IN THE WIGAN COUNTY COURT

Claim No. 0WN00945

Darlington Street
Wigan

Wednesday, 26th January 2011

Before:

DISTRICT JUDGE GORDON

Between:

JOHN BARRY KEENAN

Claimant

-v-

BRITISH GAS TRADING LTD

Defendant

The Claimant appeared in Person.

Counsel for the Defendant.

JUDGMENT APPROVED BY THE COURT

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(Best endeavours have been made during transcription however please note that the District Judge appeared to be off microphone and was difficult to hear)

APPROVED JUDGMENT

1. THE DISTRICT JUDGE: I am asked to give judgment in the case of Mr John Barry Keenan and British Gas Trading Limited. The initial proceedings were issued on 29th April 2010 for an injunction restraining the removal of three electric meters and to stop harassment of the claimant.

2. As time has progressed on this case the particulars of claim has been amended and a defence provided. I have had the benefit of the court documents and the documents by both the claimant and the defendant including an affidavit in support by Pamela Jane Hatch. I have heard oral submissions from Mr Keenan in person and from Counsel for the defendant.

3. There are two distinct issues here for me to consider on a balance of probabilities which is the civil standard. Firstly regarding whether a deemed contract existed between the parties and if not is the claimant bound by any other statutory relationship to pay BGT standing charges. Secondly I am asked to consider the issue of harassment alleged by the claimant by BGT in contacting him by telephone to chase payment.

4. On or about 1982 it is accepted by both parties that the claimant requested a connection to the supply of electricity to Unit 8 Belle Green Industrial Estate, Wigan. In the particulars it is accepted that since that time the availability of electricity has been continuous. It is accepted by the parties that a connection charge was payable and this was paid. Mr Keenan has had many tenants over the years and he says that there have been void periods when no safety issue was raised. He says it is impossible for a live account to have any safety implications. The defendant disagrees and maintains that if a supply is continuing and the infrastructure is on site to provide electricity there are clear safety issues and a liability which could attach to the supplier/distributor.

5. The dispute arises following the exit of tenants on 4th September 2009. Following this the defendant charged the claimant for standing charges. It is common ground that no electricity passed through the meter at this time. The dispute here relates to standing charge and the liability to pay it and also the ability to charge it. From 1982 a continuous supply of electricity was made available to the claimant's premises at Unit 8. The defendant and claimant agree that a contractual agreement had been in place.

6. On 15th December 2009 the claimant wrote to the defendant explaining that he was a landlord who did not wish to be a customer and he did not require the supply of electricity. He said they could remove the fuses if they wished and his exact wording was, "Unless you can arrange not to charge me" and then he said that he would supply access for them to do that. After a little delay a letter of 17th February arrived from the defendant. They informed him that if the property was to be vacant for a prolonged period he can arrange to have the fuse removed but that was a chargeable service and would incur further charges by the claimant or future tenant to render the supply live again. He was directed to the connections and metering team and given a number should he wish to arrange it.

7. The defendant argues that a deemed contract is in force and the claimant refutes that. The claimant says a deemed contract does not exist as he, as owner, has not taken the

supply of electricity and the Electricity Act 1989 as amended, schedule 6, paragraph 3(2), otherwise known as The Electricity Code, he says that on the reading of that section a deemed contract only arises where under subsection (a) the owner or occupier of any premises takes the supply of electricity which has been conveyed to them by an electricity distributor.

8. Under subparagraph (2) that is indeed one way in which a deemed contract can arise under schedule 6, paragraph 3 and in this case both parties agree Mr Keenan had not taken a supply, he had not used electricity through the meters since the tenants had left. Mr Keenan argues that that is the end of the matter. That Parliament in its drafting meant you to be bound to a deemed contract if you actually had taken the electricity through the meter. That was indeed one way in which Parliament intended the consumer to be bound and I am sure in this case a deemed contract did not arise under schedule 6, paragraph 3(2).

9. However, the defendant argues that a deemed contract can arise in spite of the lack of the taking of electricity if you applied schedule 6, paragraph 3(1) and this says:

> "Where an electricity supplier supplies electricity to any premises otherwise and in pursuant to the contract they be deemed to have contracted with the occupier or owner if the premises are unoccupied for the supply from the time, the relevant time, when he began to supply the electricity."

10. The defendant says that the supply was given in 1982 and in my judgment the supply is continuing now. If, as is the case here, supply was and continues to always be on offer then supply is a condition under which a deemed contract can come into existence. I was referred to schedule 6, paragraph 3(6). This says:

> "The expressed terms and conditions of contract which by virtue of subsection (1) or (2) is deemed shall be provided for by a scheme made under this paragraph."

