



[2015]JMSC Civ. 107

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011 HCV 01131

BETWEEN	ARTHUR RODNEY	CLAIMANT
AND	THE JAMAICA PUBLIC SERVICE COMPANY LTD	DEFENDANT

CONSOLIDATED WITH

CLAIM NO. 2011 HCV 01132

BETWEEN	KEZROY RODNEY (By Next Friend Arthur Rodney)	1st CLAIMANT
AND	ARTHUR RODNEY	2nd CLAIMANT
AND	THE JAMAICA PUBLIC SERVICE COMPANY LTD	DEFENDANT

Mr. Norman Hill Q.C. & Raymond Samuels instructed by Samuels and Samuels for the Claimants.

Mrs. Tanya Small-Davis and Mr. Miguel Palmer instructed by Livingston Alexander & Levy for the Defendant.

Heard: January 20th, 21st, 22nd, April 4th, June 3rd, 4th, October 7th, 8th, 2014 & January 9th, 2015, 5th June, 2015

Trial – Negligence-Breach of Statutory Duty –Electric Light Act S. 38(1) – Electric Light (Extra High Pressure Conductors) Regulation, 1928 S. 11- Expert Evidence – Approach of Court to Expert Evidence

CORAM: M. Cole-Smith, J.

[1] On the 20th of June, 2008, a section of Mr. Arthur Rodney's dwelling was regrettably destroyed by fire. In addition to losing several personal items, his son Kezroy Rodney suffered severe burnt injuries to his body.

THE CLAIM

[2] Separate actions were filed on behalf of Mr. Rodney and Kezroy on the 2nd March, 2011. Both claims were later consolidated by order of the court dated 22nd November, 2012. For ease of reading, reference will be made to Mr. Rodney as the claimant since the claims were initiated by him personally and in a representative capacity on behalf of Kezroy his son.

[3] In each of the claims filed, the claimant is seeking damages from the defendant, Jamaica Public Service Limited (hereinafter referred to as JPS), a provider and distributor of electricity within the island of Jamaica. The basis on which the claims are being made is that JPS has been negligent and had breached its statutory duties under Sections 11 and 38(1) of the Electric Lighting Act and Sections 11 of the Electric Lighting (Extra High Pressure Conductors) Regulations 1928. A claim under the doctrine of nuisance was initially pleaded, however, learned Queen's Counsel, indicated in his closing submission that particular issue was no longer being pursued in relation to the claim.

[4] The claimant had originally filed particulars of claim in support of the actions. These particulars were later amended during the course of the trial. In the amended particulars of claim filed June 2nd, 2014, the claimant alleged that JPS had caused, permitted or allowed electricity to escape from its wires on to the claimant's property. In a succinct version of the particulars of negligence, the claimant stated that:

- a. JPS had failed to properly install, inspect and effectively maintain its high tension wires which ran from its service pole to the meter pole on the claimant's premises.

- b. The said service wire of JPS was coming into contact with tree branches which were overhanging close to the same wires.
- c. JPS failed to cut down or remove the branches despite complaints being made about same.
- d. JPS had caused, allowed or permitted sections of the said high tension wires to become fractured as a result of the resultant friction generated from the constant contact with the tree. This resulted in an escape of electricity from a point on the wire, which burnt all the way up to the claimant's house where it started the fire.
- e. In contravention of its obligation under the Electric Lighting (Extra High Pressure Conductors) Regulations, JPS had failed in its duty to continuously maintain in perfect order and condition the wires provided for the supply of electricity, thereby causing the said wires to erode gradually and then fracture.
- f. Pursuant to section 38(1) of the Electric Lighting Act, the defendant had failed to repair its line or apparatus, having been warned about the condition of the service line.

THE DEFENCE

[5] The defendant company filed a defence in response to the original particulars of claim. This was later amended to address the claimant's case as set out in his amended particulars of claim. JPS in their Amended Defence filed 3rd June, 2014 expressly denies causing, permitting or allowing electricity to escape from its wires. JPS was also not in agreement with the claimant's allegations of negligence as particularized in the Amended Particulars of Claim. The company indicated that none of its high tension wires or conductors became fractured because of them being in contact with any tree branches

[6] As it relates to breaches under the Electric Lighting Act or any regulations to which reference was made, JPS denies any wrongdoing on its part. JPS states that

reasonable care has been taken to ensure that its equipment and service wires are safe and accords with industry norms and standards.

[7] JPS refutes the claim that the fire started on its line and or conductors, equipment or pole and averred that the fire was caused or contributed to by the negligence of the claimant and or by the conditions existing at his house. Further, the defendant company rebuffed the claimant's averment that he had complained to JPS. JPS indicated that as far as it was aware, there is no evidence that it had received any complaints from the claimant regarding its service line being damaged by the presence of overhanging tree branches.

CLAIMANT'S CASE

[8] The essence of the claimant's case is that JPS was negligent in failing to remove the branches of a mango tree that was overhanging its service line. The failure on the part of the defendant company resulted in a short circuit which caused or contributed to the fire at the claimant's house. Several witnesses were called on the claimant's behalf to establish his case as set out in his pleadings. Pertinent portions of these witnesses evidence have been set out so far as it assists the Court in determining the question of liability.

