

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-00948

BETWEEN

**TELECOMMUNICATIONS AUTHORITY
OF TRINIDAD AND TOBAGO**

Claimant

AND

**TELECOMMUNICATIONS SERVICES
OF TRINIDAD AND TOBAGO LIMITED**

Defendant

Before the Hon. Madam Justice C. Gobin

Date of Delivery: 03 February 2022

Appearances:

Mrs. Deborah Peake S.C. leading Mr Ravi Heffes Doon instructed by Mr. Rajesh Ramoutar Attorney at law
for the Claimant

Mr Martin Daly SC leading Mr Christopher Sieuchand instructed by Ms. Sonnel David-Longe Attorney at law
for the Defendant

Ruling

1. By its claim filed on 15th March 2021 the Claimant, the Telecommunications Authority of Trinidad and Tobago (TATT), claimed from the Defendant, Telecommunications Service of Trinidad and Tobago (TSTT), payment of the sum of \$26,467,445.00 being unpaid contributions to the Universal Service Fund (USF) which is established under Section 28 of the Telecommunications Act Chp. 47:01, of the Act. Under the terms of its concession to operate its telecommunications network and to provide service in particular condition 14 thereof, TSTT is required to comply with all regulations in relation to universal service and universal access and to make such contributions as are required by them. TATT claimed that by reason of TSTT's failure to pay four invoices issued, it suffered loss and damage in the amount claimed. TATT says that what is before me is a claim for recovery of a debt due under a statute, a recognised common law claim.

2. By notice of application filed on 06th September 2021, TSTT sought inter alia an order that the Court has no jurisdiction to hear a claim for moneys due and owing as a result of an alleged breach of the terms of the concession and the Act or the regulations.
3. The question which I have to determine is whether as the Defendant submits the provisions of the Act and the regulations made thereunder and such of the statutory terms as are incorporated into the concession granted to the Defendant, constitute a comprehensive code which governs the relationship between the relevant Minister, TATT and TSTT and whether by this prescription Parliament intended that the processes, remedies and penalties provided ,would be a substitute for a common law right of action for recovery of the debt.
4. The relevant principles which emerge from the case law cited by both sides including in particular from those which are binding on this Court (**The Attorney General v Chaman Algoo Civ. App 47 of 1984 and Western United Credit Union Corporative Society Ltd v Corrine Ammon Civ. App 103 of 2006**) are these:-
 - 1) The jurisdiction of the Supreme Court cannot be ousted by statute except by express words or by necessary implication.
 - 2) Where a right or liability not existing at common law is created by a Statute which gives a special remedy for enforcing it or which appoints a specific tribunal for its enforcement, a party seeking to enforce its right must resort to that remedy or to that tribunal and not to others.
 - 3) A right or action against a person obligated to pay under a statute arises to recover money unless the Act contains some provision to the contrary.
 - 4) Where there are no express words prohibiting the action to recover the debt, the Court is required to consider whether it appears from the whole purview of the Act that it was the intention of the legislature that the remedy provided should be a substitute for the right of action which would otherwise exist.
5. The Act contains no express provision which ousts the jurisdiction of the Court or which prohibits an action for recovery of a debt for non-payment of Universal Service Fund contributions. It does however provide specific remedies for breaches of the terms of concessions including for non-

payment of contributions to the USF. TSTT submits that these are exclusive remedies which must be pursued. It contends that these specific provisions having been made by the legislature, the common law remedy of recovery of a debt is not available to the Claimant. It contends that the provisions constitute a comprehensive code which effectively exclude resort to the Court.

6. I have considered the submissions and the Act as a whole and hold that this Court has no jurisdiction to hear the claim because the intention of Parliament was to establish a comprehensive scheme under the Act which would provide reasonable, adequate and effective remedies for non-compliance and material breaches of terms of Concessions, thereby excluding the jurisdiction of the Courts.
7. The following sections of the Act indicate the specific mechanisms by which Parliament sought to provide remedies :
 - a) Section 30(1) provides that the Minister, on the recommendation of TATT and subject to the procedural provisions contained in that section, may suspend or terminate a concession where the concessionaire has failed to comply materially with any of the provisions of the Act, Regulations or the terms and conditions of a concession or where the concessionaire has failed to comply materially with any lawful direction of the Authority;
 - b) Section 30(4) to 30(7) of the Act also specify certain procedural provisions with which the Minister must comply in considering whether to suspend or terminate a concession and in making such a decision;
 - c) Section 65(g) of the Act creates a specific offence where a person fails to contribute to the funding of the services referred to in section 28 in accordance with the direction of the Authority;
 - d) Section 71 creates a general offence where a person contravenes or fails to comply with any of the provisions of this Act or any Regulations;
 - e) Regulations 26(2) of the Regulations provides that a contributor who fails to contribute to the Universal Service Fund in accordance with the Regulations commits an offence under section 65(g) of the Act and is liable to such penalties prescribed therein; and

f) Regulation 26(3) of the Regulations provides that a person who fails to comply with any of the provisions of the Regulations commits an offence under section 71 of the Act and is liable to such penalties prescribed therein.

