CJ 16.9.99

OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 127 OF 1998

BETWEEN:	FLOYD WADE WILLYARD	Plaintiff
AND:	CARIBBEAN UTILITIES CO. LTD.	First Defendant
AND:	PRO BUILT LIMITED	Second Defendant
AND:	HYDES & SONS LIMITED	Third Defendant

Mr. R. Alberga Q.C. and Mr. Graham Hampson of Quin & Hampson for the plaintiff
Mr. D. Matthews and Miss Miki Jafa of Hunter & Hunter for the 1st defendant
Mr. D. Murray of Murray, Samson and Jackson for the 2nd defendant
Mr. C. Allen of Brooks & Brooks for the 3rd defendant

Before Graham J.
Hearing 6th to 10th September 1999

JUDGMENT

1. Introduction

This matter arises out of an accident which took place on the 2nd October 1995, as a result of which, the plaintiff, Wade Willyard, sustained serious injuries in the course of his employment by the second defendant. That Company had been engaged pursuant to a written contract by the third defendant to erect a steel framed a building which was being constructed by the third defendant on lands in Shedden Road, George Town, Grand Cayman. Those lands were owned and occupied by the third defendant.

The injuries to the plaintiff occurred when a steel section of angle iron, some twenty feet long, was being manoeuvered by the plaintiff into position prior to it being affixed to the partially completed steel structure. It came into contact with a high voltage line installed by the first defendant which ran in close proximity to the southern side of the building.

The evidence revealed that the horizontal clearance between the power line and the southern side of the building was about five feet and that that line ran at a height of approximately twenty-five feet from ground level. As a result of that contact 7,200 volts passed through the plaintiff' body with catastrophic results to him.

On the 12th February 1998, proceedings were commenced by the plaintiff against the first defendant, the second defendant and the third defendant.

The first defendant is a company incorporated in the Cayman Islands. It is licensed by the Cayman Islands Government as the sole supplier of electricity in the Islands. The second defendant is a Cayman incorporated company and carries on the business, inter alia, of metal building erectors, the servicing and repair of metal buildings, steel fabrications and kindred crafts. The second defendant was the employer of the

plaintiff. The third defendant is also a Cayman Islands company, specialising in the manufacture and installation of patio and pooling enclosures, security screens, screen doors, sliding screen doors and kindred crafts. A steel frame for the building was being erected by the second defendant on their premises who intended to use it for the business already mentioned. The lay out of the external walls of the building was laid out as a result of architects advice in order to maximize the frontage of the building. The second defendant had no control over that decision.

The plaintiff claims that the first defendant, the electricity company, (hereinafter CUC) was negligent, that the second defendant, his employer was also negligent in failing to provide him with a safe place and system of work. He alleges that the third defendant, as owner and occupier of the land upon which the building was being erected, was negligent in failing to make the premises as safe as reasonable care and skill could make them or alternatively failing to warn the plaintiff of unusual dangers of which they knew or should have known. At the commencement of the trial, the second defendant admitted liability but disputed its extent in terms of percentage. Both the other defendants continued to deny liability. All three defendants alleged contributory negligence on the part of the plaintiff.

2. **The Evidence on behalf of the plaintiff**

Bobby Lee Ramey is a man aged 43 who had known Floyd and Vance Willyard for many years. He was in the manufacturing business of pre-fabricating metal buildings and was the manufacture of the cladding being attached to the building in question owned by the third defendant (Hydes). He expressed a high opinion of the skills of both the Willyard brothers and described them as careful workmen who did not cut corners. They were both highly experienced in their field and both would have knowledge of the danger of working near electricity power cables. He regarded Vance Willyard as the foreman on site and, as he was, in his view, the general contractor was responsible for safety matters. He would have been prepared to make a comment on obvious hazards had he seen them whilst on site. In particular, he told the Court that if he came on site and saw work taking place beside an electricity cable he would ask the general contractor to cut off the power supply. If this was not done he would proceed with caution. He would further ask the general contractor how long the construction work was to continue and how long a cut off of power supply would be required. He agreed that in the United States the OSHA regulations laid down strict guidelines as to work near electricity cables. To him a cable was "live" unless the operator of that service said it was not live and he could see that the cable "grounded"; a

