[2017] **JMSC Civ 112**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 06503

BETWEEN	**NEW FALMOUTH RESORTS LIMITED**	**CLAIMANT**
AND	**JAMAICA PUBLIC SERVICE COMPANY LIMITED**	**DEFENDANT**

Kwame Gordon and Juliet Mair Rose for claimant instructed by Riam Essor and Co.

Symone Mayhew and Kimberley Morris for defendant

HEARD: February 27 and July 31, 2017

Electricity - Supply - Squatters in occupation of premises without consent of owner - whether Electricity supply to premises is trespass to land - The Amended and Restated All-Island Electric Licence 2011

DUNBAR GREEN, J

The Claim

[1] The claimant is a company incorporated in Jamaica with registered office at 5 Beverly Drive, Kingston 6 in the parish of St. Andrew. The defendant has authority under the All-Island Electric Licence 2001 (replaced by the Amended and Restated All-Island Electric Licence 2011) for the supply of electricity in Jamaica.

[2] The claim is for damages in trespass. It originated by way of Fixed Date Claim Form with supporting affidavit by its Chairman and CEO, Mr James Henry Chisholm. On 16th September 2013, by order of the court, the Fixed Date Claim Form and supporting affidavit were to be treated as Claim Form and Particulars of Claim, respectively. It was also ordered that the affidavit in response, sworn by Ms Kim Robinson, Attorney-At-Law, on behalf of the defendant company, be treated as the defence.

[3] At the commencement of trial the claimant's pleadings were amended to exclude certain parcels of land which had been disposed of by the claimant since the suit. The trial therefore proceeded in relation to lands registered at **Volume 1008 Folio 636, Volume 1109 Folio 441, Volume 1109 Folio 442 and Volume 1389 Folio 427** of the Register Book of Titles.

[4] The claim concerns lands known as "Orange Grove", located south of Coopers Pen and Burnwood Beach, registered at **Volume 1008 Folio 636** and **Volume 1389 Folio 427** of the Register Book of Titles, as well as lands known as "Florence Hall" which adjoins the Trelawny Multi-Purpose Stadium on its southern and western boundaries and is east of the Hague Pen commercial and residential district, being lands registered at **Volume 1109 Folio 442** of the Register Book of Titles and lands beside Coopers Pen registered at **Volume 1109 Folio 441.**

[5] The claimant alleges that the defendant:

(i) entered into multiple contracts for the provision of service to squatters on the claimant's land and has continued to benefit, gain and earn from the claimant's land and at the claimant's expense and loss;

(ii) installed poles, towers, lines, electrical equipment, tools and apparatus on the claimant's lands without permission;

(iii) installed and caused its utility lines and/or equipment to be placed on and over the claimant's lands without the claimant's permission;

(iv) accessed, occupied and continues to access and occupy illegally lands belonging to the claimant and had misused and continues to misuse the claimant's property;

(v) utilized the claimant's land for the purpose of facilitating its collection of information to further its commercial enterprise;

(vi) constructed, maintained, repaired, installed, inspected, removed, replaced, serviced, operated and dealt with its poles, towers and lines on and across the claimant's lands;

(vii) bushed, cleared, cut down, weeded, destroyed, whacked, removed, changed the landscape of or otherwise dealt with and altered the trees, shrubs, saplings of flowers on the claimant's property so as to establish its poles, towers, lines, electrical equipment, tools and apparatus;

(viii) blatantly and deliberately refused to act on or heed the claimant's various notifications to it that the occupiers of its lands were there illegally and without the owner's permission;

(ix) knowingly and deliberately facilitated illegal squatters on or before September 1993;

(x) had entered into contracts for the supply of electricity with squatters on the claimant's land for the sole purpose of profit, benefit, gain and to earn and income from the claimant's lands;

(xi) by its neglect, caused and is causing the claimant severe mental anguish, grave distress, frustration and undue burden daily; and

(xii) continues to act in blatant defiance and disregard for the prevailing court orders.

[6] Among the orders sought are:

(i) that the defendant has trespassed and continues to trespass on the claimant's land;

(ii) that the defendant has squatted and illegally occupied, and continues to illegally occupy the claimant's land;

(iii) that the defendant be directed to remove the poles, towers, lines, electrical equipment, tools and apparatus from the claimant's land;

(iv) damages for trespass; and

(v) aggravated and exemplary damages.

The Defence

[7] By way of its defence, the defendant:

(i) admits providing electricity services to persons resident in or around Coopers Pen, Orange Grove and Florence Hall areas in the parish of Trelawny;

(ii) denies erecting poles, towers, lines, apparatus without the claimant's permission for the sole purpose of providing electricity to squatters on the claimant's property;

(iii) states that it is under an obligation under its All-Island Electric Licence, 2001 (replaced by the Amended and Restated All-Island Electric Licence, 2011) to supply electricity to any owner or occupier of premises once it is required to do so;

(iv) further states that its established policy and regular practice is to require applicants for electricity supply to provide proof of ownership and/or right to possession of property in respect of which electricity supply is requested and that in certain cases where the applicants do not have registered titles or other formal proof of the ownership or right to possession, the defendant has entered into conditional contracts with applicants. These contracts make it a condition that if at a later date, greater title is established for the land by any other person or interest, the defendant would disconnect the supply of electricity and remove its equipment from the premises;

(v) sets outs its efforts to comply with the claimant's request for disconnection of supply of electricity to certain customers to include Audrey Brooks, Clive Parris and some 99 defendants named in Claim no 2007 HCV 01202 New Falmouth Resorts Limited v Fitzroy Allen & others;

(vi) sets out that it was restrained from disconnecting the supply of electricity to the 99 defendants by order of the court dated 30th March 2012; and

(vii) denies acting in deliberate disregard of the claimant's rights.

The Claimant's Evidence

[8] The Witness Statement of James Henry Chisholm, filed 26th September 2014, as redacted in paragraphs 5,9 and 10, was ordered to stand as his evidence in chief. He testified in his capacity as Managing Director and shareholder of the claimant Company. What follows is a summary of the evidence from the claimant.

[9] Mr. Chisolm said the claimant is the registered owner of lands comprised in all the titles aforementioned, which he described as parts of Orange Grove, Orange Grove Estate, Florence Hall and New court in Trelawny.The land in issue is located in the Burwood Beach/Martha Brae area of Trelawny, opposite the Royalton Hotel and divided by the new highway.

