

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011-03176

BETWEEN

**COLIN NAKHID
RUPERT GUY**

Claimants

AND

TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

Defendant

Before The Honourable Madam Justice Margaret Y Mohammed

Dated the 12th November 2015

Appearances

Mr. Farid Scoon for the Claimants

Mr. Ravi Nanga instructed by Mrs. Sookraj-Beharry for the Defendant

JUDGMENT

1. The First Claimant was the owner of a dwelling house (“the house”) situated at Old Post Road, Pierreville, Mayaro which was destroyed by fire sometime between the 21st August 2007 and the 22nd August 2007. The Second Claimant, who passed away in April 2012, was his tenant who resided in the house at the time of the fire. They instituted proceedings on the 19th August 2011 alleging that the Defendant’s negligence caused the fire. The First Claimant pleaded damages in the sum of \$274,222.00 for the loss of the house, mesnes profits in the sum of \$48,000.00 and continuing at the rate of \$1,000.00 per month from the date of the incident until

judgment or payment, the cost to prepare the construction estimate report in the sum of \$ 5,100.00, the costs of conducting the investigation and preparation of the report into the cause of the fire in the sum of \$32,005.00 together with VAT in the sum of \$4,613.25, interest and costs. The damages claimed by the Second Claimant were in the sum of \$40,000.00 for the loss of furniture, appliances and personal belongings and interest on the said sum. The Second Claimant passed away in 18th April 2012 and on the 10th March 2015 Ms Yvonne Evelyn Nicholas Guy was appointed administrator ad litem of the estate of the Second Claimant for the purpose of pursuing the instant action.

2. The Defendant is a statutory body established by the Trinidad and Tobago Electricity Commission Act¹ as the sole provider of electricity services to consumers including the Claimants in Trinidad and Tobago.
3. The Claimants averred that at an unknown date to either Claimant but before the 21st August 2007, the Defendant connected the house to its electricity supply by means of electrical materials, wirings and fittings, accessories, apparatus and other electrical devices. At a time which neither Claimant can precisely specify save and except between the hours of 11:00pm on the 21st August 2007 and 2:00 am on the 22nd August 2007 when neither of the Claimants were present at the house, a fire broke out which totally destroyed it and its contents.
4. After the fire, the First Claimant appointed Claims Adjusting Bureau Limited, a company registered in Trinidad and Tobago with US Certified Fire Investigators, Loss Adjusters and Consultants to investigate the cause of the fire and to assess the extent of the damage caused to the house and its contents. Its Managing Director, Mr. Patrick Zoe, who was certified by the Department of State of the State of New York as a certified Fire Investigator Level I (Civil) and Level II (Criminal), prepared a report (“the investigator’s report”) which determined in accordance with the National Fire Protection Association (NFPA 921) Guide for Fire and Explosion Investigations 2004 Edition that the fire originated at the eave and roof of the house; at the front

¹ Chapter 54:70

northeastern section, in the immediate area where the Defendant's electrical wires leading from its Light Pole 65/2 had been physically affixed to the premises to effect the point of entry connection directly above the meter base.

5. The Claimants alleged that the fire and damage were caused by the negligence of the Defendant. In their pleaded particulars of negligence they alleged that the Defendant (a) failed to take reasonable and effective measures whether by inspection, examination, maintenance or otherwise to ensure that the electrical wires were not defective; (b) failed to correct, fix, remove, and replace electrical wires which its servants and/or agents knew or ought to have known were defective and likely to flame, burn and cause harm to the house and the contents thereof; (c) failed to regulate the flow of electricity to the house, and to respond to earlier reports of low voltage and high power surges, which were reported to the Defendant; (d) failed to take any or any effective measures to regulate the flow of electricity to the house and to provide a safe environment for the Claimants' usage of electricity; (e) failed to construct and/or to maintain the electrical wires extending between Light Poles Nos. 65/1 and 65/2 to prevent them from swinging, swaying and making contact with each other, causing fire and sparks and creating a present danger to the Claimants' house; and (f) failed to maintain the electrical wires attached to the house and to have due or any regard to the dangers arising or likely to arise therefrom.