factor which I shall consider when dealing with contributory negligence. He happened to visit the building site in question on 5th September 1995, as he was holiday in the Cayman Islands. He heard a sound like a gun shot and observed that the cable boom of the crane was in contact with the electricity cable. That crane was normally driven by Floyd although there was no evidence that it was being driven by Floyd at the time of the incident. The evidence is to the contrary, although he had been operating the crane that day. That contact caused a power failure in respect of the two buildings on either side of the building site. The witness observed that the cable, then demonstrated to have been live, was in his opinion seven to eight feet from the overhang of the building which was being constructed. He commented that one would get into trouble in the United States if one worked so closely to a power line. He recalled that representatives of CUC came on site and that Vance Willyard said "you fix them. (meaning the cable) I don't care you fix them. We will be back in four to six weeks." It was left to CUC as to how they would do the work as the witness recalled it. That witness was unable to say how the contact between the cable and the crane was caused. He did not think it was caused by the subsidence of one of the outriggers of the crane due to soft earth. He was asked about the absence of any reference to the four to six weeks period after which Pro Built would return to work, in his witness statement, and it was put to him that such comment was not

made. He maintained that CUC would have been aware that work was being stopped on the building site for some time as Vance Willyard had said that he was moving to another site. He claimed that there had been discussions as to the method by which the cable could be made safe from a workman's point of view but rejected the suggestion by CUC that Vance Willyard had been told that if work was to be carried out near the line, CUC should first be notified. In view of the other evidence I have heard in the case I do not accept that CUC believed that there would be no work on that building site for four to six weeks. His understanding was that a plan for the "outage" would have to be made between CUC, their two clients, who had been cut off by they the crane episode, together with Pro-Built.

Alan Roffey. This witness was a former employee of CUC who now runs his own electricity installation company. He is a highly experienced man and his initial training in electrical matters was by the Royal Navy. He was recently consulted in the case and had no personal knowledge of the facts leading to the accident. He put before the Court three possible methods by which the power line could have been made safe:-
Firstly by insulation – "pigging", that is to say threading along the power line a series of rubber insulations each about four feet long. When Hew was called by CUC I was persuaded to the view that if twenty-five "pigs"

were threaded upon the line it would place an undue strain on a line which was already taut. That left two available options, namely, a power "outage", or re-routing which would cut off Cayman Caterers and the Cayman National Archive for the period whilst the work was being carried out. Roffey agreed that both methods would produce a safe result for workers on the site. As CUC's internal standard in respect of new buildings between a building and power cable was seven feet five inches he, Roffey, would not have permitted the resumption of work on the site without an "outage" or a re-routing. He said that, in the light of his experience in the industry, if he had gone on site after the crane incident, he would have decided on the appropriate way of dealing with the problem. He would have spoken to Pro-Built and Hydes and he would have wanted to "pin them down" as to the precise time for the resumption of work. He would, in the event that no outage had been decided upon, have sent an estimate of the costs of re-routing the cable to Pro-Built and Hydes. As re-routing was the best of all options then the only question was identifying the person or persons who would pay for the work. In his experience there had been a number of cases when CUC had decided that a line would have to be re-routed in the interest of safety due to building works. Save for the evidence as to whether"pigging" was appropriate or not I accept the evidence of Roffey both as to its accuracy and objectivity.

I record that the plaintiff himself did not give evidence based upon the advice his physician, Dr. Fischer. The incapacity of the plaintiff to give evidence was uncontradicted by any other evidence put before me.

