

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2019/CLE/gen/00270**

BETWEEN

EURIETTE WRIGHT

First Plaintiff

AND

EURIE'S FASHION LIMITED

Second Plaintiff

AND

GRAND BAHAMA PORT AUTHORITY LIMITED

First Defendant

AND

GRAND BAHAMA UTILITY CO. LTD.

Second Defendant

AND

GRAND BAHAMA POWER COMPANY LIMITED

Third Defendant

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Monique Gomez for the Plaintiff
Karen Brown and Rhyan Elliott for the First and Second Defendant
Robert Adams K.C. and Edward J. Marshall II for the Third Defendant

Judgment Date: 31st March, 2023

JUDGMENT

BACKGROUND

1. By an Amended Writ of Summons filed 30th June 2021, the Plaintiffs claimed that the various Defendants breached their respective contracts with them by levying inter alia unauthorized or excessive charges with respect to accounts held for Lot 11, Block 2 Fortune Cay ("Lot 11") and No. 5B Poinciana Drive ("Lot 5B") both located in Freeport, Grand Bahama. The First Plaintiff additionally claimed that the Third Defendant "GBPC" was liable to pay damages as a result of loss sustained to Lot 11 by its faulty electricity supply.
2. The First Plaintiff is the beneficial owner of the Second Plaintiff. A Mini Mall was constructed on Lot 5B which is owned by the Second Plaintiff and comprised of seven units. The Second Plaintiff obtained a Certificate of Occupancy from the First Defendant ("GBPA"). The Second Plaintiff applied and received a business licence from the GBPA.

3. **GBPA** is a company incorporated under the laws of the Commonwealth of the Bahamas and empowered by the Hawksbill Creek Agreement (“HCA”) and its amendments to regulate business in the City of Freeport on the island of Grand Bahama.
4. The Second Defendant Grand Bahama Utility Company (“**GBUC**”) is also a company incorporated in the Bahamas and licensed to supply potable water to the City of Freeport. It has a licence from the GBPA to be the exclusive provider of potable water in the Port Area.
5. GBPA is authorized to issue business licences within the Port Area and is also the regulator of water and electricity services within the Port Area.
6. The Second Plaintiff applied in July 2000 to GBUC for the supply of potable water to Lot 5B and was granted the service pursuant to the terms of an agreement. A meter was installed by GBUC to record the water consumed by the Mini Mall.
7. GBUC issued invoices for the water consumed based on the usage as reflected in the readings from the water meter or from estimates. The Second Plaintiff has not paid the full invoices rendered.
8. The Second Plaintiff alleges that the water bills were high and requested GBUC to check the mini mall for water leaks which were never found. The Second Plaintiff also claimed to have incurred expenses as a result of the high water bills.
9. The Second Plaintiff in obtaining a business licence from GBPA agreed by its terms to pay the business licence fees and by virtue of a conveyance of Lot 5B agreed to pay GBPA various service charges.
10. The Second Plaintiff has failed to pay these fees as and when they fell due. Despite an arrangement with the GBUC and GBPA to facilitate payment of the arrears owed the Second Plaintiff has failed to pay the fees. As a result, GBPA has suspended the Second Plaintiff’s right to engage in further retail business in the Mini-Mall until the matter is resolved.
11. Both GBPA and GBUC are registered under the Value Added Tax Act and are obligated by law to charge and collect value added tax for services provided.
12. The First Plaintiff built a house on Lot 11. The construction and electrical work was approved by GBPA in July 2000.
13. The First Plaintiff had difficulties with the electrical supply to Lot 11 and discovered after calling several electricians to assess the problem that GBPC had supplied full power to her house which caused loss of various items.
14. GBPC is also a company incorporated in the Bahamas and licensed by GBPA to exclusively own, generate and operate all electrical generation, transmission and distribution within the Port Area. GBPC was also empowered by this licence to provide wholesale and retail sale of electricity to the public within the Port Area.
15. The provision of electricity to the First Plaintiff was pursuant to the terms of the agreement entered into when GBPC initially approved her power supply temporarily and which was subsequently converted to a permanent supply.

16. GBPC agreed to supply the First Plaintiff with electricity to her home at Lot 11 and she would pay the invoices rendered monthly. These invoices were rendered after the meter which had been installed at Lot 11 were read or estimated in accordance with the Rules and Regulations for Electrical Service which formed a part of the agreement.
17. The account with GBPC was subsequently changed into the name of Samuel Bevans, the son of the First Plaintiff.
18. In addition to the provision of electricity to Lot 11, GBPC also provided electricity to the Second Plaintiff for Lot 5B which started in July of 2000.
19. The Second Plaintiff had requested the instillation of night guard lighting services at Lot 5B which request was approved and provided to the Second Plaintiff. This request resulted in additional electrical supply which was also metered and billed to the Second Plaintiff.
20. These invoices for the night guard lighting were also rendered as a result of either reading the meters installed or estimated the usage pursuant to the Rules and Regulations mentioned above.
21. GBPC maintains that they have only received three complaints from the Second Plaintiff in relation to the supply of electricity to Lot 5B which have been addressed by them.
22. The Second Plaintiff avers that she made numerous complaints to GBPC complaining about the high consumption of electricity and the invoicing not based on actual consumption. In fact, the Second Plaintiff avers that invoices were rendered for periods when the mall was closed after Hurricane Dorian and when there was no consumption.
23. The Second Plaintiff averred that they did not receive electrical services for three months even though they were billed for the services by GBPC.

ISSUES

24. The Plaintiffs maintain that the issues for determination are:-
 1. **Whether the GBPA as a Regulator owed a duty of care to the 1st Plaintiff when carrying out an inspection on her dwelling house located at Lot 11.**
 2. **Whether the GBPA has the authority under its Licence Agreement to charge interest on Business Licence fees.**
 3. **Whether the GBPA has the authority to charge interest on its service charges and at what rate of interest.**
 4. **Whether the GBPA is liable in damages to the 2nd Plaintiff for its refusal to issue Business Licence to its prospective Tenants.**
 5. **Whether the GBPA had the authority to charge interest on Business Licence fees and if so at what rate of interest.**
 6. **Whether GBUC owed a duty of care to the 2nd Plaintiff when it installed its water meters at the mini mall to ensure that the water meters were in good working condition.**

7. **Whether the GBPA had the authority to deny the 2nd Plaintiff from renting shop space in its small mini mall for non-payment of service charges.**
 8. **Whether the 2nd Plaintiff is liable to pay service charges to the GBPA when no services have been provided by GBPA to the 2nd Plaintiff.**
 9. **Whether the 2nd Plaintiff is liable to pay water bills received from the GBUC when the meter was never read by the employees or agents of the GBUC.**
 10. **Whether the GBUC has a duty to explain the high water bills charged to the 2nd Plaintiff when the meter was never read by its employees or agents.**
 11. **Whether the 2nd Plaintiff is liable to pay the electricity bill when the 2nd Plaintiff did not have electricity at the Mini Mall for 3 months.**
 12. **Whether the GBPC has a duty to explain to the 2nd Plaintiff why it was billed when no service was provided to its mini mall.**
 13. **Whether the GBPC is liable to the 1st Plaintiff for the loss of the various household appliances and other electrical goods as a result of the power surges to her residence.**
 14. **Whether it is the duty of the GBPC to provide electricity poles on the street near the 2nd Plaintiff's mini mall or is this the responsibility of the 2nd Plaintiff.**
 15. **Whether GBPA is liable to the 1st Plaintiff for the damage which the 1st Plaintiff suffered as a result of its Inspectors approving the electrical supply to her residence when the connection did not comply with the electrical and building codes of GBPA.**
25. The First and Second Defendants submitted that the issues are:
1. **Whether the Second Plaintiff's cause of action and/ or claims against GBPA in respect of service charges which accrued prior to 30 June 2009 are statute barred, as a matter of law.**
 2. **Whether the Second Plaintiff's cause of action and/or claims against GBPA in respect of business license fees which accrued prior to 30 June 2015 are statute barred, as a matter of law.**
 3. **Whether upon a true construction of the covenants under various conveyances and assignments of service charges, including the Lot 5B Conveyance, GBPA was entitled to levy service charges, upon the Second Plaintiff in respect of Lot 5B. If so, whether GBPA levied unjustified service charges, overbilled the Second Plaintiff or assessed and/or levied service charges upon the Second Plaintiff in a manner contrary to the provisions of the said covenants and/or the Lot 5B Conveyance and, if so, in what amount.**
 4. **Whether, upon a true construction of the License, GBPA was and remains entitled to levy business license fees upon the Second Plaintiff. If so, whether GBPA levied business license fees upon the Second Plaintiff in a manner contrary to the provisions of the Licence and, if so, in what amount.**
 5. **Whether, upon a true construction of the Licence, GBPA was entitled to refuse to issue a business license to prospective tenant of the Second Plaintiff, in accordance with the provisions of the License, where the Second Plaintiff has committed an act of default (as defined in the License), by failing to make**

