of the Management Committee of the BSCFA is deceased. The present chairman Mr. Alfredo Ortega gave evidence on behalf of BSCFA. Mr. Ortega is unable to confirm or deny the words attributed to Mr. Westby by the attorneys of BSI in their letter of 16<sup>th</sup> December 2021 whereby Mr. Westby is alleged to have threatened BSI by stating that 'BSCFA will not supply cane, and neither will the other associations'.

[44] What must be assessed in deciding this point, is the degree of control the BSCFA has over its members and whether it was complicit in the blockade. It is not an insignificant circumstance that the blockade commenced from the very first BSCFA member's truck that was to deliver cane for the grinding season. If it is that a group of disgruntled farmers chose to block the gates of the BSI mill and compound, it is a strange coincidence that it happened from the very first BSCFA member's delivery. According to the delivery schedule, BSCFA was to deliver cane throughout the afternoon, evening and night of the 28<sup>th</sup> of December 2021 on a continuous basis, going on till the 29<sup>th</sup> and 30<sup>th</sup> of December 2021. If a few random farmers were disgruntled, such a protest could have happened at any time in the delivery schedule. However, the protest happened from the very first delivery assigned to BSCFA indicating a well-planned and organised protest to deny BSI the supply of cane to its mill and thereby bring the mill to a grinding halt (pun unintended).

[45] The seriousness and impact of such a blockade is seen at paragraph 33 of Mr. Ortega's witness statement where he states:

*"Due to **the disquiet of the members** and the general public about the potential impact of an impasse surrounding the Commercial Agreement negotiations between the Claimant [BSI] and the 1<sup>st</sup> Defendant [BSCFA], Ministers of the Government including the Prime Minister requested that the 1<sup>st</sup> Defendant's leadership **meet at the area outside of the Claimant's [BSI's] compound at 5.00 pm on December 28<sup>th</sup>** so that an update could be provided"* [Emphasis added].

[46] Mr. Ortega then states that at that meeting at which the 1<sup>st</sup> Defendant (BSI) was present it was learned that there was no agreement with BSI on the commercial matter. As a result, Mr Westby the then chairman, informed the members of the BSCFA of this update. Mr Ortega states at paragraph 34 of his witness statement that he never heard Mr. Westby, nor any other person on behalf of BSCFA, call for members to block the gate as a result of the lack of agreement with BSI. However, what is of interest is that by this time (5.00 pm on the 28<sup>th</sup> of December 2021) the gates of BSI were already blocked. It is

significant to note that Mr Ortega does not state that Mr. Westby asked those who were blocking the gates to remove their trucks on the 28<sup>th</sup> of December 2021.

[47] At paragraph 36 of his witness statement, Mr. Ortega states:

*“However, I observed that a large group of people, having received the Claimant’s update [that there was no commercial agreement with BSI] were angered. Some farmers/drivers at their own volition went toward their trucks and began to move their trucks toward the Claimant’s [BSI’s] delivery gate and residential estate gate. The Claimant [BSI] had also placed heavy equipment and security trucks to block the gates of the mill from the inside”*

This passage illustrates that what took place was a blockade by the farmers and a defensive posture by BSI.

[48] Mr. Ortega goes on to state at paragraph 38 of his witness statement that:

***“The blockade lasted overnight** and into 29<sup>th</sup> December. The 1<sup>st</sup> Defendant’s [BSCFA] Committee of Management held a meeting with the Prime Minister and other Ministers of the Government on this day at the Yo Creek Agriculture station beginning 9.30 am. I was present at the meeting”* [Emphasis added].

That statement by Mr. Ortega also confirms that there was a blockade by the farmers, and that the matter was serious enough for the Prime Minister and the ministers of the government to meet the BSCFA on this matter.

[49] In his witness statement Mr. Ortega also states that the leaders of BSCFA agreed that they were going to ask the membership to remove the barrier in front of the factory. He states that though Mr. Westby went to the site on 29<sup>th</sup> December 2021, the protestors did not heed Mr. Westby’s request.

[50] However, at paragraph 44 of his witness statement, Mr. Ortega states that after the commercial agreement with BSI was agreed to, Mr. Westby addressed the crowd of farmers and that,

*“...this time they [the farmers] were satisfied with the update since it seemed that a possible agreement could be reached. Most of the trucks were removed (sic) the trucks from the gates by protesting drivers at that time on the basis that the Claimant [BSI] would finalize and sign off on the*

*agreement with the 1<sup>st</sup> Defendant [BSCFA] in the timeline expected, which was by the end of the day December 30<sup>th</sup>.*

It is thus clearly seen that there had been a protest and a blocking of the BSI gates by the famers who were members of the BSCFA and that its leadership could persuade them to unblock the gates of BSI.

