



[2017] JMSC Civ. 206

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2011 HCV 03544**

|                |   |                  |
|----------------|---|------------------|
| <b>BETWEEN</b> | <b>JUNIOR BURGESS</b>                         | <b>CLAIMANT</b>  |
| <b>AND</b>     | <b>JAMAICA PUBLIC SERVICE COMPANY LIMITED</b> | <b>DEFENDANT</b> |

**IN CHAMBERS**

**Mr. Calton Colman instructed by Carlton Colman and Co for the Claimant**

**Mrs. Symone Mayhew for the Defendant**

**Heard 27<sup>th</sup> of June and 14<sup>th</sup> of December 2017**

**COR: Shelly Williams J**

**The Claim**

[1] The Claimant filed a Fixed Date Claim Form on the 30<sup>th</sup> of May 2011 claiming his rights were breached and that there was a breach of duty by the Defendant. The Claim is that the company disconnected the electrical power supply to the commercial section of the premises of the Claimant due to a dispute arising from the reading of a disputed meter and the consequent billing. The Claim was that the Defendant demanded payment before the resolution of the aforesaid dispute, resulting in the disconnection of the Claimant's electrical power supply.

- [2] The Claimant also sought an interlocutory injunction to bar the Defendant from attaching the disputed bill from the commercial section of the property to the residential section and disconnecting same for non- payment.
- [3] The Defendant filed an Ancillary Claim in which it claimed:-
- a. The sum of \$1,135,451.53 being monies due and owing by the Claimant, the Ancillary Defendant to the Ancillary Claimant for electricity supplied his premises and for which he had been billed in respect of account 201167-723589 for the period August 27 2007 to August 26 2010.
  - b. The Ancillary Claimant also claimed interest in relation to the said sum as well as cost and Attorneys costs.

### **Background**

- [4] The Claimant who resides and has his place of business at 8 Villa Close, Spanish Town in the parish of St Catherine had two meters installed by the Defendant i.e. one for his residence and one for his commercial building.
- [5] In August 2008 the Defendant made inspections and discovered that the meter installed in the commercial section of 8 Villa Close was defective. A new meter was installed and following on the readings of that new meter the Defendant estimated the amount of electricity that had been consumed during the period that the other meter had been defective. The Claimant was then billed for that period which was between August to September 2007. The Claimant refused to pay and contested the amount that he was back billed and the current amount of electricity being recorded by the new meter.
- [6] The Claimant appealed to the Office of Utilities Regulation (OUR). After conducting its own research, the OUR found that the complaint was without basis. A letter informing the Claimant as such was forwarded to him by the OUR. The Claimant refused to pay the outstanding sums and as such his electricity was disconnected.

- [7] The Claimant filed a claim in relation to this matter seeking the abovementioned declaration along with a request for an injunction.
- [8] The Defendant filed an Ancillary Claim for the outstanding sum of \$1,135,451.53 along with costs and Attorney's fees. The majority of the outstanding sum being claimed by the Defendant was for the period after September 2007 when the Claimant contested the sum being recorded on the meter. He contended that he was not consuming that amount of electricity.
- [9] At the start of the hearing the Claimant agreed to pay the outstanding sums that was owed to the Ancillary Claimant and as such that claim was settled. The request for injunction was no longer being pursued so the only issue to be decided by the court was whether a declaration should be granted in this matter.

#### **Claimant's Submission**

- [10] Counsel for the Claimant Mr. Colman contended that the Claimant had a genuine dispute with the Defendant and as such his electricity should not have been disconnected during the period of the dispute. He argued that the Claimant had filed a dispute with the Defendant and when he was not satisfied he make an appeal with the OUR.
- [11] Mr. Colman argued the Claimant had been operating a business and had lost income as a result of the disconnection. The disconnection under the circumstances was unreasonable and the court should grant the declaration.