payments of license fees, as required under the License, or otherwise. If not, whether the Second Plaintiff has suffered loss and damage and, if so, in what amount.

6. Whether the Second Plaintiff's cause of action and/or claims against GBUC in respect of charges for the supply of water which accrued prior to 30th June 2015 are statute barred, as matter of law.
7. Whether, upon a true construction of the Contract, GBUC was and remains entitled to levy charges for the supply of water upon the Second Plaintiff. If so, whether GBUC systemically or otherwise added unjustified water charges to the invoices rendered in respect of the Second Plaintiff in a manner contrary to the terms of the Contract and, if so, in what amount. Further, if so, whether the Second Plaintiff has suffered loss and damage and, if so, in what amount.

26. The Third Defendant submitted that the issues are:-

1. Are the First Plaintiff's claims against the GBPC which arose prior to 7 March 2013 statute barred as a matter of law?
2. Does the First Plaintiff possess the requisite standing, in law, to maintain her claim(s) against GBPC arising out of the provision of power supply services to Lot 11 after 7 May 2009?
3. To the extent that any of the First Plaintiff claims arising out of the provision of power supply services to Lot 11 are not statute-barred, did the provision of power supply services to Lot 11 cause the First Plaintiff to suffer loss and/or damage to the First Plaintiff property and, if so, what amount?
4. Are the Second Plaintiff's claims against the Third Defendant which arose prior to 7 March 2013 statute barred as a matter of law?
5. Did GBPC add unexplained charges to the bills issued by it to the Second Plaintiff further to the provision of power supply services to Lot 5B and if so, what amount?
6. Did GBPC fail to bill the Second Plaintiff for power supply services provided to Lot 5B in accordance with the terms agreed to between the parties for such services.
7. What amount, if any, is the Second Plaintiff entitled to recover from GBPC?

27. The Plaintiffs relied on the written and oral evidence of Euriette Wright.-

28. The First and Second Defendants relied on the written and oral evidence of : -

- Charisse Brown
- Karla S. McIntosh
- Anastasia Rahming
- Michael Gray
- Lottie Strachan

29. The Third Defendant relied on the written and oral evidence of : -

- Jared Moss
- Laize Kowles

SUBMISSIONS

PLAINTIFFS

30. The Second Plaintiff maintains that the Vendor, Carrick Ltd. agreed with the GBPA to collect services charges by the Deed of Variation prior to the date of conveyance to the 2nd Plaintiff. The Second Plaintiff was not advised of this variation. They did not learn of it until six months after the completion of the Mini-Mall.
31. They maintain that Paragraph E of the Deed of Variation is for the mutual benefit of GBPA and Carrick Ltd. and does not reflect a service to be provided to the purchaser the Second Plaintiff. The Deed states that the service charges were \$2,240 per year and provide for a cost of living increase every three years for a period of ninety-nine years. The Deed cannot charge for services not rendered directly to the benefit of Lot 5B and as such all monies paid should be reimbursed.
32. The Deed also gave Carrick the authority to seize rental property and repossess the property if service charges were not paid.
33. The Second Plaintiff was not a party to the Deed of Variation.
34. The First Plaintiff maintained that she repaired the roads in front of Lot 5B and maintained the lawns, purchased lamp poles and water meters. She also avers that GBPA did not perform any services to enable them to charge her or the Second Plaintiff a service charge fee.
35. Since March 2019 the rental income of the Second Plaintiff has been reduced as GBPA would not approve the Second Plaintiff renting to the public because of its refusal to pay business licence fees and service charges.
36. GBPA was charging interest on the business licence fees and service charges.
37. GBUC was not collecting garbage but billing for garbage collection. From July 2000 to February 2010 the Second Plaintiff's utility bill never exceeded \$150 per month.
38. From March 2010 to 2019 GBUC billed the Second Plaintiff for water consumption in excess of 100,000 to 150,000 gallons per month.
39. The Second Plaintiff maintains that there is no swimming pool or sprinkler system to justify such usage. Further, GBUC in its invoice, never provided details to include the time of and location of reading of the meters or the actual usage for the month.
40. GBUC averred that its records up to 2019 were destroyed as well as the meter reader responsible for the readings had died.
41. The Second Plaintiff also averred that GBPC charges for electrical services were unjustified as the Second Plaintiff had stopped using electricity since December 2019 but was billed up to April 2021.

42. Further GBPC supplied full power to the house of the First Plaintiff which caused extensive damage to her appliances. By virtue of the Conveyance to the First Plaintiff, GBPA and GBPC are responsible for the damages caused by the electrical supply. GBPA is the regulator of GBPC and it also has a financial interest in GBPC through its ownership of shares.
43. The Plaintiff made certain submissions that various actions of the Defendants were unconstitutional. These submissions relate to allegations which have not been pleaded by the Plaintiffs.
44. The Plaintiffs submit that a incorporated company cannot issue a business licence or interfere in the economic actions of the Second Plaintiff.
45. The statutory interest rate on any contract in the Bahamas is 30% where as in 2017 GBPA charged interest on business licence fees of 51.8% and 68.2% in 2018. Further, GBPA charged VAT on business licence fees when there is no VAT charged on the same.
46. The First Plaintiff further relies on the Consumer Protection Act to recover the damages to her appliances.

FIRST AND SECOND DEFENDANTS

47. Under the HCAGBPA is entitled to grant approvals and issue licences for the operation of businesses with the Port Area.
48. GBPA is, inter alia, the regulator of water and electricity services within the Port Area.
49. By licence dated 1 December 2002, GBPA granted a licence to the Second Plaintiff, to carry on the business of, inter alia, (i) a residential and commercial investor in the Port Area by way of the construction, sale, rental or ownership of homes, apartments, condominiums and commercial buildings on land beneficially owned by the Second Plaintiff provided, inter alia, that commercial buildings be leased only to licensees of GBPA in good standing; and (ii) retail sale of women and children's clothing and accessories ("the Licence").
50. In consideration of the grant of the Licence, the Second Plaintiff agreed to pay an annual Licence Fee of \$1,500.00, payable on 1 December in each year, with adjustments every 3 years to reflect the increase or decrease in the consumer price index ("the Business Licence Fee").
51. By clause 7(1)(a) of the Licence, it was agreed that, inter alia, failure by the Second Plaintiff to pay the annual licence fee within 21 days after service of written notice by GBPA requiring such payment, constitutes an event of default.
52. Pursuant to clause 7(2) of the Licence, GBPA has a discretion to terminate the Licence where there is an event of default.
53. The Second Plaintiff's Licence Account has a long history of delinquency and since in or about 2009, the account has been in a perpetual state of default.