[51] Together with this narrative, it is also important to reiterate the letter written by the attorney of BSCFA to BSI stating that:

*“Based on BSI’s written acceptance of the addendum, and as at 3.30 pm today, the Committee of Management had begun communications to members to have **the blockade of all entrances to BSI completely removed**. The Chairman of the Committee of Management will be onsite in person to urge the compliance of those present”.<sup>10</sup> [Emphasis added].*

This is a clear indication that the leadership of BSCFA had it in their power to call off the ‘blockade’ of the entrances of BSI but did not do so prior to BSI agreeing to terms. It is therefore clear that the leadership of BSCFA did not prevent the blockade nor call it off before an agreement with BSI was reached. The fact that the protest and blockade took place with the very first delivery assigned to BSCFA for the season cannot be coincidence but is a matter that the BSCFA leadership was aware of or ought to have been aware of. They took no steps to prevent the blockade.

[52] I hold therefore on a balance of probabilities, based on the totality of the facts and circumstances set out above, that the BSCFA is complicit in the blockade that took place at the BSI premises.

[53] The first issue in Claim No. 86 of 2022 is therefore answered in the affirmative.

Second issue - Did such blockade interfere with the business operations of BSI?

[54] Mr. Chavarria, the Director of Finance of BSI, gave evidence regarding the extent of the interference to the BSI’s operations due to the blockade. At paragraph 22 of his witness statement he states:

*“The blockade lasted for a period of three and a half days from the 28th December to the 31st December 2021. During the period, the movement of employees, customers and vehicular traffic in*

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<sup>10</sup> Annex AO 9, witness statement of Alfredo Ortega, Chairman of the Committee of Management of BSCFA

*and out of the mill was completely halted since the members physically blocked the entrance of the mill. Employees of the Claimant who are also provided accommodations inside the Claimant's housing site were also unable to exit the compound because the Defendants also blocked the entrance and exit to the employees' housing area located on the Claimant's housing site."*

[55] At paragraph 24 and 25 of his witness statement Mr. Chavarria states:

*"During the Defendant's blockade and trespass from 28th -31st December 2021, the Claimant suffered significant loss because farmers were unable to deliver and sell and BSI was unable to purchase sugar cane to commence its production of raw and food grade sugar as well as other sugar derivatives such as molasses. BSI was also unable to sell its products to the domestic and international markets and suffered the losses... As a result, BSI wrote to all associations outlining delays that the blockade had caused including to its Air Emissions Project. The blockade also delayed the restarting of BSI's boilers"*

[56] As explained by Mr. Chavarria in his *viva voce* evidence, the protest commenced on the second day of the grinding season. The mill therefore had to come to a complete stop after the cane supplied and delivered by other farmers associations on the 27<sup>th</sup> of December and the morning of the 28<sup>th</sup> of December 2021, was exhausted.

[57] That the mill cannot be worked without the cane is easy to understand. This fact is understood or ought to be understood by all parties to these claims. The blocking of the mill gates by the farmers of the BSCFA is what caused the halt in the operations of the BSI mill.

[58] As discussed at paragraphs [42] to [51] above, the facts imply that the intention of the members of the BSCFA was to halt the operations of BSI till such time as they had a commercial agreement with BSI covering the entire grinding season.

[59] I hold therefore that that blockade did interfere with the business operations of BSI. The second issue is therefore answered in the affirmative.

Third issue - Could BSI have mitigated such losses?

[60] It is the position of the defendants that not all entrances were blocked and that BSI could have been accessed through the gates of BCEL, a little further down the road. Mr. Alfredo Ortega of the BSCFA



at paragraph 48 of his witness statement emphasised this fact, stating that there is another scale to weigh vehicles at the BCEL gate.

- [61] That position is technically correct. The court had the opportunity to visit the site, with the parties present, on the afternoon of the 16<sup>th</sup> of May 2025 to observe the locus. It was observed that vehicular access to BSI is possible from the gates of BCEL.
- [62] Access alone, however, is not what is in issue. As described above, there is a process by which the cane is brought to the mill. There is a ticket first issued with the Tare weight of the truck and the truck then moves on to the next booth to be weighed at which point the weight of the cane is determined by deducting the Tare weight of the vehicle. After weighing the cane in the truck, another ticket is issued setting out all the details of the farmer, the weight of cane delivered, and the area from which the cane was received.
- [63] For cane to be weighed at the BCEL gate, BSI would have had to remove the equipment, the booths outside the BSI gates with the computer systems and re-install them at the BCEL gate. That operation would also involve constructing a temporary structure to house these booths at the BCEL gate. No evidence was given by either party as to how long that would have taken or how much it would have cost. However, it can be deduced that moving operations from one gate to another is not as simple as closing one gate and opening another. It would take some time to set up operations at the new gate.
- [64] The blockade lasted 3 days commencing on the afternoon of the 28<sup>th</sup> of December and going on till the afternoon of the 31<sup>st</sup> of December 2021. What needs to be considered is whether during this period of three days it would have been practical to move the cane receiving systems from one gate to another. If the blockade had lasted longer, for weeks or months, the relocation of the systems to another gate or alternate site would certainly be a matter that could have mitigated a loss if other farmers associations were willing to supply cane using the alternate gate and the alternate gate was not blocked by then.
- [65] In this instance, however, the protest lasted three days and in most of those days it was the farmers of the BSCFA that were scheduled to deliver cane. Therefore, there was little point in moving the cane receiving systems of BSI to the BCEL gate, as that would not have made any difference because the farmers of the BSCFA were not delivering cane; they were protesting that they did not have an agreement with BSI to cover the entire grinding season.