SIMONE SIMMONDS

[9] Miss Simone Simmonds was the common law spouse of Mr. Rodney at the time of the fire and the mother of Kezroy. Her account of what transpired can be extracted from her witness statements filed on November 26th, 2013 and January 20th, 2014 as well as from her *viva voce* evidence.

[10] On the morning of the fire, Miss Simmonds said that while she was in the chicken coop, she heard a popping sound coming from the defendant's wire leading to the house. She later clarified this in cross-examination when she said that the popping sound she first heard did not come from the defendant's wire as previously stated, but was coming from the roof of the wooden section of the house located to the rear of the

dwelling. The roof in question was constructed from board and zinc. She said that when she heard the sound, she looked up and saw smoke coming from the said roof area and immediately rushed to the site. The witness said that when she first entered the house, she noticed that fire was on the wire attached to the board section of the roof. She and others at this point tried to salvage what they could, as the fire was confined to this part of the house. The entire wooden portion of the house eventually became engulfed in flames. An alarm was raised and the fire brigade was called.

[11] Ms. Simmonds stated that while she and others were trying to secure whatever possession they could, unbeknown to her, Kezroy who at the time was fifteen (15) months old, had entered the burning building. It was only when she heard him scream that she realised what had happened. Kezroy she said, was taken to the Port Maria Hospital and later transferred to the Bustamante Hospital for Children.

[12] Ms. Simmonds said that up to the time of her leaving with the fire personnel to the Port Maria Hospital, there was no one present from JPS on the scene. It was not until she returned from the hospital sometime between 5:10 and 6:00 in the afternoon that she saw two (2) workmen from JPS. One she said was taking out the meter and the other was clipping the defendant's service wire which was burnt and had fallen to the ground between the JPS service pole and the meter pole. She further stated that the wires between the meter pole and her house exhibited no signs of damage and was strung up in the same position as they were before. There was also no power outage in the area.

[13] Miss Simmonds further stated that at the time of the fire, the defendant's service wire was coming into contact with branches of a large "Blackie" mango tree that was located in between the two poles. The trunk of the said tree was located on their neighbour's property and was growing in the barb wire fence line that separated the two properties. She said that on previous occasions before the fire, she heard Mr. Rodney complain to meter readers from the defendant company about the company's electrical wire being in contact with the branches and the sparks that were occasioned by this

contact. She also said that she too has seen sparks as well. She said that Mr. Rodney requested that they come and clipped the said branches. However, to date, no one from JPS has come to inspect the wires nor have the branches been removed. Eventually the said mango tree was cut down by her neighbours about three (3) months after the fire, with a stump being the only evidence of its presence.

ARTHUR RODNEY

[14] Mr. Rodney gave a witness statement in this matter which was filed on the 13th June, 2013. He also gave evidence during the course of the trial.

[15] Mr. Rodney's witness statement gave the impression that he was present when the fire started. He conceded to Counsel for the defendant when cross-examined that he was not. It was his testimony that it was only after he was told by a taxi driver that his house was on fire that he was made aware of what had happened at his house and proceeded to make his way there. He said that by the time he arrived on the scene the fire was well under way and the firefighters were busy fighting the flames. Even though in his witness statement Mr. Rodney said that he had seen servants and or agents from JPS cutting burnt wires from the company's pole, he retracted and instead told the Court that he had not seen anyone from JPS that morning at the premises.

[16] At first, Mr. Rodney told the court that when he got to the house he saw the JPS service line on the ground between his meter pole and the service pole. After he was urged by Mrs. Small-Davis to carefully reflect on his evidence, he said that he had not seen any wire strung up between the meter pole and the JPS pole when he got to the premises. He also admitted that the pothead on his house had burnt off and that the wire leading from the last of the service pole to the pothead on the house had also burnt off and was lying on the ground. The wire otherwise remained in the same place as it was before the flames.

[17] Mr. Rodney indicated that prior to the fire in 2008, he had complained to JPS about their high tension wires being in contact with the branches of the big mango tree. He said he particularly became concerned about the situation when he saw smoke and

sparks, especially when the wind blows. This he said was pointed out to the meter reader from JPS when they visited his home. He said that they assured him that the matter would be reported. He had also reported the matter to the manager of the JPS office at Port Maria who promised to have someone visit his home to carryout debushing. However to date, nothing has been done.

PAUL GARDENER

[18] Mr. Gardener, an Assistant Superintendent attached to the Port Maria Fire Department, District Officer Markland Davis along with five (5) other fire personnel, responded to the fire. He along with Mr. Davis prepared a Fire Report dated June 20th, 2008; however he alone gave oral evidence in this matter. The Fire Report was tendered into evidence without objection.

[19] In the report, it was stated that when the firefighters arrived on the scene, the house was engulfed in flames. After a period of time, the firefighters managed to get the fire under control, eventually extinguishing it.