[10] The evidence is that the defendant has provided and continues to provide electricity services to over 100 squatters on the land without the permission, authorization or approval of the claimant. This has been done by installing utility poles, utility lines, metres, electrical equipment, tools and apparatus.

[11] The defendant was notified of the alleged trespass by letter dated 11th October 2003 to which a court order was attached declaring the claimant as owner of the lands and by which the claimant requested that the defendant disconnect the electrical supply and service to Miss Audrey Brooks/Country Club, who was a squatter. This was followed by a Notice to Quit dated 13th October 2003 to the defendant requiring it to quit and deliver up vacant possession of the claimant's lands. There were also telephone calls and visits to the defendant's offices and pleas to desist from the use and occupation of the claimant's land. In April 2004 the claimant provided the defendant with a pre-checked plan which identified the lands affected. Those actions were all futile as the defendant expanded the use and occupation of the land by issuing new contracts for service.

[12] In 2010, the claimant obtained and served on the defendant a court order declaring some 99 occupants of the claimant's land to be trespassers to be evicted. In response, the defendant sought the assistance of the government to remain in occupation and use of the land. The government challenged the court order and sought an injunction to prevent any action by the claimant or anyone including the defendant.

[13] Under cross-examination, Mr. Chisolm stated that the last time he visited the land in question was in 2002 and he had been having a problem with squatters since 2003 when he had to evict one Mr. Leon O'Sang.

[14] Mr. Chisolm also agreed that he had asked the defendant to take action in relation to Clive and Gloria Parris (volume 1109 folio 441) but subsequently withdrew that request. He admitted that the defendant was requested to delay disconnection on lands beside Coopers Pen, until further notice and to having discussions with a government agency in relation to selling/purchasing a portion of the claimant's land for the squatters.

[15] He admitted to being present when the defendant terminated its supply to Audrey Brooks and the Country Club, forming part of Orange Grove (volume 1008 folio 636).

[16] When asked how he came to the conclusion that the defendant had supplied the squatters with electricity, his response was that he knew of one metre, that everyone had electricity and also:

> *I am talking about facilities to people, not metres. Light all over the place at night. JPS is beside the road and could cut off their light. The Squatter houses are beside a road that leads from the hotel to the bypass road. A JPS post is on the road. I saw one wire from the JPS post to my property when I went there. This was the day I went to remove the squatters, 2002 or 2004 when I went to evict Miss Audrey Brooks. I think it was removed because the building was demolished. I haven't been to the property but I see metres from the road from the hotel to the highway…There is a pole…I saw the lines from JPS that go into my property. I didn't see metres but lines*

> *from JPS that go into my property…I haven't been inside the property where the squatters are so I can't say whether there are metres or poles but I observe wires into the property from the post. Those poles are on the line which divides my property from the road which is cut there…*

[17] Mr. Chisolm was asked whether he had made enquiries of the defendant as to whether the wire he saw belonged to it. His answer was in the affirmative and he added, "When I went to evict Miss Audrey Brooks, I think it was removed because the building was demolished."

[18] When shown the 2016 map which the court had ordered to be done, Mr. Chisolm said the pole he had been speaking about was located on the road beside his property. He also identified three other poles on the map which he said were on the line which divided his property from the road. He agreed with counsel that there was a triangular piece of land which he referred to as "The Village" located between the old road and the northern boundary of the claimant's land. That piece of land, he agreed, was not the claimant's.

[19] It was suggested to Mr. Chisolm that other than what he said was observed in relation to Miss Audrey Brooks/ Country Club, the defendant never had any poles or metres on the claimant's property at volume 1008 folio 636. His response was that he did not know whether they had any metres on the property and he did not see any poles but they had service from underground. When pressed, he said he had only heard that there was an underground facility.

[20] Mr. Chisolm said that he was not aware that in 2014 the defendant had made any disconnections on the land in Coopers Pen but he had seen documentation, through his attorneys, that the defendant had gone to carry out disconnections and there was a riot.

[21] It was suggested to him that the defendant had not sought any assistance from the government to remain in occupation of the claimant's land and his reply was that he had heard so from government officers.

[22] Mr. Chisolm said he had never seen any of the defendant's personnel on his property. He was aware that there was a transmission line on the property registered at volume 1008 folio 636 but agreed with the defendant that this did not constitute trespass as it had been authorised.

[23] It was suggested to him that the defendant had no unlawful or unauthorised equipment on the claimant's lands. He responded by saying that was his belief because he had seen metres there before and had heard in the news that the defendant had removed metres and the people revolted. It was further suggested to him that the report had been that service was disconnected, to which he responded, "I don't know the difference between equipment and service. The equipment provide the service."

[24] It was also suggested to Mr. Chisolm that when the disconnections had been done metres and poles were only removed from "The Village", that is, the area above the strip of land where the squatters are located, which is not the claimant's property. He said "I do not know. There was no pole on my property but I know they got service. It is possible they were removed from the village." He had also received reports that the squatters had illegal connections but said, "it appears as long as JPs gives service to the people, they will remain. And JPS can disconnect their service from the roads and the poles."

[25] Mr. Chisolm said that he was unable to say whether at present the squatters had electricity service. He had not been to property in many years and the last report he received was in 2014 when the defendant had gone to carry out disconnections.

[26] In re-examination Mr. Chisolm told the court that he had commissioned a survey of the property so that the bailiff could determine the boundaries with a view to enforcing the 2010 court order but a revolt by the squatters prevented this from being done.

The Defendant's Evidence

[27] The Witness Statements of Kim Robinson, legal counsel for JPS, filed 11th February 2015 and 5th May 2016, as amplified, were ordered to stand as her evidence in chief. What follows is a summary of the evidence.

[28] Miss Robinson said she was employed to the defendant since 2007 and had access to files and records relative to this matter. She stated that the defendant had an obligation, under its licence, to supply electricity to any owner or occupier of premises upon request and to connect a customer up to a distance of 100 metres from an electricity distribution line. If the applicant's facility is further than the 100 metres from the distribution point, the defendant could extend its distribution line at a cost to the applicant.

[29] The established policy and practice was to require applicants to provide proof of ownership and/or right to possession. In cases where registered title or other formal proof of ownership could not be established, the defendant would enter into "conditional contracts", subject to greater title being established. In circumstances where greater title was provided by another person, the JPS would disconnect the electricity supply and remove its equipment from the premises.