[66] I hold therefore, as regards the receiving of cane, there was no mitigatory measure that could have been adopted by BSI in that time frame.

[67] The claim for damages also includes loss for the inability of customers who had contracts with BSI to have access to buy sugar. This is a matter, however that could have been mitigated by notifying customers that they could access BSI through the BCEL gates.

[68] The principle that avoidable loss is not claimable in tort as well in contract is well established (**Admiralty Commissioner v SS Chekiang** ([1926] A.C. 637). The rationale for this concept was stated by Potter LJ in **The Elena d'Amico** ([1999] 1 Lloyd's Rep. 747 at 758) in the following terms:

*"The rule is...that the plaintiff...cannot recover for a loss avoidable by reasonable action on his own part, because, if he could reasonably have avoided it, it would not be regarded as caused by the wrongdoer"*

[69] I therefore hold that the third issue is partially answered in the affirmative.

Fourth issue – what is the quantum of loss suffered by BSI?

[70] Mr. Chavarria on behalf of BSI at paragraph 26 of his witness statement sets out the details of the losses claimed as follows:

Particulars of loss and damage

1. Payment of Employees unable to enter Mill		BZ\$
Daily payroll cost of employees	A	55,248
Number of days employees prevented from working	B	3.50
<b>Total cost to BSI (A x B)</b>	<b>C</b>	<b>193,368</b>

2. Loss of local sugar and molasses sales		BZ\$
Loss of PW sales over 4 days	D	198,464
Loss of brown sugar sales over 4 days	E	38,825
Loss of molasses sales over 4 days	F	45,932
<b>Total lost sales (sum D: F)</b>	<b>G</b>	<b>283,221</b>

### 3. Loss of sugar and molasses production to BSI

Days lost milling cane due to blockage	H	6
Average milling rate – Mt/day	I	3,500
Total cane lost – Mt (H x I)	J	21,000
Tons Cane/Tons Sugar ratio	K	12
Sugar production lost (J / K)	L	1,750
FOB US raw sugar value per MT	M	397
FOB BZ value (L x M x 2)	N	1,388,911
<b>BSI's share of lost sugar production – (N x 35%)</b>	<b>O</b>	<b>486,119</b>

Days lost milling cane to blockage	P	6
Average milling rate – Mt/day	Q	3,500
Total cane lost – Mt (P x Q)	R	21,000
Molasses production rate	S	3.25%
Molasses production lost (R x S)	T	683
FOB US molasses sugar value per MT	U	155
FOB BZ value (T x U x 2)	V	211,575
BSI's share of lost molasses production (V x 35%)	W	74,051

**Total lost sugar and molasses production to BSI (O + W)      X      560,170**

4. Loss of sugar production due to cane deterioration		BZ\$
Total cane milled of poor quality - Mt	Y	13,123
TC/TS ratio of poor quality cane	Z	13.02
Sugar produced from poor quality cane – Mt (Y / Z)	AA	1,008
TC/TS based on expected cane quality	AB	10.92
Sugar produced based on expected cane quality (AA / AB)	AC	1,202
Sugar production lost (AC – AA)	AD	194
FOB US raw sugar value per MT	AE	397
FOB BZ value ( AE x AF x 2)	AF	153,835

BSI's share of lost sugar production – AF x 35%	AG	53,842
<b>Grant Total (C + G + X + AG)</b>	<b>AH</b>	<b>\$1,090,601.00</b>

- [71] It is thus seen that the grand total is an aggregate of: losses for employees paid without work (**C – BZD 193,368**), loss of sales of existing stock (**G – BZD 283,221**), loss of sugar and molasses production (**X –BZD 560, 170**) and loss of sugar due to cane deterioration (**AG – BZD 53, 842**).

Loss due to cane deterioration

- [72] The expert in the sugar industry, Mr. Gordon Alert, in his expert report at page 460 of the record states that, “*the central question is the loss of 194 metric tonnes of sugar that BSI has claimed*”. This loss as claimed by BSI is due to the deterioration of the sugar cane which was cut but delivered late to the mill due to the blockage. Mr. Alert in his *viva voce* evidence explained that after the cane is cut, due to evaporation there is less sugar that can be milled. In his report at page 486 of the record he states that:

*“BSI claims that this loss was a direct result of cane deterioration due to the delay in milling cane on a timelier basis. Indeed, the industry standard is a kill-to-mill of less than 2 to 3 days. However, several variables influence the rate of deterioration and a carte blanche judgment of 13124 MT cane in a group needs to be disaggregated to identify the characteristics of each load and test figures”.*

- [73] Mr. Alert then looked at past data of BSI on a random basis for production in several weeks in 2020, 2021 and 2022 and came to the following conclusion in responding to written questions of parties:

*“Based on these numbers, one can argue that the 27,815 MT of cane ground and processed comparatively, had no negative impact on BSI operations”* (page 525 of the record).