6. In particular the Claimants averred that the Defendant (i) allowed its electrical wires and installations to functionally exist in a dangerous state and in an unsafe condition with at least 10 joining repairs to them and allowed them to unravel and deteriorate between the said Light Poles Nos. 65/1 and 65/2 and failed to warn the Claimants of the danger arising from such circumstances; (ii) failed to install, maintain or manage the said electrical installations with great or reasonable care having regard to their nature; (iii) failed to install or maintain the said electrical installations to prevent damage to the house; and (iv) failed to ensure that the wiring conformed to the Trinidad and Tobago Bureau of Standards Trinidad and Tobago Electrical Wiring Code High Voltage Installation (TTS 171 Part 2) as amended.

7. The Claimants also pleaded that they would rely on the incident itself as constituting evidence of negligence. Alternatively, they also averred that the electricity, the wirings and fittings were highly dangerous and likely to cause damage to the house and its contents unless installed, maintained and managed with great care and caution which the Defendant was well aware of. The Claimants sent copies of the investigator's report to the Defendant on the 19th January 2011 and they were informed by letter dated 8th June 2011 that it was completing its investigation and it would notify them on the issue of liability. On the 29th July 2011 the Claimants issued a pre-action protocol letter to the Defendant demanding compensation for their loss as a consequence of the fire.
8. The Defendant admitted that the Second Claimant was one of its consumers and that the supply of electricity to the Second Claimant for the house was established on the 18th October 2005. It admitted that there was a fire at the house sometime between the 21st August 2007 to the 22nd August 2007 but denied that the fire and the Claimants' loss and/ or damage were caused by the Defendant's negligence. It admitted that it received a report of the fire on the 21st August 2007 around 11.40 pm and its crew arrived at the house around 12.30 am on the 22nd August 2007. It denied that its electrical lines were defective or were in a dangerous condition to likely to flame and burn or cause damage to the house. They contended that the house received a supply of electricity from Light Pole 65/2 and that its installations to the house were in good condition. The Defendant also denied that it failed; (a) to regulate the flow of electricity to the house, (b) to respond to earlier reports of low voltage and high power surges reported to it, (c) to take any or any effective measures to regulate the flow of electricity to the Claimant's house, and (d) to provide a safe environment for the Claimants' usage of the electricity.
9. The Defendant averred that 6 months prior to the fire at the house, it received only three trouble reports for the circuit to which the house was connected and that such reports were not in the nature of low voltage or high power surges complaints and were unconnected with the cause of the fire that took place at the house. It annexed

the said reports. It also denied that it failed to construct and/or maintain the wires extending between Light Poles 65/1 to Pole 65/2 to prevent them from swinging, swaying and/ or making contact. It averred that if wind and weather conditions prevailed prior to the fire at the house which caused the Low Voltage wires between Light Pole 65/1 to Light Pole 65/2 to burst, the Defendant is not liable since it was an act of God. The Defendant contended that the fire did not result from any defect in the Defendant's electrical system or works as alleged by the Claimants and it relied on the Engineer's report and photographs which it annexed.

10. The Defendant did not admit the contents of the investigator's report on the grounds that it contained hearsay and irrelevant matters made on the basis of an inspection conducted 3 weeks after the fire. It also contended that there was no evidence to support the allegation that the fire originated at the eave of the roof of the house in the immediate area where the Defendant's electrical wires leading from Light Pole 65/2 were affixed to the point of entrance to the house. It called upon the Claimant to prove Mr. Zoe's qualifications.

11. The issues which arose from the pleadings were as follows.

- (a) Was the Defendant responsible for the fire which destroyed the house?
- (b) Can the court infer from the circumstances of this case that there was negligence by the Defendant?
- (c) If the answer to (a) and /or (b) is yes, have the Claimants proven their loss?

12. At the trial the First Claimant and Mr. Patrick Zoe gave evidence for the Claimants and Mr. Wendell Bhagirath gave evidence for the Defendant.