[30] The records indicated to her that the defendant had conditional contracts with persons resident in areas to include Cooper's Pen, Orange Grove and Florence Hall. Some of those contracts dated back to 1999.

[31] Miss Robinson stated that several of the customers in and around Coopers Pen had produced letters from Justices of the Peace, the Mayor and other persons who attested to their right to occupy the premises. In at least one instance, it was represented to the defendant that the lands were owned by the government, the applicants were in the process of acquiring parcels and accordingly they had permission to be on the land.

[32] She acknowledged that the defendant had received a letter from the claimant dated 11th October 2003 advising that it was the owner of property registered at volume 1008 folio 636 which included premises known as Country Club and that the claimant had received an order from the court to evict the occupant, Audrey Brooks. The letter also requested the defendant to disconnect its electricity supply and remove the metre as the building was to be demolished. In a subsequent letter, other properties were identified as being owned by the claimant but the defendant was requested to not disconnect the electricity.

[33] The defendant replied two days later requesting the date of demolition, to facilitate securing its equipment, and also proof of ownership as it related to the other properties. The records indicated that the defendant disconnected the electricity supply at Country Club on 30th October 2003, as requested by the claimant.

[34] By letter of 21st October 2003, the claimant provided the defendant with proof of ownership of properties registered at volume 1008 folio 636 and volume 1109 folio 442.

[35] By letter dated 16th March 2004 the defendant indicated to several persons indicating that it was in receipt of proof of greater title and intended to disconnect their electricity supply and remove all of its equipment unless they provided proof of better title.

[36] On 30th April 2004 the claimant wrote the defendant and requested disconnection in relation to Clive and Gloria Parris/Gloria's Restaurant. The claimant also indicated that the defendant should not disconnect squatters on its property adjacent to Cooper's Pen until further notice.

[37] The defendant wrote to the Parris's/Gloria's Restaurant on 22nd June 2004 notifying them of the intention to disconnect and later did so. However, on 25th June 2004, a letter was received from Mr. Dudley Chin informing the defendant that he was the owner of the land, having bought it from the claimant. By letter of

12th July 2004, the claimant advised that it had leased the premises to Gloria's Restaurant and Wayne's Car Wash and requested that the defendant supply them with electricity.

[38] Miss Robinson stated that she saw no record of any further communication between the claimant and the defendant regarding squatters until 24th January 2012 when the defendant received a letter from the claimant with a copy of a pre-checked survey plan for premises registered at volume 1008 folio 636 and advising that the claimant had not given permission to anyone to be on the land and that the Supreme Court had ordered a demolition of all structures and eviction of all persons on the land. The letter requested that the defendant remove its service and equipment, in view of pending demolition.

[39] On 2nd February 2012 the defendant requested a copy of the court order which it received on or about 20th February 2012. That court order was granted 30th April 2010.

[40] Miss Robinson stated that the defendant began taking steps which included contacting the bailiff for the parish to determine the exact locations for the proposed demolition. The defendant had also confirmed that some twenty three (23) of ninety- nine (99) defendants named in the order were its customers. She stated further, "In February 2012, a site visit was conducted by Marcia Ennis of the JPS district office and a representative of the bailiff at which time they identified the premises from which electricity supply was to be disconnected and the JPs metres and other equipment to be (sic) removed." She said that further to the site visit, thirty-seven (37) metre numbers were identified which corresponded to thirty-seven (37) customers.

[41] Miss Robinson explained that the disconnection exercise was delayed because the defendant was served with an Improvement Order signed by the Minister of Housing declaring the land in issue as an Improvement Area pursuant to section 6 of the **Housing Act**. The Housing Agency also requested that the

disconnections not be carried out in view of the Improvement order and advised that it would be seeking an injunction to prevent the removal of the affected persons from the property and demolition of the structures.

[42] On 8th March 2012 the defendant was served with a court order restraining it from disconnecting the electricity supply for 21 days. On 30th March 2012 it was served a second order which restrained it from interfering with the ninety-nine (99) defendants' quiet enjoyment and possession of the premises until the substantive hearing of the application for a stay of the 2010 judgment. As a result of these orders, the defendant did not take any further steps in pursuance of the disconnections until November 2014.

[43] Miss Robinson stated that since being served the last order there was no record of any further communication regarding the outcome of the application for stay until the first hearing of the instant matter on 16th September 2013 when it was intimated to the defendant's Attorney-at-Law that a court order had been made. A copy of the Formal order was received by the defendant on 15th January 2014. It was dated 4th May 2012. By that order the application for a Stay of Execution of the claimant's judgment was refused.

[44] The defendant carried out the disconnection exercise on 24th November 2014. In that disconnection exercise, fifteen (15) customers were disconnected. Subsequently, some six (6) customers were reconnected because they provided the defendant with what appeared to be bona fide documentation.

[45] Miss Robinson explained the lapse in time between service of the order and the disconnections as being caused by the vast acreage of lands involved and the lack of proper delineation of the premises.

[46] In relation to lands at volume 1389 folio 427 and volume 1008 folio 636, Miss Robinson stated that there were caveats in favour of the defendant further to easements granted to it to allow a portion of its transmission line to traverse the properties. Furthermore, title searches disclosed that the property registered at

volume 1109 folio 442 was cancelled and re-issued as volume 1467 folio 253, the claimant was not the registered owner and the defendant had a grant of easement for which it had lodged a caveat.

[47] She stated further that on a visit to the general area it was her observation that the defendant did not have any equipment or customers on the property registered at volume 1389 folio 427, save for a portion of its transmission line. She also observed that the property at volume 1008 folio 636 was large and divided by the North Coast Highway; most of that land was to the south of the highway and undeveloped; to the north of the highway were squatter settlements; and further north there was a public roadway which the defendant's distribution line traversed. This was the general area in which the 2014 disconnections were carried out.

[48] Miss Robinson said she saw metre banks, and explained that this would have been the area where the customers installed metre sockets to accept the defendant's metres and it was also the point at which the service wire would end, having started at the distribution poles. The pothead, she said, would have been installed by the customer above the metre socket and it was the customer's responsibility to wire between the pothead and their premises. She explained further that the defendant's 100 metre obligation would be the distance between the distribution pole and the metre bank.

[49] She did not recall from her visit whether there were metres in the metre banks but was conclusive that beyond those metre banks there was no equipment (service wires and metres) belonging to the defendant.