3. **The evidence of behalf of Caribbean Utilities Company**

The first witness, Geraude Holness, was a line services supervisor with many years experience. He visited the site after the crane episode on 4th September with his colleague, Garry Whittaker. On arrival on the site he was told about the incident. He noticed that the cable in question was eight to ten feet away from the building on its south side, and twenty-five to thirty feet from the ground. He considered that distance "safe". He told Vance Willyard that he could not "pig" the cable due to the difficulties of terrain and securing entry to the line. In a note made at the time, he recalled that he had warned Floyd Willyard as to the danger of working close to a supply line and that he should contact CUC to inform them if this was to happen again. He did not communicate that view to Vance Willyard, the foreman. His witness statement dated 10th August 1999, a very long time after the episode, claimed that Vance Willyard had told him that he was going to another job and undertook to inform CUC when there was next going to be work near the line. There was no mention of that part of his evidence in the note that he made at

the time. When he was cross-examined on behalf of the plaintiff he conceded that the building was obviously not completed, and that further construction at roof height (i.e. near the power line) was necessary. He told counsel for Pro-Built that he did not think to ask as to the location and type of work that remained to be done. He accepted that he had noticed that the clearance between the south side of the building was more than 7.5 feet (CUC's own internal standard) and believed it to be ten feet. He did not take any steps to measure the actual clearance. It is an agreed fact from Dave Thompson's evidence that the actual clearance was five feet five inches. In other words, Mr. Holness was virtually 100% out. He went on to agree that the situation he observed on site hadcaused him concern, but that at the time he did nothing about it. He made the important concession that if he had realised that the actual clearance was five feet five inches he would have made immediate recommendations as to re-routing or an "outage". He then made the startling admission that he regarded the events of 4th September 1995 as constituting a dangerous situation and told his superior, Mr. Dave Thompson about it. He regarded Vance Willyard as the foreman and the man in charge. It was his belief, that work on the building site might resume at any time, even the next day. He was then specifically to repudiate evidence contained in his witness statement in which he apparently stated that Vance Willyard had claimed that he was going to

another job and would inform CUC when he was next going to work near the line that therefore, he was very surprised to find out that Wade Willyard had the injury on 2nd October 1995 whilst trying to manouever a twenty foot length of angle iron in proximity to the same power line, with clearance of eight to ten feet, as he would have expected him and his brother to be more careful. He attributed the presence of those words in his statement to the attorney for CUC. I reject that suggestion. It is obvious therefore, that Mr. Holness is a witness about whom the Court has to be very careful. He was doing his best in this regard, as I judge it, to say the right thing for the company, his employer. In a further striking example of his attitude to the facts he was to claim that in his memorandum to Dave Thompson dated 7th September 1999 in which he made the observation "we would provide the necessary insulation"; he was not referring, as the rest of his memorandum did, to this particular building site! I reject that part of his evidence as well. He eventually told counsel for Pro-Built that he could not remember whether he had discussed the safety options with the Willyard brothers or not. He was to repeat that it had never occurred to him that a person working on the building could reach the power line and did not know if they would be working with twenty foot long metal objects. The reason was, that he never troubled to ask what further work and type of work was required to be done on the building. This was a significant failure on his part.

GarryWhittaker was the next witness. He too believed that the vital clearance was ten to twelve feet. In the same statement he was to say that when he heard that Wade Willyard had suffered electric shock after contact between a twenty foot steel girder and the power line that he could not believe it, as he knew that the power line was 8 feet away.

In the space of 2 paragraphs the minimum distance was reduced by the witness by some two feet! He agreed that if the true clearance turned out to be five feet five inches, as it has, there would have been obvious danger to men working on the roof on the building with a metal object. If he had realised what the true position was at the time, he would have told the men on site to stop working and put to his supervisor a range of appropriate safety options. He agreed with the suggestion that he did not know when work was to resume. He said that he did not order work to stop as he believed that they were moving to another site and he had been told that the crane would no longer be used. It is plain to me that both Holness and Whittaker were concerned only with the possible contact of the crane with the power line and not the safety of workers themselves. His false sense of security was despite his concession that he assumed that metal installations would be made at roof level!

