

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**CIVIL. APP. NO.33 of 2008**

**BETWEEN**

**TRINIDAD AND TOBAGO ELECTRICITY COMMISSION**

**APPELLANT**

**AND**

**MONA LINDSAY  
GODWIN LINDSAY**

**RESPONDENTS**

**PANEL: A. Mendonça, J.A.  
P. Jamadar, J.A.  
N. Bereaux, J.A.**

**APPEARANCES: Mr. R. Nanga instructed by Ms. N. Jaggernaut holding for  
Ms. S. Rahaman appeared on behalf of the Appellant  
Mr. K. Thompson appeared on behalf of the Respondents**

**DATE DELIVERED: March 27<sup>th</sup>, 2013**

## JUDGMENT

**Delivered by A. Mendonça, J.A.**

1. This is an appeal from the decision of Hosein, J. delivered on January 17<sup>th</sup>, 2008 where the court held that the Appellant was liable for the loss and damage suffered by the Respondents when the Respondents' home was destroyed by fire, on May 29<sup>th</sup> 2002 allegedly caused by the electrical power to the Respondents' home.
2. The Respondents, owners of a dwelling house situated at No. 7 Parakeet Avenue, River Estate, Diego Martin commenced action against the Appellant on February 20<sup>th</sup>, 2003 by writ of summons and filed an amended statement of claim on the July 21<sup>st</sup>, 2003. They alleged that the destruction of their home occurred as a result of the negligence of the Appellant.
3. The Appellant is a public authority established by the Trinidad and Tobago Electricity Commission Act Chap 54:70 which empowers the Appellant to generate, transmit, transform, distribute and sell energy to consumers, whether residential or commercial, throughout Trinidad and Tobago. The Respondents averred in the amended statement of claim, that in the execution of its electricity transmission function, the Appellant employs linesmen and other categories of workers; and owns and erects poles along which it runs wires to supply electricity to its customers. It is stated that the Appellant supplies the electricity by establishing a connection between the wires connected to its poles on one end and to the electrical installations of the house, at the other end. The Respondents further stated that the electricity pole from which the fire originated was in close proximity to their home and connected to their home.

4. The Respondents alleged that on March 29<sup>th</sup>, 2002, prior to the fire that destroyed their home; sparks and fire were seen on the wire connected to the electricity pole near to the Respondents house, whereupon a report was made to the servants and / or agents of the Appellant. A group of employees of the Appellant visited the area the following day, when one of them climbed the electricity pole but did not remove, replace or repair any wire or other object on the pole. The Respondents alleged that on May 29<sup>th</sup>, 2002, some two months after, the wire from the electricity pole to the dwelling house of the Respondents caught fire which quickly spread along the wire to the house, causing the dwelling house itself to enkindle.
  
5. According to the averments in the amended statement of claim, the servants and or agents of the Appellant arrived at the scene of the fire before the arrival of investigators from the Trinidad and Tobago Fire Service and removed the electricity meter from the house and burnt wires which were connected to the electricity pole thereby precluding the investigators from the Trinidad and Tobago Fire Service from carrying out a comprehensive investigation aimed at determining conclusively the cause of the fire.
  
6. The Respondents alleged that the Appellant was negligent in that it (a) failed to carry out any or adequate inspection of the wires or of the said pole with a view to replacing them or effecting preventative maintenance; (b) permitted the wires on the pole to become defective; (c) failed to maintain the wires on the poles in a safe condition;(d) failed to remove, repair or replace the wires on the said pole despite the fact that they knew or ought to have known that they were likely to cause fire; (e) failed to have any or any sufficient regard for the safety of the said dwelling house and/or its contents; (f) failed to have any or any adequate steps to prevent the occurrence of the fire. The Respondents also relied on the doctrine of *res ipsa loquitur*. The Respondents claimed a total of \$348,150.00 as damages representing the value of the house and its contents.