- [74] In response to questions from court, in his *viva voce* evidence, Mr. Alert stated that he could not see the data for deterioration in the actual numbers. He stated that if the sugar cane was milled one week prior to its actual milling (delay due to the blockade), in theory there could have been more sugar, but that actually there was no reduction.

- [75] Based on this evidence, I reject BSI’s claim for loss of sugar production due to cane deterioration. As such, the total claim will be **reduced by BZD 53,842**.

#### Loss of sugar and molasses sales

- [76] Mr. Chavarria at paragraph 28 of his witness statement, states that, "*The lost sales is derived from taking the daily average sales for the respective product multiplied over the 4 working days*".
- [77] It is to be noted however, that the loss of sales claimed under this head is for sugar and molasses that was already in stock, and not sugar and molasses lost due to lack of production. This stock was eventually sold at some point in time. Hence, the loss is mitigated once a sale is realized. Further, as discussed in the third issue, BSI could have mitigated this loss of sales by informing its customers that they could have access to BSI from the BCEL gate. This was not done.
- [78] The court is therefore not inclined award damages under this head. Accordingly, the total claim will be **reduced by a further sum of BZD 283,221** regarding sales of sugar and molasses.

#### Loss of molasses and sugar production

- [79] The loss quantified under these two heads of 'molasses' and 'sugar' is based on a full capacity of milling 3500 Metric Tonnes (MT) of cane per day. The schedule for cane delivery produced by Mr. Ortega (Annex AO-4) indicates the cane that was to be delivered from 9.00 am on Monday 27<sup>th</sup> December to 5 pm Wednesday 29<sup>th</sup> December 2021. A full 24-hour cycle of delivery is set for Tuesday 28<sup>th</sup> of December 2021 in which BSI was to deliver from 12.31 pm. As indicated in the schedule, If the quantities of cane deliveries are calculated from 2.10 am on 28<sup>th</sup> December (First delivery for that date) to 2.45 am on 29<sup>th</sup> December 2021 (24-hour delivery cycle), a total of **3,024<sup>11</sup>** MT of sugar was scheduled to be delivered. According to the delivery schedule (Document AO-4) the total deliveries for the period commencing from 9 am on 27<sup>th</sup> December 2021 and ending at 2.22 pm on 29<sup>th</sup> December 2021, a period of approximately 54 hours (2 days and 6 hours or 2.25 days), is 7000 MT. Thus, if the total cane delivered over this period is considered, the average daily supply of cane based on these figures is about **3,111** MT per day (7000 divided by 2.25). If these two numbers (3,024 and 3,111) are averaged, the total delivery of cane per day would average to **3,067** MT per day (3024 + 3111 divided

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<sup>11</sup> Aggregated as follows; 566 + 379 + 329 + 360 + 297 + 322 + 455 + 316 = 3024 (the delivery of 316 MT at 2.45 am on Wednesday 29<sup>th</sup> is excluded as this is beyond the 24-hour cycle which began with the delivery 566 MT at 2.10 am 28<sup>th</sup> December 2021)

by 2). It is thus seen that the losses calculated by BSI based on 3500 MT of production per day is not accurate and tends to be on an ideal basis rather than on an actual basis.

[80] The days of milling lost to the blockage has been calculated as 6 days. The blockage lasted from 28<sup>th</sup> December to the end of 31<sup>st</sup> December 2021 - a period of just 3 and a half days. Time to recommence milling was also lost due to a boiler malfunction (Document AO-10). While the malfunction has been attributed to having to restart the boiler, that is matter which is not foreseeable by the defendants and is not a loss that can be claimed from the defendants.<sup>12</sup> While the blockade was removed by the evening of the 31<sup>st</sup> of December, the resumption of deliveries on 3<sup>rd</sup> January 2022 was the decision of BSI and not the defendants. Since the claimant has calculated loss of sales of sugar and molasses in stock based on 4 days of lost sales, I hold that the loss attributable to the defendants for loss of production of molasses and sugar cane has also to be reduced to 4 days and not calculated as 6 days, as done by the claimants.