The final witness for CUC was the supervisor, Dave Thompson. He prepared a report in which the clearance figure was described as being about five feet. His initial report failed to consider whether or not any fault might attach to CUC, and blamed Pro-Built for all that had happened. He had first viewed the site on the day after the crane episode when he wrongly estimated the clearance as six to eight feet. He therefore judged it impossible for a man on the building to reach the power line. He claimed that he had discussed safety with Vance Willyard, who was to contact him if his men were to work near the line again. He was under the impression that the crew was going to another site. He came back on site on 2nd October 1995, after the accident to Floyd Willyard, at which stage no one on site was blaming CUC for what had happened. This I accept. When he was cross-examined, he agreed that he knew that further work was to be undertaken on the building after the crane episode, and sought to explain away the relevance of seven foot five inches internal standard as applying to new constructions only. He specifically disagreed with his subordinate, Garry Whittaker, in that he claimed that he did not appreciate that there might be danger to men when working on the roof adjacent to the power line. He did not think it appropriate to write a warning letter to Pro-Built or Hydes and Sons although CUC was later to do so in 1998 when they warned Hadsphaltic Construction, at a stage when they were constructing a overhead

walkway on West Bay Road, in "close proximity" to a power line. He was then to concede that had he appreciated that there was still work to be on the sides of the building near the power line he would have written a warning letter. He concluded with these words:-

> "I now agree in view of my state of knowledge a warning letter should have been sent to Vance Willyard of Pro Built – I consider that the warning I had given to Vance was very very clear. The letter would have been a reinforcement of what I had said to him."

He then said that he was not told by Vance Willyard that he was leaving the site and would return four to six weeks later. Accordingly, he conceded that work might have resumed the very next day.

4. **The evidence of behalf of Pro Built**

The only witness called on behalf of Pro-Built was Vance Willyard. He was in a difficult position as, at the outset, Mr. Delroy Murray, counsel for Pro-Built realistically and properly conceded liability on the part of his client. He made no admissions as to its extent. The witness naturally found the whole procedure very trying as he had to concede that his behaviour had in large measure lead to his brother's tragic accident. I watched him very carefully to assess his demeanor and credibility. It was

noteworthy that whilst he was given a number of possible opportunities to "gild the lily" in the interests of his brother he resisted all of them. He conceded that both he and his brother were experienced men who understood the danger of electricity. He conceded that his brother had eleven years experience and had been a foreman on building sites in the United States and knew the danger of working near power lines. He would have been familiar with the OSSHA Regulations as representing good practice wherever the building site might be. As to the facts of the crane episode, he claimed that it was the softness of the ground, it being the rainy season, which had caused the crane to tilt and make contact with the power line. He continued, that in general, site conditions were such that he had, by the time of that episode, decided to do work on another site until site conditions in general had been improved. When Holness and Whittaker came on site he told Holness that the crane then would no longer be used after Holness told him that if there was to be work near the power line with the crane he should call CUC who would insulate the wires (i.e. "pig" them). He then heard Holness tell Ray Hydes that he would insulate the wires. He took that view that as Hydes was the general contractor, and not him, it was up to Hydes to deal with matters such as insulation and site preparation. He then went off site to work on another project. Between that date and 2nd October when they returned to work, he spoke to Ray Hydes stressing his concern both as to the power line and

the condition of the ground. According to him, Hydes was to contact him when site filling and grading had taken place and the power line had been made safe. Hydes had undertaken to contact CUC in that regard. I addition he claimed that Hydes had been concerned about the power lines being so close to his building for some time. He therefore thought that the problem was going to be dealt with. He did not have to consider a power source for himself as Pro-Built used their own generator on site for power tools. He resumed work on Monday 2nd October 1995, "one of the Hydes had told me to return at the end of the previous week .... I was told that the site was ready for work", I always dealt with Ray Hydes." He then conceded that the did not make any checks to see if the power lines had been made safe and acknowledged that it was a grave mistake to have failed to make those vital checks. He denied seeing Dave Thompson on site on 5th September 1995, the day after the crane episode. He agreed that he had paid for the small amount of damage caused by the crane episode but without admitting liability. He said that he had not discussed the question of the power lines with Wade Willyard before the return to work, but explained that he would not have returned to work unless he thought the line was safe that would have put his brother and other workmen at risk. He denied that he had told CUC that he would be working off site for four to six weeks, but conceded that in fact the other job he went to did in fact last for that period. He pointed out that the line