54. By Conveyance, dated 19 January 2000, between Carrick Limited part and the Second Plaintiff Lot 5B was conveyed to the Second Plaintiff, upon the uses referred to in the Conveyance and more particularly those uses set out at Clause 2 of the Deed of Variation dated 14 January 2000 made between GBPA and Carrick Limited.
55. By clause 2(1) of this Deed of Variation, the Property was made subject to the payment by the Second Plaintiff of annual service charges for a term of 99 years in the amount of \$2,000.00 ("the service charge"), for the first 3 years and with adjustments every 3 years to reflect an increase or decrease in the cost of living index. The service charge was to be paid in equal half-yearly payments.
56. By Clause 2(a) of the Conveyance, the Second Plaintiff agreed to pay to GBPA the service charge in respect of the Property in accordance with the terms of the Conveyance as varied by the Deed of Variation.
57. The Second Plaintiff's service charge account has a long history of delinquency and since inception, the account has been in a perpetual state of default.
58. GBUC is the provider of potable water in the City of Freeport and, supplies potable water to its water utility customers at rates set by GBUC. GBUC levies charges for water consumed, as measured in 1,000-gallon units, by its water meters installed at each service location.
59. On 25 July 2000, the Second Plaintiff entered a contract with GBUC ("the Contract") for the supply of potable water to the Mini Mall and installed a meter at Lot 5B for this purpose.
60. GBUC issued invoices for the charges for the water consumed at the Mini Mall as reflected by the meter reading.
61. Euriette Wright, as witness for the Second Plaintiff stated that she was not aware of the terms of the Conveyance (in particular, the provisions relative to the payment of service charges) or the Deed of Variation at the time when she executed the Conveyance and sought, to convince the Court that she ought not to be bound by the obligations therein to pay service charges.
62. The Second Plaintiff's pleaded case is limited to a claim against GBPA for double billing; which presumes an admission that GBPA was entitled to levy service charges. As the Amended Writ of Summons was not further amended to assert any additional claim against GBPA, the Second Plaintiff's claims against GBPA remain limited to those pleaded in the Amended Writ of Summons.
63. The onus is on the party who asserts an allegation to prove that assertion.
64. The Second Plaintiff must prove that the service charges, License Fees and water bills were not in accordance with the terms of the respective agreements between the Second Plaintiff and GBPA and GBUC. The onus is on the Second Plaintiff to prove that GBPA and GBUC breached their respective agreements with the Second Plaintiff by levying excessive charges which caused damage or loss to the Second Plaintiff.
65. A breach of contract also occurs when a party without lawful excuse fails or refuses to perform what is due by him under a contract.

66. Therefore, where a party has breached the contract and that breach has given the other party the right to terminate performance of the contract that party is not in breach of contract in refusing to continue with performance because he has lawful excuse for his non-performance.
67. The Second Plaintiff must prove that GBPA and / or GBUC, without lawful excuse, breached their respective contracts with the Second Plaintiff and that the damages claimed by the Second Plaintiff are such as may fairly and reasonably be considered, either arising naturally, i.e. according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the Second Plaintiff and GBPA and / or GBUC (as the case may be), at the time of the making of the respective contracts, as the probable result of the breach thereof.
68. By Section 5(1)(a) of the Limitation Act, 1995 , actions founded on simple contract or on tort, shall not be brought after the expiration of six (6) years from the date on which the cause of action accrued.
69. Any cause of action which, if proven to have accrued to the Second Plaintiff against GBPA and / or GBUC, prior to 30 June 2015, would be statute barred.
70. An action upon an instrument under seal, by Section 5(2) of the Limitation Act provides that such action shall not be brought after the expiry of twelve (12) years from the date on which the cause of action accrued.
71. Any cause of action by the Second Plaintiff arising out of the Conveyance of Lot 5B or the Licence, which arose prior to 30 June 2009, is statute barred; and any cause of action which arises in connection with the Contract, which arose prior to 30 June 2015, is statute barred.
72. The Second Plaintiff's allegation that GBPA declined to inspect premises at the Mini Mall and / or to issue licences to prospective applicants, does not assert any wronging by GBPA against the Second Plaintiff and as such, paragraph 10(iii) of the Amended Writ of Summons does not plead a cause of action in favour of the Second Plaintiff.
73. Further, by clause 7(1)(a) of the Licence, failure by the Second Plaintiff to make payment of the annual Licence Fee within twenty-one (21) days after service of written notice by GBPA requiring such payment, constitutes an event of default.
74. The Second Plaintiff's default in payment of License Fees was evidenced by the Licence Fee Statement which showed that the Second Plaintiff did not make annual payments of \$1,500.00 within the time specified in the Licence. The Second Plaintiff admitted to stopping the License Fee payments when, according to Ms. Wright, GBPA could not explain how the Licence Fees were calculated. Later, Ms. Wright testified that she realized that GBPA was not entitled to issue licences and that that was the basis of her refusal to pay the fees. Ms. Wright also admitted that she gave GBPA postdated cheques to pay the Licence Fees because she was running behind.
75. It is submitted that if GBPA declined to inspect premises at the Mini Mall (which was not admitted), such failure did not constitute a breach of the Licence but as a result of the failure by the Second Plaintiff to pay the licence fees.

76. The Second Plaintiff's rights under the Licence to, carry on the business of, inter alia, rental of a commercial building, was subject to the Second Plaintiff's compliance with the terms of the Licence, which included (but were not limited to) the payment of licence fees. Should the Second Plaintiff failed to comply, such failure might result in a suspension or termination of the Second Plaintiff's right to carry on the stipulated business enterprises. It is therefore submitted that refusal to issue licences to prospective tenants (although not proven by the Second Plaintiff) was within the scope of recourse available to GBPA as a result of the Second Plaintiff's default in payment of licence fees.
77. Until the Licence is terminated by GBPA or surrendered by the Second Plaintiff, GBPA remains entitled to charge the Licence Fee as prescribed and agreed.
78. No evidence was produced of any requests by any prospective tenants for inspection of premises by GBPA which were refused; neither did the Second Plaintiff produce any evidence of potential rental income.
79. The Second Plaintiff seeks constitutional relief and the setting aside of the Conveyance, none of which have been pleaded or even raised at trial and should be disregarded. In any event, it is submitted that the Second Plaintiff has no standing to bring this claim as the wrong complained of is an alleged wrong against third parties (prospective tenants) and not against the Second Plaintiff. As such, the Second Plaintiff does not allege any wrongdoing against itself.
80. GBPA relies on the decision in **R v. Secretary of State for Social Services and another, ex parte Child Poverty Action Group and others [1989] 1 All ER1047**, where the Court of Appeal noted that in the absence of a duty, there is no locus standi and that locus standi goes to the jurisdiction of the Court. Where the Court has no jurisdiction, the parties may not confer such jurisdiction on the court. Similarly, in **Bank of America NT & SA (Re) [1993] BHS J. No. 135**, Justice Gonsalves-Sabola quoted with approval, the decision in **The Securities and Exchange Commission of the United States v Guarantee Trust Co Limited, Civil Appeal (1985) No. 19**, where the court stated that:
- “the Court did not have carte blanche to make declarations... Some legal interest or some specific legal right has to be shown. Without a legal right to found on, the applicants would lack the necessary locus standi to seek a declaration”.
81. The Second Plaintiff pleaded that only two (2) of the six (6) shop spaces at the Mini Mall were rented and produced no evidence of prior rental activity. It is therefore submitted that the Second Plaintiff's claim for loss of rental income for the year 2020 should fail.
82. However, should the Court determine that GBPA refused to issue business licences to prospective tenants (third parties) as alleged any such cause of action which accrued prior to 30 June 2009 (as the licence is an agreement under seal), would be statute barred in accordance with section 5(2) of the Limitation Act.
83. The Second Plaintiff produced no evidence of the payment of licence fees other than the copies of 18 post-dated cheques in the amounts of Two Hundred Fifty Dollars (\$250.00).

The Second Plaintiff has failed to prove payment of fees in the amount in respect of which it seeks recovery.