[81] Using these adjusted figures discussed above, the loss for molasses production would be as follows:

Loss of sugar and molasses production to BSI

Days lost milling cane due to blockage	H	<b>4</b>
Average milling rate – Mt/day	I	<b>3,067</b>
Total cane lost – Mt (H x I)	J	<b>12,268</b>
Tons Cane/Tons Sugar ratio	K	12
Sugar production lost (J / K)	L	<b>1,022</b>
FOB US raw sugar value per MT	M	397
FOB BZ value (L x M x 2)	N	<b>811,468</b>
<b>BSI's share of lost sugar production – (N x 35%)</b>	<b>O</b>	<b><u>284,014</u></b>

(The figures in bold are new inputs based on the conclusions reached. The rates are as given by BSI)

[82] Likewise, it is possible to calculate sugar production lost, as follows:

<sup>12</sup> *The Wagon Mound* [1961] A.C. 388 PC. *Muirhead v Industrial Tank Specialities Ltd.* [1986] Q.B. 507

Days lost milling cane to blockage	P	<b>4</b>
Average milling rate – Mt/day	Q	<b>3,067</b>
Total cane lost – Mt (P x Q)	R	<b>12,268</b>
Molasses production rate	S	3.25%
Molasses production lost (R x S)	T	<b>399</b>
FOB US molasses sugar value per MT	U	155
FOB BZ value (T x U x 2)	V	<b>123,690</b>
BSI's share of lost molasses production (V x 35%)	W	<b><u>43,292</u></b>

(The figures in bold are new inputs based on the conclusions reached. The rates are as given by BSI)

[83] The Loss of sugar and molasses production to BSI is therefore **284,014 + 43,292** which amounts to **BZD 327,306**.

[84] Based on these figures the total loss to BSI due to the blockade of the factory is as follows:

1. Payment of Employees unable to enter Mill		BZ\$
Daily payroll cost of employees	A	55,248
Number of days employees prevented from working	B	3.50
<b>Total cost to BSI (A x B)</b>	<b>C</b>	<b>193,368</b>

2. Loss of local sugar and molasses sales		BZ\$
<b>Total lost sales</b> (disallowed for reasons in paragraphs [76] – [78])	<b>G</b>	<b>000,000</b>

3. Loss of sugar and molasses production to BSI

Days lost milling cane due to blockade	H	<b>4</b>
Average milling rate – Mt/day	I	<b>3,067</b>
Total cane lost – Mt (H x I)	J	<b>12,268</b>
Tons Cane/Tons Sugar ratio	K	12
Sugar production lost (J / K)	L	<b>1,022</b>
FOB US raw sugar value per MT	M	397
FOB BZ value (L x M x 2)	N	<b>811,468</b>

<b>BSI's share of lost sugar production – (N x 35%)</b>	<b>O</b>	<b>284,014</b>
Days lost milling cane due to blockade	P	4
Average milling rate – Mt/day	Q	3,067
Total cane lost – Mt (P x Q)	R	12,268
Molasses production rate	S	3.25%
Molasses production lost (R x S)	T	399
FOB US molasses sugar value per MT	U	155
FOB BZ value (T x U x 2)	V	123,690
BSI's share of lost molasses production (V x 35%)	W	43,292
<b>Total lost sugar and molasses production to BSI (O + W)</b>	<b>X</b>	<b>327,306</b>
(Reduced for reasons at paragraph [79]–[80] above)		

4. Loss of sugar production due to cane deterioration		BZ\$
<b>BSI's share of lost sugar production</b>	<b>(AG)</b>	<b>000,000</b>
(Disallowed due to expert report – paragraphs [74] - [75] above)		
<b>Grant Total (C + G + X + AG)</b>	<b>AH</b>	<b><u>\$ 520,674.00</u></b>

[85] The defendants have contested the amount paid for employees on the payroll stating that there is no indication that these employees were idle or that there is proof of the amounts paid to them. I reject that submission; the quantum expert also confirmed the payroll figures. Due to the blockade, those employees who had to be paid for their time would not have had productive work during the period of the blockade. It is also noted that the claim under this head for payment to employees is confined to 3.5 days which is the exact period of the blockade and does not extend to 6 days which is the period it took to recommence operations at the mill. I therefore consider the claim for payment of employees to be a reasonable claim.

[86] Thus, the answer to the fourth issue is that the defendants are jointly and severally liable to the claimant for **BZD 520,674** of losses caused due to the blockage of the BSI premises.



## DISCUSSION AND ANALYSIS – CLAIM 87 of 2022

### First Issue - Did the defendants' actions cause an interference with the business operations of BCEL?

- [87] It was held while discussing the first issue in Claim 86 of 2027 that the defendants were jointly and severally liable for the interference of the business operations of BSI. The business operations of BSI and BCEL are intertwined. One cannot function without the other. The fuel for the power plant of BCEL is the *bagasse* – the waste material from the grinding of the sugarcane at BSI.<sup>13</sup> Without the *bagasse*, the power plant cannot function. As stated by Mr. Shawn Chavarria, the Director Finance of BCEL; “*The claimant's [BCEL's] business is therefore entirely dependent on the availability of bagasse produced by BSI during the milling season since both operations enjoy a symbiotic relationship...*”<sup>14</sup>. The halting of the BSI mill and its operations starved BCEL of the fuel for its power plant. It is not dissimilar to a lamp flaming out due to lack of oil or a motor engine failing due to fuel starvation.
- [88] Therefore, I hold that the defendants' actions of blockading the BSI gates also caused an interference with the business operations of BCEL. The first issue in Claim 87 of 2022 is answered in the affirmative.