[20] The report concluded that the fire was caused by an electrical short circuit, but the specific origin of the short circuit was not explicitly stated. The conclusion reached was based on the observations made by the authors of the report and discussions they had with Ms. Simmonds.

[21] Mr. Gardener said that in investigating the cause of the fire, his attention was drawn to the service wire of JPS leading from its utility pole to the affected premises. This wire he said appeared to be short circuited. He further explained that he saw two sets of wires lying on the ground. One of the wires was severed from the pothead on the claimant's house at one end and from the service wire itself from the other end. He said that the end that was severed from the house displayed evidence of "arcing". This piece of wire appeared to be a "dead" wire, that is, it had no electricity flowing through it. There was also evidence of "bulbing" on both ends of the wire.

[22] The other wire was dangling on the ground from the JPS service pole on one end with that end being in close proximity to the end of the "dead" wire. The wire was otherwise strung up in continuous flow going back to the meter pole.

[23] Mr. Gardener also told the court that he observed splices on the wire at the end that was severed from the JPS wire. At the point at which he observed the splice, it appeared that the wire was constantly rubbing on trees, but he was unable to describe the variety of trees when inquiry was made of him in cross examination.

DEFENDANT'S CASE

[24] The defendant company has joined issue with the claimant on the question of liability. The defendant is contending that the fire did not occur as a result of any negligence on its part or on the part of any of its equipment and electrical apparatus. The fire, the defendant asserts resulted from a short circuit which originated on the claimant's wire or within the claimant's house. Several witnesses were called by the defendant, including an expert, to set out its case as pleaded in its defence.

ODALE JAMES

[25] Mr. James is a linesman who works in the Emergency Department of JPS. A witness statement was filed on his behalf on December 9th, 2013 as well as he was called as a witness for the defendant.

[26] In his evidence-in-chief, he stated that on the morning of the incident, he and Mr. Brian Walters were dispatched from the Port Maria office to respond to a fire at the claimant's residence. When they arrived on the scene, he observed the said house on fire and saw that firefighters were tackling the flames. In cross-examination, the witness told the Court that he and his colleague spent half an hour on the scene and that he had identified himself to one of the firemen, but he couldn't remember who it was.

[27] Mr. James said that on arrival, he and his co-worker went about disconnecting the defendant's service wire from the claimant's meter pole. He personally disconnected the wire, firstly from JPS's pole and then from the customer's meter pole. His evidence is that at the time he was disconnecting the wire, the defendant's wire was not passing

through or coming into contact with any tree. There was no tree of the kind described by the claimant. Mr. James indicated that there was no damage to the JPS service wire nor was any evidence of burning or heat seen at any of the potheads or meter socket on the meter pole.

[28] The distribution pole which housed the transformer was also checked and it was found that the transformer had not blown or its' fused "tripped". After he had removed the wire, he rolled it up, tagged it and carried it to the Port Maria office for further checks to be made on it. He said that all of this was standard operating procedure in cases where it is alleged that the defendant's wire was involved in a fire.

[29] Mr. James pointed out that while there was no damage to the defendant's wire, he observed that a piece of the claimant's wire closest to the house was burnt about eight (8) feet and lying on the ground. The wire from the meter pole up to the house to the point where the wire was burnt and lying on the ground was still held up on the private poles that supported them. He also said that he saw several splices along the wire.

GERNOS GIBBS

[30] Mr. Gibbs is a Claims Investigator employed to the defendant. He was charged with the task of conducting an investigation in relation to the fire at Mr. Rodney's premises. His evidence was set out in his witness statement filed on December 9th, 2013 and supplemented by his oral evidence given at the trial.

[31] In or about November, 2008, Mr. Gibbs said that he visited the property of Mr. Rodney. On his arrival, one of the first things that he observed was that the electrical wiring from the meter pole to the house was still anchored to all the private poles leading up to the house except for approximately 8 feet of the wire towards the end nearest to the house. This piece of wire had burnt off from the pothead on the house. He said that a section of this wire was melted and that a burn of this nature is indicative of fire from the building end and not from another source such as a short circuit. He also said that he observed about four (4) splices along the wire from the customer meter

pole to the house. The meter socket also had no signs of fire or burn marks on it and there were no visible burn marks on the potheads located on the claimants meter pole.

[32] Mr. Gibbs stated that while he did notice that sections of the wire leading from the meter pole to the house were making contact with trees, he did not observe any damage on the wire on account of this.

[33] Mr. Gibbs stated that checks made by him revealed that there was no report from any of Mr. Rodney's neighbours of there being any disruption in the electricity supply to the persons in the area at the time of the fire.

GARFIELD BARRETT

[34] This witness is a Revenue Assurance Manager at the defendant's company. His duties entail him having oversight of the company's customer complaints mechanisms.

[35] Mr. Barrett's evidence was centered on how a prospective customer goes about entering into a contract for the supply of electricity with the defendant. He explained the necessary preparatory protocols the intending customer would have to satisfy, such as obtaining a Government Electrical Inspectorate certificate, before service is received by the customer.