84. Any loss of business opportunities (which the Second Plaintiff claims in addition to loss of rental income) do not arise from the Licence itself and cannot reasonably be said to have been in the contemplation of GBPA at the date of the Licence as a natural consequence of any breach of the Licence; and therefore, too remote. The Second Plaintiff admits applying for and obtaining a licence from GBPA and stated that the Second Plaintiff paid licence fees payable thereunder until 2019.

85. The Second Plaintiff seeks to approbate and reprobate by seeking relief against GBPA for allegedly failing to inspect premises and / or to issue business licences (ie. to enforce the Licence), while at the same time impugning the authority of GBPA to issue licences.

86. Ms. Wright, on behalf of the Second Plaintiff testified that by virtue of section 24(1) or (2) of the Companies Act, GBPA being a private company, had no authority to issue business licences.

87. Section 24(1) and (2) of the Companies Act, 1992, Chapter 308 of the Statute Laws of The Bahamas provides :-

“24. (1) Subject to this Act, a company incorporated under this Act has the capacity and all the rights, powers and privileges of an individual of full capacity.

(2) A company incorporated under this Act has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside of The Bahamas to the extent that the laws of The Bahamas and of that jurisdiction so permit.”

88. Neither of these provisions either expressly or implicitly speaks to the capacity of a private company to issue business licences. GBPA as a limited liability company, pursuant to certain agreements made between the GBPA and The Bahamas Government commencing with the HCA is expressly authorized to issue licences in respect of business operations in the Port Area of the City of Freeport. The Government Agreements are replete with references to this power. In particular, Clause 3(7) of the Principal Agreement provides that:

“The Port Authority will not assign their rights under this Agreement without the consent in writing of the Government, Provided Always that nothing in this subclause contained shall be deemed to prevent or restrict in any way the Port Authority licensing any person, firm, or company to carry on any lawful business, undertaking, or enterprise within the Port Area on such terms and conditions as the Port Authority shall in their absolute discretion deem fit and proper subject only to the provisions hereinbefore contained.”

89. The Second Plaintiff claims licence fees for the period 2000 to 2020, in the amount of \$32,000.00, (annual licence fee of \$1,500.00 x 21.33yrs) which total in excess of all licence fee payments due from the inception of the licence on 1 December 2002. The Second Plaintiff by admission discontinued payment of licence fees in 2019 after receiving a series of demands for payment from GBPA and not receiving what the Second Plaintiff considered a proper explanation of the calculation of Licence Fees. The Second Plaintiff has admitted its default in payment of Licence Fees.

90. The Second Plaintiff's evidence in support of its pleaded case is that: (i) at the time of the purchase of the Property, the Second Plaintiff was not aware of the obligation in the Conveyance to pay service charges and on that basis, the Second Plaintiff should not be obliged to do so; and (ii) the Second Plaintiff is not obligated to pay service charges in circumstances where, according to the Second Plaintiff, GBPA has not provided services to the Second Plaintiff.
91. Again, the Second Plaintiff's evidence on this point was inconsistent. On the one hand, Ms. Wright on behalf of the Second Plaintiff testified that the Second Plaintiff agreed by signing the Conveyance to pay GBPA the annual service charges payable in May and November, without any deductions but she later denies having seen the Conveyance when she executed the same and that she was not aware of the terms thereof until some fifteen years later. According to Ms. Wright, she was not represented by counsel in the purchase of the Property and attended at the offices of GBPA to execute the Conveyance on behalf of the Second Plaintiff where she was presented with the execution page only.
92. Mrs. Charisse Brown on behalf of GBPA testified, that the Second Plaintiff was represented by Mr. Terrance Gape of Dupuch & Turnquest in the purchase of Lot 5B; and the draft Conveyance and copies of the deeds were forwarded to Mr. Gape on 9 April 1999. She further testified that the engrossed conveyance was forwarded by GBPA to Mr. Gape for execution by the Second Plaintiff. Mrs. Brown also testified that a copy of the Deed of Variation was forwarded to Mr. Gape under cover of letter dated 19 January 2000 The executed Deed of Variation was forwarded to Mr. Gape under cover letter dated 10 February 2000 Her evidence was corroborated by copies of the letters to Mr. Gape attached to her Witness Statement.
93. Mrs. Brown also testified that the balance of the purchase price was forwarded by Dupuch & Turnquest on behalf of the Second Plaintiff, in July 1999, approximately three (3) months after the draft Conveyance and copies of title deeds had been provided to Mr. Gape.
94. Further, Ms. Wright's oral testimony that she did not see the Conveyance at the time of execution is inconsistent with paragraph 7 of her Witness Statement where she admitted knowledge of the obligation of the Second Plaintiff to pay service charges when she stated that:
- "The 2nd Plaintiff in compliance with the terms of the Conveyance made payments on the service charges and only stopped paying the service charges when unjustifiable fees were charged on the 2nd Plaintiff's account with the 1st Defendant."**
- Later, Ms. Wright admitted that Mr. Gape was her lawyer who took care of the processing of the conveyance for her.
95. The Second Plaintiff, was represented by counsel who investigated title to the Property and who approved the form of the Conveyance on behalf of the Second Plaintiff. The Second Plaintiff executed the Conveyance, which provided for the payment of service charges as expressly referenced therein. The Second Plaintiff thereafter is bound by this obligation. **L'Estrange v. F. Graucob Limited [1934] 2KB 394**

96. The service charges were billed in accordance with the Conveyance. The evidence of Ms. McIntosh in respect of the COLAs was uncontroverted. As a result, GBPA is not guilty of the breach alleged by the Second Plaintiff or any breach of the terms of the Conveyance relating to service charges.
97. The Second Plaintiff is bound by its pleadings and is not entitled at trial to raise the issue of whether or not services charges were payable at all for the reason alleged. When the Court specifically inquired as to whether the Second Plaintiff intended to make an application for an amendment to plead this point, the Second Plaintiff replied in the negative and no such application has been made.
98. The Second Plaintiff is imputed with the knowledge of its attorney Mr. Gape who approved the terms of the Conveyance since February 2000.
99. The Second Plaintiff's obligation to pay service charges is unconditional. Clause 2(1) provides inter alia that:-
- ".....Provided however the said yearly service charge shall during the term hereby be stipulated to be paid in equal half-yearly payments on the 1st day of May and the 1st day of November in each and every year free from all deductions."**
100. There is nothing on the face of the Conveyance which expressly or implicitly requires GBPA to provide any services directly to the Second Plaintiff or in respect of Lot 5B.
101. Service charges are paid by all lot owners for the maintenance and upkeep of the City of Freeport (including maintaining roads, cutting verges, collecting bulk trash, planting trees and beautifying certain areas). GBPA has not made any specific commitment to the Second Plaintiff or to any lot owner, as to what maintenance is required to be performed.
102. The Second Plaintiff has failed to prove that GBPA was obligated and failed to provide any services in respect of Lot 5B; and that in the face of the most cogent evidence produced at trial, the Second Plaintiff's claims for service charges from May 2000 to December 2020 should fail.
103. Any cause of action in respect of service charges paid by the Second Plaintiff prior to 30 June 2009 are statute barred.
104. If the Second Plaintiff is entitled to recovery in respect of service charges, such recovery should be limited to a portion of service charges in fact paid by the Second Plaintiff. The only evidence as to service charges paid by the Second Plaintiff shows arrears of services charges in the sum of \$25,444.36; and that it would be inequitable to permit the Second Plaintiff to recover the entirety of all sums paid by the Second Plaintiff in these circumstances.
105. The only evidence before the Court on the question of whether GBPA charged interest on arrears of service charges, is the statements of account issued by GBPA. Neither of these documents reflects any interest charged by GBPA.
106. The Second Plaintiff does not plead that GBPA is not entitled to charge interest on business licence fees; only that the interest charged is high. The Second Plaintiff has not pleaded that GBPA is not entitled to assess interest on arrears of business Licence Fees.