of the building was laid out when he arrived on site and that he was not responsible for site preparation. He was not under contract for the fitting of utilities, nor for the design of the building. He regarded that as the responsibility of the general contractor who had engaged a number of companies to carry out various works in respect of the building. It was obvious to him that for the power line to be made safe, CUC would have to know the date if an "outage" was to be effected. The relevance of that admission to CUC's counsel is to be judged by their own evidence that an "outage" would have been regarded as inappropriate and that re-routing was the proper course to take. This was, in fact, the course they took after the accident had occurred. He was adamant that CUC's only expressed safety concerns were in relation to working with the crane close to the power line and did not relate to other work on site. He did not regard safety in that respect as his responsibility and therefore did not know when CUC were going to do the safety work. He accepted that in his initial report, he had said that at the time of the accident his brother Wade Willyard and a fellow workman were well aware of the power line and were actually looking at it. Adding "I did not think that he knew that the line was live".

5. **The evidence on behalf of Hydes & Sons**

The only witness called on behalf of Hydes and Sons was Ray Hydes. He accepted that he was the occupier of the land but maintained that Pro-

Built were in entire charge of the building operation. CUC 's representative had visited the site in June or July 1995, as he was concerned that the power line was situated just behind his premises and should be re-routed. After the crane episode, he went on site and spoke to a representative of CUC. That person appears to have been Holness. Insulation or "pigging" of the line was discussed. In the end, it was decided that proper access to the line could not be achieved due to the state of the ground and the equipment available. He denied that he ever discussed safety with any representative of Pro-Built, although he conceded that Vance Willyard would have been present when he spoke to Holness. The reason he did not have that discussion is that he regarded Pro-Built as being solely responsible for safety on site. Although he admitted discussions with Holness, no decision was taken as to what to do and when to do it. He was then shown a letter written by his then attorney on 16th August 1996 which said that no one in Hydes and Sons was "privy to any discussion between CUC and Pro Built with regard to energized line." I would normally make a finding of fact in respect of this apparent discrepancy but in the light of other evidence given by Mr. Hydes, such a finding is unnecessary. He agreed, when cross-examined, that when Pro-Built left the building site, after the crane episode, further work was needed on the sides, rear and roof of the building and that filling and grading of the land needed to be done. He could not say when

the filling and grading had been completed, nor could he say when or how Pro-Built had returned to work on site. Whilst admitting that someone must have told them when to return, he denied that it was him. He specifically denied knowing that they were to return on 2nd October. When pressed he said that if Vance Willyard had said (as he had in evidence) that he was not going back on site until it was ready, he could not contradict him; nor could he disagree with Vance Willyard's evidence that he had said to him that the site was "in order" at the end of the previous week. He had previously said in answer to Mr. Matthews for CUC that so far as he was concerned, on the return to work by Pro-Built no work had been done by CUC on the power lines. In further clarification, he said that so far as he was concerned, whether or not the line was live was at best 50-50! He agreed that he did not communicate his state of knowledge to Vance Willyard but did not accept that there was any obligation on him to do so.

5. **Findings of fact**

Bearing in mind the evidential burden I find the following facts to be established on the balance of probabilities:-

(i) The grave injuries suffered by Floyd Willyard on the 2nd October 1995 took place in the course of his employment by Pro-Built.

(ii) Pro-Built had been engaged by the general contractor Hydes & Sons Ltd. to erect a building on lines which were laid by their

architect. They were sub-contractors but not the only sub-contractors. Hydes had adopted a do-it-yourself approach and had engaged various companies to perform specific tasks.

(iii) Site preparation of the lands was neither done or expected to be done by Pro-Built. It was done by some contractor whose identity has not been given to the Court.

(iv) After the incident of 4th September 1995, CUC knew or ought to have known, that work on the roof of the building adjacent to and within five feet of the power line was likely to resume at any time thereafter.

(v) After the incident of 4th September 1995 CUC knew, or ought to have known, that work on the power line might involve the handling of metal objects which were being used in the course of construction.

(vi) That as days went by, between 4th September 1995 and 2nd October 1995, the resumption of work on the roof became daily more likely.

(vii) Despite their state of knowledge, as I find it to be, CUC neglected to send a warning letter to Pro-Built or to Hydes and Sons and did not take any action nor plan to take any action to make the power line safe.

