THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014-00752

BETWEEN

NEIL PERSAD **FIRST CLAIMANT**

AND

SANDRA PERSAD **SECOND CLAIMANT**

AND

TRINIDAD AND TOBAGO ELECTRICITY COMMISSION **DEFENDANT**

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr V. Maharaj for the Claimants

Mr D. Balliram for the Defendants

Date: 11 October 2017

JUDGMENT

1. The Claimants are husband and wife. There was a fire at their home on 22 August, 2012 at Waterloo. They live in an upstairs and downstairs house. The property was given to them by the first Claimant's father. It was renovated over time by the Claimants who lived there with their six children. The first Claimant is a medical doctor and his wife is a medical records clerk.

2. The Claimants allege negligence against the Defendant. They have also raised res ipsa loquitur. The Defendant denies they were negligent. The central issue the court had to decide was whether this was a case of negligence, res ipsa or whether it can be attributed to an accidental cause for which the Defendant could not be liable.

3. The Claimants gave evidence of the happening of the fire. They also set out the losses they suffered. Two witnesses were called by them – one Mitra Rampersad did a survey of the house and made recommendations and a costing for reconstruction/repair of the damaged areas and one Chadee Manorath, an electrical and instrument engineer, who went and made observations of the property afterwards.

4. The Defendant called three employees of the company including an engineer. The determination comes down to an assessment of the evidence given by these witnesses and consideration of the documentary evidence adduced.

5. The Defendant made several objections suggesting the Claimants were adducing expert evidence, which was not independent and that the foundation was not laid properly for this evidence. The Defendant itself, however, called an engineer who purported to give evidence about whether the Defendant was responsible for the fire. The foundation was not laid for this witness' evidence either. So the Defendants objects to evidence of the Claimant for which the same objections can be made of its own witness.

6. The court has the duty to consider the evidence adduced and see what reasonable determinations can be made on the evidence. This is a contest between two parties. None of the evidence, strictly speaking, can be seen to satisfy the requirements of Part 33 regarding expert witnesses. They do not certify their duties to the court and do not meet the other strict criteria set out under Part 33.

7. But this does not mean the evidence is inadmissible or of no value.

8. Witnesses who have experience and expertise can give evidence of their observations and even their opinion on certain matters which from their qualifications, experience and observations they may be able to give. At the end of the day, while they may not be experts under Part 33, their evidence can be of value to the determination of contested issues. Ultimately, what would be important is the weight that can be attached to their evidence having regard to all circumstances including their methodology, the observations they made, their disinterest, their backgrounds and other factors such as demeanour, consistency with other evidence including documentary evidence, and so on.

9. The court has to be reasonable in how it manages evidence. Otherwise, the court will unnecessarily deprive itself of evidence which could be of value in the determination of the case. Put another way, most litigants will not have the means to truly engage experts who meet the criteria of Part 33. However, evidence of a witness' observations can be of value to assist the court to make findings of fact necessary to the determination of the claim.

10. Again it all depends on the evidence that is being given. Any witness is entitled to give evidence of what they have seen, heard or did. It does not follow from this that only experts within the contemplation of Part 33 could ever offer an opinion in a trial. Such opinions as given have to be carefully considered and given only such weight that can properly be attached to it given all the circumstances.

11. A further point. The Defendant has questioned the independence of Mr Manorath because he is a friend of the Claimant's sister-in-law. It does this without consideration of the obvious irony that it asks the court to accept the evidence of Ms Saidel Hosein, who is their employee.

12. Again, the court has to look to the value that can be added by witnesses giving careful consideration to all factors including their relative disinterest in the matter.

13. I turn to the evidence. The Claimants really can give no evidence as to the cause of the fire.

14. I considered the evidence. Mr Rampersad's evidence was essentially related to the state of the building from his observations. He made recommendations for the repair work needed. His evidence cannot assist with the cause of the accident. In any event I found his evidence to be credible in the sense that he set out clearly what he saw. From his background he clearly is in a position to give evidence regarding the remedial work needed based on his observations.

15. Mr Manorath gave evidence that he examined the incoming T&TEC and home connection cables – he saw that both cables showed signs of being burnt within their insulations.

16. He further went on to say that he "observed" that the fire started due to overheating at the connection point of the incoming T&TEC lines and house cable. This, he "believed" was caused by the point of connection becoming slack where the cables meet.