[36] Evidence was also led from this witness relating to the nature of the company's Customer Call Management System (CCMS), which records complaints made by customers and action taken on their behalf. This system not only contains logs of complaints made telephonically, but also complaints made by other means of communication. After explaining how the system works, Mr. Barret indicated that when he searched CCMS, he did not find any calls or reports made by the claimant as it relates to him observing sparks on the company's service lines. In any event, the witness explains that while JPS has an obligation to maintain its wires, its urgency depends on the risk posed. In the case of primary wires (high voltage/tension) JPS has a responsibility to respond immediately when these wires are in the vicinity of trees. This is because of the grave consequence that can follow, if same is not dealt with

swiftly. In the case of secondary wires, JPS is not under a duty to respond with the same level of urgency, if there is no immediate risk being posed.

KEVIN DONALDSON

[37] Mr. Donaldson was called as an expert by JPS. He is a qualified and certified Electrical Engineer with a considerable amount of practical experience in this field. His qualification or competence was never challenged by the claimant. An expert's report dated 29th November, 2013 was prepared and was tendered into evidence without objection.

[38] Mr. Donaldson in both his report and oral testimony explained how electricity flows between a customer's house and the transformer. Following this explanation, the witness then went on to explain what a short circuit is, how it occurs and the physical manifestations that an observer would see at the point where a short circuit originates.

[39] Applying what he said was well established electrical theory, Mr. Donaldson explained what would happen if a short circuit had occurred along the claimant's wire versus if it occurred along the defendant's wire. This aspect of his evidence will be explored more fully later on in the judgment.

[40] Mr. Donaldson concluded at the end of his expert's report that it was his professional opinion that the fire at the claimant's house was not caused by any defect with the defendant company's wires and or other equipment.

RESOLUTION OF THE ISSUES

[41] The claimant bears the legal burden of proving that JPS was negligent. For such a claim to be successful, the Court of Appeal in the decision of **Jamaica Public Service Company Limited v Marcia Haughton Civil Appeal 136/2005** held that it has to be established that:

- i. The defendant company had a duty of care to the claimant that in providing its service, it would exercise the care expected of such a utility company involved in that business activity

- ii. There was a breach of that duty; and
- iii. As a consequence of that breach, the claimant's house was destroyed by fire.

[42] Having regard to the evidence of the witnesses and the submissions of both Counsel, the following are the main issues for determination.

- i. Whether JPS's service wire was coming into contact with the branches of a mango tree or any other tree.
- ii. If there was contact, whether JPS had a duty to remove same and whether failure to the branches of the said tree caused the fire at the claimant's house

[43] It is not in dispute that Mr. Rodney at the time of the fire was a legitimate customer of JPS. Prior to the fire, he had entered into a contract for the supply of electricity with the defendant which is governed by among other things JPS's Standard Terms and Conditions of Electricity Service.

[44] In order to appreciate the context within which this claim has arisen, one has to understand how electricity was supplied to the claimant's house. For present purposes, the starting point is the distribution pole. The distribution pole houses the transformer. One of the functions of the transformer is to reduce the voltage of high tension wires (described as primary lines) that pass through it, so that the appropriate voltage can be passed on to the customer. From the distribution poles, service wires run to secondary poles. It is from these poles that customers receive their electrical supply. The service wires that run in between the secondary pole and the customer's premises are called secondary wires. These are not high tension wires as the claimant has pleaded. According to the undisputed evidence of the defendant company witnesses these wires are made from aluminum and are covered with insulated material.

[45] At the entrance to Mr. Rodney's property was a secondary pole made from concrete. Service wires were conveyed from this pole to a meter pole on the claimant's

property. The defendant bears the responsibility for the maintenance of these wires. The meter pole was and had to be constructed by Mr. Rodney. It consists of two potheads and a meter socket. One of the potheads serves as the point of entry for the defendant's wires from the secondary pole and the other serves as the point of connection for the claimant's wires. The meter socket houses the meter which measures the user's consumption of electricity.

[46] Mr. Gibbs in his witness statement said that JPS was only obligated to install service wires between its pole and the customer's meter pole up to a maximum of one hundred (100) feet. Beyond that, the customer was responsible for ensuring that the wires get from the meter pole to the house. It is the customer who has the responsibility of ensuring that the wires that extend along this path is maintained.

[47] The uncontested evidence is that Mr. Rodney's house is located some 575-600 feet from the meter pole, consequently he had to erect three (3) or four (4) private wooden poles to carry the electrical wires from the meter pole to the pothead on his house. The last of the pole was estimated to be some 12-18 feet from the house. The house which was on an incline consisted of a concrete section to the front and a section made of wood at the back. The chicken coop to which Ms. Simmonds made reference to in her evidence was at the side of the house, towards the back.

Whether Defendant's service wire was in contact with any tree

[48] One of the factual issues in dispute is whether at the time of the fire, the defendant's wire was running through any tree or having any contact with or in close proximity to any tree.