7. The Appellant denied that the fire was the result of any negligent action or default on its part or on the part of any person employed by the Appellant. Moreover the Appellant denied that its servants and or agents precluded Fire Service investigators from carrying out their investigations but admitted that its servants and /or agents attended the home of the Respondents during the fire threat and removed therefrom its meter; and service mains connected to the southern side of the house and took custody of them.
8. The Respondents therefore alleged negligence on the part of the Appellant and /or its servants or agents. It is trite law that in order to establish negligence, the Respondents are required to prove that a duty of care existed between the parties, there was breach of that duty by Appellant and that breach resulted in damage or loss suffered by the Respondents. There is no dispute that the Appellant owed the Respondents a duty of care. The Appellant are under a duty to ensure that its supply of electricity is safe, that is to say within the prescribed voltages and to guard against electrical disturbances that would result in fire. There is also no dispute that if the Appellant breached that duty, the Respondents suffered loss as a consequence of that breach. The issue in this case is whether the destruction of the Respondents' home was caused by a breach of the duty owed by the Appellant to the Respondents. The Respondents sought to establish the breach of duty by the Appellant by calling four witnesses including themselves. The first of these witnesses was Reynold Charles.
9. Reynold Charles, a neighbour of the Respondents gave evidence that in March, 2002 he noticed the wires connected to Pole No. 52 at Parakeet Avenue were sparking. It was from Pole 52 that the Respondents obtained their electricity supply. Mr. Charles in his witness statement stated that he had reported the sparking of the wires to the Appellant on the day he noticed the sparking. A few days after making the report,

servants and/ or agents of the Appellant came to the electricity pole. Mr. Charles could not comment on what if anything the workmen did on that occasion. He further averred that on the 15<sup>th</sup> April, 2002 he again saw sparks on the wires connected to the electricity pole. However, he was not present when the fire which destroyed the Respondents' home occurred. He returned from work to see the Respondents' home partly destroyed. In the afternoon he saw a group of male workers employed by the Appellant remove the meter that was installed and take it away in a Trinidad and Tobago Electricity Commission ("T &TEC") truck.

10. Anthony Drayton, another witness for the Respondents indicated in his witness statement that on May 29<sup>th</sup>, 2002 around 1:35 pm he smelled what appeared to be burning rubber and when he looked outside of his house, he saw that the Respondents' house was on fire. He indicated that he contacted the Four Roads Fire Station and made a report of the fire to Fire Sub-Station Officer Steve Nanan. Mr. Drayton stated further that he observed the electrical wire, which connected the Respondents' home to Pole No. 52, was burnt and on the ground, sparking at times, raising and falling back to the ground. According to Mr. Drayton's evidence, Fire Sub-Station Officer Nanan and a crew of firefighters arrived at the Respondents' home shortly after the report was made. The firefighters were able to contain and eventually extinguish the blaze. He commented that the T&TEC workers, who arrived on the scene shortly after the Fire Service personnel, disconnected the electricity to the Respondents' house. After disconnecting the electricity to the house, the wire stopped sparking and raising from and falling to the ground.

11. Mr. Drayton indicated that on May 29<sup>th</sup>, 2002 shortly before the Respondents' home caught fire, he heard loud cracking sounds coming from the transformers connected to T&TEC poles situated at the nearby Cayman and Flamingo Avenues. The cracking sounds were not unusual. He also stated that there were, what he would

describe as, electrical surges in Parakeet Avenue and surrounding areas before the fire occurred.

12. Mr. Lindsay, the first named Respondent, was not at home when the fire began but returned home having been alerted by a telephone call that his house was on fire. He appears to have arrived while the firefighters were attempting to put out the fire. Mr. Lindsay stated that the T&TEC employees removed the meter from the house and removed the electrical wire running from his house to the electricity pole before the arrival of the investigators from the Fire Service.
13. Mrs. Lindsay, the second named Respondent, also was not present when the fire began but gave evidence with respect to the electrical surges which occurred early in the year 2002 in the area of Parakeet Avenue. Mrs. Lindsay's evidence showed that she too had heard the cracking sounds from the transformers, which were located on neighboring streets. On receiving news of the fire at her home, Mrs. Lindsay returned home from work. She indicated that once the fire was under control, she walked around the property looking at what was left and noticed that the meter was not in place where it was installed.
14. Leo Joseph, a senior officer of the Trinidad and Tobago Fire Service, gave evidence on behalf of the Respondents in response to a subpoena but did not give a witness statement. His evidence was concerned with an investigation conducted by the Fire Service as to the cause of the fire and a written report prepared by another Fire Officer with respect to the fire. The report suggested that witnesses were interviewed who indicated that they had observed sparks on the electrical service line leading from the pole to the Respondents home but no action was initiated to address the situation until flames were seen. The report, which was not prepared by him, suggested that electricity was a probable cause of the fire and that a complete investigation was forestalled by the removal of the meter from the house by the

T&TEC personnel before the Fire Services investigators arrived. The report, therefore, classified the cause of the fire as “undetermined”.

