



[2018] JMSC Civ. 149

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013HCV 01451

BETWEEN	DONOVAN SENIOR	1st CLAIMANT
	ALMA SENIOR	
AND		2nd CLAIMANT
AND	JAMAICA PUBLIC SERVICE COMPANY LIMITED	DEFENDANT

IN OPEN COURT

Mr Clifton Campbell instructed by Archer Cummings & Co., for the Claimants
Mrs Tanacania Small Davis and Ms Sidia Smith instructed by Livingston Alexander & Levy for the Defendant

April 24, 25 and 26 (May 22) and November 22, 2018

Negligence . Breach of duty of care - Breach of Statutory Duty . *Res ipsa loquitur* -

LINDO, J.

The Parties

[1] The 1st Claimant, Donovan Senior, (Mr Senior) is the son of Mrs Alma Senior, (Mrs Senior) the 2nd Claimant. At material times, they resided at Lot 86 Mount Dakin, Mount James P.O., in the parish of Saint Andrew in a four- bedroom house owned by them.

[2] The Defendant, Jamaica Public Service Company Limited (JPS), is a company duly incorporated under the Companies Act of Jamaica having its registered office in the Dominion Life Building, 6 Knutsford Boulevard, Kingston 5 in the parish of Saint Andrew. It was, at all material times, a holder of the All- Island

Electric Licence under and by virtue of the **Electric Lighting Act and the Office of Utilities Regulations Act** and the sole distributor of electricity in Jamaica.

The Claim

[3] On March 7, 2013, the 1st Claimant filed a Claim seeking damages for negligence against the Defendant. On February 10, 2014, the Claimants jointly filed an Amended Claim Form and an Amended Particulars of Claim in which they are claiming damages for negligence and for breach of the **Electric Lighting Act** and the **Office of Utilities Regulation Act**. By the Amended Claim, they claim that on or about the 21st day of May 2010 the claimants' (sic) property at Lot 86 Mount Dakin, Mount James in the parish of Saint Andrew was severely damaged by fire as a result of the defendant's servants and/or agents so negligently maintaining and/or neglecting to maintain its defective works and/or disturbance on its system...causing the claimants to suffer severe loss and damages.+

[4] The allegations of negligence are particularized as follows:

- i. *Failing to take all reasonable and effective measures whether by inspection, examination or otherwise, to ensure that there was or would be no risk of fire arising from the defective wiring from the light post to the claimants' premises;*
- ii. *Allowing the power lines connected to the Claimant's premises to be left in such disrepair that the wires were left exposed causing fire spark and smoke to come therefrom;*
- iii. *Failing to anticipate and to guard against the reasonable foreseeability that the fault transmission lines(s) would cause a fire;*
- iv. *Failing to take all take reasonable care in repairing and/or maintaining the faulty transmission lines(s) which were connected to the said premises or at all;*
- v. *Failing to diagnose any problem that may have arisen on its distribution lines and to advise the Claimants of same to remedy if necessary; and*

- vi. *The Claimants will further rely upon the doctrine of res ipsa loquitur”*

[5] The allegations of breach of the **Electric Lighting Act** and the **Office of Utilities Regulation Act** are stated as follows:

- i. *Failing to furnish and to maintain a supply of electricity for private use, and more specifically, for the claimants’ use in accordance with reasonable standards of safety and dependability as understood by the electric business;*
- ii. *Failing to maintain, repair and/or replace all relevant transmission lines leading and/or connected to the Claimants’ property in accordance with good industry practice so as to enable it to meet its obligations under the licence granted by virtue of the Electric Lighting Act and the Office of Utilities Regulation Act;*
- iii. *Failing to follow prudent utility practices, detailed design standards relating to the transmission system and/or lines to cover the required technical criteria and conditions to reconnect the Claimants*
- iv. *Failing to attach a Certificate of Inspection and approval from the Chief Electrical Inspector or his authorized agent before reconnecting a supply of electricity to the Claimants’ premises.*
- v. *Energizing rebuilt/modified transmission lines to the Claimants’ premises before same was inspected and certified by the Chief Electrical Inspector.*

The Defence

[6] The Defendant by the Amended Defence filed on March 7, 2014, denies liability and asserts that the fire was due to the defective wiring of the Claimants’ premises. The Defendant contends that it is responsible solely for the service wire leading from its utility pole to the metering point on the premises and that the electricity transmitted from the metering point to the private pothead on the dwelling house was by private wire and/or conductor and/or apparatus owned by the Claimant and/or the owner and occupiers of the premises. The Defendant avers that at all material times, it took reasonable steps to ensure that its equipment, including its conductors were reasonably safe for the purposes for

which they were intended, consistent with industry norms, standards and any relevant and applicable regulations, and that electricity was supplied to the metering point on the premises in a reasonably safe manner.

[7] The Defendant claims that the matters complained of were solely caused by or contributed to by the claimants' own negligence or by the negligence of the Claimants' servants and or agents and/or by the conditions existing at the dwelling house.