Disposition

13. I have concluded that the Claimants have failed to prove that the Defendant's negligence was responsible for the fire. Based on the circumstances of this case and

the paucity of evidence the Court was unable to infer that the Defendant was negligent. As the Claimants have failed to prove that the Defendant was liable for the fire which destroyed the house, the issue of damages does not arise.

Was the Defendant responsible for the fire which destroyed the house?

14. In his closing submissions, Counsel for the Claimants submitted that the Claimants were not asking the Court to determine the cause of the fire since he conceded that there was no evidence from any of the witnesses on how it started. He submitted that the only evidence which may assist the Court was that from Mr. Wendell Bhagirath who eliminated the Defendant from being responsible for causing the fire. It appeared to me that in the closing submissions, Counsel for the Claimants abandoned their claim for negligence and only sought to pursue the claim under the doctrine of *res ipsa loquitur*. I will nevertheless address the issue of the alleged Defendant's negligence since it arose from the Claimants' pleaded case.
15. Counsel for the Defendant's position was that the Claimants had failed to discharge their burden of proving that the Defendant's installation caused the fire. There was no direct evidence from any witness of how the fire started. No weight should be attached to the evidence of the Claimants' expert Mr. Patrick Zoe since he failed to establish his expertise to arrive at his conclusions that the Defendant caused the fire which destroyed the house.
16. It is settled law that to establish a claim in negligence the onus is on the Claimants to prove on a balance of probabilities that the Defendant owed them a duty of care and that there was a breach of this duty of care which resulted in loss or damages to the Claimants. There was no dispute that the Defendant as the sole distributor of electricity in Trinidad and Tobago owed a duty of care to maintain its systems and to ensure that it did not cause any damage or loss to the Claimant. The dispute was whether the Defendant breached that duty of care which resulted in the fire that

caused the destruction of the house. The Claimants' position is yes and the Defendant's position is no.

17. In my view, the Claimants have failed to discharge their burden that on a balance of probabilities the Defendant was responsible for the fire for three reasons.

18. Firstly, there was no evidence of the origin of the fire. The First Claimant stated in his witness statement that he was informed by the Second Claimant on the morning of the 22nd August 2007 that the house was destroyed by fire the night before.² He therefore did not witness the fire. There was no witness statement filed for the Second Claimant since he passed away on the 18th April 2012. The Claimants' expert, Mr. Patrick Zoe stated during cross-examination that he visited the scene of the fire about one week after and that he did not know what occurred on the date of the fire or between the time of the fire and when he visited one week thereafter. He too did not witness the fire. The Defendant's witness, Mr. Wendell Bhagirath, an electrical engineer who was attached to the Defendant's South Distribution Area as a Duty Manager in August 2007 and whose duty it was to investigate all building fires and prepare all relevant engineering reports, first visited the scene after the fire and therefore he was not present at the time of the fire.

19. Secondly, I have attached no weight to the expert evidence of the Claimant's witness Mr. Patrick Zoe who concluded that the Defendant was responsible for the fire. According to Mr. Zoe's witness statement and supplemental witness statement he is a Forensic Loss Adjuster and Consultant certified by the Department of the State of New York as a Certified Fire Investigator Level I (Civil) and Level II (Criminal). He attached copies of his certificates to his supplemental witness statement. He stated that the pre-requirements for obtaining the forensic fire investigator's certificate by the Standards Bureau, Department of State of the State of New York were twofold. There was a theoretical component where the candidate received certification after successfully completing certain approved forensic fire investigation training courses.

² Paragraph 6

The second component involved the practical training in the conduct of fire investigations. His practical investigations were carried out in Trinidad and Tobago and involved 7 investigations. He attached his application and his completion certificate. He also stated that he began his practice in 1981 and he has investigated the causes of fires at private residences, commercial businesses such as factories, warehouses, supermarkets, variety stores, business offices, restaurants, cars, ambulances, maxi taxis and an ocean tug boat. He listed 15 fires which he investigated in Trinidad and Tobago and in other Caribbean countries such as Dominica, Antigua and Barbuda and Guyana. He also stated that he conducted an inquiry into the fire at the house and he prepared a report for the Claimant where he concluded that the Defendant's negligence caused the fire. In his witness statement he set out at paragraph 3 (i) to (v) particulars of negligence as his reasons for concluding that the Defendant's negligence caused the fire.