[49] Both Mr. Rodney and Miss Simmonds gave testimony to the effect that JPS's wires were interacting with the branches of a mango tree. In their written arguments filed December 19th, 2014, the claimant submitted that the evidence of these two witnesses should be accepted as it was corroborated by Mr. Gardener the only independent witness. Mr. Gardener had said in his evidence that he had seen impressions on the JPS's service wire indicating that it had been rubbing against a tree.

Mr. Gardener however made no specific reference to any particular tree when he was quizzed about same during cross-examination.

[50] It is the Court's view that the evidence of Mr. Gardener must be cautiously looked at in this regard. It appears that where he was making reference to JPS Service pole and wires, he was actually describing the claimant's private pole nearest to the house. It does not seem from the evidence that he had an understanding of how the electrical supply was set up on this particular property. He admitted in cross-examination that he had not seen any pole with a meter on it. Further when he was asked about the material that was used to construct the JPS service pole to which he was referring to, he indicated that it was standard JPS and that the same was not made from concrete. Additionally, he indicated in his evidence that he did not look at the JPS service pole during the course of his investigation when he was quizzed about other distribution lines. He was also asked to estimate the approximate distance between the JPS service pole of which he was speaking and the house. He expressed a difficulty doing so, but suggested that it was perhaps 50-75 feet more or less from the house. From his evidence, it seems the witness assumed that the private wooden pole nearest to the house which was erected by Mr. Rodney belonged to JPS and that the wires leading from this pole to the house was also the defendant's service wire.

[51] Mr. James who had testified to removing the defendant's wire on the morning of the fire told the court that he had encountered no tree while he was carrying out his duties. The claimant sought to discredit his evidence by suggesting that he was not being truthful about the time he said that he and his colleague arrived at the premises and carried out the operation he described. On the evidence of Mr. Gardner while he was on the scene he had not seen any personnel from the defendant company. Ms. Simmonds also told the Court that it was not until she returned home in the evening that she saw the two men from JPS.

[52] Mr. James insisted that he and Mr. Walters went to the home of the claimant on the morning of the fire and were there for about half an hour. According to him, he

introduced himself to one of the firefighters, but he was unable to recall the name of that person. This he maintained notwithstanding the effortful cross-examination of Learned Queen's Counsel. It is quite possible that Mr. Gardener may not have seen the men as they removed the wires between the two poles. Mr. Gardener's evidence suggests that he would have been consumed with ensuring that the fire was being contained and may not have noticed both men at the bottom of the incline, given that their presence seemed to have been brief. The fact that he did not see either of them does not mean that they were not there as he was not the sole firefighter on the scene. It is also highly unlikely that the defendant company would have dispatched personnel so late in the afternoon as alleged by Ms. Simmonds, if the initial allegation was that their service wire was somehow related to or part of the fire. There is therefore no basis on which this court can find that the evidence of Mr. James lacks credibility or incapable of belief.

[53] One would tend to believe the evidence of Mr. James of there being no tree at the time of the fire. The witness's credibility has not been impeached in any way by the cross-examination of learned Queen's Counsel. Mr. James testified that as part of his job he responds to emergency situations where the company's wires are in contact with bothersome foliage. It seems improbable that such a large tree as described by the claimant's witness would have escaped the consciousness of Mr. James, who personally disconnected the wires. The same witness was also shown a picture that was taken of the locus when this Court visited there in April, 2014. The said picture showed the tree stump in the fence line between the poles in question. When the witness was asked by Mrs. Davis-Small as to whether that picture accurately reflected how the area looked at the time of the fire, he responded in the affirmative.

[54] Mr. Rodney's evidence was also telling as it relates to whether the tree was present at the time of the fire. While his former common law spouse at the time was able to speak with definitiveness as to when the said tree met its demise, he was not. In cross-examination, he told the Court that he was not there at the time the tree was cut down nor was he able to say who had cut it down. From his evidence, this tree would have been of great concern to him, therefore he should have been able to speak with

some preciseness as to when or by whom the tree was cut down, especially if it was done so after the fire. This uncertainty on the part of Mr. Rodney ignites speculation that the mango tree was not present on the morning of the fire.

[55] On the totality of the evidence, the proper conclusion to be drawn is that on the morning of the fire, the defendant's wire was not passing through or having any interaction with the branches of a mango tree or any other tree.

Whether JPS owes claimant a duty to remove trees interfacing with its service line on claimants premises

[56] Having concluded that the defendant's service wire was not coming into contact with any tree at the time of the fire, it is useful to examine whether previous contact would have resulted in the consequences that the claimant has put forward. In this regard, the Court will have to see whether the defendant company would have been under a duty to remove the branches of the tree when complains were made by the claimant and whether failure to resolve same was a direct cause of the fire.