#### **Defendant's Submission**

- [12] Counsel for the Defendant argued that pursuant to Section 15 of the Electric Lighting Act the Defendant may collect all sums due from the customer in respect of the provision of a supply of electricity.
- [13] Ms Mayhew submitted that from the evidence there was no bona fide dispute between the parties. She argued that:-

- i) The new meter installed in September 2007 recorded the Claimant's consumption on the commercial account.
- ii) There was no evidence that the new meter was defective.
- iii) The Claimant did not make a request for the meter to be tested as was his right.
- iv) That based on the independent test of the OUR it was concluded that the meter was not defective and the high consumption was likely the result of 'waste' at the Claimant's premises.

[14] She argued that in light of the fact that the Claimant had refused to pay his outstanding electricity bills the Defendant had a right to disconnect the electricity supply to the Claimant. There was therefore no breach of duty by the Defendant. She argued that the relief sought by the Claimant should be refused.

## **The Law**

**The Electric Lighting Act**, Section 15 states that:

*"If any Local Authority, company or person, neglect to pay any charge for electricity, or any other sum due from them to the undertakers in respect of the supply of electricity to such Local Authority, company or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line, or other work through which electricity may be supplied, and may, until such charge or other sum together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid are fully paid, but no longer, discontinue the supply of electricity to such Local Authority, company or person"*

[15] A summary of the Jamaica Public Service revised back billing policy (2002), at paragraph 2.2 indicates

*that in cases of under-billing of an account caused by a JPS error or omission, the recovery of revenues for lost energy through back billing shall abide by the simple principle that a customer should not be unfairly disadvantaged because of an error or the omission of JPS.*

- [16] The two governing principles gleaned are that JPS has a right under the statute to disconnect where a person neglects to pay for their electricity. Additionally, the law provides for JPS to back-bill a customer but such customer should not be unfairly disadvantaged in so doing.
- [17] A similar issue arose in the case of **Gordon, Lisa v Jamaica Public Service Company Limited** (unreported), Supreme Court, Jamaica, Claim no. 2011HCV4635, judgment delivered September 16 2011. In that a case the time period where the customer was back billed was six (6) years. Skyes J sought to balance the interest of both parties by granting an injunction against the defendant for the electricity to not be disconnected on the grounds that there was no fraud on the part of the Claimant as there was nothing to prove that she contributed to the high electricity bill and the Claimant would have been disadvantaged because of her children who were of young school age.

### **Analysis**

- [18] The request for a declaration in this case is based on the fact that the amount of electricity being consumed by the Claimant was being contested. The Claimant after lodging a complaint with the Defendant, lodged an appeal with the OUR. The OUR embarked on an independent examination of the meter and dismissed the complaint. The Claimant later filed a Claim contesting the same bill.
- [19] In support of his claim the Claimant attached to his affidavit a report from an engineer which suggested that the meter readings of the Defendant were incorrect. On careful examination of that report it was found that the report failed to consider a number of factors including the air conditioning unit attached to the commercial building.
- [20] The Claimant agreed to pay the Ancillary Claimant the outstanding sums owed to it. The only question left to be decided is whether or not the Defendant ought to have disconnected the electricity whilst the claim was being contested.

- [21]** The claim in this case concerned two sums, namely the sum that was back-billed when the meter had been defective, and the sums based on the readings from the new meter. The amount that was being back - billed concerned two months, namely, August to September 2007.
- [22]** Whilst the Defendant should consider as per it's back billing policy (2002), that the customer should not be unfairly disadvantaged due to an error or an omission, in these circumstances the action of the Defendant cannot be deemed to be described as such. Section 15 of the Act allows the Defendant to disconnect electricity due to non-payment. The Defendant was more than reasonable in this particular case as it continued to supply the Claimant with electricity for months, whilst the bill in question was being queried.
- [23]** Based on the evidence of this particular case there was no breach of duty by the Defendant and as such the court will not make any declaration in relation to the case.

### **Order**

1. The application for declaration is refused.
2. Cost in this case to the Defendant to be agreed or taxed.