20. During cross-examination, Mr. Zoe stated that his certificates gave the information on the courses he pursued in order to obtain them. Having examined the certificates there were no particulars of the courses he pursued in order to attain the certificates. He admitted that in the training he underwent to obtain his certificates he did not study electrical systems installed and maintained by an electricity company. He did not study the internal wiring of buildings and he did not have any training on the power system operated by the Defendant. Although he admitted that he had done a lot more investigations than the 15 he had set out in his supplemental witness statement, he agreed that none of the investigations he listed were fires caused by an electrical problem. He explained that the Fire Investigators Guide was used by all training institutes on fire investigations and that there was no such guide in Trinidad and Tobago and the Caribbean.

21. He also admitted that although he mentioned in his witness statement that the Defendant failed to inspect, examine or maintain its electrical wires he did not know how often the Defendant did this. He said that his basis for stating that the Defendant failed to correct, fix, remove and replace electrical wires which the Defendant knew

were defective came from enquiries. He did not witness the Defendant's electrical wires in the area of the house before the fire, but he made an inspection after the fire during the course of his investigation. His basis for his conclusion was not forensic but from visual testing and from information from persons who lived in the area.

22. He explained that he did not observe that the Defendant failed to regulate the flow of electricity to the house by failing to respond to low voltage and high power surges and to take effective measures to regulate the flow of electricity to the Claimants' house. He confirmed that he did not make any reports to the Defendant about such a problem and that the basis for him making such a statement was from information given to him by persons in the area and not based on his personal knowledge. He did not witness electrical wires swinging, swaying and making contact causing fire and sparks which created a danger to the house but that information was based on what he was told by other persons. He explained that the reasons he stated that the Defendant failed to conform to the Trinidad and Tobago Bureau of Standards Trinidad and Tobago Electrical Wiring Code High Voltage Installation (TTS 171 Part 2) as amended was because he believed that this was in the Bureau of Standards Code which he later accepted was not applicable to the Defendant's system.

23. Mr. Zoe also confirmed he was an expert in this matter in fire investigations and not as an electrical engineer, as such he did not know the difference between a high voltage and a low voltage wire and that he could not look at any of the Defendant's wirings and make that determination since he did not have that expertise. He was not in a position to dispute when Counsel for the Defendant put to him that the wiring between Light Pole 65/1 and 65/2 and continuing from 65/2 was low voltage. He admitted that he arrived at the particulars of negligence which he set out at paragraph 3 of his witness statement in January 2013. Notably, the particulars of negligence in his witness statement were verbatim the same particulars in the Statement of Case which was filed on the 9th August 2011.

24. Part 33.2 CPR sets out the impartial duty of the expert as:

- " (1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of the litigation.
- (2) An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.
- (3) An expert witness must state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded view.
- (4) An expert witness must make it clear if a particular matter or issue falls outside his expertise.
- (5) If an expert's opinion is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.
- (6) If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.
- (7) If after exchange of reports an expert changes his view on a material matter such change of view must be communicated to the other party."

25. In a pre-CPR judgment which is still relevant and good law, Nelson JA who delivered the judgment of the local Court of Appeal in **Sookdeo Ramsaran and ors v Lorris Sandy and anor**³ described the process the Court must use in determining the competence of a witness to give expert opinion evidence in a matter. At paragraph 29 he stated:

“ It is trite law that expert opinion evidence is an exception to the rule that opinion evidence is not admissible. An expert must have a field of expertise. A field of expertise is an organized branch of knowledge, such as valuation. However, even within an organized branch of knowledge e.g medicine or the physical sciences, there may be specialism. A witness claiming expertise in a specialist area must give evidence of the qualifications and/or practical experience he has in that area. It is not enough to say that one is a valuer to give crop valuation evidence.”