[8] In the Particulars of Negligence of the Claimants, the Defendant states that it relies on the doctrine of *res ipsa loquitur* indicating that the fire started within the Claimants' electrical panel, within the dwelling and states the following:

“ failing to identify and to rectify the cause for the alleged continuous outbursts of fire and smoke..., maintaining a state of affairs wherein the electrical installation within the premises were defective; failing to take steps to ensure that the electrical installation was properly done and in a good state of repair; taking improper steps to remedy the defective wiring; maintaining an unsafe and potentially dangerous state of affairs by facilitating make-shift and spliced joints on the private wires and/or conductors leading from the metering point to private pot head on the dwelling house; failure to ensure that the wires and electrical installation were sufficiently grounded.”

[9] The Defendant also specifically denies that it breached either the **Electric Lighting Act** or the **Utilities Regulation Act**.

The Claimants' Case

[10] The Claimants filed witness statements of Mrs Senior, Mr Senior and Richard Ellis in support of their claim. At the commencement of the trial, the court, on the application of Counsel for the Claimants, ordered that the witness statement of Mrs Senior, filed on February 20, 2015, be admitted as hearsay evidence. A similar application in relation to a proposed witness, Richard Ellis, was withdrawn and Richard Ellis did not give evidence at the trial.

Evidence of Alma Senior

[11] Mrs Senior's evidence is that in the 1980s she got an electrician to do the wiring inside her house and it was tested and passed and then some men came and ran wire from the main road to a wooden post she had erected on the land and from the post to the house. She states that the wiring was supplied and done by the Defendant and she was later directed to replace the wooden post with a concrete post which she did and the Defendant's men came and installed a meter on the concrete post. She states further that when Hurricane Ivan affected the country in or around 2004, a light pole outside her house was displaced and a wire which ran from the light pole to her house burst, causing a power outage in her home and the whole area and personnel from the Defendant company came and used pliers to reconnect the service wires. She says they did not change the wires but merely twisted them together and used tape to cover the connections.

[12] Mrs Senior indicates that she complained to the Defendant that sometime afterwards she began to see sparks and smoke coming from the wires and that she experienced frequent power outages, but no one responded or visited and it was after she went to the police station and made a report that some men came and changed the wire from the light pole to the meter. She also indicates that whenever the lights in the house were turned on, the wire from the meter to the house lit up and glowed and would sometimes smoke. She adds that she was at home on May 21, 2010 when she heard explosion in the roof of her house and saw fire engulfing the ceiling and the entire house burnt down and she lost everything she owned in the fire.

Evidence of Donovan Senior

[13] The witness statement of Mr Senior dated and filed February 20, 2015 was admitted as his evidence in chief and he was cross examined.

[14] His evidence is that after the house was wired for electricity it was inspected, a post was erected midway from the JPS post on the road to our house itself they came and ran some wire from the main on the road to the post we erected and then from the post to our house. They ran the wires directly to our house. Our electrician did not run any wires outside of our house. He then states that they began to receive electricity and began to receive estimated bills and decided to go to JPS to get a meter and were told to erect a concrete post and that they then came and removed the wire from the first pole put in the wire to the concrete post and put in metre there. He states further that there is a pothead on the top of the concrete pole, four wires come from it, two of which go down to our house and two go up to the JPS pole and adds that after Hurricane Ivan, the utility pole had become displaced and the wire from the light pole to the metering point on the house had burst and they experienced power outages.

[15] He also states that he saw where the service wire was burnt off from the same light pole and a JPS team came to the area and he watched them use pliers to reconnect the service wire to the house and after this they began to see sparks coming from the JPS wires and they experienced fluctuations in the supply of electricity as a result of which they called the JPS offices numerous times. He states further that after his mother went to the Police Station and made a report the men from JPS came and changed the wire from their post to our meter and that the electrical transmission power lines which lead from the JPS utility pole to our house became defective whenever electricity was turned on the service wire would overheat then glow and/or light up and it would produce smoke. Sometimes along with the smoke we would see sparks which came from the said service and power lines continuously.

[16] He indicates that he knew of the Defendant's policy of only being responsible for 100 feet of wire from the main pole to the house, but when he measured from the main pole to the pothead and then to the house, the length of the wire amounted to 97 feet and all these wires were supplied by JPS and all installations were

done by JPS and/or their agents. He asserts that they were never told by JPS to do any repairs to their house or to the wires to their house and were never advised to get an electrician to sort out any problems they had but that JPS told him not to touch any of the wires and that they would come and do the repairs, but never did.

- [17] He adds that on or about May 21, 2010 a fire broke out at our house and that Richard Pellington, died from burns he received and that two persons from Crawford Jamaica Limited (International Loss Adjusters) visited the house, he fixed up a room on the property for his mother and waited a long time but did not hear from JPS and they got a valuation report a fire report from the fire department and an electrician report.
- [18] In amplifying his evidence, Mr Senior disagreed that on January 26, 2010, electricity was disconnected from the house, and stated that they had never had their electricity disconnected, as all our bills are prompt up front, never been late, no confrontation with JPS with late payment. He added that they were still getting bills.
- [19] Under cross examination, he said he would have to accept that the contract between the Defendant and his mother was in 1984 and that he did not deal with them personally and did not know who wired the house. He then said all the wiring inside the house, as well as the switches and breaker panel were supplied by JPS and that they came and wired inside the house.
- [20] He disagreed that JPS instructed them to build a pole between their (JPS) pole and the house and stated that there was no light pole between the JPS pole at the gate and the house. When pressed, he agreed that a concrete post was put up and a meter installed to it and that JPS strung wire from their post at the gate to the meter and that was about three years before the fire. He also said they started getting bills about three months after getting the meter.

