

Bahamas Electricity Corporation

Appellant

v.

Carnival Leisure Industries Limited

Respondent

FROM

THE COURT OF APPEAL OF THE
COMMONWEALTH OF THE BAHAMAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
20TH MAY 1991

Present at the hearing:-

LORD KEITH OF KINKEL
LORD ACKNER
LORD OLIVER OF AYLERTON
LORD LOWRY
SIR ROGER ORMROD

[Delivered by Lord Keith of Kinkel]

In this appeal the appellant is the statutory authority for the supply of electrical energy in the Bahamas. The respondent carries on the business of operating a casino at the Cable Beach Hotel in the islands. On 18th May 1983 the respondent entered into a contract with the appellant for the supply of electricity to the premises, and the appellant installed a meter in the premises for the purpose of recording the amount of electricity consumed. The meter was read periodically and bills for the amount of electricity recorded as consumed were regularly rendered to and paid by the respondent until 19th July 1985. It was then discovered by the appellant that certain ancillary equipment associated with the meter had been incorrectly wired, with the result that the meter had since its installation been recording a very substantially lower consumption of electricity than had actually occurred. On 23rd August 1985 the appellant wrote to the respondent claiming payment of the sum of \$687,166.85, being the cost of 4,425,600 units of electricity, which was the appellant's estimate of the extent of the under-recording.

The respondent refused to pay this sum, so the appellant instituted in the Supreme Court proceedings for the recovery of it. The respondent by its defence

pleaded that the appellant was estopped from alleging that the respondent had been under-charged for electricity, by reason that it had arranged its affairs, in particular as regards the prices charged to its customers, in reliance on the accuracy of the electricity bills from time to time rendered to it. It was further pleaded that in any event the respondent's liability was limited, by virtue of certain provisions of the Bahamas Electricity Corporation Regulations, to payment in respect only of a period of three months of meter failure.

The case came on for trial before Gonsalves-Sabola J., who on 9th June 1987 gave judgment in the appellant's favour for the whole sum sued for. The respondent appealed to the Court of Appeal, and on 24th February 1989 that court (Henry P., Smith and Melville JJ.A.) allowed the appeal in part, to the effect that the respondent was found liable to the appellant only in a sum attributable to a three month period of under-recording, amounting to \$99,535,01, which sum the respondent had in fact paid into court before the trial. The appellant now appeals to Her Majesty in Council.

The decision of the Court of Appeal was based upon the provisions of Regulation 7 of the Bahamas Electricity Corporation Regulations, the material parts of which are as follows:-

" 7.-(1) Electricity supplied to a consumer shall be measured by means of a meter or meters supplied and fixed by the Corporation.

(2) The registration of all meters shall be prima facie evidence of the energy consumed provided, however, that in special circumstances and with the approval of the Corporation metering may be dispensed with and the amount and/or value of energy consumed may be assessed in accordance with the published tariffs.

(3) If a meter for any reason ceases, omits or otherwise fails to register the amount of electrical energy consumed, a consumer shall pay in respect of such energy supplied a reasonable sum in respect of any such period (not exceeding three months) of meter failure, based on the amount of the consumption of such consumer ascertained by comparison with similar periods."

The Court of Appeal held that, in the situation where a meter had failed to register the whole amount of electrical energy consumed, Regulation 7(3) created a statutory obligation on the consumer to make payment of a reasonable sum in respect of the period of failure which excluded any common law estoppel which might otherwise have arisen. The period in respect of which payment had to be made was, however, limited so as not to exceed three months. The Court rejected an

argument advanced on behalf of the present appellant that the expression "similar periods" in Regulation 7(3) referred only to periods before the meter failure occurred, and that since there was no such period, because the failure had operated from the moment of installation, the provision did not operate to limit the respondent's liability. The assessment of the reasonable sum had in fact been made by reference to periods after the failure had been put right.

When the appeal came for hearing before the Board, the respondent was content to accept the decision of the Court of Appeal, and did not seek to reopen the question of common law estoppel except in the event that the Court of Appeal should be held to have gone wrong on the effect of Regulation 7(3) as limiting the respondent's liability.

It was argued for the appellant that the Court of Appeal had indeed reached the wrong conclusion on that matter, the contention being that the "similar periods" referred to in Regulation 7(3) must necessarily be periods before the meter failure took place. Unless the period of failure had been preceded by a period of meter accuracy, so it was maintained, the electricity supplier would have had no opportunity to detect that the meter had gone wrong, and the Regulation could not reasonably be construed as intended to bring about such a result. There is, however, no ambiguity about the words "similar periods", which in their ordinary meaning are clearly apt to embrace periods after as well as periods before the meter failure. There is no room for the view that two meanings are open, so as to enable that meaning to be selected which would lead to the allegedly more reasonable result. It is not in any event an unreasonable result that periods after the meter failure should be capable of being used to estimate the amount of electricity consumed during the period of failure. Comparison with a preceding period of meter accuracy is by no means the only method of detecting that the meter is or must be under-recording the consumption. Their Lordships are therefore of the opinion that the Court of Appeal rightly decided this issue, and in the circumstances the question of common law estoppel need not be considered.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.