8. In response TATT submits that the availability of these remedies does not oust the jurisdiction of the Court because if TATT were to be limited to them there would be consequences that could not have been intended by Parliament. It contends that the institution of criminal prosecutions and the ultimate imposition of penalties even including the hefty fines stipulated would be insufficient. Resort to them would not result in adequate protection or compensation and would be “poor consolation” for TATT which would be injured by non-payment toward the fund. Further, invocation of the Ministerial power to suspend or cancel of a concession would result in loss of access of telecommunication services to the public for whose benefit the Act was passed, it would defeat the objective of the Act to provide service.
9. I reject these submissions on the insufficiency or disadvantages of the available statutory remedies. They are flawed first because they wrongly assess the efficacy of the remedies by treating them distinctly. Nothing prevents TATT from exercising an option to avail itself of any or all options simultaneously. Significantly the Act gives TATT an unusual discretion to exercise forbearance, an overriding option not to exercise any or all of its options. This supports TATT’s contention as to the scope of legislation and the intention of parliament to confer on TATT sufficiently wide powers while limiting access to the Court.
10. On the particular matter raised as to insufficiency of penalties, I find that, as the Defendant submits, the person who suffers injury as a result of non-payment of contribution to the USF is not TATT but the general public for whose benefit the fund was established. Under Section 18 of the Act, TATT is authorised to “collect” USF contributions but Section 53(1) makes it clear, that USF contributions are not TATT’s funds in the sense that they are not available for defraying its expenditure. TATT does not suffer loss and injury as a result of non-payment. It is the public who is deprived of funds. This is further reason to reject the submission that the penalties are insufficient to compensate TATT under the statutory scheme. Parliament did not intend for TATT to be approaching the Court for “compensation”. It provided a comprehensive regime which did not contemplate TATT having to go outside of it for enforcement of a material breach for which several remedies were expressly provided.

11. The Act provides for cancellation or suspension of a concession for material non-compliance. It is unarguable that there could be no more effective a mechanism for compelling compliance. Payment of USF contributions and payment of fees are material terms. The threat of suspension or cancellation of a concession with the imposition of terms including payment of outstanding contributions appears to me to be what the legislature contemplated as a powerful method of compelling compliance for the benefit of the public, summarily and with the minimum of costs.
12. TATT's argument that the ultimate sanction which the statute provides would result in loss of access to the public for whose benefit the legislation was passed and that this is the "opposite of promoting access" is surprising and quite frankly absurd. The salutary objective of "promoting public access" is not free standing. If it were so, public access through persons operating without licences would be considered as promoting it. It is but an important part of the foundation upon which rests a highly regulated statutory framework established by the Act. The concessionaire's licence to provide service is conditional upon its compliance with the provisions of the Act.
13. Under this comprehensive scheme, TATT is entrusted with serious responsibilities, and vested with far reaching ancillary powers to discharge them. The collection of contributions for it and the administration of the USF are among TATT's more important duties. They impact directly on public access to consumers throughout Trinidad and Tobago. In order to facilitate the collection and the determination of the amount of the contribution that is due, the Universal Service Regulations 2015 impose a statutory requirement on the concessionaire to submit details of gross revenue on a specified form. Regulation 9 mandates the submission of audited statements by the concessionaire within 6 months of the financial year. These are intrusive statutory powers which confirm the intention of Parliament to equip TATT with the necessary tools to secure compliance by concessionaires with this material term. In the circumstances a seeming reluctance on the part of TATT to resort to the most effective remedy provided by the Act is not readily explained but whatever the reason, its disinclination does not permit it to bring a claim before the Court.
14. In arriving at my conclusion that the Act provides a complete code and that it provides special and particular remedies which supercede all common law rights of action, I have also considered the following. Section 11 (1) of the Interpretation Act Ch 3:01 permits reference to the preamble of the Act

to discern the intention of the legislature. In this case the preamble indicates the intention to establish a comprehensive legal framework.

15. I have also noted that Parliament, in establishing the framework saw it fit to preserve the jurisdiction of the Court in limited circumstances, first for review a decision of the Minister to suspend or cancel under Section 30. Then Section 70 allows for recovery of the cost of restoration and repair for damage to property, following upon a conviction for an offence under Section 69, as a civil debt. In the circumstances I find that the omission of Parliament to legislate to expressly preserve the jurisdiction of the Court for the recovery of what must have been anticipated would exceed sums contemplated by s 70 ,for outstanding fees or USF contributions, could only have been deliberate and the omission is explained by the fact that adequate provisions for redress for material breaches, including non-payment of fees and USF contributions were made. TATT is not entitled to avoid them on the grounds that they consider them to be inadequate, unreasonable or disproportionate. It must instead consider the remarkable power conferred by Section 81, and whether it should exercise the discretion to forbear in favour of a defaulting concessionaire. If it chooses not to, then it must avail itself of the remedies provided.

16. Determination

- 1) The Court declares pursuant to Part 9.7 Civil Proceeding Rules that it has no jurisdiction to hear this case and that the statement of case should be struck out.
- 2) The Claimant is ordered to pay the Defendant's costs of the claim on the prescribed scale.
- 3) The Claimant is ordered to pay the costs of the notice dated 06th September 2021, fit for Senior Counsel and Junior.

CAROL GOBIN

Judge