The important word in this paragraph is, "Or." This clearly indicates that a deemed contract by a virtue of schedule 6 comes into existence if there is a supply of electricity which is possible but does not have to be taken or if there is a taking of electricity which has been conveyed.

11. I have been asked in this matter to consider the intention of Parliament and to consider construction of the Act and its schedule. To me, in my judgment, the construction of these sections are clear; if you are provided with a supply and do not use it you are deemed to have contracted whether or not you take the electricity. There are two situations in which the contract can arise and the claimant, in this case, is caught by subparagraph (1) as there has been a supply and continuing supply to the premises. It cannot be right in my judgment and was not, in my judgment, in Parliament's intention to allow, in this sort of situation, a landlord to have the benefit of a supply to a property when his next tenants leave without the obligation under the contract, albeit deemed, to pay a standing charge due for the safety, upkeep and security of it.

12. Counsel for the defendant outlined very clearly the obligations which fall to the distributed supplier and that by statute they are bound to provide a supply. In return Parliament has said over the years and witnessed in the persuasive evidence *(inaudible)* Hansard that the statutory charge, even after privatisation, should remain to ensure the

maintenance and upkeep and safety of the infrastructure. As consumers we have a charge to pay to ensure that the distributors can maintain their statutory obligation.

13. The terms and conditions in respect of gas or electricity or both from British Gas, version 7 which has attached to the documentation, are clear that under a deemed contract they are permitted to levy a standing charge. The charge I have been shown today is levied by the distributor then it is checked by Ofgem for reasonableness and then the supplier, in this case British Gas, collects it almost as an agent for them. Under law the companies are able to legally levy this charge and under the deemed contract in this case the claimant was and is still bound to pay it.

14. In respect of the question of relevant time I do not accept that this clause is there to allow for void periods. Taking a view of the history of the legislation and its purpose it means for there always, in my judgment, to be someone who is being supplied or someone who is taking the electricity to be bound to pay towards the upkeep, maintenance etc. of the infrastructure from which the supply is coming. In my view the relevant time here would be that once the tenant had ended their tenancy the owner would take over responsibility if they continued to have a supply of electricity to the premises and it is accepted by all parties in undertakings that that supply is in place to this date.

15. In respect of the argument about removal of fuses the claimant's letter, in my judgment, was clear; if the defendant wanted to remove the fuses at no charge they could come and do so. The letter in response was also clear; they would charge to do so and reconnection would also require a charge. Bearing that in mind they left it in the hands of the claimant to respond to decide whether he wished to incur that charge to disconnect the fuses and also whether, after consideration, he was prepared bearing in mind the fact that there would be a reconnection charge. He did not choose to contact them to arrange for the disconnection or the de-energisation of that electricity.

16. The court does have sympathy as in early evidence the claimant said the recession was hitting at the time that this all started to occur and he began to feel under a great pressure and he did say that at that time he did not know what to do. However, in my judgment it was clear from the letter of 17th February that there is a charge for supply and that it was for him to contact them to authorise the de-energisation of the infrastructure but he failed to do so and in failing to do so was levied a charge.

17. In my judgment the claimant, in spite of his thorough argument and advocacy, has failed as he was, as a matter of law, obliged to pay the charge under the deemed contract brought into existence by virtue of the Electricity Act 1989 as amended under schedule 6, paragraph 3(1) and (2).

18. In respect of the issue of harassment I have seen various affidavits from the claimant and the most recent affidavit given today from Pamela Hatch. It would appear following the substantive last hearing there was over a period of approximately five months when the defendant did not contact the claimant regarding the amount owed. The claimant says the start again of calls was through the period of November, December and January and that these have caused him some stress. He saw this as a deliberate act to intimidate.

19. The defendant says as soon as it came to light and to their attention that the block, which had been put on the account following the last court hearing, had been taken off they

instructed that it should be blocked again and they did. I am assured that the block was lifted by human error only. The individuals who called and were noted on the affidavits were clearly call centre employees following an on screen instruction to chase a debt regularly and so were various people, not just one persistent caller. I do accept in this case that it was a matter of human error and I do agree with the defendant's counsel that in this case Mr Keenan was right to be, as Counsel put it, incandescent about the fact that the calls had started again.

20. I do accept, however, though that an instruction to block was put on; I accept that it was lifted by accident and again has been put in place. Importantly I accept the defendant's submission that they were unaware of the fact that the block had been taken off and that the claimant, aware of the defendant's agreement at court, had not called to alert the defendant's solicitor, of whom he had knowledge, quickly that the calls had started again. I do not see this as a deliberate campaign of harassment and for these reasons dismiss this element of the claim in law. It would, however, be for Mr Keenan to decide whether he would wish to complain to any of the regulatory bodies or ombudsmen about this element of the claim but in law I dismiss that element today as well. Therefore claim of the claimant is dismissed.