- [21] When asked if he was aware that Government Electrical Inspector came to his home to inspect the wiring done by the electrician, he stated that he was there when ~~man~~ from JPS came when they put in the meter+. He said the concrete post he erected was ~~about~~ 100 feet+ from the JPS post and the meter post was about another 50 feet from the house. He agreed that he said after the hurricane the whole area had power cut and stated that JPS came and ~~do~~ everything+.
- [22] He disagreed with the suggestion that JPS came after the hurricane and strung wire from the JPS post to the meter and then said they came and changed the wire from the pole to the meter ~~and didn't~~ strap them up properly+. He admitted that where he saw fire was the pothead, on the outside, and indicated that after the fire, he took up the wire because children were there and it was dangerous. He denied making a reconnection and denied being present when Mr Lewis visited, or telling Mr Lewis that he had reconnected to do some repairs. He admitted making a report to JPS and when asked if in the letter, he stated that there was fire from the breaker box, after indicating that he could not remember, said that the letter should state that the fire was from the pothead. He said the meter was not damaged in the fire and he saw no sign of fire from the concrete post.
- [23] He denied the suggestions that he was informed by JPS that they were not responsible for wiring beyond the meter and said that after the fire, they told him to ~~buy~~ wire and fix up the house, get electrician+. When he was asked if any rewiring was done since then, he said ~~they~~ cut me off, is a generator I using now+. On being pressed as to whether the electricity was disconnected from January 29, 2010, he said, ~~yes~~, I think+ and then said ~~we didn't~~ get no cut off. Have current up to May 4 when we had fire+.
- [24] When further cross examined on his evidence in relation to whether their electricity had ever been disconnected, Mr Senior stated that he was going by what he thought his mother was doing, and, with specific reference to whether the electricity supply had been disconnected to the house in January 2010, his

response was ~~No~~, not to my knowledge+. He stated that he knew what would be indicated on the bill and that if there is a ~~carry over~~+, it would mean the bill was not paid in full.

[25] He indicated that where he said in his statement that wires ~~burnt~~+, after Hurricane Ivan, he meant ~~burst~~+, and that there was a storm after Ivan and it was after that storm that JPS came and changed wires, but they did not change the one from the meter to the house and did not take out the meter. He denied that the fire started within the house or in the breaker panel.

[26] Mr Senior then examined a number of photographs admitted in evidence and agreed that after the hurricane JPS came and ~~fixed~~ their side+, as shown in Figure 3. He identified the meter in Figure 18 as being the same meter that was there before, and identified the wire, which he said he took up after the hurricane. He indicated that he was unable to identify items in Figures 2, 4 and 5, as well as Figure 16 and 26. (The court took note that these included the concrete post, metal pipe, breaker panel)

[27] He stated that he took pictures about a week after the fire and when asked if the breaker was completely burnt, he said he did not take notice. He denied being told by JPS that any problem with the wiring to the house was his responsibility, and when it was suggested to him that there was no damage to the meter by the fire, he said ~~not that I know of~~+. He also denied that the problem with the house was defective wiring.

[28] In seeking to clarify his evidence, Mr Senior stated that JPS came to repair the wire from the pole to the house two times, just after Hurricane Ivan and after the ~~next storm~~+. He said that the second time they came, all of what they had done ~~ear down~~ back again and they came and change piece from the post to the pot head and leave our own down to the house and never came backō +

The Defendant's Case

[29] The Defendant presented evidence from Alphanso Lewis and Hamlet Palmer whose witness statements were filed on February 11, 2015. The report of an expert witness, Mr Kevin Donaldson, also formed part of the evidence relied on by the Defendant and all the witnesses were cross examined.

Evidence of Alphanso Lewis

[30] In his witness statement which stood as his evidence in chief, Alphanso Lewis states that he was the Claims Investigator for the Defendant at the time of the fire. He states that he made contact with Mr Donovan Senior to set up an appointment to visit the location and they met at the location on July 25, 2010 and Mrs Alma Senior was also present. He states that he took several photographs. (These were tendered and admitted in evidence)

[31] He describes the dwelling as being ~~at~~ the dead end of an open secondary circuit and is connected to the JPS circuit by a # 6 triplex wire~~+~~. He explains that his investigation entailed looking at the point where the JPS service wire connected to the customer~~s~~ meter pole and that the JPS service wire runs from the JPS distribution pole and in to the customer~~s~~ meter which was on a concrete pole. He estimates the distance between the JPS distribution pole to the customer~~s~~ meter pole to be about 75 feet.