15. On the other hand, Alvin Ramsaran, engineer, gave evidence on behalf of the Appellant. Mr. Ramsaran’s evidence was to the effect that prior to the report of fire on the 29<sup>th</sup> May, 2002, there were no complaints during the period January 2002 and May 2002 as illustrated by the Appellant’s record of reported complaints in respect of the Parakeet Avenue. Mr. Ramsaran went on to explain the function of the Duty Engineer when investigating a fire. He indicated that the engineer would examine the Appellant’s electrical installation, for which the Respondents are responsible, which includes *“the service connection wire [which comprises two ‘live’ conductors insulated by black pvc material and a neutral conduction of bare aluminum/ steel which is connected to a ground rod]; the point of entrance [which is the area where the customer’s entrance cable is connected to T&TEC’s service connection wire] and the meter.”*
16. Mr. Ramsaran went on to highlight that an Electrical Fire Check List, which is used in the investigation of fires, was prepared by him in this case. Mr. Ramsaran confirmed that there was no evidence of tampering with the Appellant’s installations, no evidence of overloading of the supply and no indication that the fire may have started at the point of entry. He also could not determine the cause of the fire. The Check List also indicated that the service connection wire (secondary) appeared to have started burning at the house end and the burnt secondary was collected and tagged at both ends. He was unable to discover any tripped breakers in the house. He also provided photographic evidence which was annexed to his witness statement. The first picture was of the burnt house. According to Mr. Ramsaran, the second picture illustrates that the insulation to the customer’s entrance cable was burnt as a result of heat from the fire and the fascia board at the point of entry showed no evidence of any combustion. This, in his opinion,

eliminated the source of the fire being at the point of entry. The other photographs showed no evidence of burning of the meter or the Respondents breaker panel.

17. Dexter Greene employed as an "A" Class Lines Man but Acting Distribution Crew Foreman attached to the Emergency Department of the Appellant's Port -of-Spain Office, was one of the Appellant's employees who attended the home of the Respondents on May 29<sup>th</sup>, 2002. Mr. Greene stipulated that he arrived at the Respondents' home around 2:00pm and observed that the house was on fire. The Fire Services were attending to the fire. He observed the area had an electricity supply, in order to make the area safe, the crew under his supervision, isolated the supply by opening the low voltage taps on the high voltage poles at Pole No.2, which is located at the corner of Parakeet Avenue and Circular Road. The work of the T& TEC crew was completed within an hour and they then left the scene of the fire.

18. Richard Seebright, a foreman attached to the Distribution Northern Area emergency Department of the Appellant, gave evidence that he and his crew arrived at the scene of the fire around 3:20pm that afternoon and observed that the service connection wire to the burnt house was still connected to the house. He noticed that the low voltage taps on the High Voltage Pole No.2 were opened as the supply to the area was isolated by the Appellant's crew that attended the area earlier that afternoon. He removed the service connection wire by cutting the wire both at the house end and at the pole end. He tagged both the house end and the pole end. He removed the meter which was attached to the Respondents' house. His crew thereafter closed the low voltage taps on the High Voltage Pole No. 2 returning supply to the area and conducted voltage tests to ensure that the supply to the area was normal before leaving the scene.