(viii) There was discussion between Holness, Vance Willyard and Ray Hydes on or about 4th September 1995, which either alerted or should have alerted Hydes to the need for decisive action as to the rendering safe of the power line prior to the resumption of work.

(ix) On 4th September 1995, Vance Willyard told Holness in the presence of Hydes that CUC should do what was necessary to make the power line safe for the resumption of work.

(x) On or about 1st October 1995 Vance Willyard spoke to Hydes and was told that it was safe to resume building operations on his site. Vance Willyard ordered the resumption of work without checking with CUC as to the safety of the power lines.

(xi) When Hydes made the foregoing representation to Vance Willyard, he realised that there was an even chance that the power supply had not been made safe.

(xii) Prior to the resumption of work Vance Willyard, the man entrusted with safety as the work was in progress on site, failed to take steps to make certain that the power lines had been made safe. In particular, it must have been clear to him that no re-routing had taken place as the line of the electricity poles would in that event have been moved. He was duty bound to check whether in the event that re-routing had not taken place grounding cables were visible. At the very least he should have checked for "pigging". Neither grounding nor "pigging" had been accomplished. This was a signal abdication of responsibility by him.

(xiii) Floyd Willyard, although perhaps lulled into a false sense of security by his brother's failure to check and/or warn him, knew or ought to have known, that no re-routing had taken place, that no grounding cables were visible nor any other form of insulation. He was a very experienced man and should have due regard for his own safety especially in view of the events of 4th September 1995. This finding of fact is made on the basis that in this regard it is for the defendants or any of them, to discharge the evidential burden which I find that they have done.

5. **Liability**

1. CUC

I accept the submission made on behalf of the Electricity Provider, that a perusal of the case law indicates that such a body will not be held to be liable for contact with an overhead power line, unless there are special circumstances which render it forseeable by the electricity company that someone will, or may be, in close proximity to the line, but will not be aware of its presence. In this case I treat the state of mind of the Willyard brothers as, although being aware of the presence of the overhead line,

they were unaware of its dangerous quality, believing it to have been neutralised. I accordingly treat the case as if it had been a case of concealment.

In ***Withers v. Southern Electricity [1975] CA (unreported)*** the plaintiffs succeeded as he was a visitor to a camp site which had an ever changing population. The electricity company was aware of its use and was held liable as it did not advise the land owner to keep campers away from the area beneath the lines or warn them of their presence. The plaintiff in that case touched an overhead line accidently with a long ridge pole.

In ***Buckland v. Guilford Vas Light and Coke Co. [1949[1 KB. 410*** the power line in question passed above an easily climbable tree and was hidden by its leaves. There was a footpath in the field where the tree stood. A young girl climbed the tree and was killed.The company was liable because the lines constituted a hidden death trap.

In the minds of Vance and Floyd Willyard, that is precisely the position of the power line in this case and I so find. Holness knew that work was to be resumed on the building. He failed to establish its precise location and nature, and failed to measure the precise clearance between the potential place of work and the line. He expressed his general concern to

Thompson who disagreed with his conclusion, although he had not been on site after the accident took place. He too properly failed to measure the true clearance between the potential place of work and the power line. The onus was on the electricity company, as the provider of a potentially lethal commodity, to contact Pro-Built and Hydes and Sons and to take appropriate steps to make the site safe. Their decision after the accident was that a re-routing was the only possible and proper step to take; therefore they should have seen to it that that was done immediately after the crane incident. It is suggested to me that the electricity company have no power to cut off supply. That may be so, but they have the power and a duty to make their influence felt when danger is likely to be caused to people working on the site. As the service provider, CUC were the experts. It was for them to lay down the appropriate steps to be taken and to see that they were carried out. They should have insisted on remedial action being taken straight away and warned off Pro-Built from the site until they were satisfied that safe conditions existed. I am bound to say that the evidence that I have heard in this case indicates a slap dash attitude on the part of CUC. It is the hope of this Court that lessons will have been learned and that a case of this kind will not recur. They failed to ascertain the precise nature of the work to be carried out and its location.; if they had done so, I believe they would have acted. They failed to do so, and accordingly, I find that they were negligent in relation

to the employees of Pro-Built. That failure was an effective cause of the accident. In the words of counsel for the plaintiff, it was an accident waiting to happen.