[32] Mr Lewis states that the JPS service wire was ~~clamped~~~~+~~, which, ~~is~~ the standard~~+~~, and that there were no signs of burning or overheating on the service wire, service entrance, meter socket nor on the pothead on the meter pole. This he says is where the JPS wire, supplying electricity, is connected to the customer~~s~~ equipment to receive electricity. He points out that the JPS side of the customer~~s~~ pothead was connected via a compression connector, which ~~is~~ standard~~+~~.

- [33]** He notes also that the connection on the customer side of the pothead was wrapped or twisted and he documents irregularities at the point of connection of the customer service wire at the dwelling, and notes that the conduit, made of PVC, which ran on the wall of the dwelling, showed signs of burning or overheating. This, he says, suggests that there was some amount of excess current flowing from the ground, the cause of which is a short circuit.
- [34]** He says that he viewed a non-standard makeshift connection, which was present at the time of the visit, at the same pothead as before. The wiring, he says, could never have been passed by the Government Inspector. Based on the condition of the wiring of the premises, as well as the discussions he had with Mrs Senior during which he states that she said she saw fire coming out of the breaker panel, he concludes that the fire started at the private pothead.
- [35]** In amplifying his evidence, he said he visited the premises twice and took photographs on his second visit. He states that both Mrs Senior and Mr Senior were present when he visited.
- [36]** He indicated that on his second visit he did measurements and the distance between the JPS distribution pole and the customer's meter pole was 55 feet, and the distance between the meter pole and the pothead on the house was 85 feet.
- [37]** He described the photographs taken by him and explained the purposes of the white PVC pipe and the conditions of the wiring in the different pictures and pointed to what he called "an illegal connection" and a "non-standard" connection. He stated that in his experience, having been at JPS since 1991, it is not the practice of JPS to do any wiring from the meter pole to the pothead on the house.
- [38]** When cross examined, Mr Lewis stated that when he went to do investigations at the premises of the Seniors, he took notes of the conversation he had with Mrs Senior and that he could not recall the exact thing she told him. He stated that on

his first visit on July 25, 2010, he met with Mr Senior and as part of the conversation, it was stated that a connection was made in order to facilitate temporary repairs to the dwelling house.

[39] He admitted that he could not say definitively that fire started inside the house and neither could he say definitively that JPS had disconnected the electricity.

[40] In clarifying his evidence, Mr Lewis stated that Mrs Senior told him that as she came into the living room she saw fire coming from the breaker panel.

Evidence of Hamlet Palmer

[41] Mr Palmer's evidence is that he was at all material times, an employee of the JPS and that he is familiar with the general policies and procedures relating to a customer's application for electrical services from the company. He refers to the company's Standard Terms and Conditions of Electricity Service by which the company and its customers is governed, indicating that it (Sheet 214) establishes, *inter alia*, that the customer's wiring is distinct and separate from JPS's wiring, and (Sheet 215) provides that the customer's electrical equipment shall conform to JPS's requirement and stipulates that the electrical energy must not be used in such a manner as to cause voltage fluctuations or disturbances in the company's distribution system.

[42] Mr Palmer states that JPS customers are required to recertify their inspection report if there has been any extension on, or any re-wiring of, their premises. He states that the supply of electricity to the Claimant's premises was disconnected on January 26, 2010 for non-payment of bill. He points out that there was no record of restoration of electricity to the premises, that the records show that April 2010 was the last payment received and at the date of the fire, service had not been restored by the Defendant.

[43] He explains that the wire from the JPS post to the meter pole is the responsibility of JPS, and the wire from the meter pole to the customer, belongs to the

customer and that JPS does not supply or install that wire. In explaining the process involved when the supply of electricity is disconnected for non-payment, he indicates that the information is recorded and automatically updated. He notes that to the best of his knowledge the computer was working, had no reason to believe the information was inaccurate and that he printed the information. (The Service Order Query was admitted in evidence as Exhibit 17).

[44] Mr Palmer then explained that the system automatically generates the order for disconnection for non-payment, that a disconnection order had been sent out in respect of the Senior's house on January 26, 2010, and that the task was carried out. He examined a statement for the account for Mrs Senior and explained that there was an actual amount shown on the meter for a number of months after the electricity was disconnected because on a monthly basis, all meters are read whether or not the electricity has been disconnected. He pointed out that for an actual amount to be recorded, it is obvious that the meter is in use at the time and that would have been as a result of reconnection. He also explained how a customer would go about getting reconnection, noting that a reconnection fee that would have had to be paid, would be reflected on the statement of account. He stated that in respect of the Senior's account, payments were made, no reconnection fees were paid, and it would be correct to say that reconnection was not done through JPS.

[45] He also explained that even after disconnection, the Seniors would still get bills because they did not come in and officially close the account and that the bill would reflect zero consumption, customer charge and late fee. He also stated that JPS would not run a wire past a meter post and onto the customer's property.

[46] In amplifying his evidence contained in his witness statement, Mr Lewis explained the process of record keeping by JPS and the procedures followed when a disconnection takes place and noted that the records revealed that the supply of electricity to the Seniors was disconnected for non-payment of bill. He

indicated that the system automatically generates order for disconnection, pointed out that the records show that several orders were given for disconnection and were cancelled. The orders for disconnection he said, were given because the bill was not paid in full or at all, so it would not be true to say bills were paid in full and on time. He added that an order for disconnection was carried out on January 26, 2010 and noted that in February, March and April there were actual readings, and said, % obviously the meter is advancing at that stage, is in use at that point+, as a result of re-connection.