[50] Under cross-examination, Miss Robinson disagreed that the defendant had an obligation to verify whether an applicant who claimed to be an owner was in fact so. However, she said that if the defendant's equipment were to be installed on the property, the applicant would need to prove ownership or right to possession.

Otherwise, it did not matter whether the applicant was a squatter, lawful occupier or owner because the defendant would not be trespassing on anyone's property.

[51] Miss Robinson denied that she had stated on a previous occasion that the defendant had equipment and metre on lands owned by the claimant. She said that her reference to "premises" in paragraph 23 of her Witness Statement was to the general area in which demolitions had been done and not to individual premises. Similarly, when she stated in paragraph 23, "at which time they identified the premises from which electricity supply was to be disconnected and the JPS metres and other equipment to be removed" it was in reference to an area and not specific houses. The word "premises" used in paragraphs 19 and 33 was to be accorded the same meaning.

[52] She agreed that on the first occasion the claimant contacted the defendant there was uncertainty as to where its equipment were located but based on its subsequent site visit and use of GPS, the equipment location had been confirmed as not being on the claimant's land except for the transmission line for which there had an easement.

[53] She also said that the defendant had recently begun the process of developing an asset management system to keep track of its equipment.

[54] She agreed that there was no record of the defendant communicating to the claimant that it had no equipment on its lands. Neither was she aware of any underground wires on the claimant's property.

[55] Miss Robinson corrected an earlier statement to say that it was six (6) of the twenty-four (24) and not six (6) of fifteen (15) customers who had been reconnected. She also said that of the thirty-seven (37) customers who were identified by the bailiff, twenty-four (24) of them had been disconnected. She could not explain why the others had not been disconnected but said that not all of the 37 persons were in the list of 99 defendants in the claimant's eviction order. She could not say whether the six (6) reconnected customers had

anything to do with the claimant's property but when pressed she said an inference could be drawn that at least one of them was not occupying the claimant's land as that person had produced a copy title.

[56] In response to a suggestion by counsel as to whether it was possible to disconnect service without accessing the claimant's land, Miss Robinson answered in the affirmative. She could not say definitively whether at any time prior to 2016 the defendant had to run wires over the claimant's land but she knew that as it related to the thirty-seven (37) disconnections the defendant would not have had to run any lines over the claimant's land.

Claimant's Submissions Summarised

[57] The claimant submitted that the defendant's pleadings strongly suggested that there was no issue with its assertion that the defendant had equipment on its land. Paragraph 7 of Miss. Robinson's affidavit was referenced, to wit:

> *In response to paragraph 6 of the Chisolm affidavit, it is admitted that the defendant has provided electricity services to persons who are resident in or around Cooper's Pen, Orange Grove and Florence Hall areas in the parish of Trelawny. It is denied that the defendant has erected poles, towers, lines, apparatus without the claimant's permissions (sic) for the sole purpose of providing electricity to squatters on the claimant's property.*

[58] The claimant interpreted that statement, in the context of successive paragraphs, as justifying the provision of service to squatters. There was no express denial of the allegation, it submitted.

[59] The claimant relied on rule 10.5 of the CPR and submitted that a party is bound by its pleadings. Accordingly, the evidence of Miss Kim Robinson that the defendant had no equipment on the defendant's land was inconsistent with the defendant's pleadings and should be rejected. In support, it cited Lord Radcliffe's speech in **Esso Petroleum v Southport Corporation [1956] AC 218**:

> *My Lords, I think that this case ought to be decided in accordance with the pleadings. If it is, I am of the opinion, as was the trial judge, that the respondents failed to establish any claim to relief that was valid in law. If it is not, we might do worse justice to the appellants, since in my view they were entitled to conduct the case and confine their evidence in reliance upon the further and better particulars of paragraph 2 of the statement of claim which had been delivered by the respondents. It seems to me that it is the purpose of such particulars that they should help to define the issues and to indicate to the party who asks for them how much of the range of his possible evidence will be relevant and how much irrelevant to those issues. Proper use of them shortens the hearing and reduces costs. But if an appellate court is to treat reliance upon them as pedantry or mere formalism, I do not see what part they have to play in our trial system.*

[60] Counsel submitted further that various correspondence and documents issued by the defendant attested to the placement of its equipment on the lands in question. Reference was made to paragraph 2 of the conditional contract at exhibit 16, which states:

> *I further understand and agree that should at a later date greater title be established for the said premises at Cooper's Pen by any other interest, who at that time refuses permission for electricity services to be connected to the said premises, the Jamaica Public Service Company Limited, will immediately disconnect the supply and remove its equipment from the premises.*

[61] Counsel also referred to paragraph 8 of the conditional contract at exhibit 18 and letter of 16th March 2004 at exhibit 25 where similar reference is made to equipment.

[62] It was also submitted that a letter of 22nd June 2004 from the defendant to Clive Parris (exhibit 27) was further confirmation by the defendant that it had equipment on the claimant's land. The letter reads, in part:

> *It has been brought to our attention that metres numbered 912294 and 242330 from which you are supplied electricity is (sic) situated on lands belonging to New Falmouth Resorts Limited. The owner of the said land has requested that the Jamaica Public Service Company Limited remove its metres and support apparatus from*

> *the land, or face legal action. In the circumstances, we must advise that the company will comply with the owner's request and disconnect the supply of electricity after three (3) days receipt of this notice*

[63] Reference was also made to letter of 13th October 2003 (exhibit 9) in which the defendant stated, "We note from your letter the intent to demolish the building and so we request that you advise us of the exact date of the demolition exercise to facilitate the securing of our equipment." This was in response to the claimant's letter of 11th October 2003 (exhibit 8) which stated in part, "Kindly disconnect URGENTLY your electricity supply from YOUR pole and REMOVE YOUR METRE from the COUNTRY CLUB as we may demolish the BUILDING as early as the 14th instant." Counsel found in that exchange an "irresistible inference" that the defendant was interested in securing its equipment because it was on the claimant's land.

[64] In relation to the metre banks shown on the map which were created in 2016, counsel submitted that there was no indication when the defendant moved from individual metres on the claimant's land to a metre bank off the claimant's land.

[65] Counsel referred to paragraphs 23 and 24 of Miss Robinson's first Witness Statement in which she stated that the defendant had identified "the premises from which electricity supply was to be disconnected and the JPS metres and other equipment removed and the need to plan the exercise to minimise potential danger to its equipment", as further evidence that it had equipment on the claimant's land. Further, the defendant at no time took issue with the claimant's assertions that it had trespassed on its land by providing electricity and installing equipment on premises occupied by squatters.