19. Ronald Orr, an Estate Corporal attached to the Appellant's Central Distribution area, stated in his witness statement that on May 30<sup>th</sup>, 2002 he received instructions from his then superior, Estate Constable David Valentine to take photographs of the Respondents' premises. He went to No. 7 Parakeet Avenue equipped with a 33mm camera with zoom lens and a roll of 35 mm film and photographed the house and the electrical installations. The photographs, annexed to his witness statement, were of the burnt house, the point of entry, Pole 52, Pole 52 and the house, the meter base, the main panel and the ground wire.
20. Based on the aforementioned evidence, the court below found that the Appellant was liable for the damage and loss suffered by the Respondents. The Appellant now appeals contending that the decision of the judge is unreasonable and cannot be supported by the law. The Appellant also contends that the judge erred in law in holding that the case as pleaded by the Respondents was proved by the evidence adduced to the Court; that is to say, that the case as advanced by the Respondents established negligence on the part of the Appellant or its employees.
21. On an examination of the evidence of both the Appellant's and the Respondents' witnesses, it is difficult to see how it was proven that the Appellant breached its duty to the Respondents. The Respondents have not provided the court with cogent evidence regarding the origin of the fire, that it was electrical in nature or that it occurred as a result of the negligence of the Appellant.
22. Neither of the Respondents was at home when the fire started, so that they are not in a position to identify the source of the fire. Mr. Charles was also not at home when the fire began and could only speak to previous alleged incidents of sparking on the wires. No evidence was led on behalf of the Respondents from which the court could conclude that the sparking of the wires was a consequence of the negligence of the Appellant nor was there evidence that the sparking caused the fire. Mr. Charles'

evidence was simply that he had made a report of the cracking sounds coming from the transformers in the area and that the T&TEC workers investigated his reports.

23. Mr. Drayton's evidence was that he had smelt burning rubber and when he looked outside he saw the Respondents' home on fire. He did confirm that before he noticed the fire, he had heard the transformers making cracking sounds, but indicated as well that the cracking sounds were a common occurrence. Moreover, his evidence as to what he observed of the wire after the fire is of no assistance in determining whether the fire was a consequence of the negligence of the Appellant.
24. Similarly with respect to the evidence of the Respondents, they were not at home at the time the fire started and could give no evidence as to how the fire started. Their evidence of sparking on the wire connected to the pole from the house and the transformers cracking sounds is subject to the same criticism. There was no evidence to link the cause of the sparking on the wire or the cause of the cracking sounds that were noticed by the Respondents and their witnesses some two months before, to the fire that destroyed the home of the Respondents in May and to any negligence on the part of the Appellant.
25. There is mention by witnesses of electrical surges in the area, but it is difficult to give any weight to that evidence. One witness referred to it as what he "would describe as surges". The Respondents indicated that during what was described as surges, the lights in the house dimmed. This is not what one would expect from a surge. This is hardly evidence from which it can be concluded that there were electrical surges. In any event, the evidence was that the electrical surges occurred on previous occasions and not on the day of the fire. There is again no evidence that the surges caused the fire or were occasioned as a consequence of some fault on the part of the Appellant.

26. As regards the evidence of the removal of the meter and the electrical wire that was connected to the Respondents' house, the suggestion by Counsel for the Respondents was that this was evidence from which the court should draw an inference adverse to the Appellant. We see no reason to do so. There were avenues open to the Respondents to obtain inspections of the meter. No application was made by the Respondents to the Appellant for the production of the meter, or to have it inspected and a report prepared. This is therefore not a case where the Appellant refused to hand over the meter and the wire to the Respondents or destroyed the items. In the circumstances we do not think it appropriate to draw any inference adverse to the Appellant.

27. Counsel for the Respondents also referred to the Fire Services report. The report seems to be the high-water mark of the Respondents' case in so far as it suggested that the probable cause of the fire was electricity. However it does not appear from the record that the report was received in evidence. The report seems to have been marked "X" for identification and it does not appear that any more was done in respect of its formal admission into evidence. In any event, the report was inconclusive as to the cause of the fire stating that the cause was "undetermined". Moreover, although the report suggested that the fire may have been electrical this does not impute blame on the Appellant. An electrical fire may not originate from the electricity supply to the house but may be the result of the malfunctioning of an electrical appliance within the home. The assertion of the Respondents that the point of origin of the fire was the general area of the electrical service connection to the house does not assist the Respondents. This does not specifically say that the fire originated from the installation for which the Appellant is responsible and a statement that it was in the general area of the electrical service connection could refer to an area for which the Respondents were responsible. In any event, there is nothing in the report to suggest that this occurred as a result of the negligence of the

Appellant. The report by its terms is incomplete and the cause of the fire is “undetermined.” There is also the issue of the expertise of the maker of the report to identify that the possible cause of the fire was electricity. No evidence of his expertise was given and that must impact on the weight to be given to the report. In all the circumstances, this report does not assist the Respondents’ case.