[47] Mr Palmer then explained the procedures to be followed for re-connection, indicating that payments were made in relation to the Senior's account, but no reconnection fee was paid.

[48] In cross examination, he indicated that if there was an erroneous entry he would see it, but, by just looking, one would not know that there is an error at the data entry point.

Expert Witness, Kevin Donaldson

[49] The evidence of Mr Kevin Donaldson, Registered Professional Electrical Engineer, who was called as an expert witness pursuant to an order of the court made on March 9, 2015, is contained in the Reports filed on March 26, 2015 and April 24, 2015, respectively. In his report, he establishes the basics of bonding and grounding and states that good electrical practice dictates that all metal objects of an electrical circuit within a building must be permanently bonded together via properly sized copper wire. He says that all conductors of electricity from the meter pole to the main electrical panel should not have any splices or joints and states that % the responsibility of the integrity of all wiring after the meter or meter pole leading to the premises and the integrity of all wiring within a building lies solely with the owner of said premises+and that the responsibility for integrity of all wiring before the meter/meter pole connecting the meter to JPS pole, lies solely with JPS.

- [50] Mr Donaldson notes that the JPS field investigator indicates that the Claimant's building was approximately 150 feet away from the JPS service pole. He states that the total lack of current flow towards the house and the non-combustible PCV insulation over the wire leading to the house negates a fire being able to travel from towards the house. He concludes that the most probable causes of the fire were an electrical short circuit within the claimant's house, a faulty neutral due to poor splicing on the customer's neutral wire or some other non-electrical means within the house.
- [51] His opinion is that the fire originated within the Claimant's premises and that the fire damage was not from a cause relating to the quality of JPS infrastructure up to the pothead before the meter, or the quality of electricity being supplied to the premises.
- [52] In response to questions put to him by the Claimant, he indicated that he is unaware that JPS does any inspection as it relates to the customer's side after the meter socket pole, and that it is the sole function of the Government Electrical Inspectorate (GEI) and that it is the responsibility of the customer's electrician to ensure that the customer's installation is electrically and mechanically sound. He added that the determination of whether a customer's service wire might be faulty is the responsibility of the customer and their electrician and if a customer's wire is determined to be faulty, the GEI will not pass the installation as fit for connection and a GEI certificate will not be generated.
- [53] In relation to whether JPS would have been negligent in reconnecting service wire to a customer's house by only twisting burst wires back together without ensuring that the twisted wires were compressed and properly sealed, he explained that the PSCo. service wire is determined as the piece between the street take off pole and the customer meter pole. The customer wire is determined as the piece between the customer meter pole and customer's house and stated that he is unaware of JPS undertaking wire connections between the meter pole and the customer's house, in general.

- [54]** He stated that the question of negligence on the part of JPS on the customer's side does not arise as this side is entirely the responsibility of the customer. He stated that if JPS personnel joined service wires together by only twisting and not compression clamping and taping, that would be careless and not considered good workmanship. He notes however, that he does not recall ever encountering such a scenario with JPS connections since he has been in the electrical business for over twenty years.
- [55]** When cross examined, Mr Donaldson stated that it would be highly unlikely that if the fire started by the pothead on the house it could lead to the breaker and said he would expect it at the pothead outside, as there was more charring on the exterior wall of the building. He said it was highly unlikely, although possible, for fire to start on the outside and spread to the inside as wood is combustible material, but stated that it does not seem logical to say that the fire started outside and spread to the inside, which could be an explanation for the soot on the door and window, close to the breaker.
- [56]** He stated that soot on the outside indicated that the fire was on the inside, and, if the fire started high, it is most likely to stay high and there would be intense charring at the top, outside. He pointed out that, based on the documents he saw, it was clear that the fire was on the inside, coming out.
- [57]** He pointed out that soot outside indicate fire was on the inside and rising up and the exterior wall indicated intense fire on the inside and said if the fire started high, it would most likely stay high and charring would be seen at the top, outside. He stated that if the fire originated at the pothead it would go up and that smoke from fire is always going to rise.
- [58]** In relation to the charring at the middle level on the outside of the house and at the top of the entrance, he expressed the view, based on the pictures which he said he saw, that this suggests strongly that the fire that caused the residue was just on the inside at that level and within inches of that level.

[59] He expressed the opinion that based on the documents it is clear the fire was on the inside, coming out and not on the outside and stated that he can say with certainty the fire started on the inside.

[60] In clarifying his evidence, Mr Donaldson said he saw no charring in the vicinity of the pothead and if the fire had started there, there would have been lots of dark smoke stains. He also stated that the roof would catch afire from arcing+

The Submissions

[61] At the end of the hearing, I reserved my decision and Counsel for the parties were invited to file written closing submissions and authorities in support, although skeleton submissions were filed prior to the commencement of the trial. The Claimants' Skeleton Submissions were filed on November 28, 2017. The Defendant's Skeleton and Closing Submissions were filed on November 21, 2017 and May 22, 2018, respectively. Up to the time of writing, there is no record of any closing submissions from the Claimants' Counsel.