17. Mr Jones for T&TEC, using a voltmeter, checked the voltage on the Defendant's line at Pole No. 340A. All reading were "within an acceptable tolerance of the nominal voltage for residential premises". He observed no visible signs of charring or burning of the service connection wire. He checked the voltage at the transformer and found it to be normal. This examination was done on the same day, some hours after the fire.

18. Mr Sherwin Francis, a crew foremen, gave instructions to remove the service connection wire from the pole and found it to be in good condition as there were no visible signs of charring or burning.

19. Saidel Hosein was the duty engineer. She had been working at T&TEC for a year and a half, after graduating from the University of the West Indies with a BSc in Electrical and Computer Engineering.

20. She checked the condition of the point of entrance wire, the secondary connection wire, the meters, the transformer circuit cable, the pole number, the owners of the property, and she recorded the names of the fire officers and police officers on duty.

21. She examined the wire from the main line of the Defendant's supply. She saw no signs of burning, scorching or charring. The entrance cable also showed no such signs.

22. She was looking at these to determine if "there were any electrical surges on the lines."

23. She went back to office and checked their system for trouble reports in the previous six months before the accident. There were none by the Claimants. She found no record of any recent repairs to the Claimant's point of entrance. She "concluded" there was no fault on the Defendant's distribution system and the Defendant was not responsible for the fire.

24. She saw an Electrical Inspectorate Report, which showed all circuit breakers were on the "ON" position – this confirmed there were no surges or overloading of the circuit breakers.

25. She criticises Mr Manorath's report as lacking factual evidence of the cause of the fire. She went on to say that a malfunction of electrical appliances could cause overheating of the customer's system which could cause a fire. There was nothing however to suggest whether any investigation took place with this angle.

26. The witnesses were cross-examined. Of interest Mr Rampersad was not challenged on any of his observations and recommendations.

27. Mr Manorath in cross-examination accepted this was his first report regarding a residential fire. He stated how he concluded the slackness caused the overheating. He did, however, have previous experience as an electrician and later as an engineer. He is now a teacher. He examined the cables on the ground.

28. Ms Hosein noted her observations were made from 50 ft. away regarding the point of connection.

29. She said she could not refute that Mr Manorath saw burning on both the incoming and outgoing cable.

30. She accepted she only looked for surges. She accepted a slack connection can lead to a fire. She had not checked the connector in house to see if it was loose or slack.

31. A report was done by the Electrical Inspectorate, an independent body under the Ministry of Public Utilities. That report found the service was adequate; protective devices adequate; the earthing system was adequate; conductors were adequate; branch circuits protection were adequate; no overloaded circuits. 75% of the upstairs ceiling was destroyed. The conductors in the splitter unit were in good condition. The report also noted that there was no evidence to suggest that the fire occurred due to a fault in the electrical wiring.

32. This report, therefore, all but cleared the Claimants of any responsibility for any of the installations under their control. Ms Hosein's evidence also establishes that there was no surge nor were there any unusual reports.

33. This therefore leaves Mr Manorath's evidence intact. Ms Hosein did not look at the point of connection to determine if it was slack. She also accepted that this could cause a fire. Mr Manorath's evidence also remained intact that the incoming and outgoing cables both showed burning within the insulation. This also is not refuted by the Defendant.

34. The evidence is that this connection is within the control of the Defendant. There was also no evidence when last this connection had been checked by the Defendant or in fact whether it had been checked since the connection was made.

35. Despite Mr Manorath's lack of prior experience with residential fires I found him to be a credible witness who accurately reported what he observed. There also is agreement that a slack connection can cause a fire. Having excluded surges and without identifying any fault in the electrical wiring of the premises, based on the evidence, it is both plausible and reasonable to conclude that the fire was caused by this slack connection where the cables met, which was within the control of the Defendant.

36. As noted, there is no evidence of any inspection of this connection by the Defendant. Failing to do so routinely at reasonable time intervals, given the dangers posed by a slack

connection demonstrated negligence on the part of the Defendant. In my view, therefore, the Defendant is responsible in negligence for the fire at the Claimant's home.