26. Mr. Zoe said that he was an expert in fire investigations and not electrical installations. He admitted that he had no training in electrical installations nor in the electrical distributions systems. Although he said that he has investigated many

³ CV A 55 of 2003

accidents caused by fire, he admitted that none of the 15 investigations he included in his supplemental witness statement concerned an electrical fire. He also failed to establish the nature of the courses he pursued to obtain his certification. Therefore there was a notable absence of evidence of Mr. Zoe's training and practical experience to satisfy me that he had sufficient expertise to investigate an allegedly electrical fire caused by an electrical installation from the Defendant. I therefore attach no weight to his opinion.

27. However, that was not all. His evidence as set out in his witness statement gave no factual basis or scientific criteria for arriving at his conclusion that the Defendant was responsible for the fire which destroyed the house.

28. In **Dayal Moonsammy v Rolly Ramdhanie and anor**⁴ Kangaloo JA who delivered the decision of the Court of Appeal had the following to say on the duty of an expert when giving his opinion before the Court:

“11. It is important to observe that Dr Bedeysie gives no factual basis nor scientific criteria for his opinion that the appellant would have to retire in about five years time. It is not apparent from the report that Dr Bedeysie was aware of the occupation of the appellant nor what his job entailed. Dr Bedeysie has not said that he is aware that the appellant was not already doing light duties or engaging in a job which required him not to lift more than ten pounds. It cannot be assumed that Dr Bedeysie was aware of the requirements of the job of the appellant.

12. It should be noted that the case of Gerard Martinez & or v Harrilal Ramdeen & Or HCA 2372 of 1979 Best J cited the well known case of Davies v Edinburgh Magistrates 1953SC 34 which was approved and applied by our Court of Appeal in Edmund & Ors v Ralph Morris Mag. App 5 of 1973 unreported on the duty of expert witnesses. “*Their duty is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of those criteria of the facts proven in evidence.*”

29. The position set out by Kangaloo JA is no different from the requirements of Part 33.2 (3) CPR. The particulars of negligence in Mr. Zoe's witness statement were:

⁴ Civ App No 62 of 2003

- “i failing to take all reasonable and effective measures whether by inspection, examination, maintenance or otherwise to ensure that abovementioned wires were not defective;
- ii. Failing to correct, fix, remove, and replace electrical wires which T&TEC, its servants and/ or agents knew or ought to have known were defective and likely to flame and burn and cause harm to the Claimants’ said Dwelling House and the contents thereof;
- iii. Failing to regulate the flow of electricity to the property, and failing to respond to earlier reports of low voltage and high power surges, reported to the Defendant, and failing to take any or any effective measures to regulate the flow of electricity to the Claimants’ property and so provide a safe environment for the Claimants’ usage of the same;
- iv. Failing to construct and or to maintain the electrical wires extending between Light Poles Nos. 65/1 and 65/2 so as to prevent the said electrical wires from swinging, swaying and making contact with each other, and causing fire and sparks and creating a present danger to the Claimants’ property;
- v. In maintaining the said electrical wires attached to the said Dwelling House the Defendant failed to have due or any regard as aforesaid to the dangers arising or likely to arise there from in that:
 - a. The Defendant allowed the said electrical wires and installations to functionally exist in a dangerous state and in an unsafe condition with at least 10 joining repairs to the said electrical wires and allowed unraveling and deteriorating of wires between the said Light Poles Nos. 65/1 and 65/2.
 - b. the Defendant failed to warn the Claimants or either of them of the danger arising from the circumstances hereinbefore set forth;
 - b. In the foregoing particulars failed to install maintain or manage the said electrical installations with great or reasonable care having regard to their nature;
 - c. In the foregoing particulars failed so to install or maintain the said electrical installations so as to prevent damage to the property of the Claimants or either of them.
 - d. The Defendant failed to ensure that the wiring aforesaid conformed to the Trinidad and Tobago Bureau of Standards Trinidad and Tobago Electrical Wiring Code High Voltage Installation (TTS 171 Part 2) as amended.”