[62] In their skeleton submissions, the Claimants indicated that when the evidence is examined, the elements for negligence are met and the Defendant is in breach of both the **Electric Lighting Act** and the **Office of Utilities Regulation Act**.

[63] It was further submitted that under Section 22(1) of the **Electricity Act, 2015** (which repealed the **Lighting and Electric Act** in existence at the time of the fire), there is a duty of a transmission licensee to develop and maintain a reliable, efficient, coordinated, safe and economical transmission system in accordance the terms of the licensee's transmission license, the transmission code, the Act and the regulations made.

[64] Subsection 2 was also cited. It states as follows:

"it shall be the duty of an electricity licensee to ensure that it does not commit an act or omission that will adversely affect, directly or indirectly, the security and stability of the electricity supplied by it or by any other person to consumers".

[65] The Claimants also submitted that as customers, the Defendant owed them a common law and a statutory duty of care to take reasonable care in its provision of electricity to ensure that no injury or loss was caused to them, as it ought to have been reasonably foreseeable that they would be directly affected by the actions or inactions of the Defendant.

Defendant's Submissions

[66] It was submitted on behalf of the Defendant that pursuant to the **Electricity Act**, the All Island Electricity License, 2001 and the Line Extension Policy, it only has an obligation to erect and maintain distribution wires along the public roadway and to provide service wire up to a maximum of 100 feet. It contended that the customer is responsible for the electrical service wiring from the meter to, and within his/her private premises. Section 8.3 of the JPS Line Extension Policy was cited. It states:

“Extensions on private property on the incoming (line) side of the company’s revenue meter will be owned and maintained by JPS at its expense. Extensions on private property, on the load (customer’s) side of the Company’s revenue meter will be owned and maintained by the applicant at their expense”.

[67] The Defendant also submitted that the elements of negligence have not been sufficiently proven by the claimant, indicating that the defendant’s duty of care to the claimants was met, in that its electrical wiring system was maintained in proper working order and that the fire did not originate on, nor was it caused by any defect in JPS’s electricity supply system.

[68] The case of **NG Chun Pui and Others v Lee Chuen Tat and Another** [1988] R.T.R. 298 was cited in support of the Defendant’s subsequent contention, that the doctrine of *res ipsa loquitur* is inapplicable to the present case. It was noted that if the fact of the fire itself raises a prima facie case of negligence, where the defendant adduces evidence to rebut the presumption, it is no longer proper for the court to draw this initial inference.

[69] It was also submitted on behalf of the Defendant that the %customer call management system records+ demonstrate that there was no lawful connection to its electricity distribution lines in May 2010. It contended that the fact that the Claimants had electricity supply on this date requires an explanation, and strongly points to the fact that they were in breach of section 17 of the **Electric Lighting Act** which states that:

“Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses, any electricity shall be guilty of simple larceny and punishable accordingly, and the Resident Magistrate’s Court shall have jurisdiction in case of any such offence”.

[70] The Defendant submitted that to hold it liable for the damage sustained by the claimants, in such circumstances, would amount to allowing the claimants to profit from their fraudulent actions and posited that the fire may not have occurred, but for the fact of the illegal extraction at the time of the fire.

[71] The Defendant further submitted that the Claimants have not demonstrated the elements necessary to sustain a claim for breach of statutory duty. It indicated that the terms of the **Electric Lighting Act** are not meant to protect against injury or loss which results from faulty wiring on the customer side of the meter. According to the Defendant, the loss suffered by the Claimants does not fall within the ambit of the Defendant’s statutory duty. The defendant also submitted that the operative and effective cause of the fire was the faulty wiring in the Claimants’ premises, specifically, the spliced and mechanically unsound joint in the vicinity of the pothead, near the eaves of the claimants’ building.

The Issues

[72] In view of the evidence presented and the submissions of Counsel, I find that the issues which arise for determination are whether the Defendant breached its duty of care or its statutory duty to the Claimants and as a result their home was destroyed by fire, and if so, whether they are entitled to damages.

The Law and Application to Facts

[73] In order to establish liability on the part of the Defendant, the Claimants have to show that the Defendant had a duty of care to them that in providing its service of supplying electricity to them, it would exercise the care expected of such utility company involved in that business activity and that there was a breach of that duty and as a consequence of that breach their house was destroyed by fire. (see **Jamaica Public Service Company Limited v Marcia Haughton**, SCCA No 136/ 2000, delivered December 20, 2007).

Duty of Care

[74] In **Jamaica Public Service Company Ltd. v Winsome Ramsey**, Supreme Court Civil Appeal No. 17/03, Harris J.A. noted that in discharging the burden of proof, the claimant must show the existence of sufficient relationship of proximity or neighbourhood between the defendant and himself, the foreseeability of damage by reason of the defendant's negligent performance of an operation resulting in injury +

[75] The issue of whether the claimants have established negligence on the part of the defendant is a one of fact. The claimants therefore need to provide evidence to prove on a balance of probabilities that the Defendant was negligent and that the fire which destroyed their house resulted from that negligence.

