

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 of 2003

BETWEEN:

DEREK KNIGHT

Appellant

and

GRENADA ELECTRICITY SERVICES

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian D. Saunders
The Hon. Mr. Ephraim Georges

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. D. Mitchell for the Respondent

2003: July 8, 9;
2004: February 2.

JUDGMENT

[1] **SAUNDERS, J.A.** : When this matter came on for trial, it was stood over to the following day because the court had not been supplied with either the notes of evidence or the documents exhibited at the trial. The exhibits were subsequently supplied and the appellant (whose responsibility it was to prepare the record) was content that we should hear the appeal on that basis.

[2] Mr. Derek Knight continuously occupied premises at 6 Camerhogue House in Church Street, Grenada between 1st November, 1984 and 22nd October, 1997. The company supplying those premises with electricity claims that Mr. Knight is indebted to it in the sum of \$51,815.88 for electricity supplied to the premises

during that period of time. Mr. Knight counters that he has paid in full all electricity bills directed "to Derek Knight". In his defence, Mr. Knight also alleges that the claim is barred by limitation.

[3] The suit was tried before Benjamin, J. The learned Judge examined all the evidence provided to the court and concluded that the claimant had proved its case. The Judge found that the premises occupied by Mr. Knight had indeed been supplied with electric current throughout the relevant period and that Mr. Knight was responsible for the electricity allegedly consumed. Judgment was accordingly entered for the electricity company for the sum claimed along with costs in the sum of \$14,363.18. Mr. Knight has appealed that judgment to this court.

[4] The appeal was centred on issues of fact. However, I will acknowledge straight away that the conditions do exist here for a re-evaluation to be made of the learned trial Judge's findings of fact. The trial Judge's conclusions were inferences drawn from an examination of documentary evidence. The Judge's findings were not based on the credibility of any particular witness. This court is therefore in as good a position as the trial Judge to determine the facts. See: **Grenlec vs. Peters**¹.

[5] Mr. Knight's main criticism of the judgment of the trial court was that it was wholly inconsistent with the judge's assessment of the evidence of Mr. Philbert Lewis. Mr. Lewis was the sole witness for the company. The Judge had found that Mr. Lewis was not a very helpful witness. He was unfamiliar with the physical layout of the premises. He could not say whether there were three separate service meters allocated to the building. He also did not know who occupied the various parts of the building. Although he had stated confidently that he could identify the number of the meter that was applicable to the claim, it was subsequently established that he was unable to do so.

¹ *Grenada Civil Appeal No. 10 of 2002*

- [6] If the evidence tendered in support of the claim had been limited to the oral testimony of Mr. Lewis, then it is doubtful whether the Judge could properly have come to the conclusions arrived at in his judgment. However, the Judge also had before him a mass of documentary evidence. The Judge examined that evidence and predicated his judgment on the same. I have carried out an exercise similar to the one that must have been carried out by the learned Judge and I have to say that I agree fully with the conclusions arrived at by the Judge.
- [7] The evidence in the case discloses that at one time, the Central Statistical Office ("CSO") had occupied the premises in question. In October, 1984 the CSO moved out of the premises and from November, 1984 Mr. Knight became the occupier. The relevant number of the meter attached to the premises was 43/00530. In a letter written to the electricity supply company in January, 1985, Mr. Knight asked the company to read the meter as soon as possible and acknowledged that he was responsible "for any energy metered thereafter".
- [8] The company subsequently sent bills to the premises for electricity consumed. These bills were however addressed to the CSO or to "CSO-Derek Knight" or to "Derek Knight (Stats Office)" or some variant of the above. Mr. Knight refused to accept these bills. He returned them. In his defence, he maintained that "all claims +for electricity supplied as in bills directed to Derek Knight were paid in full". The natural inference is that all bills that were not addressed to "Derek Knight" period, were not paid.
- [9] There has never been any suggestion that Mr. Knight was either without electricity for any significant period of time or that his energy supply during the relevant period emanated from an alternative source. The matter therefore boils down to a resolution of the issue as to whether the account tendered by the company is in respect of electricity consumed by the very premises that were vacated by the CSO and occupied by Mr. Knight.

[10] The learned Judge found that the company's documentation had provided sufficient evidence of this fact so as to resolve the matter in its favour. The company's documents inextricably link the number 43/00530 with account number 1 54 00220 0. The latter account was shown to relate to the subject premises. The learned Judge was therefore right to conclude that Mr. Knight was indebted to the company as claimed.

[11] This leaves only the matter of the limitation point. Mr. Knight appears to have abandoned this point because, in his submissions to this court, he neglected to address it at all. This court has therefore not been afforded much assistance on the issue. The matter may have been fully argued before the learned trial Judge however because the Judge dealt with it at some length in his judgment.

[12] The learned Judge quite rightly noted that the company has founded this action not on the basis of an account but rather on unjust enrichment. Equitable relief is being sought and therefore the Limitations of Actions Act does not apply. The question is whether the company was guilty of laches. The Judge reasoned that:

"[Mr. Knight] admitted that in 1986 he sought and obtained an injunction to restrain the disconnection of electricity service from his office. He further said that the substantive action was never heard as he did not pursue it. Throughout the period prior to and subsequent to the grant of injunctive relief, the defendant enjoyed the facility of electricity service and subsequent to 1986, the [electricity company] would quite rightly have taken the view that any attempt to discontinue the service would have been met with an application to restrain such action. In the circumstances, the court is of the opinion that the doctrine of laches does not avail the defendant".

[13] I am content to accept as correct this conclusion of the learned trial Judge. I would therefore dismiss this appeal, affirm the judgment of the trial Judge and order that

the costs of this appeal, in the sum of \$9,575.00, be paid by the appellant to the respondent.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]