### Second Issue - If so, did BCEL suffer losses due to interference with its business operations?

- [89] It is to be noted that the grinding season commenced on the 27<sup>th</sup> of December 2021 and that cane was supplied and milled at BSI from the 27<sup>th</sup> of December 2021. Therefore, at the time the of the blockade of the BSI gates on the afternoon of 28<sup>th</sup> December 2021, the BCEL power plant was up and running with one boiler as stated in the *viva voce* evidence of Mr. Shawn Chavarria.
- [90] At paragraph 25 of his witness statement, Mr. Chavarria states that; “[a]s a result of the Blockade and trespass BSI was unable to produce sugar products as well as bagasse, the latter of which is used by the claimant [BCEL] to generate electricity. Consequently, the claimant was unable to generate and sell electricity in accordance with its commercial agreements in place which adversely affected the claimant's economic interests”.<sup>15</sup>

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<sup>13</sup> Paragraph 9 of the witness statement of Shawn Chavarria, Claim No. 87 of 2022.

<sup>14</sup> Paragraph 10 of the witness statement of Shawn Chavarria, Claim No, 87 of 2022.

<sup>15</sup> Witness statement of Shawn Chavarria, Claim No, 87 of 2022.

[91] At paragraph 26 of his witness statement Mr. Chavarria gives the details of the losses under the following heads: lost energy sales from the blockade; energy lost from the delay in the installation of equipment and commissioning for the second boiler; and energy import cost from restarting the plant on 3<sup>rd</sup> January 2022.

[92] As the operations of BCEL are totally dependent on the *bagasse* supplied by BSI and as I have held that the blockade of BSI also constituted an interference with the business operations of BCEL, it follows that BCEL suffered losses due to such interference, as BCEL was unable to produce and sell electricity consequent thereto.

[93] The second issue in claim 87 of 2022 is therefore answered in the affirmative.

Third issue - Could BCEL have mitigated such losses?

[94] Any claimant that claims damages owes a duty at common law to mitigate the loss that it may suffer. A long line of cases has followed this principle stated in ***British Westinghouse Co. v Underground Ry***<sup>16</sup> wherein Viscount Haldane LC held<sup>17</sup>:

*“The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a claimant the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damage which is due to his neglect to take such steps”.*

[95] In the case of ***The Liverpool (No.2)***<sup>18</sup> Lord Merriman endorsed this passage of Viscount Haldane, stating; *“The classic statement [namely of Lord Haldane], although made in an action arising of a breach of contract, applies equally, mutatis mutandis, to tort”.*

[96] That being the applicable law, it is necessary to ascertain if BCEL could have functioned despite the blockade of BSI and the lack of the supply of *bagasse* during the blockade of BSI. Mr. Alfredo Ortega at paragraph 54 of this witness statement states that:

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<sup>16</sup> [1912] A.C. 673.

<sup>17</sup> *ibid* at page 689.

<sup>18</sup> [1963] A.C. 64

*“The bagasse derived from the sugar cane delivered would have been stockpiled for use by the claimant [BCEL] for power generation. To my knowledge, the claimant does not necessarily use the bagasse immediately as the sugar cane is delivered and milled but rather stockpiles it to feed the power generation plant on a need’s basis”.*

[97] This position was confirmed by Mr. Chavarria in his *viva voce* evidence where he explained to court that at the end of the grinding season a stock of *bagasse* is kept on site, unburned, to enable the power plant to start operations the next season. This reserve stockpile of *bagasse* has not been quantified, but again, according to Mr. Chavarria’s *viva voce* evidence the reserve stockpile of *bagasse* would last for a few days.

[98] It can be concluded therefore that at the beginning of the grinding season there is available a stockpile of *bagasse* that will last a few days till such time that stock is replenished by fresh *bagasse* consequent to milling at BSI. The blockade occurred just one and a half days into the new season which meant that BCEL would have had a stockpile of *bagasse* leftover from the previous season. It is also to be noted that BCEL usually operates with two boilers, so it can be assumed that the reserve stockpile of *bagasse* would have been sufficient for a few days of operation using two (2) boilers. At the time of the blockade beginning on 28<sup>th</sup> December 2021, only one boiler was in operation according to the evidence before the court. Therefore, with a reserve stock of *bagasse* to last a few days for two (2) boilers at the beginning of the grinding season, it can be assumed that there would have been sufficient *bagasse* in reserve to operate one boiler for a period of 4 to 5 days.

[99] No evidence was placed before the court to establish that the available stock of *bagasse* was exhausted before the power plant was shut down. BCEL shut down its power plant in anticipation of a loss of a replenishment stock of *bagasse* and not for an actual loss of *bagasse*. It was also Mr. Chavarria’s evidence that this stock was being kept as a rolling reserve for the end of the season and presumably that is why it was not burned as fuel when the BSI factory stopped operations. However, the reserve stock can always be built up at a future point and that is not a reason to stop operations if a reserve was available. This situation is not dissimilar to having to use a reserve in the fuel tank of vehicle if the fuel is low.