[66] The claimant urged the court to find that the defendant's requirement that proof of right to occupation be established by applicants for its service, albeit inadequate, existed only because the supply of the defendant's product required the establishment of equipment on the land.

[67] The claimant cited in support of its submissions ***JA Pye (Oxford) Ltd and another v Graham and another*** [2002] 3 All ER 865**;** ***Bukit Lenang Development SDN BHD v Telekom Malaysia BHD & Ors*** [2012] 1 CLJ 228**;** ***Jamaica Public Service Company v Rose Marie Samuels*** [2012] JMCA Civ 42**,** ***Evans and Evans v Cable and Wireless Jamaica Limited*** [2008] JMCA Civ and ***Thrifty-Tel Inc v Myron Bezenek*** 46 Cal.App.4th 1559, 54 Cal.Rptr.2d 468.

Defendant's Submissions Summarised

[68] The defendant took no issue with the claim to ownership with respect to two properties registered at volume 1008 folio 636 and volume 1389 folio 427 (see exhibits 2 & 4 – certificates of title).

[69] The defendant disputed the claimant's ownership of the land at volume 1109 folio 442 as that title was cancelled and re-issued in 2013 as volume 1467 folio 253, in the name of Kemtek Development and Construction. It submitted that any claim in trespass relative to that property would be limited to the period when the claimant was owner but the pleadings did not disclose what that period was.

[70] The defendant's position was that it had taken steps to comply with the claimant's request in relation to the 2010 court order but the process to disconnect the squatters was interrupted by the grant of an injunction by the Supreme Court. Subsequent to the injunction being discharged the defendant removed twenty-four (24) metres from its metre banks located in "The Village", property which did not belong to the claimant. The defendant also removed illegal connections in the area.

[71] Counsel submitted that the claimant's case must be examined in light of the evidence that Mr. Chisolm had not visited the property registered at volume 1008 folio 636 since 2002 at which time he had seen a pole on the road "beside the said property". He had also observed a wire running from the pole onto the property and saw a metre "on the road". He did not know whether the wire from

the pole was the defendant's property. Also, he had not been on the inside of the property to see if there were any metres or poles located there. He was only aware that the persons alleged to be squatters had electricity service. Neither had he ever seen any of the defendant's employees on the property.

[72] In relation to the burden of proof, the defendant submitted that the claimant should prove that its servants and/or agents had entered upon the claimant's land and/or remained there or placed or projected an object upon it, without lawful justification (See **Halbury's Laws of England, Volume 97 (2015), paragraph 563** and **Winfield and Jolowicz on Tort, 17th Edition, 2006).** Accordingly, it was not for the defendant to prove that it did not have equipment on the claimant's land but rather the claimant had to prove that there was equipment on or entry by the defendant onto its property. However, the claimant had skilfully tried to shift the burden of proof onto the defendant.

[73] Counsel submitted that even if there was no express denial, the claimant would have been put on notice that it would need to prove its allegations, since there was no admission. However, the claimant had provided no evidence to show that the defendant had unlawfully entered its land and erected or projected any equipment thereon in order to supply occupants with electricity.

[74] Counsel posited that squatters having electricity supply was not an indication that the defendant had trespassed on the claimant's property. Further, there was no evidence that in supplying any squatter with electricity the defendant's servants and/or agents had entered the property and erected any equipment thereon.

[75] In relation to the conditional contracts, it was submitted that they were standard form and therefore the wording could not be taken to indicate an admission that there was equipment on the relevant lands. Also, the statements by the defendant that it needed to secure its equipment were not indicative of an admission of the presence of equipment on the claimant's land. The evidence

had also established that there was no need to enter the claimant's property in order to supply electricity.

[76] Counsel also submitted that no evidence was before the court to establish that the defendant had bushed, whacked or removed any shrubs or weeds from the claimant's property registered at **Volume 1008 Folio 636**. Similarly, in respect of properties registered at **Volume 1109 Folio 441** and **Volume 1389 Folio 427**, the claimant provided no evidence of any unauthorized JPS equipment or entry onto the property by the defendant's servants and/or agents to do any of the alleged acts pleaded.

[77] The cases ***of Robert Evans & Anor v Cable and Wireless*** (unreported) SCCA No 44 of 2005, delivered 5th December 2008, ***Jamaica Public Service Company Limited v Enid Campbell & Anor*** [2013] JMSC Civ. 22 and ***Jamaica Public Service Company Limited v Rosemarie Samuels*** [2012] JMCA Civ 42 were distinguishable in that there was clear evidence that equipment was on the subject lands.

[78] Counsel contended that **Bukit Lenang Development SDN BHD v Telekom Malaysia BHD & Ors [2012] 1 CLJ 228**, should be distinguished because the High Court of Malaysia had found for a fact that equipment had been installed on the land and its precise perimeter was well-known. In the instant case, the boundaries were not well known and no equipment was proved to be installed on the land.

[79] The defendant urged the court to find, as in **Bukit,** that there was insufficient evidence to suggest that the squatters came to be in illegal possession because of the defendant's supply of electricity or that the defendant was aware that the occupants were squatters prior to supplying them with electricity.

[80] It was also the defendant's position that **Thrifty-Tel Inc v Myron Bezenek**, involved trespass to chattels and therefore different principles of law were applicable.

[81] It was argued that electricity is a form of energy and in the absence of wires and other equipment, there can be no trespass by the mere presence of a supply of electricity to the property.

