

IN THE FULL COURT OF THE SUPREME COURT OF  
JUDICATURE ON APPEAL FROM THE DECISION OF THE  
HIGH COURT JUDGE IN CHAMBERS IN ACTION NO. 2015-HC-  
DEM-CIV-CD-991  
(CIVIL JURISDICTION)

2018-HC-DEM-CIV-FCA-114

BETWEEN:

ROSIGNOL FISHERMAN CO-  
OPERATIVE SOCIETY, a body  
corporate registered under the Co-  
operative Societies Act, Chapter 89:01  
with its registered office at Rosignol  
Village, West Bank Berbice.

Appellant

-and-

GUYANA POWER AND LIGHT  
INCORPORATED, a Company  
incorporated under the Companies Act  
No. 29/ 1991 with its registered office  
situated at 91 Duke Street, Kingston,  
Georgetown.

Respondent

The Honourable Justices Navindra A. Singh and Sandil Kissoon, Puisne Judges

Mr. Sanjeev Datadin and Ms. Anessa Chow for the Appellant

Mr. Timothy Jonas for the Respondent

**Delivered March 10<sup>th</sup> 2020**

DECISION

BACKGROUND

The Respondent instituted High Court Action 2015-HC-DEM-CIV-CD-991  
against the Appellant by way of a Specially Indorsed Writ [SIW] on September 16<sup>th</sup>  
2015 claiming the sum of \$29,918,195 being a sum due and owing by the Appellant

to the Respondent for electricity supplied to the Appellant at the Appellant's request between January 2002 and August 2012.

Eventually on November 13<sup>th</sup> 2017 the Appellant filed an Affidavit of Defence disputing the debt but primarily setting forth a defence of limitation on the claim.

At the hearing of this appeal on December 11<sup>th</sup> 2019 Mr. Datadin, Counsel for the Appellants stated that the only defence that the Appellant was now relying on was that the claim was statute barred.

The Respondent claims that the debt accrued between January 2002 and August 2012 with the last bill demanding payment being issued on August 29<sup>th</sup> 2012.

The Appellant asserts that since the SIW was instituted more than three years after the date of the last demand any claim for with respect to that debt is statute barred by virtue of the **Limitation Act [CAP 7:02]** of the Laws of Guyana.

The Respondent contends that the debt is a statutory debt and as such is not subject to the provisions of the **Limitation Act**.

### **ISSUE I**

Is the supply contract between the Respondent and a consumer under the **Electricity Sector Reform Act** a commercial contract or a statutory contract.

### **FACTS**

The facts are as recited above and are undisputed.

### **LAW**

**Section 6 of the Limitation Act; CAP 7:02 of the Laws of Guyana**

**Electricity Sector Reform Act; CAP 56:01 of the Laws of Guyana [the ESRA]**

**Norweb PLC v Dixon** [1995] 1 WLR 636

**ANALYSIS**

The Respondent relies on **sections 21, 22 and 23 of the ESRA** to demonstrate that the arrangement between the Appellant and the Respondent was a contractual one and therefore subject to the provisions of the **section 6 of the Limitation Act**.

**Sections 21, 22 and 23 of the ESRA** provide as follows;

*21. Subject to the provisions of this Act and any regulations made thereunder, a public supplier shall, upon being requested to do so by the owner or occupier of any premises (hereinafter referred to as a "consumer") within such public supplier's authorised area –*

- (a) provide a new or increased supply of electricity to those premises; and*
- (b) provide electric lines, meters and other apparatus as are necessary to supply electricity to the point of entry to those premises.*

*22. Where any consumer requires a supply of electricity as provided in section 21, he shall give to the public supplier a notice in writing specifying –*

- (a) the premises for which the supply is required;*
- (b) the day on which the supply is required to commence;*
- (c) the maximum power which may be required at any time; and*
- (d) the minimum period for which the supply is required to be given.*

**23.** *Where a public supplier receives a notice from a consumer under section 22, the public supplier shall give to that consumer a notice that –*

*(a) states the extent to which the proposals specified in the consumer's notice are acceptable to the public supplier and specifies any counter proposals made by the public supplier;*

