

Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. H.175 OF 1998

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| BETWEEN | MARCIA HAUGHTON | CLAIMANT |
| AND | JAMAICA PUBLIC SERVICE COMPANY LIMITED | DEFENDANT |

Raphael Codlin & Dwayne Thomas instructed by Raphael Codlin & Company for Claimant.

David Batts & Miss D. Gentles instructed by Livingston Alexander & Levy for the Defendant & with them Miss Gillian Burgess of the Jamaica Public Service Company Limited.

HEARD: 21st, 22nd & 30th November, 2005

JAMES, J.

1. This claim arises from the destruction of the Claimant's Mini Mart and bar by an electrical fire on the 2nd October 1996.

In this claim the visual evidence of Keith Brown and Ancerd Thompson and evidence in the witness statement of Roy Thompson (now deceased) was admitted in accordance with the Evidence Act, is challenged by the evidence of Timothy Scarlett a Professional Engineer and Beresford Williams an Electrical Engineer employed to the Defendant.

2. The evidence of Keith Brown and Ancerd Thompson was that they saw sparks on the utility pole of the Defendant and that they also saw fire "running" towards the

Claimant's shop. Both witnesses were cross-examined but nothing significant turned on that exercise. As stated above the evidence of Roy Thompson was received by way of statutory provisions.

In his witness statement he said he saw sparks coming from one of the defendant's light pole. Then he said "I saw the sparks shoot down to the next pole which was right at Miss Haughton's shop. Shortly after I saw smoke coming from the shop."

3. In its defence the Defendant called four witnesses -- Lindy Elliott, Clyde Brown, Beresford Williams and Timothy Scarlett.

Lindy Elliott is a Detective Sergeant of Police who on the morning of the fire was on mobile patrol in the area of the fire. Although he said that he discovered the fire, there is also evidence from Roy Thompson that a police vehicle that was passing stopped at the scene. He also said he observed "thick" black smoke coming from under the roof of the Mini Mart and bar in the vicinity of the pot head.

4. Clyde Brown is a Technical Assistant employed to the Defendant. His evidence is concerned with the observation of a defective utility pole in the vicinity of the shop premises in May 1996 and the replacement of that pole before October 2, 1996.

Mr. Brown further stated that nothing other than replacement of the pole was done meaning that none of the equipment attached to the pole was found to be defective at the time of his routine check in May 1996.

5. Beresford Williams is an Electrical Engineer employed to the Defendant. He visited the scene on the 3rd October 1996 and observed that the switches on the breaker were in the "ON" position which means that the breaker had not tripped. He said the breaker is designed to trip once there is a short circuit. This could lead to a fire in the building and also lead to the service neutral burning off at the JPS pole. Mr. Williams concluded that the cause of the fire was attributable to the connection of several pieces of equipment to the power supply which resulted in an overload of the system.
6. The last witness for the Defendant was Timothy Scarlett a professional engineer with 37 years experience. His opinion was sought nearly nine (9) years after the fire. He concluded that the fire damage was initiated at the shop/ pothead due to a break down of insulation level at the potheads connections.

He also gave the following reasoning:-

1. The break down occurred at the customer's wires, possibly due to the overload conditions in the shop and slack connection at the pothead.
2. The pothead short circuit at the shop, created conditions which led to the fire.

The shop's circuit breaker would not trip under these conditions.
3. The pothead fire caused the neutral at the J.P.S. Company pole connection to be burnt off.
4. All the above conditions would result in a loss of power to the other three (3) houses being fed from the same service wire.

7. From the evidence of Beresford Williams it is fair to conclude that he based his conclusions on the belief that the electrical system in the shop was overloaded by the connection to it of several items of equipment. He further said that when there is an overload and the breaker does not "trip" that can cause the conductors to heat up a 'short out'.

There is evidence which is that the breaker did not trip.

8. On the other hand Timothy Scarlett seem to contradict that of Beresford Williams. He said the problem in the shop did not occur because the breaker did not trip. A fire starting in the pothead would not cause the breaker to trip.

Mr. Scarlett gave some instances which may cause "sparking" at the JPS pole.

He listed them as follows:-

- (a) If the insulators are broken - (although he said this is quite rare).
- (b) Slack connections can cause sparking at the pole.
- (c) if the service wire itself is defective.

9. There is evidence from the Claimant that at nights and on the night of the incident she had plugged out a freezer with drinks, a poker machine, a fan, component set and cash register.

Mr. Scarlett testified that a fire could move or run along the service wire at a speed causing no burning of the service wire.

10. Having considered all the evidence including the opinion of the two electrical engineers, I make the following findings:

- (i) The Defendant is a company registered under the laws of Jamaica with authority to provide and distribute electricity.
- (ii) The Claimant was a customer/consumer of electricity supplied by the Defendant.
- (iii) On or about the 2nd October, 1996 an electrical fire destroyed the Claimant's shop and bar.
- (iv) I accept the evidence of Keith Brown, Ancerd Thompson and Roy Thompson in particular that they saw sparks at the JPS light pole and fire "running" along the (service) line towards the shop before any fire was seen at the shop's pothead.
- (v) That when Lindy Elliott arrived on the scene sparks and fire had already moved from the pole to where he saw thick black smoke coming from under the roof in the vicinity of the pothead.
- (vi) That the Claimant had that night plugged out some of the equipment used in the shop.
- (vii) I find that at that time of night and with less demand on the electrical system it is not likely that there was an 'overload' on the system.
- (viii) The inspection done by Clyde Brown in early May 1996 and the subsequent replacement of the defective JPS pole is not conclusive of that all the equipment on the pole was in good working order.

- (ix) The evidence of Timothy Scarlett did not rule out the possibility of any of the conditions at paragraph 8 above.

I therefore find on a balance of probabilities that the evidence of Brown, Thompson, Roy Thompson is preferred to that of the electrical engineers who have differed as to the cause of the fire.

The Law

I agree with Counsel for the Defendant that the rule in **Ryland v Fletcher** is not applicable in this case.

The Claimant has, though her witnesses established that spark and fire came from the Defendant's utility pole traveled along the service wire and on to her premises.

The Defendant in paragraph 4 of its defence stated its defence but failed to lead such evidence to show that fire was caused by an excess load on the circuit due to the number of appliances on it.

Damages

The Special damages claimed is stated as :

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| (a) | Destruction of Bar and grocery | \$1,500,000.00 |
| (b) | Destruction of goods | \$3,000,000.00 |

Firstly the evidence revealed that Claimant carried on her business in leased premises.

There is no evidence of the term of the lease nor of the profits she realizes or expects from her business. There is no evidence of what efforts if any she has made to resume business elsewhere.

Notwithstanding these deficiencies the Court recognizes that the Claimant has been put out of business and deserves some compensations.

Her claim in respect of appliances, equipment, stock in bar and grocery and building is put at \$3,000,000.00.

Her claim in respect of the destruction of the bar and grocery is interpreted to mean the loss of her opportunity to carry on her business in those premises because of the fire.

Put another way, my understanding of the claim is that she has lost the opportunity to make a profit.

The period contemplated for which she should be compensated for loss of her profits is eighteen (18) months.

Re claim for that loss is reduced by 50%.

The claim for the destruction of her goods is however reduced by 33 $\frac{1}{3}$

Judgment for Claimant for \$2,750,000.00 with interest at the rate of 6% with effect from 2/10/96 to 30/11/05.

Costs to be agreed or taxed.