[100] Based on the evidence before the court, BCEL shut down the power plant not due to fuel starvation but due to a decision taken to preserve the reserve (the assonance was not intended). As stated above,

there is no evidence to indicate precisely how long this reserve would have lasted. It is also probable that BCEL would not have known how long the blockade would have lasted. However, there was a rolling stock of *bagasse* for a few days which could have been used to continue operation of the power plant but was not used. BCEL therefore could have taken but did not take any mitigatory measures to avoid its loss by using the reserve stock of *bagasse* to fuel the power plant for a few days more.

[101] As the blockade lasted for just three and half days, it would have been possible for BCEL to continue operations using the reserve stock of *bagasse*. In fact, according to Mr. Chavarria, the delay in the start of the BSI mill was also due to a boiler malfunction which may have occurred due to heat expansion and contraction when the boiler was shut off. Thus, if the power plant was running and the boiler was not shut off, there is the possibility that there would have been no malfunction in the boiler and consequently no need to delay the restart of operations to 3<sup>rd</sup> January 2022 due to the repair of the boiler. If that was the case, operations could have commenced at BSI on 1<sup>st</sup> January 2022, and the stock of *bagasse* that was used replenished from that date onwards.

[102] In any event, in the totality of the circumstances set out above, I hold that BCEL could have and should have mitigated its losses by using the reserve *bagasse* to keep its power plant operating during the blockade of BSI. The claimant, BCEL, elected not to do so.

[103] The third issue is therefore answered in the affirmative. BCEL has failed to take any steps to mitigate its losses.

Fourth issue - if so, what is the quantum of loss suffered by BCEL?

[104] In its claim, BCEL has quantified its loss as follows:

Particulars of loss and damage

**Loss of electricity sales and energy imports**

BZ\$

1. Daily energy sales <u>with 1 boiler</u> - MWh	50
# of days boiler and TG offline	4.50
Total energy - MWh	225
Tariff - BZ\$/MWh	217.28

	<b>Sub-total lost energy sales from blockade</b>	<b>48,889</b>
2.	Daily energy sales with 1 boiler - MWh	50
	Daily energy sales with 2 boilers - MWh	283
	Difference	233
	# of days boiler #1 delayed for commissioning	9
	Total energy - MWh	2,099
	Tariff - BZ\$/MWh	217.28
	<b>Sub-total lost energy sales from delay with boiler #1</b>	<b>456,037</b>
3.	Energy import cost from restarting plant on 3 Jan 2022	<b>60,000</b>
	<b>Total loss of energy sales and import costs</b>	<b>564,926</b>

[105] It can be seen from the above that there are three components to this claim. The first component is the sales lost due to shutting down the one boiler that was in operation at the time of the blockade. This amount is quantified as BZD 48,889.

[106] The second component is the delay attributed to restarting the second boiler by 9 days due to the technical experts from overseas who were to attend to it staying away due to the blockade.<sup>19</sup> This delay of nine days sales is quantified as BZD 456,037.

[107] The third component is the cost of electricity imported to restart the power plant which is quantified at BZD 60,000.

[108] I have held, answering the 3<sup>rd</sup> issue, that BCEL has taken no steps to mitigate its loss by keeping the power plant operational with the reserve stockpile of *bagasse*. Had BCEL done so, there would have been no requirement to restart the plant. Therefore, I reject the portion of the claim for restarting the power plant. Accordingly, the claim should be reduced by **BZD 60,000**.

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<sup>19</sup> Paragraph 28 of the witness statement of Shawn Chavarria in Claim No. 87 of 2022.

[109] While it is possible for BCEL to have continued to function with its power plant during the blockade of BSI using the reserve stockpile of *bagasse*, it also noted that such reserve would have had to be replenished once operations recommenced at BSI. As stated in evidence, the reserve stock is maintained at the end of the grinding season to have an available stockpile of *bagasse* at the start of the next season to operate the power plant immediately without having to wait for the *bagasse* to be produced in the new grinding season.

[110] Thus, if the reserve *bagasse* was burned to fuel the power plant during the blockade of BSI, such reserve would have to be built up again. If that was the case, in order to re-build the reserve that would have used during the blockade, BCEL would have had to stop operating the power plant at the end of the grinding season a few days earlier; to preserve the *bagasse* for the start of the next season. Hence, even if BCEL had mitigated its loss by using the reserve during the period of the blockade, there is still a loss to BCEL in the output of its energy sales. If mitigatory measures had been taken by BCEL due to the blockade, the loss of energy sales would then have occurred not at the front end of the grinding season but at the end of the grinding season.