[76] The evidence shows that the defendant and Mrs Senior were in a contractual relationship in which the defendant provided electricity to their home. This relationship therefore meant that there was the existence of a sufficient relationship of proximity+ between them. The defendant therefore owed her a duty to take care when providing electricity to her to ensure that she did not suffer any injury.

[77] On the evidence of Mr Lewis, who I observed to be a credible witness, I find that the claimants were not customers of the defendant at the time of the fire. I accept

as true, his presentation of the records of the company showing that the electricity was disconnected in January of the same year. Any connection subsequent to this period was therefore illegally done.

[78] It was stated in **Dominion Natural Gas Company Ltd. v Collins and Perkins** [1909] AC 640 that a duty of care is owed by %a person in control of dangerous things to protect against harm those who may come in close proximity to that thing+. Electricity has been accepted by the courts as a dangerous thing and the defendant, as generator and supplier, had a general duty to ensure that those who come in close proximity to its lines did not suffer loss or damage.

[79] Section 5 of the **Electric Lighting Act** also imposes a duty of care to exercise due and reasonable care on the public utility company to secure the public from personal injury (**Jamaica Public Service Co. Ltd. v Winston Barr, Bryad Engineering Co. Ltd., Raymond Karl Adams, Noel Bryan, Dervin Brown and Milton Verley** (1988) 25 J.L.R. 326).

[80] It is clear from the JPS Line Extension Policy and Standard Terms and Conditions, as well as the evidence of the Defendant% witnesses, who I found to be generally consistent, that the Defendant is not responsible for the wiring beyond the meter. I find that the duty of care owed to the Claimants was to ensure that those in proximity to the lines were protected from personal injury. This duty of care requires the Defendant to properly install, inspect and maintain the wiring which was within 100 feet of the service pole, but does not extend beyond the wiring and equipment for which the Defendants are responsible.

Breach of Duty

[81] The main dispute is whether the Defendant breached the duty of care owed to the Claimants. The test is what the reasonable man would do if placed in the Defendant% position, having regard to the likelihood of harm, the seriousness of the injury that is risked, the utility of the Defendant% conduct and the

practicability of measures to avoid the harm (see **Blyth v Birmingham Waterworks Co. Ltd.** (1856) 156 ER 1047).

- [82] I find that at the commencement of the contractual period, the wiring at the house was properly installed and inspected, but damage occurred as a result of the impact of Hurricane Ivan. I believe that the Defendant made repairs to the damaged wire from their pole to the meter after the passage of the hurricane, but find it highly unlikely that they would have done the repairs to the wiring beyond the distance for which they were responsible. I therefore reject the evidence of Mr Senior that the Defendant inspected the wiring and certified it fit to be connected to the electricity supply. I conclude that a person outside of the employment of the Defendant company made the repairs to the wiring in a faulty and sub-standard manner. I find no evidence that the fault originated with the Defendant.
- [83] In the case of **JPSCo v Marcia Haughton** (supra), the Court of Appeal allowed the appeal on the basis that it was inexplicable why the learned trial judge preferred the evidence of the eyewitnesses called by the respondent to that of the electrical engineers who differed as to the cause of the fire. The Court pointed out that the evidence of expert witnesses must be properly and thoroughly assessed.
- [84] I relied heavily on the expert evidence of Mr Kevin Donaldson. I found his evidence as contained in the report and his viva voce evidence, to be coherent, detailed and credible. He too gave evidence which I accept as true, that the wiring from the pothead to the house and the wiring inside the house are the sole responsibility of the homeowner and that the Defendant was responsible solely for the wires which ran from their pole to the pothead. His professional opinion is that the fire originated from inside the Claimants premises and that the fire damage received was not from a cause relating to the quality of JPS service. His evidence was also supported by images depicting the state of the premises.

- [85]** I find as a fact that the wiring which extends from the meter pole to the pothead on the Claimants house are the responsibility of the Claimants and that the Defendant did not install that wiring. I believe it is fair to infer that the wiring on the claimants house had not been maintained over a number of years and that after it was damaged by hurricane the Claimants did not get an electrician to carry out any repairs on the wires, which were their responsibility, whereas the Defendant did repairs to the section for which it had responsibility. I also find that the fire originated within the Claimants house. I believe the testimony of Mr Lewis that he saw irregularities at the point of connection of the customer service wire and that the conduit, made of PVC which ran on the wall of the house at the time of his visit, showed signs of overheating and burning, whereas those within the responsibility of the Defendant remained in good condition.
- [86]** Mrs Senior, the only eyewitness, states that after she heard the explosion in the roof, she saw fire engulf the ceiling. I agree with Counsel for the Defendant that her evidence is crucial to their case as she was the person who entered into a contractual relationship with the Defendant in the process of obtaining electricity supply in 1984, and because she was the only eyewitness to the events which give rise to this claim.
- [87]** I am mindful that Mrs Senior was not cross examined at trial and having assessed her evidence against the background of the documentary evidence and the evidence of the other witnesses, I have given weight to it, especially as regards the evidence as to her contractual relationship with the Defendant and as to where she said the fire started. Although missing from her witness statement, I believe that she told Mr Lewis, upon his visit to the premises, that she heard a popping sound coming from the living room and went to investigate and saw fire coming from the breaker panel.