30. The aforesaid is the substantial part of the witness statement apart from Mr. Zoe’s qualifications. There was nothing in his witness statement nor his supplemental witness statement setting out the factual or scientific basis for him to arrive at the aforesaid sweeping statements.

31. For the aforesaid reasons, I did not attach any weight to Mr. Zoe's evidence since he did not properly establish his expertise to give evidence on the cause of the fire and he failed to establish any factual basis or scientific criteria for his opinion that the fires which destroyed the house was caused by the Defendant's negligence.
32. Thirdly, the Defendant's witness Mr. Wendell Bhagirath's evidence supported its position that that the fire was not the Defendant's fault and there was no evidence to challenge his finding. Mr. Wendell Bhagirath was an electrical engineer who was the duty engineer in August 2007 for the Defendant's South Distribution area where the fire occurred. As the duty engineer he was required to investigate all building fires and prepare relevant engineering reports. His evidence was that on the 21st August 2007 when the Defendant's Telecom Operator received a report of a fire at Pierreville, Mayaro there was an immediate response by the Defendant's emergency crew since it was the Defendant's practice once a fire is established to disconnect its installation from the customer's premises as a safety precaution. The Defendant's installation included its poles, the service connection (which comprises two hot conductors insulated in black PVC material and a neutral conductor of bare aluminum/steel); the point of entrance (which is the area where the customer's entrance cable is connected to the Defendant's service connection wire) and the meter. The customer's installation included all internal electrical equipment from the point of entrance inclusive of the meter base, all circuit breakers, socket outlets, light fixtures and appliances. He stated that the customer is responsible for maintenance of his installation.
33. His report on the fire was prepared based on the Defendant's records, his observations on a site visit, his examination of the Defendant's installation and from photographs taken at the scene of the fire by Mr. Peter Bascombe. It concluded that there was no evidence to suggest that the fire was caused by the Defendant's installation and systems. He based his findings on the following evidence he found. There was external heating of the PVC insulation of the house (point of entrance) end which in his view was consistent with the fire emanating from the house. He examined the

length of the Defendant's installation from the point of entrance to the house to Light Pole 65/2 and he found it was in a good condition. When he reviewed the photographs he observed that the Defendant's infrastructure was in a normal condition.

34. He searched the Defendant's records for trouble reports for the area 6 months prior to the date of the fire and he found 4 complaints on the same circuit that the house was on including that of the fire. However there were no reports of any other problems of low voltage or high power surges on the Defendant's system. The first report was made by Rio Claro WASA of Pierreville on the 18th August 2007 at around 11:30 am of loss of supply. The Defendant found that there was a blown transformer fuse. The customers on this circuit were transferred to an adjacent transformer circuit and the electricity was restored about 1 ½ hours after the report. The second report was made by a person named Perez of Pierreville, Mayaro on the 18th August 2007 at around 1.20 pm who complained that there was no electricity supply to a building. It was found that the lead to the point of entrance had burst. The Defendant's crew serviced the point of entrance, the pole and the meter base. The third report was made by Pastor Sylvester on the 18th August 2007 at around 1615 in the evening with the complaint of a smoking meter base. The meter base, which was the customer's installation, was found to have burnt connections. The Defendant's crew disconnected the supply to the customer at the pole end of the connection. The meter (the Defendant's installation) was removed and the customer was advised to have his electrical wiring inspected and to produce a Government electrical inspectorate's inspection certificate before the supply could be restored.
35. The fourth report which concerned the fire in the instant proceedings indicated that on the day of the fire the Defendant's crew found a burst white phase low voltage conductor between Light Pole 65/2 and Light Pole 65/1 on the ground.
36. Mr. Bhagirath subsequently reviewed and commented on the investigator's report. He stated that if there were high winds and weather conditions prior to the fire which caused the low voltage wires/ conductor between Light Pole 65/1 and Light Pole 65/2

to burst, it did not cause the fire since the Claimants' electricity supply was from Light Pole 65/2 and the installations from Light Pole 65/2 to the house were in good condition. He also indicated that if the fire was electrical in nature and emanated from the Defendant's installation, there would have been signs of burning along the Defendant's service connection wire. If the source of the heat was internal which suggested that the fire was electrical in nature and emanated from the Defendant's installations, pitting and fusing would have been present on the Defendant's service connection wire. If the wire was burnt off due to external fires then those characteristics would not have been present. He did not observe pitting or fusing on the Defendant's service connection wire. Based on his examinations, the Defendant's service connection wire was burnt off from the house due to an external fire and there were no signs that its service connection was burnt along its length.