FINDINGS ON THE ISSUES

Facts not in Dispute

[82] It is not in issue that:

I. the claimant is the registered owner of properties registered at volume 1008 folio 636 and volume 1109 folio 441 (exhibits 2 & 4 – Certificates of Title);

II. the defendant has the exclusive right to supply electricity to the public;

III. the defendant has entered into conditional contracts for the provision of electricity service to squatters on the claimant's land;

IV. the defendant had carried out some disconnections; and

V. the 2016 map does not show any equipment on the claimant's land save for a transmission line which is not in dispute;

The Licence – Obligation to provide service

[83] The licensee's duty to provide electricity supply is set out in Condition 13. Clause 10 (iii) as follows:

> *For local connections the licensee shall upon being required to do so by the owner or occupier of any premises that is not already served and whose premises situated within two pole spans totalling more than 100 metres but one pole span where the first span exceeds 100 metres along a public road or highway from any Distribution Line of the Licensee give and continue to give a supply of energy for such premises at no construction cost to such owner or occupier up to the distance along a public road or highway aforesaid.*

[84] Condition 13. Clause 10 (iv) provides in part:

> *The Licensee will give a supply of energy for any premises so long as the owner or occupier will contribute to the Licensee the cost of Distribution Line in excess of the aforesaid distance…*

[85] In ***Robert Evans*** (supra), the Court of Appeal construed the meaning of similar provisions, set out in section 11 of the **Telephone Act** which provides, in part, "Every person having a residence or place of business within an area shall be entitled…to require the licensee to supply him with a telephone…"

[86] Harrison, JA delivering the decision, stated at paragraph 28:

> *On a literal reading of section 11 of the Act, it would suggest that the Respondent has an obligation to provide service to "every person who has a residence" but one would have to determine whether this obligation is unconditional and conveys the right to provide a service to squatters without the consent of the registered proprietor or owner of land.*

[87] At paragraph 29, His Lordship concluded:

> *…If section 11 were to be construed so as to convey on the respondent an automatic right to enter the appellant's land without their consent this would seem to derogate from the spirit and purpose of section 18 of the Constitution of Jamaica. Section 18 clearly recognises an individual's property rights as fundamental in a democratic society…*

[88] In my view, the decision in ***Robert Evans*** goes a long way to effectively answer the question whether these clauses clearly establish a duty to supply utility service in accordance with the laws of Jamaica, specifically as it relates to entry onto private property. It is clearly the case that there is no automatic right, in performing the obligations to supply electricity, to trample on the rights of property owners. Accordingly, occupier, as used in the Electricity Act must mean lawful occupation (see ***Woodstock and Another v South Western Electricity Board*** [1975] 1 W.L.R. 983].

[89] But there remains the real question as to whether it is against public policy for the statutory obligation to be construed in a burdensome and impracticable manner which puts the utility company in an impossible situation to fulfil its public duty,

especially in the Jamaican context where it is not uncommon for persons, especially the poor, to be put in legitimate occupation of land under informal arrangements. I do not interpret the judgment of Harrison JA to be saying that the licence burdens the utility company beyond proof which did not show the occupation to be manifestly unlawful.

[90] I was cited the Malaysian High court case of ***Bukit Lenang Development SDN BHD v Telekom Malaysia BHD & Ors*** [2012] 1 CLJ 228 in which the effects of a similar licensing provision were interpreted. Gunalan Muniandy JC analysed the effects in view of the utility company's role and obligations to the public, mandated under provisions of law. His Lordship said that in those circumstances it would be too burdensome for the utility company to be in the position of having to ascertain "actual" status and be held liable in trespass prior to notification that a person in occupation had been declared a trespasser. (Para 44). I find this reasoning to be persuasive.

Establishing bona fides of occupants and treatment of claims to title

[91] The court cannot be oblivious to the reality that scores of Jamaicans live in houses without the requisite documentary proof of ownership or are in occupation under multifarious arrangements, which lead to a reasonable conclusion that they are manifestly in occupation as apparent lawful occupiers. The following situations in the instant case, are illustrative.

[92] In the case of Lorraine Genius, her proof of occupation was a tax receipt in the name of Aston Gordon and a letter dated 27th September 1999, from Aston Gordon, witnessed by a Justice of the Peace, in which he claimed ownership of the premises and gave her permission to obtain electricity supply from JPS. She also produced a letter from David Fletcher, witnessed by a JP, in which he stated that she was given permission to run an electrical line across his property (exhibit 19).

[93] June Stoney produced a letter dated 3rd October 2000 signed by Iris Cooper and witnessed by a JP, in which Ms. Cooper stated that she gave Ms. Stoney permission to put electricity on her premises. A second letter was produced, dated 29th September 2000, witnessed by a JP, in which Ms. Cooper stated that her father had died and she was in charge of his property. A tax receipt was also shown in the name of John Cooper. (exhibit 20).

[94] Ann Buchanan produced a letter of 19th February 2004, signed by a JP, in which it is stated that Ms. Buchanan had been living on the land for a number of years. The JP described the land as being owned by the government and said it was soon expected to be sold to Ms. Buchanan. (exhibit 6). Jesmina Noble produced a similar letter which was signed by the Mayor, dated 6th June 2000. (exhibit 7).

[95] It can hardly be contended that tax receipts, letters from public officials which represent a course of dealing for sale/purchase of land purportedly owned by government and acquiescing to the occupation of those lands, and letters signed or witnessed by Justices of the Peace claiming ownership of land, granting permission for occupation or attesting to occupation over a considerable period, could not establish apparent lawful occupation, sufficient for the defendant to enter into conditional contracts.

[96] If, as the conditional contract provides, the defendant is notified of a better claim or greater title, does nothing and the customer turns out to be a squatter, it is clear to me that the defendant's action in relation to the land would constitute a trespass.

[97] I turn now to examine the evidence as to how the defendant conducted itself when such circumstances did arise.

[98] In the case of Ann Buchanan, there is evidence that within a month of her conditional contract the defendant wrote to her indicating that it was in receipt of documentary evidence of ownership and that she should supply evidence of

ownership, interest or right to occupy the premises failing which her service would be disconnected.

[99] As it relates to Audrey Brooks/Country Club, there is evidence that the defendant terminated the supply upon being served notice by the claimant that it was the registered owner of the property and Ms. Brooks had been given no consent. The claimant's letter to the defendant was written on 11th October 2003 and action was taken on 30th October 2003.

[100] The defendant also wrote a similar letter to Clive Parris on 22nd June 2004, consequent on the claimant's letter of 30th April 2004, serving notice that there would be a disconnection in three days because the claimant had advised that it had ownership of the land on which two (2) metres were located.

[101] The court notes that the letters from the claimant asserting ownership were acted on by the defendant within a few weeks to two months. This could not be considered dilatory. A defendant who acts swiftly upon notice that the land belonged to the claimant would not be liable for unreasonable interference and certainly could not be said to be encouraging squatters to trespass.

[102] It is also a material consideration that in its letter of 30th April 2004, the claimant requested of the defendant that it should delay the disconnection of "other squatters…beside Coopers Pen". Yet, by 16th June 2004, the claimant wrote the defendant to say that it had continued to encourage many squatters by providing electricity without the claimant's permission and threatened a law suit if it did not act.