107. The Rate of Interest Act, 1948, Chapter 341 of the Statute Laws of The Bahamas governs the maximum rate of interest which may be charged on loans and for purposes connected therewith. The provisions of this Act do not apply to Licence Fee payments as they are not loans or purposes connected with loans.
108. The rate of interest reflected on the Second Plaintiff's Statement is clearly 1.5% per month (18% per annum).
109. Although the statement of account issued by GBPA reflects the accrual of interest, the evidence of Ms. McIntosh is that although the statement of account reflects interest, the interest is reversed upon receipt of Licence Fee payments. This is evident in several of the entries made when the interest was reversed / credited. Ms. Wright also admitted that the interest charges were reversed by GBPA.
110. The Second Plaintiff has failed to prove that the Second Plaintiff paid the claimed interest amount of Fifteen Thousand Dollars (\$15,000.00) or any sum to GBPA in respect of interest. Should this Honourable Court find GBPA in fact charged an excessive rate of interest. The Second Plaintiff must prove that the total sum paid to GBPA by the Second Plaintiff exceeded the amount of all Licence Fees due and payable under the Licence from inception in 2002 to the date of the Amended Writ of Summons. The Second Plaintiff having admitted its default in payment of licence fees and the fact that it discontinued making licence fee payments in 2019 after receiving various demands for payments from GBPA, it is submitted that the Second Plaintiff has failed to prove that any sum over and above the agreed Licence Fee has been paid to GBPA.
111. GBPA is a VAT registrant and that the statements issued reflect VAT in accordance with the Value Added Tax Act, 2014 and its amendments.
112. It is not disputed that the Second Plaintiff contracted with GBUC for the provision of potable water at the Mini Mall.
113. All bills issued to the Second Plaintiff were in respect of water consumed at the Mini Mall and were billed in accordance with GBUC's prevailing rates at the material times.
114. The Second Plaintiff claims that the meter at the Mini Mall was never read by GBUC metermen, however Ms. Wright admitted that she was not always at the Mini Mall and that in fact, she sometimes travelled to the United States and remained there for extended periods. Ms. Wright admitted that she could not say with certainty that the meter was not read.
115. Mr. Michael Gray, witness for GBUC, advised the Court that the meterman who read the meter monthly during the material times is now deceased. Mr. Gray was responsible for inter alia, supervision of GBUC Servicemen, processing service meter routing information for the GBUC Servicemen to carry out systematic meter readings, liaising with the GBUC Utility Relations Department to process various work orders, including those for meter validation and repairs and that he personally handled various work orders and meter validation requests made to the Metering Department in respect of the Second Plaintiff's account. The monthly reading of the meter was also corroborated by Ms. Anastasia Rahming.

116. Ms. Wright also admitted that although she claims that the water bills were excessive, she does not know the billing rate for consumption of water.
117. Mr. Gray gave a detailed explanation of the meter reading process, the equipment and software used to store and upload the reading and further that he was personally responsible for syncing the handheld devices to the GBUC's software.
118. Of further particular significance is Mr. Gray's evidence that:
- i. The meter was read on a monthly basis
 - ii. Readings are input into the handheld devices at the customer location;
 - iii. The uploading of the reading is done by connecting the handheld device to GBUC's billing system;
 - iv. The software used by GBUC flags any reading which is uncharacteristically low or high for a customer and that meter is reread for accuracy
 - v. All rereads that he conducted at the Mini Mall confirmed the accuracy of the initial reading. On one attendance at the Mini Mall before the start of the workday, when the Mini Mall was believed to be unoccupied, he checked the meter and found that there was a rate of flow. Mr. Gray explained that rate of flow means that the meter was spinning when water was not being consumed at the location.
 - vi. As meters age, they slow down and do not record all the water that flows through the meter (meters never speed up as they age)
 - vii. Only water consumed or otherwise released at the customer location is recorded by the meter
119. Although the Second Plaintiff claims that the water charges were unexplained, in Ms. Wright's letter of to Dr. Wildgoose, she referred to readings furnished to her by GBUC.
120. The consumer usage history clearly showed the amount of water consumed monthly and the current reading on the meter. The consumer usage history also showed whether the meter was in fact read or whether the bill was estimated.
121. Ms. Anastasia J. Rahming stated that between 2010 and 2019, the water consumption of the Second Plaintiff's account was only estimated twice. In each case, the estimated amount was less than the prior and subsequent month's reading.
122. After an estimated reading an adjustment would be made to the customer's account on the next reading if the reading on the meter was less than the estimated amount.
123. The Second Plaintiff failed to prove that the meter was not read or that the charges to its account were unjustified. Ms. Wright's evidence is that there are seven (7) units at the Mini Mall (with one shop occupying two (2) units) and all units except the Water Depot shared one water meter.
124. It is also submitted that any claim against GBUC which arose before 30 June 2015 is statute barred.

THIRD DEFENDANT

(i) First Plaintiff's Standing Re Electricity Supplied To Lot 11?

125. On 9 May 2007, a change was made to the customer account for Lot 11. The name of the customer at Lot 11 was changed from the First Plaintiff to Samuel Bevans and, as a consequence, all monthly invoices for electricity supplied to Lot 11 after that date have been issued to Mr. Bevans only.
126. There is no evidence of any complaint having been made prior to 9 May 2007 by the First Plaintiff to GBPC in relation to the supply of electricity to Lot 11.
127. It is submitted that, to succeed in respect of her pleaded claims against GBPC respecting electricity supplied to Lot 11, the First Plaintiff must first establish that GBPC owed to her either a contractual duty or a duty of care rooted in the law of tort.
128. At the material time, the First Plaintiff did not have a contractual relationship with GBPC in respect of the supply of electricity to Lot 11; namely, between August 2009 and May 2019. Thus, at the material time, GBPC did not owe to the First Plaintiff a duty based in contract for the supply of electricity to Lot 11.
129. The First Plaintiff accepted that her son, Mr. Samuel Bevans, had been, and still is, the GBPC account holder for Lot 11 since 9 May 2007. She also accepted the Damage Report submitted to GBPC in 2016 in respect of damage allegedly sustained to various articles located within the premises at Lot 11 was not prepared and submitted on her behalf, but rather on behalf of Mr. Samuel Bevans, the account holder.
130. In addition, no evidence has been adduced at trial to prove the First Plaintiff owned any of the articles allegedly damaged by reason of GBPC's supply of electricity to Lot 11.
131. As First Plaintiff was neither the account holder nor the owner any of the items allegedly damaged as pleaded, it was also not foreseeable that, if GBPC failed to exercise reasonable care in the supply of electricity to Lot 11, the plaintiff would have been harmed. In other words, the First Plaintiff lacks the requisite proximity to GBPC's supply of electricity to Lot 11 to give rise to a duty in tort. In the circumstances, at the material time, GBPC also did not owe the First Plaintiff a duty of care based in tort.

see: **The Attorney General v Craig Hartwell [2004] UKPC 12 at para. 21 [T/1]** and **Darren Rutherford v Commissioner of Police and another [2019] No. 67 [T/2]**

(ii) First Plaintiff's claims statute barred in any event?

132. The First Plaintiff commenced this Action against GBPC on 7 March 2019. Therefore, any cause of action she might have had against GBPC, in either contract or tort, in respect of damage or loss alleged suffered by her before 7 March 2013 due to GBPC's electricity supply to Lot 11, are stale and statute-barred in any event.
133. The claims pleaded by the First Plaintiff's against GBPC pre-date 7 March 2013. In the circumstances, they are statute-barred. Thus, assuming, but not conceding, the First Plaintiff has standing to maintain the claims pleaded against GBPC it is also clear such

claims ought to fail in light of section 5 of the Limitation Act.

iii) Did GBPC cause the First Plaintiff to suffer loss and damage?