[111] The period of the blockade was three and half (3.5) days. Given that operations could have commenced at BSI on the 1<sup>st</sup> of January 2025 if there was no issue with the boiler, the allowable loss for the power plant ought to be four (4) days of lost energy sales. The quantum of loss for lost energy sales has therefore to be calculated for 4 days as follows:

Daily energy sales <b><u>with 1 boiler</u></b> - MWh	50
# of days boiler and TG offline	<b>4.00</b>
Total energy - MWh	<b>200</b>
Tariff - BZ\$/MWh	217.28
<b>Sub-total lost energy sales from blockade</b>	<b>43,456</b>

(The figures in bold are the new inputs based on the above discussion. The rates are as given BCEL)

[112] Thus, the claim for lost energy sales of the first boiler is BZD 43,456 and not BZD 48,889. The claim should therefore be further reduced by a sum of **BZD 5,433** (48,889 – 43,456)

[113] The above discussion has dealt with first and third components of the loss claimed by BCEL. The second component is the loss of BZD 456,037 due to the delay in repairing and starting the second

boiler of the power plant. This delay is attributed to the blockade on the basis that overseas technical experts who were to come and work on the second boiler turned away and left due to the blockade, causing the work to be rescheduled.<sup>20</sup>

[114] The law in relation to damages is that a claim for damages must be foreseeable and not too remote.<sup>21</sup> There is no indication, even under this head, that BCEL sought to mitigate its loss by engaging with the team of experts and permitting them to access the premises through the BCEL gate which was accessible even during the blockade.

[115] Mr. Chavarria's witness statement produces a letter dated 13 January 2022 that advises the farmer associations, including BSCFA, regarding the project to commission the boilers with a new system. That letter, however, has been sent after the event of the blockade. The BSCFA or the farmers could not have known of this equipment upgrade prior to the blockade.

[116] The matters to be considered are therefore whether damages under this head is too remote and could not be foreseen by the defendants and whether the claimant failed to mitigate its loss. I hold that given the circumstances described above, the defendants could not have foreseen such damage and that the claimant has not taken any steps to mitigate its loss.

[117] As the damage is not foreseeable and too remote, and as BCEL has taken no steps to mitigate its loss, I hold that BCEL is not entitled to claim for the nine days of loss due to the second boiler not being commissioned. Therefore, the claim out to be reduced further by a sum of **BZD 456,037**.

[118] Considering the above discussion, the total loss by BCEL is recalculated as follows:

<b>Loss of electricity sales and energy imports</b>	<b>BZ\$</b>
1. Daily energy sales <b><u>with 1 boiler</u></b> - MWh	50
# of days boiler and TG offline	4.00
Total energy - MWh	225

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<sup>20</sup> Paragraph 28 of the witness statement of Shawn Chavarria in Claim No. 87 of 2022.

<sup>21</sup> *Hedley Byrne & Co. v Heller & Partners Ltd.* [1964] A.C. 465. *The Wagon Mound* [1961] A.C. 338. *South Australia Assets Management Corp. v York Montague Ltd.* [1997] A.C. 191. *Manchester Building Society v Grant Thornton UK LLP*. [2021] UKSC 20. *Meadows v Kahn* [2022] A.C. 852

Tariff - BZ\$/MWh	217.28
<b>Sub-total lost energy sales from blockade</b>	<b>43,456</b>
2. Lost energy sales from delay with boiler #1	<b>000,000</b>
(Disallowed)	
3. Energy import cost from restarting plant on 3 Jan 2022 (Disallowed)	<b>000,000</b>
<b>Total loss of energy sales and import costs</b>	<b>43,456</b>

[119] Thus, the answer to the fourth issue in Claim No. 87 of 2022 is that the defendants are jointly and severally liable to the claimant for **BZD 43,456** of losses caused.

## **DISPOSTION**

[120] Claim No. 86 of 2022 is partially allowed with costs to the claimant.

[121] Claim No. 87 of 2022 is partially allowed with costs to the claimant.

## **IT IS HEREBY ORDERED AND DECLARED THAT**

- (1) The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants are jointly and severally liable to pay to the claimant in claim No. 86 of 2022 a sum of **BZD 520,674** as damages with interest at 6% per annum from 1<sup>st</sup> January 2022.
- (2) The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants shall pay the costs of the claimant in claim No 86 of 2022. The costs are to be agreed or assessed.
- (3) The 3<sup>rd</sup> and 4<sup>th</sup> defendants who have been released from the claim by the claimant in claim No. 86 of 2022 are entitled to their costs to be paid by the claimant as agreed or assessed.



- (4) The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants are jointly and severally liable to pay to the claimant in Claim No. 87 of 2022, a sum of **BZD 43,456** as damages with interest at 6% per annum from 1<sup>st</sup> January 2022.
- (5) The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants shall pay the costs of the claimant in claim No 87 of 2022. The costs are to be agreed or assessed.
- (6) The 3<sup>rd</sup> and 4<sup>th</sup> defendants who have been released from the claim by the claimant in claim No. 87 of 2022 are entitled to their costs to be paid by the claimant as agreed or assessed.

**Rajiv Goonetilleke**  
High Court Judge