[57] Mr. Rodney indicated previously that complaints were made to agents of the defendant company as well as to the manager at the Port Maria office about sparks emanating from the defendant's service wires when it comes into contact with the tree branch. He said that while he was promised by the manager to have personnel deal with the problem, nothing was ever done. Mr. Barrett told the court that checks of CCMS made by him did not reveal any log of any complaint being made by the claimant. In any event, Mr. Barrett said that while the company has a responsibility for maintaining the integrity of its wires, the urgency of the response depends on the type of service line in question and the immediate risk posed. Mr. Barrett stated that trees coming into contact with primary lines will pose a higher risk than trees in contact with secondary lines. In the case of the former, contact will immediately cause a short circuit and will therefore be treated with urgency. It is only where the secondary lines start to exhibit signs of becoming an immediate threat or risks, such as if they become broken or fire is

seen along them, that it is dealt with the same level of urgency as if it were a primary line.

[58] Even though Mr. Rodney and Ms. Simmonds had said that they had seen sparks at the point where the defendant's wires was in close proximity with the tree, it doesn't seem, that this was the kind of threat that would have caused JPS to become concerned. Mr. James in his evidence -in- chief had likened sparks of this nature to the kind seen when one is using a cutting machine and had said that it is unlikely for sparks of this kind to result in a fire.

[59] Counsel for the defendant suggested to Mr. Rodney that if he had in fact made a complaint to the defendant company, he would have been told that the said tree was on private property. When this suggestion is taken together with the evidence of Mr. Barrett, it would appear that the duty of the defendant to attend to trees coming into contact with its secondary lines does not extend to where the said lines are traversing private property, unless the situation poses an immediate threat or risk.

[60] Reliance has been placed on Section 38(1) of the Electric Lighting Act as imposing a duty on the defendant to have the trees removed. The section reads:

Subject to the provisions of this section the undertakers or any person authorized by them in that behalf may at all reasonable times enter upon any land on, under or over which supply lines have been laid, placed or carried, or upon which posts or apparatus have been erected, for the purpose of carrying out repairs thereto, and may carry out all requisite repairs and in the course thereof fell or lop trees, remove vegetation and do all other things requisite for the said purpose, causing as little damage or disturbance as possible.

It is clear that the section does not place a general duty on the defendant to remove trees or other flora that may be in close proximity to its supply lines. The section merely gives the defendant and its authorized agents ancillary powers to remove same while in the course of carrying out repairs on its appurtenances.

Where did the fire originate – on the defendant’s service line or the claimants’ line?

[61] Central to the claimant’s case is that JPS’s failure to remove the overhanging branches contributed to a short circuit which ultimately caused the fire at the claimant’s house. The evidence of the expert witness for the defendant, Mr. Donaldson becomes quite critical at this point.

[62] Mr. Donaldson explained to the court the general flow of electricity in a circuit so as to provide a context in which the present situation could be understood. He stated that, when electricity originates from a source (such as a transformer), it travels along a medium (in this case, the wire or conductor) to a load (namely the house) and returns to the source via the same path it came. This continuous back and forth movement of electrical current he described as an electrical loop.

[63] The witness explained that sometimes different wires within the circuit become connected or fused together resulting in a short circuit. When this happens, the original path of electrical flow is broken or is “shorten” as the nomenclature suggests, and a new path is created for the flow of electricity. There is no flow of electricity going forward in the circuit. As soon as the electrical current reaches the point of the short circuit; it flows back to the source. The latter point was strenuously tested by learned Queen’s Counsel in cross-examination; however the witness remained steadfast in his explanation that there is no forward flow of electricity where there is a short circuit.

[64] Mr. Donaldson further explained that usually when electricity enters a building; it does so via the pothead and passes through a breaker panel. The breaker panel is a protective device that effectively kills the current when there is a short circuit to prevent damage to the electrical wiring or a fire. He says that where a short circuit occurs, “downstream” that is after the breaker panel, it would cause the breaker to “trip” and the consequences described earlier would be triggered.

[65] On the other hand, if the short circuit occurs, "upstream", that is before the breaker panel, there is a high degree of a fire being started, especially if the point of the short circuit is near flammable materials. This is so because the breaker panel only affords protection to the circuit downstream. He explains that this is one of the reasons for the Government Electrical Inspectors insistence that wires going towards the breaker panel be as continuous as possible and free from splices or joints. A splice or joint is usually formed where a wire is broken and re-attached or if it was not initially long enough to reach its intended location, it is pieced in order to get it to its designated area. A joint or splice in a wire is readily identifiable by a knot. Mr. Donaldson had suggested that depending on the situation, a joint in a wire could cause a short circuit, if it touches an exposed wire.

[66] In his report and as part of his oral testimony, Mr. Donaldson said that at the point of a short circuit, the effect is usually very clear. He said that because a considerable amount of current and heat is generated at the point of the short circuit, wires near this point can undergo thermal stress which can cause them to melt and or their insulation to become destroyed. If these wires are near any combustible material such as dry wood or cloth, it can result in a fire. He also said that electrical "arcing" (which is a discharge of electricity between wires) can occur, before the wires involved in the short circuit are fused together.