*(b) states whether the rates to be charged by the public supplier will be determined under sections 26 to 28, inclusive, or by a special agreement between the public supplier and the consumer under section 29, and specifies the rates to be charged or the proposed terms of the agreement;*

*(c) specifies any payment which that consumer will be required to make for the public supplier's provision of electric lines, meters or other apparatus as permitted under section 26 (4);*

*(d) specifies any security deposit which the consumer will be required to give under section 28;*

*(e) specifies any other terms which that consumer will be required to accept under section 25 and the Third Schedule; and*

*(f) states the procedures for the resolution of any disputes between the public supplier and the consumer as provided for in Part X of the Public Utilities Commission Act,*

*and the written acceptance of such notice by the consumer requiring a supply of electricity and the public supplier's supply of electricity pursuant thereto shall constitute a contract between such consumer and the public supplier for the supply of electricity in accordance with this Act and any regulations made thereunder.*

The Appellant stresses that the last lines of **section 23** which provides “... *shall constitute a contract ...*” expressly creates a contract.

**Section 6 of the Limitation Act** provides;

*“Every action and suit ... upon any contract, bargain or agreement relating to movable property ... or the value of any goods sold and delivered, shall be brought within three years next after the cause of action or suit has arisen.”*

It must be noted that the mere use of the word “contract” in **section 23 of ESRA** does not necessarily mean that the supply contract constituted a contract within the meaning of **section 6 of the Limitation Act**.

The Appellant further argues that under the provisions of **ESRA** the terms and rates have to be agreed upon before the contract is concluded therefore there is no compulsion on either party to conclude a contract.

It is important at this juncture to point out that it is imperative that the Court, being the judicial interpreter, consider the statute as a whole before asserting a particular interpretation to any section or word of a statute.

Sir Edward Coke in **The First Part of the Institutes of the Laws of England, or a Commentary upon Littleton** [1628] stated;

*“It is the most natural and genuine exposition of a statute to construe one part of the statute by another part of the same statute, for that best expresseth the meaning of the makers.”*

Also in **KMart Corp. v Cartier Inc.** [1988] 486 U.S. 281, Kennedy J. stated;

*“In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”*

In this light the Court finds that **section 24 of the ESRA** provides guidance in determining what type of contract is in fact created under **section 23 of the ESRA**.

**Section 24** provides;

**24.** *Nothing in this Act shall require a public supplier to supply electricity to any premises if and to the extent that –*

*(a) the public supplier is prevented from doing so by circumstances not within its control;*

*(b) the public supplier might or would be in breach of this Act, the regulations made thereunder, or of the licence granted to it, and it has taken all reasonable steps to prevent such breach or violation;*

*(c) it is not reasonable in all the circumstances for the public supplier to be required to do so; or*

*(d) the person requesting the supply of electricity has been convicted of three or more offences under this Act, the regulations made thereunder, or with regard to any offence involving the use of electricity under any other written law.*

It is clear that the Respondent is in fact under a legal compulsion to enter into a contract to supply electricity to a consumer as is clearly stated in **section 21 of the ESRA** except in circumstances which are legislated and which are set out in **sections 24 of the ESRA**, contrary to the Appellant’s contention.

Further, **section 27 of the ESRA** provides;

*27.(1) Prior to and on January 1, 2001, the headline rates, actual rates and basic rates to be charged by the Guyana Electricity Corporation and Guyana Power & Light, Inc., for the supply of electricity and services shall be those determined in accordance with the Second Schedule.*

*(2) After January 1, 2001, the First Schedule and the licence granted by the Minister to Guyana Power & Light, Inc. under section 42 shall govern the rates for the supply of electricity and services at any time charged and to be charged by Guyana Power & Light, Inc., and the mechanisms, formulae, principles and procedures whereby such rates shall be calculated and determined for all purposes under this Act and the Public Utilities Commission Act.*

This clearly demonstrates that application of the the Statutes, to wit, **ESRA** and the **Public Utilities Commission Act**, and not the Respondent, determine the rates [or the consideration] for the contract formed. In fact the rates are dictated to the Respondent by the operation of those Statutes.