Damages

37. The next issue to be considered will be damages. It is not in dispute that the property of the Claimants was partially destroyed. It is not disputed that they lived in the home with their six children. The first Claimant is a surgeon. The second Claimant is also in the medical field as a records technician. It is obvious that in the course of their marriage they would have acquired many possessions. From the undisputed evidence they had invested in their property. Their home would have included all the things a standard middle income home may have.

38. They have given evidence that several receipts for items purchased were destroyed in the fire. This seems perfectly reasonable to believe.

39. In some instances, the Claimants, more particularly the second Claimant, went about and got estimates for the replacement of items she said were similar to the items they had owned and which were destroyed. The question is, do I accept these Claimants as truthful witnesses. There were admittedly some discrepancies in their evidence – for example in the first Claimant's witness statement he had asserted that he got estimates, but in cross examination he accepted his wife had gotten them. They are husband and wife at the end of the day. There would be no reason for him not to accept what enquiries his wife had made. It is also fair to say that they would have discussed the matter and would have acted as a team. In the circumstances, I saw no reason for these discrepancies to materially affect the court's acceptance of these witnesses as being generally truthful.

40. This leads therefore to a careful consideration of their specific claims for the various items and to consider any supporting evidence in respect of the specific items, the reasonableness of the claims, the likelihood that the items would have cost what is asserted, and make a determination on these matters. It is also noteworthy that Mr Rampersad's evidence was not seriously challenged about what he observed about the building and what would be necessary to restore the building to full use having regard to the effects of the fire.

41. What is relevant, however, is that so many of the Claimants' supporting documents – estimates to replace items in particular were not agreed. The Claimants therefore had the responsibility to prove these documents. Several were not even included in the witness statements. Thus the court had no supporting documents for items which it was reasonably expected the Claimants would have. While receipts from before the fire can be taken to have been destroyed, where documents were obtained after – including receipts, estimates or invoices – these would have to be proved in the normal way – and the court expected the receipts to be presented to the court in respect of costs incurred after the fire. The Claimants would have known of the intention to bring a claim.

42. Furthermore, several documents attached to the claim from were not put into evidence through the witness statements of the Claimants and these documents were not agreed. Thus they did not find their way into evidence.

43. Mr Rampersad made several recommendations for what work is needed to restore the building. The first Claimant said he had an estimate for this work amounting to $684,892.00. However, that estimate was not put into evidence.

44. The Claimants claimed $302,600.00 for teak cupboards and furniture in the house. This was a substantial claim.

45. It may have been expected that the Claimants would have said who constructed the cupboards and either call that person as a witness or obtain a document indicating this from the maker and seeking to admit it as a hearsay document.

46. The Claimants claimed for an air condition unit – it is not unusual to expect the Claimants to have an air condition in their bedroom. The cost claimed of $7,000.00 is reasonable.

47. The claim for the re-wiring of the electrical connection of materials and cost seemed both necessary and reasonable. I find this expense proved in the sum of $21,392.37.

48. The cost of retaining Mr Rampersad in the sum of $5,175.00 is reasonable and proved.

49. The cost of repainting the downstairs area was reasonably expected. I accept the Claimants evidence on this and allow the claim for $2,960.00.

50. The Claimants sought to claim for furniture that had to be repainted downstairs in the sum of $10,364.50. However, the first claimant did not indicate what furniture this was or why it needed to be repainted. I do not find this claim proved.

51. The first Claimant gave evidence of loss of a camcorder valued $3,900.00, a digital camera valued $2,430.00 and binoculars valued $675.00. This, in my view, I accept were lost and the values attributable to them are reasonable.

52. There was a claim for eighteen photos and seven framed canvas pictures. There were no particulars given for these two items. There was no evidence of what would be the replacement costs of these items and they are therefore not allowed.

53. The children's school books had to be repurchased. These seemed both plausible and reasonable even though receipts were not submitted. I think having regard to the items claimed this figure of $9,687.00 is reasonable.

54. The Claimant claimed for re-doing the kitchen cupboards. There was no evidence of who did the work. It would have been very easy for a receipt to be obtained and provided. Alternatively, the cupboard maker could have been called as a witness. This was a substantial claim and there was lack of sufficient evidence of this expense. This claim is not allowed.