134. The First Plaintiff is not qualified to give testimony regarding the supply of electricity to residential premises. She failed to adduce any expert testimony to prove the allegation that GBPC's electricity supply caused damage to Lot 11 or the articles located at the premises.
135. She testified that she was advised by an electrician that 'the problem' was the house at Lot 11 was not properly grounded as it lacked a ground disposal well. The First Plaintiff however under cross-examination, accepted that GBPC had advised her that the grounding, or the ground disposal well, at Lot 11, was the responsibility of the property owner; and not the responsibility of GBPC.
136. The responsibility by the owner for the grounding and/or the ground disposal well, was also confirmed by Mr. Jared Moss, GBPC's Director of Operations, whose evidence was uncontroverted. Section 12.4 of GBPC's 'General Rules and Regulations' provides that **"GBPC's customers are solely responsible for the selection, installation and maintenance of all electrical equipment and wiring, other than GBPC's meters and apparatus, on the customer's side of the point of delivery which includes, but it not limited to grounding and/or the ground well."** Thus, any damage which might have been sustained at Lot 11 due to improper grounding or an inadequate ground disposal well could not be rightly attributed to GBPC.

(iv) 'Unexplained charges' added to Second Plaintiff's invoices?

137. In support of its claims that the Second Plaintiff was 'overcharged' and/or 'overbilled' by GBPC in the amount of \$32,977.25 over the period July 2000 to October 2020, the Second Plaintiff has, by the evidence of Ms. Euriette Wright, asserted that -
- i. GBPC required a meter rental fee to be paid for electrical meters installed to record the electricity consumed at Lot 5 B. GBPC required the Second Plaintiff to pay for additional lamp poles to be installed on Lot 5 B to improve the lighting near the Lot.
 - ii. GBPC invoiced Second Plaintiff for electricity consumed at Lot 5 B at a time when no electricity was supplied to its premises for a period of more than 3 months following Hurricane Dorian
138. The Second Plaintiff has not adduced any documentary evidence showing that it either 'purchased a meter or that it was required to pay a 'monthly meter rental fee', as alleged and was in fact shown a document in cross-examination entitled the Certificate of Deposit issued by GBPC to the Second Plaintiff in respect of the electricity service supplied to Lot 5 B which reflected that the Second Plaintiff had only paid a deposit for the meter at Lot 5B in the amount of \$120.00 and not that it had purchased one as claimed.
139. GBPC did not bill the Second Plaintiff, or charge a fee, for 'meter rental' as alleged, GBPC painstakingly took Ms. Wright through a GBPC invoice issued to the Second

Plaintiff on 11 March 2019 20 which Ms. Wright accepted as representing a 'typical' GBPC invoice. It was evident the Second Plaintiff had erroneously construed the 'KVA' charge in the amount of \$45.55 appearing in the invoice as representing a 'monthly meter rental fee'-

140. Whilst Ms. Wright did not agree with counsel for GBPC as to the meaning of 'KVA', the correct meaning of KVA charge put to Ms. Wright was not controverted by the Second Plaintiff's counsel when she re-examined Ms. Wright or when she cross examined Mr. Jared Moss, GBPC's witness. Further, when the Court asked Mr. Moss to explain the meaning of the KVA, he stated:–

A. Demand would be a charge that we charge to industrial and commercial customers to have power, meaning that certain businesses require a certain amount of energy, at any particular time, and to have that power available to them, especially during peak times, most utilities in any part of the world would charge a demand, based on that criteria.

A. depending on a peak, whatever your peak draw was, over 15 minutes, it would be recorded onto the meter. It is sent up to billing and calculated based on a particular rate.

Witness: I guess to make it simple, you can compare the KVA like you are driving a car, and your top speed within that particular time. The KWH would be considered your miles per hour, or how long you were running that particular time.

141. The Second Plaintiff's claim that it was overbilled by GBPC because it was 'required' or 'compelled' by GBPC to purchase lamp poles collapsed, during cross examination when Ms. Wright accepted that it voluntarily purchased lamp poles for additional lighting at its premises upon its determination that the existing lighting was insufficient –

142. The evidence led at trial clearly shows the Second Plaintiff was not 'required' or 'compelled' to purchase lamp poles, or additional lighting, at its premises. GBPC was not required to provide an additional lamp pole to the Second Plaintiff to enhance the lighting at Lot 5B free of charge; the Second Plaintiff has not provided any factual and legal basis to support such a conclusion.

POST HURRICANE DORIAN CHARGES

143. Under cross examination, the Second Plaintiff asserted, for the first time, that it had been specifically charged by GBPC for a supply of electricity for a period of ten (10) months following 1 September 2019 in circumstances where business premises were closed and electricity was not being supplied to Lot 5 B.

144. The evidence led at trial, however, showed that –

- i. The Second Plaintiff consumed electricity at its premises in August 2019, for which it had not paid prior to the arrival of Hurricane Dorian;
- ii. An invoice was issued to the Second Plaintiff on or about 30 September 2019 for the amount of \$283.23, which was an estimated charge, in accordance with GBPC's policy;

- iii. Electricity supply services were restored to the Second Plaintiff's premises in October 2019 and the meter at Lot 5 B was read by Mr. Lanze Knowles, GBPC's meterman, on 11 October 2019
- iv. After the meter was read by Mr. Lanze Knowles on 11 October 2019 and before the earlier invoice issued to the Second Plaintiff was paid, the said 'estimated charge' was subsequently reversed and removed from the Second Plaintiff's account. It was replaced with the charge based on the Second Plaintiff's usage at its premises as read on 11 October 2019 by Mr. Lanze Knowles;

145. Ms. Wright's evidence that GBPC 'never' read the meter installed at Lot 5 B is also unsustainable. She conceded, during cross examination, that she never saw anyone from GBPC read the meter at the Second Plaintiff's premises.

146. Mr. Lanze Knowles, testified that he read the Second Plaintiff's meter each month between 11 October 2019 and July 2020 which evidence remained uncontroverted.

147. The Second Plaintiff was only charged by GBPC in respect of electricity supply that it actually consumed at Lot 5 B and that the meter installed at Lot 5 B was in fact, read by GBPC between 11 October 2019 and July 2020, contrary to Ms. Wright's assertion that it was not.

148. The Second Plaintiff was duly invoiced by virtue of the meter readings taken at Lot 5B for both the premises and the night guard light and/or as estimated by GBPC in accordance with the applicable 'Rules and Regulations for Electrical Service' which provides as follows:-

"14.1 Meter Reading. Meters will be read and bills will be rendered as nearly as practicable at monthly intervals for all electric service supplied to the Customer during the proceedings month.

14.3 Averaged Bills. Where the Company, for whatever reason, is unable to read the meter, the Company shall estimate the amount of the electric service supplied and submit an averaged bill, so marked, for payment by the customer. Adjustment of such customer's average use to actual use will be made after an actual meter reading is obtained.

14.5 Separate Billing for Each Point of Delivery. At each point of delivery the use of service shall be metered separately for each Customer served. Whenever for any reason the Company furnishes two or more meter installations for a single customer, or supplies service under a Rate Schedule which does not require a meter, each point of metering and/or point of deliver where no meter is required is considered as a separate service. A separate Service Agreement is required, and bills are separately calculated for each such separate service, except where Company may, under special circumstances waive this requirement."

DECISION

149. The issues in this action are not complicated. The court must decide essentially whether there were any breaches of contract by any of the Defendants as pleaded or any torts committed by GBPC.