[67] From the expert's evidence, at the point of origin of the short circuit, there should be some manifestation of same. The condition of the respective wire under the responsibility of the defendant's and claimant at the time of the fire must be looked at. Mr. James was the only witness that adequately spoke to the condition of the defendant's wire on this particular day. He stated that he did not observe any damage to the JPS service wire when he was removing it. In fact when cross-examined by Mr. Hill, he told the Court that it was a fairly new service wire that he had removed. Neither Ms. Simmonds nor Mr. Rodney described any physical characteristic of the defendant's wire that would suggest that a short circuit occurred there.

[68] However, in relation to the claimant's wire, several witnesses were able to give similar observations concerning its condition. Both Mr. James and Mr. Gibbs said that at least eight (8) feet of the claimant's wire near to the house was burnt and lying on the ground. Mr. Gibbs in particular spoke to the insulation section of the wire being melted. Mr. Gardener testified as well to seeing a piece of wire lying on the ground close to the house severed at one end from the house and at the other end from the service wire. Mr. Rodney also admitted to Counsel for the defendant that a section of the wire leading from the last private pole to the pothead on his house was also burnt off and on the ground. Mr. James, Mr. Gibbs and Mr. Rodney all said that the wire leading from the last pole down to the meter pole was in place in the same way as previously described.

[69] Mr. Gibbs, Mr. James and Mr. Gardner made reference to seeing splices along the length of the claimant's wire. The claimant submitted that there were no splices along its wire. It was suggested by Queen's Counsel, Mr. Hill that regard should be paid to the certificate issued by the Government Electrical Inspectorate. It was his submission that the inspectorate would not have issued a certificate if there were any splices on the wires. Consequently, the issuance of the certificate should be taken as conclusive evidence of the state of the claimant's wire at the time the fire occurred. This line of argument cannot be accepted as the certificate issued by the Electrical Inspectorate is not meant to be a perpetual guarantee of the condition of the wires. As pointed out by Mr. Barrett, this certificate would only speak to the condition of the wire at the time it was inspected prior to electricity being supplied to the premises. In fact, Mr. Donaldson indicated in his evidence that if any modification is to be done electrically to one's building, one has to be recertified and issued with a new electrical inspectorate certificate.

[70] Apart from Mr. Gardener, the other men did not provide specific location as to where these splices were seen. Mr. Gardner indicated that he had seen a splice or joint at the end of the wire on the ground where it had been severed from the other wire that was dangling from the pole. Mr. Donaldson explains that if a short circuit had occurred at this point where the joint was observed or a little distance along the wire inside the

house, the manifestations of the short circuit as described by the witnesses above are likely. Further when the expert was directed to the evidence of Miss Simmonds regarding the popping sound she first heard and the smoke that was seen by her rising from the roof of the wooden section of the house, he said that this, when taken together with what the other witnesses said, suggests that the short circuit or cause of the fire originated along the claimant's wire.

[71] As it relates specifically to this case, Mr. Donaldson informed the court that if a short circuit had occurred along the JPS service wire, it would have caused the electricity to flow back to the transformer via the new route created and not forward towards the house. This he said would have caused the transformer to have blown or the transformer to "trip", resulting in damage and disruption to the electricity supply of other customers. Mr. James said that when he and Mr. Walters checked the distribution pole, they did not observe that the transformer was affected by the fire in any way. There was also no indication that the other customers along the distribution line had experienced any disruption in their electrical supply or any other damage as revealed by the evidence.

[72] Additionally both Mr. Gibbs and Mr. James had outlined that if a short circuit had occurred along the JPS service wires, there would have been some signs of same passing through at the meter socket on the meter pole. Both men confirmed that no soot or other burn marks were seen at the meter socket or potheads.

[73] It doesn't appear that even if the defendant's wire was coming into contact with tree branches that it would have caused the fire at the claimant's house. In the first instance, it is the undisputed evidence of Mr. James, which was corroborated by the expert's testimony that it is unlikely that JPS's service line would have become fractured on an account of any rubbing against any tree branch, as the wires are made from aluminum.

[74] In the unlikely event that the wires did break and a short circuit resulted, Mr. Donaldson said that this would still not cause a fire at the claimant's house some

distance away. This is because, as mentioned before the electrical current would flow back to the transformer, via the tree or by way of some other path of least resistance. The effect of this would be that the JPS service wire would exhibit signs of damage and other persons along the distribution line would have been affected because of the effect it would have had on the transformer. He further added that because of the non-combustible insulation material over the wire, it is unlikely that any fire started at this point would have travelled towards the house, as the material makes the wire incapable of sustaining or spreading a long burn. Consequently, there would not have been any damage to the claimant's wire some distance away, if the short circuit had occurred within the defendant's area of responsibility.

[75] The expert informed the Court that his conclusion that the most probable cause of the fire was an electrical short circuit within the claimant's house or by some other electrical means was based on established electrical theory. Learned Queen's Counsel however urged the Court to dismiss the evidence of the expert on the ground that it was illogical and unreliable. In his attempt to discredit the expert's evidence, learned Queens Counsel pointed the court to what he deemed as inconsistencies in the expert's explanation, however, the Court is of the opinion that these references are not of the kind to render the expert's evidence incredulous.