55. The first Claimant also claimed for loss of jewellery: these included an identification bracelet for $32,000.00; six rings valued $3,600.00; four watches valued $2,000.00. While these are items which one may have reasonably expected the first Claimant would own, again he could easily have obtained evidence of the replacement cost of similar items to what he had. There was no evidence as to the description of the items, where purchased or the replacement cost. A Claimant must do better than this if there is an expectation that the court will order another party to pay compensation of this nature.

56. The second Claimant also gave evidence on damages.

57. There were uniforms for school which in my view was both plausible and reasonable. I allow the claims in the sum of $1,400.00, $1,700.00 and $1,500.00, with a total of $4,600.00.

58. There was a claim for household ornaments, curtains, wares and cutlery, bedsheets, plants etc. There was no evidence relating to description or replacement costs of these items. In my view these losses were not specifically proved.

59. There was a bold statement: I had to purchase clothes for the family at a cost of $32,935.00. There was no description of the items, statement of where these were purchased, when they were purchased, and no supporting receipts. These claims were not proved.

60. There was, however, a statement of items of jewellery lost. A statement from Laxmi Jewellers of an estimate of the jewellery lost and the cost was attached. The witness gave evidence in the witness statement that she obtained it from Shiva's Jewellery. However, of significant importance, no hearsay notice was served by the Claimant in respect of this document. Thus the Claimant was required to call the maker of the document at Laxmi Jewellery to prove it. This was to have been by witness statement since the court directed witness statements to be filed in lieu of oral examination-in-chief.

61. A similar document was advanced in respect of Indian clothing for the family including shalwars, gararahs and kurtas. This estimate was in the sum of $112,500.00. Again no hearsay notice was served.

62. The court can, of course, receive hearsay evidence in the absence of a hearsay notice. But there can be both danger and unfairness in this. Serving a hearsay notice tells the other side that a party wants to advance certain evidence, but that the witness is unavailable or it may be impractical to call the witness or the witness may not recall etc. When the notice is served, the other party can decide how important the evidence is to their case. If it is particularly important that party can, where the CPR allows, serve a counter notice, objecting to the evidence and requiring the party to produce the witness or requiring the court to decide the issue if the hearsay evidence is to be allowed or disallowed. When a

party fails to serve a hearsay notice, and the document is not agreed, the other side is entitled to carry on the case with the assumption that the other party is not pursuing that evidence. Thus, to allow the evidence at trial, in effect, allows the party that has failed to serve the hearsay notice to steal a march on the other side. This will generally be unfair.

63. Allowing these documents to be relied on by the claimant with no notice to the defendant also denies the defendant the opportunity to test the evidence in cross-examination. There may have been less expensive alternatives to the items quoted for. We are denied the opportunity of seeing and hearing the evidence and forming impressions of the witness. We are denied evidence of the process used to arrive at the figures and hearing what information was given to the witness leading to preparing the estimate. The higher the figures being claimed, the greater is the likely prejudice to the defendant. Put another way, the larger the claim being made, the more critical it is for the claimant to make attempts to call the witness, the maker of the document, to prove losses. Because, even if the evidence is allowed in, the weight the court may be able to attach to it may be limited.

64. The result is that the court is unable to rely on these documents as evidencing the values of the items quoted.

65. Both Claimants, therefore, claimed damages for various items. What there was a failure to do was to prove these losses by proper descriptions of items lost and quotations for replacement, properly admitted.

66. I have accepted certain expenses as being both plausible and reasonable.

67. However, I am unable to overlook the failings in respect of all items. The best the court can do is to make an award for nominal damages taking into account the various losses which I found including cupboards, furniture, clothing, jewellery, ornaments and other household items. It also includes possible reconstruction work for the upstairs portion of the house. A substantial amount was claimed for these and it is clear that there was substantial loss. I found there were losses and significant losses were expected. However, ultimately Claimants must prove their losses. A nominal damages award in the sum of $120,000.00 is the best the Court can do in this regard.

68. There is judgment for the Claimants against the Defendant. The Defendant must pay special damages in the sum of $68,183.87.

69. The Defendant must also pay nominal damages in the sum of $120,000.00 to the Claimants. Interest is to run on these sums from date of claim form to the date of judgment at 2.5% per annum.

70. The Defendant must pay prescribed costs based on the total of damages and interest to date of judgment.

Ronnie Boodoosingh

Judge