150. The court, having heard the oral evidence, and reviewed the written and documentary evidence and submissions of the parties, accepts the following facts as proven:-

- 150.1. GBPA is a Bahamian incorporated company vested with power under the HCA and its amendments to regulate business in the city of Freeport.
- 150.2. It is empowered to grant approval and issue business licences for the operation of businesses with the Port Area. The Port Area is a defined area under the HCA.
- 150.3. The Second Plaintiff is a Bahamian incorporated company which owns Lot 5B Block N in the city of Freeport upon which it built the Mini-Mall. The First Plaintiff is the beneficial owner and President of the Second Plaintiff.
- 150.4. The Second Plaintiff applied for and was granted a licence from GBPA on the 1st December 2002 to conduct business which included inter alia the rental of commercial buildings on land owned by it and also it was licenced to conduct retail sale of women's children clothing and accessories.
- 150.5. The Second Plaintiff agreed to pay an annual business licence fee of \$1500.00 with adjustments every three years to reflect the changes in the consumer price index as set out in the terms of the licence.
- 150.6. The terms of the licence agreement included the power of GBPA to terminate or suspend the licence where there was an event of default. An event of default included a failure to pay the annual fee within twenty-one days after a demand for payment had been made in writing.
- 150.7. Both the Second Plaintiff and GBPA admit and accept that the account was delinquent and in default, although they differ as to the cause and consequences.
- 150.8. The Second Plaintiff acquired Lot 5B by a Conveyance dated 19th January 2000. The Conveyance was expressly subject to the Deed of Variation dated 14th January, 2000.
- 150.9. The Deed of Variation was made between GBPA and Carrick Limited who was the vendor in the conveyance to the Second Plaintiff.
- 150.10. Lot 5B was subject to annual service charges imposed by the Deed of Variation fixed at \$2,000.00 for the first three years and adjustments every three years to reflect the cost of living index. The annual charges were to be paid in equal half yearly payments in May and November of each year. These charges covered the cost of inter alia garbage collection and road cleaning.
- 150.11. By signing the Conveyance the Second Plaintiff agreed to pay the annual service charge.

- 150.12. Both parties agree that the Second Plaintiff's service charge account was delinquent and in default. Again they differ as to the cause and consequence.
- 150.13. GBUC is a Bahamian incorporated company licenced exclusively by the GBPA to supply potable water to the city of Freeport by virtue of a licence from the GBPA.
- 150.14. The Second Plaintiff entered into a contract with GBUC for the supply of water upon payment of the agreed invoices to the Mini-Mall and GBUC installed a water meter on the premises.
- 150.15. Invoices were generated for water consumed at the Mini-Mall as determined by meter reading.
- 150.16. The Second Plaintiff disputed the invoice as being excessive and not reflective of the usage. The water account of the Second Plaintiff is in arrears. Again the cause and consequence is in dispute.
- 150.17. GBPC is another Bahamian incorporated company licenced by GBPA to provide electrical services to the city of Freeport.
- 150.18. GBPC approved an application of the First Plaintiff for the supply of electrical services to Lot 11 in November of 2004.
- 150.19. The temporary supply of electricity was converted to a permanent supply after payment by the First Plaintiff of the requisite fee.
- 150.20. The First Plaintiff constructed her residence on Lot #11.
- 150.21. Invoices were generated to the First Plaintiff from November 2004 to May 2007 for the supply of electricity either from the meter being read or estimated.
- 150.22. In May of 2007 the name of the customer for Lot #11 was changed from the First Plaintiff to Samuel Bevans. Thereafter all invoices were issued to Mr. Bevans.
- 150.23. GBPC also entered into a contract with the Second Plaintiff to supply electricity to the Mini-Mall.
- 150.24. Invoices were issued to the Second Plaintiff after reading the meter installed on the property or after the usage was estimated as allowed under the Rules and Regulations for Electrical Services which formed a part of the contract.
- 150.25. The Second Plaintiff applied to GBPC for night guard lighting in January 2002 and the same was approved and installed by GBPC. The additional service was an extra cost to the Second Plaintiff.
- 150.26. Invoices were generated to the Second Plaintiff for the night guard lighting.

150.27. The parties provided evidence of complaints or inquiries regarding the meter reading and the night guard lights.

150.28. The Second Plaintiff's account with GBPC is in arrears. The parties differ as to the cause and consequence.

CLAIMS AGAINST THE FIRST AND SECOND DEFENDANTS

151. The Second Plaintiff maintains that the First Defendant refused to issue licences to potential tenants of the Mini-Mall. By virtue of Clause 7 (1) (2) of the licence issued to the Second Plaintiff, any failure to perform any of the provisions or covenants of the licence constitutes an act of default. If there is an act of default which has not been remedied by Clause 7 (2), this act results in the voiding or suspension of the licence.
152. As the licence issued was to allow the Second Plaintiff to inter alia rent premises to tenants, and there has been an act of default, the Second Plaintiff can no longer rent the premises until the default has been remedied.
153. Accordingly as there is no dispute that the business licence fees were not being paid as required under Clause 4 (1) of the licence, the non-payment constituted an act of default which enabled GBPA to refuse to grant permission for persons to rent the Second Plaintiff's Mini-Mall.
154. The relationship between the Second Plaintiff and the GBPA is contractual. It arose as a result of the licence agreement. Accordingly Section 5 of the Limitation Act, Chapter 83 of the Statute Laws of the Commonwealth of the Bahamas fixes the time period for the commencement of any actions arising out of this agreement. The Limitation period for causes of action in simple contract is six years from the date on which the cause of action occurred or twelve years if based on an instrument under seal. This action commenced in March of 2019. No claims arising earlier than March 2013 can be brought if the cause of action is based on a simple contract, or March 2007 if the cause of action is based on an instrument under seal. As the licence is an instrument under seal all causes of action prior to March 2007 are barred. Accordingly, all of the claims against GBPA arising from the business licence fees prior to March 2007 are statute barred and dismissed.
155. As for those fees issued post 2nd March 2007 by virtue of Clause 4(1) of the Licence Agreement the Second Plaintiff agreed to pay the annual business licence fees as set out in the Second Schedule to the Agreement.
156. The claim that GBPA is not empowered by the Business Licence Act or the Constitution to issue business licences is without merit in this action. In any event under the HCA, by Clause 3(7) GBPA is expressly empowered to licence **"any person, firm or company to carry on lawful business undertaking or enterprise within the Port Area."** Such a claim as raised by the Second Plaintiff was not pleaded but despite this it can only be ventilated in an action against the Crown and not in a private action between private persons. I also adopt the finding of Chief Justice Gonsalves-Sabola in **Bank of America v SA (Re) 1993 BHJ No. 15** where he referred to and adopted the finding of Georges CJ in **Security Exchange Commission v Guaranty Trust #423 of 1983** who stated:-

“The object of a declaratory judgment is to declare the legal position of some party, usually of the Plaintiff. In a case where he has no legal rights or no legal position which can be declared, this remedy is useless to him.”

157. The claims for the breach of contract for the imposition of service charges alleged against GBPA meet the same limitation response. Any claims arising prior to March 2007 are statute barred by virtue of Section 5 of the Limitation Act as the obligation arose by virtue of the Conveyance to the Second Plaintiff. .
158. The Deed of Variation which the First Plaintiff submits is not binding as she was unaware of it, is specifically referred to in the Conveyance to the Second Plaintiff from Carrick Limited. In Recitals G and H of the Conveyance, the vendor agreed to sell the property to the Second Plaintiff to the uses as varied in the Deed of Variation. Further in the Habendum of the Conveyance the Second Plaintiff agreed to pay GBPA the yearly service charge as varied by the Deed of Variation.
159. The First Plaintiff signed this Conveyance on behalf of the Second Plaintiff. I am therefore satisfied that despite her submission that it did not benefit her, or that she was unaware of it, the evidence of Ms. Brown proves which I accept, that the Second Plaintiff's counsel received the draft conveyance and title deeds and approved the same. Further, the First Plaintiff as the beneficial owner and president of the Second Plaintiff signed the conveyance, thus agreeing to the terms. As stated in L'Estrange v F. Gracuob Limited 1934 KB394 at page 403:-

“In cases which the contract is contained in a railway ticket or other unsigned document, it is necessary to prove that an alleged party was aware, or ought to have been aware, of its terms and conditions. These cases have no application when the document has been signed. When a document containing contractual terms is signed, then, in the absence of fraud, or I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not. “

160. The GBPA by virtue of the agreed terms in the conveyance was entitled to charge service charges on the Mini-Mall. There was no restriction imposed in the Conveyance or Deed of Variation that the service charges had to exclusively relate to services provided to the Second Plaintiff. In fact the requirements to pay the annual service charges is a covenant which runs with the land for a fixed period, and is contained in the Conveyance regardless of who the owner is.
161. GBPA was empowered to charge the annual service charges. There was no breach of contract by GBPA in charging the annual service charges. The Second Plaintiff by failing to pay them is in default of its contract with GBPA, who would be entitled to exercise its rights to remedy any default.
162. As stated earlier the Second Plaintiff's claim for loss of rental income is without merit as GBPA is empowered to exercise its rights against a licensee upon an act of default by that licensee who rents premises by refusing to approve any rentals and by not approving the appropriate licence. I note in any event that the Second Plaintiff did not produce any evidence of requests of tenants for approvals which were refused. In any event as submitted by GBPA such loss would directly be the loss of such prospect tenant and not the Second Plaintiff.