[103] The facts surrounding the 30th April 2004 letter establish that the claimant was inconsistent in how it wanted the defendant to treat with alleged squatters. I also observe, with more than passing curiosity, that when the claimant filed an action in 2007 against ninety-nine (99) squatters it did not include the defendant as a party.

[104] The next correspondence from the claimant was on 12th July 2004 when it wrote to say that it had agreed to lease part of the lands to Mr. and Mrs. Clive Parris for Gloria's restaurant and requested that they be supplied with a metre and electricity. A similar request was made for one Wayne James of Wayne's Car Wash (exhibit 29).

[105] There was no evidence before the court as to what transpired between the parties during the period 12th July 2004 and 24th January 2012, when the claimant wrote to the defendant, enclosing a pre-check plan for lands registered at volume 1008 folio 636 (lands adjoining Coopers Pen) and advising that the Supreme Court had ordered demolition of premises and eviction of persons on those lands. The defendant was told that if it had any 'services' on the land it should remove them speedily.

[106] I take note that the lands described as "adjoining Coopers Pen" in the 2012 letter seem to be the same lands to which the claimant had referred as being "beside Coopers Pen" in its April 2004 request that there be a delay in disconnections.

[107] The evidence is that on being served with the court order, the defendant began to plan an operation for carrying out disconnections. This was affected by an intervening court proceeding which was initiated by the government on behalf of the ninety-nine (99) squatters.

[108] It arises for consideration whether the defendant acted reasonably in relation to the 2010 Court Order against the ninety-nine (99) squatters. Although the order was published in 2010 as substituted service, the defendant said it only became aware of it when the claimant wrote on 24th January 2012. A copy of the order was provided by the claimant on 20th February 2012.

[109] By 29th February the defendant was engaged with the Ministry of Housing which had served it with a Housing Improvement Scheme Order pertaining to the subject lands. On 8th March 2012, the government obtained an injunction to

restrain any action in relation to the 2010 court order. This injunction was extended on 30th March 2012.

[110] The defendant said it heard nothing further about the matter until September 2013 at the first hearing of the instant matter when the claimant's attorney intimated that an order had been made. Ms. Robinson's evidence is that upon learning of the order, the defendant requested a copy which it received from the claimant on or about 15th January 2014. The defendant then carried out disconnections on 24th November 2014 in relation to twenty-four (24) of the ninety-nine (99) squatters whom they identified as customers. This was done in the presence of 21 police officers.

[111] Ms. Robinson said the defendant needed time to remobilise the operation which had been interrupted in 2012 by court action. This included sending letters to customers and working through the vast acreage of land which lacked proper delineation.

[112] I also heard evidence that the claimant itself had a challenge in enforcing the 2010 court order. Mr. Chisolm said that after the order was obtained, the bailiff requested that that the property be surveyed in order to identify its boundaries. As it turned out, the exercise had to be aborted because the bailiff was met with a hostile reaction. Mr. Chisolm characterized the response of the squatters as a 'revolt'

[113] There was no evidence that on learning of the 2010 court order the defendant ignored it. I accept the evidence that shortly after learning about the order, it began to make preparations to act in conformity with the court decision but was prevented from taking any action because of intervening court proceedings. On being advised that the application for stay of the 2010 judgment was refused, it carried out disconnections within 10 months. I accept that there was a boundary challenge, as borne out by the testimony of the claimant that the bailiff requested

that a survey be done to establish the boundaries of its land in order to enforce the judgment against the squatters.

[114] These facts do not bear out or support the contention that the defendant was supporting, maintaining or enticing squatters on the claimant's land or was dilatory and unresponsive.

Trespass to Land

[115] I now turn to whether the claimant established that the defendant had trespassed on its land by placing its equipment thereon and/or in supplying electricity to squatters, without permission.

[116] The claimant would have to prove, on a balance of probabilities, that the defendant had unjustifiably intruded upon its land (See ***Jamaica Public Service Company v Rose Marie Samuels*** *(*supra), as in "wrongfully sets foot on it, rides or drives over it, or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another..also… if, having entered lawfully, he unlawfully remains after his authority to be there expires." (**Halbury's Laws of England**, Volume 97 (2015) 5.

[117] The claimant has not established any instance in which it identified any property of the defendant on its land. It assumed that to be the case from the letters written by the defendant in which it served notices of disconnection and referred to removal of its property. Those letters are formalistic and not indicative of any fact that equipment was present or had been removed from any premises.

[118] The claimant also assumed that because electricity was on the land, it had been supplied by the defendant and that the defendant must have accessed the land to provide it.

[119] Orange Grove, Coopers Pen and Florence Hall are by no means unique areas in regard to squatting and informal settlements. It is a serious social reality that in Jamaica persons squat on lands for years, often without documents that can grant them legal access to necessary amenities. True to that reality is the evidence that the defendant disconnected illegal supply of electricity in the area when it carried out the operation in November 2014. It is also the evidence, which I accept, that of ninety-nine (99) squatters who were defendants in the 2010 court action only twenty-four (24) were identified as the defendant's customers.

[120] Against this background, the claimant cannot simply assert that because electric lights and a wire were observed on its property, it follows that the defendant must have trespassed on its land. It must establish the allegations of trespass with specificity.

[121] Mr. Chisolm's evidence was that he knew that the defendant was providing electricity to the squatters, because, inter-alia, "light all over the place at night, JPS is beside the road and could cut off their light." He also said, "the squatter houses are beside a road that leads from the hotel to the bypass road – a JPS post is on the road…I saw one wire from the post to my property." This observation, he said, was made either in 2002 or 2004 when he had gone there to remove squatters consequent on the first court order. At best, this evidence was speculative.

[122] He did not know of any metres and had seen no poles on the property but said he knew that service had been provided by the defendant from underground. There was no evidence to establish the veracity of the allegation that there was underground service.

[123] At the commencement of trial the claim was amended to exclude several parcels of land that were originally claimed to have been trespassed on by the defendant. Of the four parcels that were left in the claim there was undisputed evidence that

one parcel, volume 1109 folio 442, did not belong to the claimant as the title had been reissued in 2013 to Kem Tech Development and Construction Limited as volume 1467 folio 253. According to the defendant, that property is an established scheme of development over which it has a grant of easement.