37. He also indicated the Trinidad and Tobago Bureau of Standards Trinidad and Tobago Electrical Wiring Code High Voltage Installation (TTS 171 Part 2) as amended is not applicable to Low Voltage conductors such as those which ran between Light Pole 65/1 and Light Pole 65/2. He also received a report from the Government Electrical Inspectorate which was unable to conclude that the fire was electrical in origin. In summary, his evidence was that he was unable to determine the cause of the fire, but he ruled out that it was electrical in nature or that it was as a result of a fault on the Defendant's installation or system.

38. The gist of Mr. Wendell Bhagirath's cross examination was that if the un-insulated wire between Light Poles 65/1 and 65/2 touched, there would have been a spark and that elements in nature such as a hurricane can cause a short circuit. He confirmed that there was a burst wire between Light Poles 65/1 and 65/2 but he was unable to determine what caused it to burst. He disagreed that the burst wire would cause a fire. He said that there would be a spark and it would fall to the ground but energy had to be sustained to cause a fire. While he agreed that the burst wire could have resulted in a surge, the Defendant did not investigate its cause and therefore it was unable to determine what caused the wire to burst. Once the wire burst and fell to the ground it

interrupted the flow of electricity to the house. The Defendant's installation which attached its wires to the Claimant's house was on the bashboard and it was burnt out. He did not examine the meter base and he did not see evidence of the fire at the meter which was the Defendant's installation. He agreed that a short circuit which is a surge can cause a fire. He found a burst conductor at the point of entrance to the Claimants' house which had nothing to do with the Claimant's installation, and all the Claimants' installations up to the point of entrance were intact.

39. Although as an electrical engineer Mr. Bhagirath did not have experience to determine the cause of a fire, in my view that was irrelevant since his role was not to determine the cause of the fire which is a broad and wide mandate. Instead, his focus was to determine if the Defendant's installation caused the fire. In my view these are two different things. Importantly, his evidence that if the fire was electrical in nature, there would be signs of burning along the Defendant's service connection wire was unchallenged. The onus was on the Claimant to adduce evidence to demonstrate that there was no other cause of the fire except the Defendant's installation, which it failed miserably to do. It was not the Defendant's duty to prove anything. All it had to do was to demonstrate based on its evidence that its installation did not cause the fire which I am satisfied that it did.

Can the court infer from the circumstances of this case that there was negligence by the Defendant?

40. In the closing submissions Counsel for the Claimants submitted that there was sufficient evidence adduced in the instant matter for the Court to make a finding of negligence against the Defendant. In particular he relied on the evidence that there was a burst wire between Light Poles 65/1 and 65/2; the failure by the Defendants to provide an explanation how the wire burst; Mr. Wendell Bhagirath's admission that it is possible that when a wire burst it may result in a fire; the Defendant's apparatus which was attached to the bash board of the house was burnt and there was no

problem with the Claimants' apparatus leading from the meter into the house since it was unaffected.

41. Counsel for the Defendant submitted that the burden of proof is on the Claimants to prove that given all the circumstances the Court can conclude that the fire was caused by the Defendant and that the evidence must demonstrate that the fire was electrical in nature. The Defendant is not required to prove anything but to show that there may have been other causes for the fire and Mr. Wendell Bhagirath stated this in his evidence which was unchallenged.
42. In the local Court of Appeal decision of **Trinidad and Tobago Electricity Commission v Mona Lindsay and anor**⁵, which was referred to by Counsel for the Defendant, Mendonca JA stated the following on the doctrine of *res ipsa loquitur* which is apt in the instant matter:

“30. The doctrine of *res ipsa loquitur* was explained as explained by Morris LJ in **Roe v Ministry of Health [1954] 2 QB 66** at page 88 where it was stated that –

“... this convenient and succinct formula possesses no magic qualities, nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin. When used on behalf of plaintiff it is generally a short way of saying: “I submit that the facts and circumstances which I have proved establish a *prima facie* case of negligence against the defendant.” It must depend upon all the individual facts and the circumstances of the particular case whether this is so. There are certain happenings that do not normally occur in the absence of negligence, and upon proof of these a court will probably hold that there is a case to answer”

Another influential explanation is that of Megaw LJ in **Lloyde v West Midlands Gas Board [1971] 1 WLR 749** at pages 755 where he stated:

“I doubt whether it is right to describe *res ipsa loquitur* as a “doctrine.” I think that it is no more than an exotic, although convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff *prima facie* establishes negligence where: (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the

⁵ Civ App 33 of 2008

accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety."

"I have used the words "evidence as it stands at the relevant time." I think that this can most conveniently be taken as being at the close of the plaintiff's case. On the assumption that a submission of no case is then made, would the evidence, as it then stands, enable the plaintiff to succeed because, although the precise cause of the accident cannot be established, the proper inference on balance of probability is that that cause, whatever it may have been, involved a failure by the defendant to take due care for the plaintiff's safety? If so, *res ipsa loquitur*. If not, the plaintiff fails. Of course, if the defendant does not make a submission of no case, the question still falls to be tested by the same criterion, but evidence for the defendant, given thereafter, may rebut the inference. The *res*, which previously spoke for itself, may be silenced, or its voice may, on the whole of the evidence, become too weak or muted."

43. The burden of proof remains on the party who asserts and relies on the doctrine, in the instant matter, the Claimants. In the aforesaid judgment, Mendonca JA stated that while the Claimant still has the burden to prove "...by inviting the court to draw the inference that on a balance of probabilities the defendant failed to exercise due care, even if the claimant does not know what particular respects the failure occurred. If the defendant then does not adduce any evidence, the inference is not rebutted and the claimant has proved his case"⁶.

44. The learned Justice of Appeal went on to further state that:

"34. ... A plaintiff cannot rely on the maxim to create a presumption of negligence where there is no evidence from which an inference can be drawn that it is more likely than not that the effective cause of the accident was some act or

⁶ Paragraph 32 *supra*

omission of the defendant constituting a failure on the part of the defendant to take proper care for the plaintiff's safety.”

45. In my opinion there was no evidence for me to conclude given the circumstances of this matter that the fire occurred as a result of the negligence of the Defendant. There was absolutely no evidence that the fire was electrical in nature. There was no eye witness evidence which suggested that he/she saw when the wire between Light Poles 65/1 and 65/2 burst, it sparked and there was a sustained energy which resulted in a fire which eventually destroyed the house. There was also no evidence that the Defendant's electrical installations or apparatus was faulty or not properly maintained.

46. In any event, Mr. Wendell Bhagirath's evidence rebutted any inference to be drawn since he stated that the burst wire was between Light Pole 65/2 and Light Pole 65/1 and the Claimants' connection was from Light Pole 65/2 and that the installations from Light Pole 65/2 to the house were in good condition. Although the Defendant's service connection wire was burnt off, Mr. Wendell Bhagirath's unchallenged evidence was there was no evidence of burning along the Defendant's service connection wire; and no pitting and fusing present on the Defendant's service connection wire which would have suggested to him that it was an electrical fire. Further, the report from the Government Electrical Inspectorate which was attached to Mr. Bhagirath's witness statement, which was also unable to conclude that the fire was electrical in origin, was unchallenged.

Order

47. The Claimants' action is dismissed.

48. The Claimants to pay the Defendant costs of the action.

49. Both parties agreed that costs at the end of trial are to be assessed on the prescribed basis pursuant to Part 67.5 (1) Appendix C CPR. The Claimants' total claim for damages was \$403,904.25. Costs are assessed in the sum of \$61,890.43.

.....

Margaret Y Mohammed
High Court Judge