**Regulation 6 of the Public Electricity Supply Regulations [Third Schedule of the ESRA]** provides;

*6. No person shall be entitled to assign the benefit of his supply contract, or his right to a supply of electricity under section 23 of the Act, nor shall he sell or supply or cause to be sold or supplied to any other person or premises any electricity supplied, without first obtaining the written approval of the public supplier.*

The fact that the consumer is prohibited from assigning any benefits of his contract without the approval of the Respondent further demonstrates the restricted statutory environment in which parties to the a contract formed under **ESRA** are compelled to operate.

Based on the existence of the foregoing statutory environment, the relationship created between the Respondent and any consumer is inconsistent with that of a commercial contract.

I adopt the words of Justice Dyson in **Norweb PLC v Dixon** @ 644, since, with respect to the issues herein, **section 16 of the Electricity Act** of England is materially similar to **section 21 of ESRA** and **section 16 of the Electricity Act** of England is materially similar to **section 21 of ESRA** in that these sections address the same issues;

*“The issue in this case is: which side of the line does the relationship between a tariff customer and a public electricity supplier fall? In my judgment, the legal compulsion as to both the creation of the relationship and the fixing of its terms is inconsistent with the existence of a contract. As regards the creation of the relationship, the supplier is obliged by section 16(1) of the Act of 1989 to supply if requested to do so. The exceptions from the duty to supply provided in section 17 are very limited in scope. Mrs. Cover submits that section section 17 (2) (c) gives the supplier what she calls a discretion not to supply. That is not so. A supplier is excused from supplying if (the burden being on him) it is not reasonable in all the circumstances for him to be required to do so. What is reasonable is a question of fact to be established objectively. Discretion does not come into play. Thus, save in*

*certain narrowly defined circumstances, if a consumer requests the supply of electricity, the supplier is obliged to supply.*

*As for the terms of the supply, Mrs. Cover submits that there is scope for what she calls bargaining. I cannot agree. The tariff is fixed by the supplier ...”.*

It must be noted that in the case at bar, the circumstances surrounding the relationship between the Appellant and the Respondent are totally controlled by statute, definitely much more than under the **Electricity Act** of England as addressed in **Norweb PLC v Dixon**, as expounded above.

## **CONCLUSION**

The relationship between the Appellant and the Respondent is governed by statute and not by the general principles that govern contracts.

## **ISSUE II**

Was the Respondent’s claim subject to **Section 6 of the Limitation Act**.

## **FACTS**

The facts are as recited above and are undisputed.

## **LAW**

### **Section 6 of the Limitation Act**

### **Electricity Sector Reform Act**[the **ESRA**]

## **ANALYSIS**

The conclusion in ISSUE I is that the relationship between the Appellant and the Respondent is not governed by the usual contractual principles and as such the Respondent's claim could not be subject to **section 6 of the Limitation Act**.

Notwithstanding this, an examination of various regulations of the **Public Electricity Supply Regulations** is also informative on this issue.

**Regulations 7 and 15 of the Public Electricity Supply Regulations** provide;

*7. (1) Subject to subparagraphs (2) and (3) and paragraph 8, a public supplier may recover from a consumer any charges due to it in respect of the supply of electricity, or in respect of the provision of any electricity meter, electric line or other electrical apparatus.*

*15. (1) Every public utility shall supply its consumers at intervals of approximately one month, or at such other intervals as may be directed by the Commission in relation to any consumer or class of consumers, with a bill showing the sum payable by the consumer on account of the public supplier's supply of electricity during the preceding month, or during such other period as may be directed by the Commission.*

*(2) A public supplier may include in a consumer's bill for the supply of electricity any unpaid charges for work done or services rendered by the public supplier in or about the consumer's supply, including administrative charges for collection and charges for bounced cheques, and such charges shall remain subject to the terms and conditions of payment for the supply of electricity under these Regulations and the Public Utilities Commission Act 1999.*

*(3) A public supplier's omission to dispatch any bill shall not release a consumer from responsibility for the charges for electricity supplied, work done or services rendered to or for such consumer.*

*(4) Except where otherwise expressly agreed between a consumer and a public supplier, every bill shall be payable within twenty-one days of the issue of the bill, and if payment in full is not made within that period, the public supplier may –*