[124] It was also the case that in relation to volume 1109 folio 441, occupied by the Parris', ownership had been disputed because one Dudley Chin produced a Sale Agreement purportedly for the same premises, albeit the sale agreement carried a different volume and folio number. As a further twist to the dealings surrounding this land, the claimant subsequently wrote to say that the premises had been leased to the Parris' and Wayne's Garage.

[125] It is apparent that ownership of at least a portion of the land was not a settled matter, as at the time of trial the claimant was alleging trespass to land which had changed ownership in 2013. The evidence also lacked specificity as to where equipment was on this land, to whom service was given and the period over which this would have occurred.

[126] The defendant had given evidence that it did not have a register of its equipment and so could not say with certainty where they were located. This would not necessarily mean that it had equipment on the claimant's land. It is for the claimant to prove its allegation of trespass and it is clear from the evidence of Mr. Chisolm that it had not been able to do so.

[127] In contrast, the defendant produced a map (exhibit 37) which identified its distribution line running along the main road and meter banks in the area between the claimant's property and the old main road referred to as "the Village", which the parties agree is not the claimant's property. Ms. Robinson also gave evidence that when she conducted a site visit there was no JPS service wire beyond the metering point. This, she said was also established by GPS location.

[128] For completeness, I should also point out that there was no evidence that the defendant bushed, whacked or removed any shrub or weeds from the claimant's property.

[129] ***Bukit Lenang*** (supra), is distinguishable on the facts because in that case it had been established that the electric company was liable in trespass for having installed its equipment on the plaintiff's land (electricity poles, pylons with transmission lines, meters, lamp posts, electrical cables and other conduits) and also for continued trespass having failed to discontinue its service to the illegal occupants when it had been instructed by the plaintiff's solicitors to do so.

[130] It is also significant, in ***Bukit,*** that the pleaded defence was that the defendant utility company was not in a position to refute the allegation of trespass because the plaintiff had failed to disclose particulars about the parties who had been purportedly supplied with electricity. In the alternative, it was claimed that the electricity had been supplied with the consent, agreement and/or directions from a previous owner of the land. (Supra, para 44).

[131] The defendant in ***Bukit*** therefore admitted to being present on the land, the issue being whether it was properly authorized to do so. The court also heard evidence as to how the supply of electricity had been connected to the households in the subject land and based on the evidence it described the defendant's denial of trespass as "improbable and incredible". (Ibid).

[132] The facts of the instant case are clearly different. The defendant has denied entering the claimant's land, provided evidence to show that customer equipment (metre banks) were installed on property which did not belong to the claimant and explained that the customers were responsible for taking the service from the metre banks to their premises. Also, the claimant's right to some of the land was disputed; it admitted to never seeing any of the defendant's equipment installed on or removed from its land; and the facts did not disclose

that the defendant was unresponsive or dilatory in dealing with the claimant's concerns about the supply of electricity to alleged squatters.

[133] ***Jamaica Public Service Company Limited v Enid Campbell & Anor*** *(supra*) and ***Jamaica Public Service Company Limited v Rosemarie Samuels*** (supra) can also be distinguished on the fact that in those cases it had been established that the JPS had run its transmission lines over the claimants' properties, without permission. In the instant case, a transmission line was run over property under an easement.

[134] I agree with counsel for the defendant that, as the court found in ***Bukit***, there is no evidence to support a claim for facilitating trespass or illegal occupation. In order to succeed on this point, the claimant would need to demonstrate that the defendant conducted itself in a manner which establishes that it knowingly entered into contracts with persons who were in illegal possession of the claimant's property. This is plainly not the case, if only because the defendant required applicants to produce proof of their occupancy.

[135] Counsel for the claimant submitted that the defendant should not be permitted to rely on evidence which denies that its equipment was on the claimant's land because the defendant's pleadings did not consist of a denial of trespass. I do not agree with this submission. There is a denial at paragraph 7 of the first Affidavit of Kim Robinson. She stated, inter-alia, "…***<u>It is denied that the defendant has erected poles, towers, lines, apparatus without the claimant's permissions"</u>*** *(sic) for the sole purpose of providing electricity to squatters on the claimant's property.* (My emphasis).

[136] The preposition "for" makes for an inelegant construction but it clearly was an attempt to mirror the language in paragraph 6 of Mr. Chisolm's affidavit in support of the Fixed Date Claim Form. I do not see how paragraph 7 of Ms. Robinson's affidavit could be interpreted other than as a denial that the defendant's property was on the claimant's land.

[137] The reference to the removal of equipment in various letters and conditional contracts seems more to have been indicative of intention rather than confirmatory of any fact in relation to the placement or location of any equipment.

Can service amount to trespass?

[138] It has been contended that a trespass can occur if the defendant causes some foreign matter to enter or come into physical contact with someone's land, foreign matter being defined as including "anything having size or mass, including gases, flame, beams from searchlights and mirrors…" (**Street on Torts, 9th Edition, page 70**).

[139] I make the observation that electricity (the electrons and/or electric field) falls in the category of things that have "mass" and therefore is a 'foreign matter' to land, as defined above. If it were necessary for me to do so, I would have accepted as persuasive, the decision of the court of Appeal of the Fourth District of California in ***Thrifty-Tel Inc v Myron Bezenek*** 46 Cal. App. 4th 1559, 54 Cal.Rptr.2d 468, that electronic signals were sufficiently tangible to support a trespass (Per Crosby, Acting PJ, para II) and the observation that tangibility has been relaxed to the point where microscopic particles and migrating non-tangibles such as sound waves may give rise to trespass (supra, note 6).

[140] However, the instant case is not about 'naked' electric energy, in the sense of electricity being transmitted independent of a conduit, akin to a flame or beam which is not 'carried' by any physical or visible conduit. The case is grounded in allegations about wires, poles, metres, and underground supply. There was also the distant observation of lights at night time. Suffice it to say, electricity might be generated from a stand-alone machine operated with petrol, so it does not follow from the observation of electric lighting that electricity is supplied via a utility service line or wire.

[141] Where, as alleged in this case, the electricity was distributed via a line, it is the running of the line on or over land which would constitute the trespass,

irrespective of whether, at any moment, the line was live with electricity. And, as I have already concluded, there is no evidence to support any finding that the defendant ran wires or in any other manner, trespassed on the defendant's land.

[142] In the premises, I find that the claimant has failed to establish the claim in trespass.

THE ORDER

[143] Judgment for the defendant. Costs to be taxed if not agreed.

Dunbar Green, J.