163. Upon a review of the documentary evidence adduced, particularly the statements produced reflecting the licence fees and the service charges, I am satisfied that whether the claim is within or without the limitation period, there was no excessive billing or overcharging involved.
164. I also accept that GBPA is a VAT registrant and as such is obliged to charge VAT on the services it provides. Accordingly this claim by the Plaintiffs too is without merit.
165. As I have accepted earlier GBUC was empowered to charge the Second Plaintiff for water supplied to the Mini Mall.
166. The Second Plaintiff through the evidence of the First Plaintiff was unable to prove that GBUC failed to read the meter as she alleged. She admitted in her oral evidence that she never saw them read the meter but she also admitted that she was not always present at the Mini-Mall. In light of this admission and having heard the evidence of the water meter reader supervisor and after reviewing the copies of the meter statements, I accept that the water meter at the Mini-Mall was regularly read and only rarely estimated by GBUC. In fact, a detailed explanation was given to the court as to how the process worked and how the information was transmitted which was eventually embodied in the statement which I accept. This information could only be obtained from the meter itself.
167. The allegation by the Second Plaintiff that the water charges were excessive was not borne out by the evidence. Further it was admitted that all of the tenants except one shared the same water meter. No evidence was produced as to the volume of water used by these tenants and it would be impossible in the absence of any evidence by them to conclude that the charges were greater than the actual usage.
168. Again, any alleged excessive charges incurred prior to March 2013 which are challenged are statute barred as the contract was a simple contract.

CLAIMS AGAINST THE THIRD DEFENDANT

169. The Plaintiff's claim covers the period August 2009 to May 2019. By the First Plaintiff's evidence during trial she stated that her son Samuel Evans has been the account holder of Lot 11 since 9th May 2007 and she accepted that the damage report submitted to the GBPC was submitted by Samuel Evans.
170. The transfer by the First Plaintiff of the electrical account with GBPC for Lot 11 into the name of Samuel Bevens meant that he, from the 9th May 2007 was the party to the contract with GBPC and was obligated to pay for the supply of electricity provided by GBPC to Lot 11. He alone therefore would have an interest in any damage sustained to Lot 11 if any and to the home and appliances or articles inside of the home if any arising out of the contract.
171. The First Plaintiff therefore did not have a sufficient interest in the claim pleaded against GBPC. Any recourse would be for the party to the contract who is not the First Plaintiff but Mr. Bevens.
172. In **Mills v First Caribbean International (Bahamas) Bank Limited and others [2010] 3BHS JN2** which I adopt, Barnett CJ stated:-

“An action for breach of contract can only be maintained by the parties to the contract and they can only recover damages suffered by them as a party to the contract. The Plaintiff is not bringing this action on behalf of the Association and he is not claiming any loss suffered by the Association as a result of the breach of contract.”

173. In any event, any claim made for damage or loss prior to March 2013 is statute barred.

174. There is no privity of contract between the First Plaintiff and GBPC regarding the supply of electricity to Lot 11. The account is in the name of Mr. Samuel Bevans who has not provided any evidence or pleaded any cause in this action. It is to him that obligations would arise from GBPC in the supply of electricity, not the First Plaintiff. Accordingly the claim for breach of contract against GBPC for any alleged loss or damage of the First Plaintiff is dismissed.

175. If the First Plaintiff is seeking damages arising for the alleged tortious acts of GBPC, she must prove that a duty of care is owed to her, that it was breached and that she suffered damage as a result. The admission by the First Plaintiff of the cause of the damage being the lack of a ground well was the responsibility of the owner of the property and not GBPC. This admission jettisons her claim against GBPC and would leave any tortious claim to be made against the owner of the property, Mr. Samuel Bevans.

176. Under the Rules and Regulations for Electrical Services which formed a part of the contract between GBPC and Mr. Bevans, particularly Section 12.4 stated:-

“the customer is solely responsible for the selection installation, and maintenance of all electrical equipment and wiring (other than the Company’s meter and apparatus) on the customers side of the point of delivery.”

Mr. Bevans would have been responsible for the installation of a ground well and not GBPC.

177. The Second Plaintiff claimed that it had to purchase a meter or pay a monthly meter rental fee for the meter installed at the Mini-Mall. During the course of the trial they were unable to produce any evidence that they had purchased a meter from GBPC. There was however, a Certificate of Deposit dated 25th July 2000 produced which evidenced that the Second Plaintiff had paid a deposit for a meter from GBPC. GBPC’s ‘General Rules and Regulations for Electrical Service’ provides that a deposit is not a payment or part payment for any bill for service.

178. The Second Plaintiff also claimed that the abbreviation KVA on the electricity bill from GBPC was a reference to a monthly meter rental fee. However, GBPC evidence rebutted this as it was explained that KVA was short for Kilovolt Amps and was worked out by calculating the peak usage recorded on the meter at a particular rate at month’s end. Additionally, the General Rules provided that KVA is the abbreviation for the word Kilovoltampere and is defined as **“The unit of apparent electric power equal to 1,000 voltamperes, the product of volts and amperes gives voltamperes (VA).”** It was not a charge for a monthly meter rental fee at all.

179. The Second Plaintiff’s claim that she had to purchase a meter or pay a monthly meter rental fee also fails.

180. The Second Plaintiff's claim that she was overbilled by GBPC due to having to purchase lamp poles must also fail. During the trial, the First Plaintiff accepted that the Second Plaintiff voluntarily purchased lamp poles for additional lighting at the Mini-Mall. She accepted that the poles were requested by her.
181. While the Court sympathizes with the Second Plaintiff's beneficial owner who gave evidence that she requested additional lamp poles in the area surrounding her Mini Mall after being robbed about 'five times', her one time purchase of the lamp poles cannot in any way support her claim of being over charged or over billed by GBPC.
182. The Second Plaintiff also claimed that she was charged for electricity at the Mini-Mall for ten months after the passage of Hurricane Dorian in September 2019, despite there being no electricity at the premises. However, the evidence led at trial revealed that prior to Hurricane Dorian's passing there was an unpaid balance outstanding and electricity was restored to the Mini-Mall in October 2019, thus; the bills generated reflected that electricity was being used although at a minimal level

CONCLUSION

183. I have considered the evidence, both written and oral as well as the submissions, provided by all the parties in this matter. It is trite that he who alleges must prove. The civil standard of proof provides for a case to be proved on a balance of probabilities. I was not satisfied that the Plaintiffs discharged their burden of proving any of their claims against the Defendants. The evidence of each of the Defendants was overwhelmingly preferable to that of the Plaintiffs. I also found the First Plaintiff's refusal to concede facts which were clearly in evidence before her did not assist her case.
184. The Plaintiffs action is dismissed in its entirety. Costs of the action are awarded to each of the Defendants to be taxed if not agreed.

Dated this 31st of March, 2023



Hon. Madam Justice G. Diane Stewart