*(a) without notice, disconnect the supply in question, as well as any supply of electricity provided to the same consumer at another premises;*

*(b) assess a single administration charge in the amount of no more than five hundred dollars;*

*(c) assess the expense of disconnecting any supply of electricity under paragraph (a); and*

*(d) charge interest on the amount remaining unpaid after the twenty-one day period, at the rate of eight percent per annum or at such higher rate as may be specified by the Commission, and, where the consumer renders payment in full of any bill more than twenty-one days after issuance of such bill, any disconnection effected within one working day after the public supplier's receipt of such payment shall be deemed to have been properly made.*

*(5) For purposes of these Regulations, a bill shall be deemed to be issued when it is posted.*

Examination of these regulations, particularly, **Regulations 7 15 (3) and 15 (4)(d)**, demonstrates that there is no indication of an intention by the legislature to set a limitation on the recovery of charges for electricity supplied by the Respondent.

This is further buttressed by **Regulations 19 of the Public Electricity Supply Regulations**, which provides;

*19. If a consumer quits any premises at which electricity has been supplied to him by a public supplier without giving the notice required under paragraph 10(b), in such a manner that the notice is received by the public supplier at least twenty working days, or Such other period as otherwise required by the public supplier's Standard Terms and Conditions, or in any other contract between the consumer and the public supplier, before the consumer quits the premises, such consumer shall be liable to pay the public supplier all charges in respect of the supply of electricity to the premises accruing up to whichever of the following first occurs –*

*(a) the expiry of twenty working days after the public supplier receives the notice required under paragraph 10(b), or such other period as otherwise required by the public supplier's Standard Terms and Conditions or in any other contract between such consumer and the public supplier; or*

*(b) the day from which any subsequent owner or occupier of the premises requires the public supplier to supply electricity to the premises.*

**Regulation 19 (b)** is logically inconsistent with the proposition of a limitation period since it would be impossible to determine when next a consumer would require a supply of electricity.

**Regulation 20 of the Public Electricity Supply Regulations**

*20. If a consumer quits any premises at which electricity has been supplied to him by a public supplier without first paying all charges due from him in respect of the supply, or the provision of any electricity meter, electric line or other electrical apparatus, or any other charge permitted by these Regulations or the Commission, the public supplier may refuse to furnish such consumer with a supply of electricity at any other premises until he pays the amounts due:*

*Provided that such public supplier shall not be entitled to require payment of amounts due from a consumer pursuant to this paragraph from the next consumer requiring a supply of electricity to the premises.*

**Regulation 20** positively demonstrates that there can be no limitation on the on the recovery of charges for electricity supplied by the Respondent since it refers not just to the premises to which electricity was supplied, it refers specifically to the consumer that owes for the supply of electricity and clearly there can be no limitation that is referable to an unknown future event, to wit, when and where the consumer will next request a supply of electricity.

**Regulation 21 of the Public Electricity Supply Regulations** provides;

*21. In addition to a public supplier's right to discontinue the supply of electricity and recover charges due therefor under paragraph 15(4), a public supplier may, without notice, discontinue the supply of electricity to a consumer's premises or to any other premises owned or occupied by such consumer and recover any amounts due for so doing from such consumer –*

*(a) if the consumer fails to comply with any term of his supply contract or the Regulations made under the Act;*

*(b) if the consumer intentionally or by culpable negligence damages or allows to be damaged any electricity meter, electric line or other electrical apparatus belonging to a public supplier on the consumer's premises; or*

*(c) if there is no valid contract in force in relation to such supply of electricity.*

The provisions of this regulation confirms that **regulation 20** could not be interpreted as a right to refuse to furnish a consumer with a supply of electricity at any other premises *which is already being supplied with electricity*.

It is clear from foregoing that it was never intended that the Respondent be limited with respect to time for recovery of charges from a consumer.

### **CONCLUSION**

**Section 6 of the Limitation Act** is not applicable to the Respondent's claim and further there is no legal limitation on the Respondent's ability to recover the charges claimed.

In the circumstances this appeal is dismissed with costs to the Respondent in the sum of \$250,000.00 to be paid on or before March 27<sup>th</sup> 2020.

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Justice N. A. Singh

I concur.

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Justice S. Kissoon