6. **Pro-Built**

Vance Willyard's failure to lay down a safe system of work for his workers rather than merely telling CUC and Hydes and Sons to get on with the job and make the site safe was a signal failure. That failure was compounded by his failure to check that vital safety work had been accomplished before taking his men back on site. It would have been very easy for him to telephone CUC to make sure that the site was safe before putting his fellow workmen at risk. I find that he was negligent in the circumstances and his negligence was greatest in terms of percentage.

7. **Hydes & Sons**

Ray Hydes owed a duty of care to Pro-Built and its employees. Once he knew, as he was to admit that he did, that there was at least a 50% chance that the power line was live. He must have known that no relocation of the power line had taken place on his premises. It could not have happened without his knowledge. He was seriously in breach of his duty of care to those might suffer injury by reason of his failure to warn them. He failed in that duty, and I judge that to be a further cause of the

accident. It has been urged upon me that in the event that an independent contractor is engaged to work on site, the occupier is absolved of liability for their negligence. I agree. See ***Indermaur v. Dames [1867] Vol. II [L.R.] 313***.

This is a long established proposition of law. In this case the liability of Ray Hydes is not based on the vicarious liabillity of Pro-Built. His liability is direct liability on the basis that I found that there was a duty of care to the employees of Pro-Built to warn them as to his state of knowledge and his failure so to do. Where vicarious liability enters into the picture is that Hydes and Sons Limited are liable for the vicarious liability of Ray Hydes their servant or agent and I so find.

8. **Conclusion**

I must now assess whether the plaintiff is guilty of contributory negligence. If he was lulled into a false sense of security, as has been urged on me, he should not have allowed himself to be in that position. He was working near power lines which turned out to be live. They were live to his knowledge one month before. He was working with a twenty-feet long piece of angle iron, five feet from that power line. As an experienced man, who had been a foreman for eleven years in the United States, it was reasonable for him to take appropriate care for his own safety. He should have asked his brother Vance Willyard, whether or not

the site had been made safe. As the number two man on site, he had a duty not only to himself, but workmen working with him, to see to it that the power had been switched off before undertaking the work which lead to his unfortunate accident. He failed to do so. Accordingly, his conduct has directly contributed towards the injuries which he unfortunately suffered and I so find. In this respect I accept the evidence of Ramey as to the way in which a power line should be regarded and I assess his negligence at 20%.

9. I now make the following orders:-

(i) Judgment shall be entered for the Plaintiff against the Defendants for 80% of the damages to which the Plaintiff is ultimately found to be entitled together with the costs of this action to be taxed if not agreed.

(ii) (a) The first Defendant's liability for the Plaintiff's loss and damage is assessed at 30%.

(b) The second Defendant's liability for the Plaintiff's loss and damage is assessed at 40%.

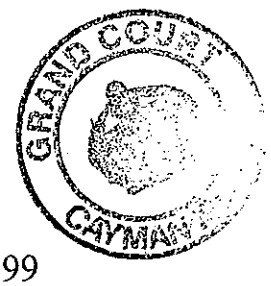
© The third Defendant's liability for the Plaintiff's loss and damage is assessed at 10%.

(iii) The contribution between the Defendants as to the damages to which the Plaintiff may be found to be entitled shall be in the same proportions in which the Defendants have been found to be liable.

(iv) The Defendants are ordered to contribute amongst themselves to the Plaintiff's costs when taxed or agreed in the following percentages:-

(a)	The First Defendant	37.5%
(b)	The Second Defendant	50.0%
©	The Third Defendant	12.5%

10. I cannot leave this tragic case ,in which a young life has been blighted, without observing that building regulations in respect of employers and penal sanctions on the providers of utilities do not exist in the Cayman Islands. Such provisions do exist in the United Kingdom and it is for the legislature to judge in the light of the present building boom whether such legislation should be introduced for the protection of working people.



H.G.D. Graham
Judge of the Grand Court

16th September 1999