28. Although there were allegations of poor maintenance of the lines there is simply no evidence of this. There is no evidence of the cause of the fire and no evidence that the fire was caused as a consequence of the negligence of the Appellant. The Respondents did not call any expert witness who could have given a possible forensic explanation of the cause of the fire. Even though some of the witnesses indicated that there was sparking on the wire and cracking sounds from transformers in the area there is no evidence these events caused the fire or occurred as a result of some fault on the part of the Appellant.

29. In our judgment the Respondents did not put forward any evidence to establish that the fire occurred as a consequence of the negligence of the Appellant. The Respondents, however, have also relied on the doctrine of *res ipsa loquitur* (“the thing speaks for itself”), which holds that the courts, in some instances, can infer negligence from the circumstances in which an accident occurred.

30. The doctrine of *res ipsa loquitur* was 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 a 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”*

31. Another influential explanation is that of Megaw LJ in **Lloyde v West Midlands Gas Board [1971] 1 WLR 749** at page 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 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."*

32. Moreover, the Privy Council in **Ng Chun Pui and Others v Lee Chuen Tat and another [1988] 132 Sol Jo 1244** highlighted the fact that the burden of proof remains with the claimant and it is misleading to talk of this shifting to the defendant if *res ipsa loquitur* is pleaded. It may be possible for the claimant to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care, even though the claimant does not know in 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.

33. The Court of Appeal in **Trinidad and Tobago Electricity Commission v Bridgemohan Sookram and Another (1999) 57 WIR 473** at page 485 stated that:

*“the trial judge was wrong to put the burden of proof in this case ab initio on the Commission to disprove negligence [...] The practical results of this error by the judge were that he did not recognize that, in order to succeed, the respondents had the onus of proving either a specific cause of the fire involving negligence on the commission's part or that the fire had occurred in circumstances in which prima facie it could not have occurred without such negligence. Moreover, 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 respondents' 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. Instead, the judge in placing the burden of proof on the wrong party, treated the commission as being under an obligation to prove affirmatively that the fire had been caused by negligence on the part of the respondents rather than that it could have been caused in one or other of the ways suggested by the commission (indeed, even if this did not involve personal negligence on the respondents' part).”*

34. The maxim is not a rule of law as it merely describes a state of the evidence from which it is proper to draw an inference of negligence. It is no more than a rule of evidence affecting the burden of proof. It is based on a common-sense approach and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are unknown to the claimant and are or ought to be within the knowledge of the defendant. 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 omission of the defendant constituting a failure on the part of the defendant to take proper care for the plaintiff's safety.

35. In our judgment the evidence of the Respondents does not attract the res ipsa loquitur principle. Nothing in the evidence suggests the fire could not have occurred without the negligence of the Appellant so as to require an explanation for the fire

from the Appellant. It cannot be said therefore in the absence of the Respondents proving on a balance of probabilities what was the relevant act or omission of the Appellant that led to the starting of the fire, that the evidence shows that more likely than not the effective cause of the accident was some act or omission of the Appellant which constitutes a failure on its part to take proper care for the Respondents' safety. Even if it did, there is sufficient evidence to discharge the burden that would have shifted to the Appellant. There is the evidence of Mr. Ramsaran who completed the Electrical Fire Check List when he attended the home of the Respondents in which he confirmed that there was no tampering with the installations, no evidence of overloading of the electricity supply and no indication that the fire started at the point of entry. Moreover, the photographic evidence provided by Mr. Orr shows no defect on the installations and no fire at the point of entry of electricity supply to the house. There is no evidential basis on which the judge could reasonably have found that the Respondents' home was destroyed as a consequence of the negligence of the Appellant.

36. For these reasons we will allow the appeal. The judgment of the court below is therefore set aside and the Respondents' action is dismissed. The Respondents shall pay the Appellant's costs both here and below to be taxed in default of agreement.

A. Mendonça  
Justice of Appeal

P. Jamadar  
Justice of Appeal

N. Bereaux  
Justice of Appeal