[76] The claimant's did not challenge several important aspects of the expert's evidence. Much of the cross-examination was spent trying to get the witness to agree that in a short circuit there is a forward flow of electricity and this forward flow of electricity could have caused the fire at the claimant's house, even where the short circuit had occurred on the defendant's wire. There was also an insistence that where there is a lack of demand on the part of the customer for electricity, then it is unlikely that there will be a short circuit. In the case of the former, the expert dismissed the suggestion as not being electrically possible. In the case of the latter, Mr. Donaldson also did not agree with that suggestion.

[77] In the House of Lords decision of **Bolitho v City and Hackney H.A. [1998] A.C. 232**, Lord Browne-Wilkinson made some observation as to how the Court should

approach the evidence given by experts. At pages 241-242, a passage which was cited by the claimant, reads:

“The use of these adjectives-responsible, reasonable and respectable- all show that the Court has to be satisfied that the exponents of the body of opinion relied upon can demonstrate that such opinion has a logical basis. In particular in cases involving, as they often do, the weighing of risks against benefits, the judge before accepting a body of opinion as being responsible, reasonable or respectable, will need to be satisfied that, in forming their views, the experts have directed minds to the question of comparative risks and benefits and have reached a defensible conclusion on the matter.”

At page 243, a passage that has been cited with approval in the Court of Appeal decision of **Jamaica Public Service Company Limited v Marcia Haughton**, Lord Browne-Wilkinson continued

“In the vast majority of cases the fact that distinguished experts in the field are of a particular opinion will demonstrate the reasonableness of that opinion...But if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible. I emphasise that in my view it will seldom be right for a judge to reach the conclusion that views genuinely held by a competent medical expert are unreasonable...It is only where a judge can be satisfied that the body of expert opinion cannot be logically supported at all that such opinion will not provide the benchmark by reference to which the defendant’s conduct falls to be assessed.”

[78] Even though reference was being made in the above mentioned case to medical experts, it has been held that this approach applicable to experts in general. Mr. Donaldson in both his report and while being cross-examined said that he looked at

some fourteen (14) pieces of documents before reaching a conclusion. These include fire report, various field and investigative reports from the defendant, witness statements from witnesses on behalf of the claimant and defendant. He was able to explain the different outcomes when different situations were put to him, which allowed this court to have a comprehensive understanding of the matter as a whole. He was forthright and unwavering in his evidence, even when learned Queens Counsel attempted to pour cold water on his theory. He addressed his mind to the risks and benefits and the reasonableness of his explanation is supported by the evidence that is before this court.

[79] The claimants have not presented any other credible expert evidence or body of opinion which dispels the theory and conclusion reached by Mr. Donaldson. In the absence of this, this court finds that the expert's evidence is not contrary to reason, especially when this tribunal directs its mind to the evidence.

[80] The claimant had raised in his submission the applicability of the doctrine of *res ipsa loquitur* to the facts of the case. However, there is no need to explore that argument as there is no difficulty in the present case with establishing the relevant act or omission which caused the fire.

[81] The claimant also argued that the defendant company had breached its duties under section 11 of the Electric Lighting (Extra High Pressure Conductors) Regulations 1928. That regulation states that :

The whole of the works shall be executed with the best materials and workmanship and with consummate care in every detail so as to insure stability and usefulness for the intended purpose, viz: the distribution of electricity for light and power and shall thereafter be continuously maintained in perfect order and condition to the satisfaction of the Electrical Inspector hereinafter mentioned.

As previously indicated by the expert, there is no evidence that the wires/conductors and other equipments of the defendant were defective in any way. Therefore the

claimant's argument that the defendant had breached its statutory duty cannot be accepted.

CONCLUSION

[82] On a balance of probabilities, the claimant has not proved that there was a sufficient relationship of proximity between the defendant and the cause of the fire (**Jamaica public Service Company Limited v Winsome Ramsay Supreme Court Civil Appeal No. 17/2003**). On an assessment of the evidence, the following are the findings of this court:

- a. The defendant's service wire, which was incorrectly described as being high tension wires, was not interacting or passing through any tree at the time of the fire.
- b. The defendant was not under a duty to remove any tree overhanging its secondary lines which was traversing the private property of the claimant, unless there was some evidence of immediate danger or risk. There being no such imminent risk.
- c. If the defendant's service wire was in fact coming into contact with the branches of any tree, failing to remove same would not have caused the fire at the claimants' house.
- d. The fire originated near to or along the wires leading to the claimants' house and within the claimant's area of responsibility and not along the defendant's service wire.
- e. The fire did not occur as a result of any failure of the defendant's company wires/conductors or any other equipment.

[83] The circumstances of this case are indeed tragic. Lives were disrupted, relationship wilted and a child has been scarred on account of this incident. However, the Court is bound to follow the evidence and the logical conclusion that follows on a proper assessment of it.

[84] Judgment is therefore in favour of the defendant with costs to be agreed or taxed.

W. S. L. Smith
Judge