Res Ipsa Loquitur

[88] The Claimants as well as the defendant pleaded the doctrine of *res ipsa loquitur*. The elements of the doctrine as stated by Morrison JA in **Shtern v Villa Mora Cottages Ltd and Another** [2012] JMCA Civ. 20 are that: (a) the occurrence was such that it would not normally have happened without negligence; (b) the thing that inflicted the damage was under the sole management and control of the defendant; and (c) there must be no evidence as to why or how the accident took place.

[89] I agree with the Defendant's belated contention that this doctrine is inapplicable to the case at bar. The Claimants have the onus of proving either a specific cause of the fire involving the negligence on the Defendant's part or that the fire had occurred in circumstances in which prima facie it could not have occurred without such negligence. They have sought to do both. As submitted by Counsel for the Defendant, the Claimants have pleaded precise particulars of negligence that they claim was the cause of the fire.+

[90] In the case of **Trinidad and Tobago Electricity Commission v Bridgemohan Sookram and Another** (1999) 57 WIR 473, which I find to be persuasive, de la Bastide CJ, in delivering the judgment of the court, commented on the error of the trial judge that:

"...he did not appreciate that in order to render the doctrine of 'res ipsa loquitur' inapplicable, it was sufficient for the commission to show that it was equally likely that the fire had been caused by negligence on the respondent's part as by negligence on its part and that therefore it was highly relevant if the commission could show that the system of wiring in the respondents' home might have been defective and this might have caused the fire, or that the fire might have been caused by overloading of the circuits by the respondents coupled with the failure of their fuses or breakers to provide the safeguard which they were supposed to provide in such circumstances..."

[91] I have already concluded that the wiring beyond the meter towards the house, was not the responsibility of the Defendant. I accept the explanation of the Defendant and the expert opinion of Mr Donaldson as to where the fire

originated. Based on the location of the origin of the fire, the written, oral and pictorial evidence of the wiring on the premises, and the description of how the fire began by the sole eyewitness, Mrs Senior, I find that the fire did not occur as a result of any negligence on the part of the Defendant. I therefore find that the Defendant did not breach the common law duty of care owed to the Claimants.

Breach of Statutory Duty

- [92] The Claimants also allege that the fire occurred as a result of the Defendants' breach of the **Electric Lighting Act** and the **Office of Utilities Regulation Act** under which they are to provide electricity in accordance with reasonable standards and safety and dependability, among other things.
- [93] The Claimants, whether intentionally or otherwise, have failed to specify the provisions of either Act which they claim to have been breached. Reference was made in the Skeleton Submissions of the Claimants to sections 62(1), 22(1) and 22(2) of the **Electricity Act** which repealed the **Electric Lighting Act** approximately one year after this claim was brought. No reference was made to any provisions of the **Office of Utilities Regulation Act** and I have not seen the relevance of this Act to the present claim.
- [94] In order for the claim for breach of statutory duty to be sustained, the Claimants needed to demonstrate that they fall within a class of persons that the statute is meant to protect, that the injury falls within the ambit of the statutory duty and the breach was the operative cause of the loss they incurred. (**Gorris v Scott** (1874) LR 9 Ex 125; **McWilliams v Sir William Arrol & Company** [1962] 1 WLR 295). They have failed to establish on a balance of probabilities that the injury falls within the ambit of the statutory duty and that a breach of said duty was the cause of the loss they claim to have suffered. There is no evidence that the Defendant failed to maintain its equipment and wires in accordance with industry standards. On the contrary, I find on the evidence, that the faulty state of the

wiring at the Claimants premises of which they were aware, and their failure to correct same was the operative cause of the fire.

Conclusion

[95] When I consider the evidence of Mr Senior and Mrs Senior, to the extent that I have afforded it weight, alongside the evidence of the Defendant's witnesses and the evidence of the expert witness, I prefer and accept the evidence of the Defendant. As stated earlier, I placed much reliance on the expert evidence and he too, gave evidence that wires from the pothead to the house and wiring in the house are the sole responsibility of the homeowner and that the Defendant was responsible solely for wires which ran from their pole to the pothead. I also accept his professional opinion that the fire damage ~~was~~ not from a cause relating to the quality of JPSCo infrastructure up to the pothead before the meter or the quality of the electricity being supplied to the premises.+

[96] I therefore accept as a fact that the Claimants are responsible for the wires which extend from the meter pole to the pothead on their house, as well as all the wires on their house, and find as a fact that the fire originated from inside the house as there was no sign of damage to the service wires which were the responsibility of the Defendant. I also accept and that there was faulty wiring from the meter pole to the Claimants house and it was their responsibility to maintain same and they failed to do so.

[97] In view of the foregoing, the Claimants have failed to establish on a balance of probabilities that the fire which took place at their premises was caused by the negligence of the Defendant. There will therefore be judgment for the Defendant with costs to be taxed, if not agreed.