Neutral Citation Number: [ ]

2017 EWHC 790 (CH)

Case No: C3OMA916

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MANCHESTER DISTRICT REGISTRY

The Civil Justice Centre
Manchester

Date: 7 April 2017

Before :

His Honour Judge Bird

- -

Between :

ROCHDALE BOROUGHWIDE HOUSING LIMITED	**Claimant**
- and -	
ESTHER IZEVBIGIE	**Defendant**
-and-	
UNITED UTILITIES WATER LIMITED	**Intervener**

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Paul Whatley (instructed by **Rochdale Boroughwide Housing Limited in-house solicitors**) for the **Claimant**
Joseph Markus (instructed by **Platt Halpern Solicitors**) for the **Defendant**
Gaynor Chambers (instructed by **United Utilities Water Limited in-house soliciotr**) for the **Intervener**

Hearing dates: 8-9 February 2017

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE BIRD

7th April 2017

His Honour Judge Bird :

1. The Defendant is the tenant of a property owned by the Claimant. The Claimant says that the Defendant is behind with rent payments and so seeks possession. An issue has arisen as to the amount of rent owed. The court has approved the formulation of a preliminary issue to enable that issue to be determined.

2. The preliminary issue concerns the price that may be charged for the provision of water and sewerage services to domestic dwellings. In short, if the Claimant is a "water re-seller" within the meaning of the Water Resale Order 2006 then there is a cap imposed on the charges that can be levied for such services. If the Claimant is not a water re-seller there is no cap.

3. The intervener is the relevant provider of water and sewerage services. For the purposes of this judgment I need only refer to the provision of water services.

4. Although the sum of money involved in the instant case is modest I am told that the determination of the preliminary issue will have an impact on very many other tenants.

5. The preliminary issue is formulated with admirable clarity and is this: "is the Claimant a reseller within the meaning of the Water Resale Order 2006 by reason of the agreements entered into between the Claimant and the Intervener?"

The 2006 Order

6. By section 150 of the Water Industry Act 1991, as amended, the Water Services Regulation Authority (known as "Ofwat" and referred to in the 1991 Act as "the Authority") may:

"from time to time by order, fix maximum charges which a person who is not a relevant undertaker may recover from another such person in respect of water supplies or sewerage services provided to that other person with the help of services provided by a relevant undertaker."

7. By section 150(3) Ofwat is under a duty to publish any order it makes. The 2006 Order was issued by the Director General of Water Services under a previous version of the section and is published as part of a leaflet called "A guide to water resale – information for household customers"[1].

8. The order is expressly set out at pages 16 to 19 of the leaflet. The broad lay out of the order is this: paragraphs 1 to 4 set out introductory provisions. Paragraph 5 provides definitions, paragraph 6 deals with maximum charges and paragraphs 7 to 9 with other charges. Paragraph 10 deals with overcharging and gives a person who is overcharged the right to recover the amount of the overcharge from the reseller.

9. The definition of re-seller (with capitalised terms defined in the same paragraph) is as follows:

> "Re-seller means any person who is not a Relevant Undertaker but who
> (a) provides to any Purchaser a supply of piped water which a Water Undertaker has supplied, directly or indirectly, to the Re-seller; or
> (b) ....."

10. It is common ground that the Claimant is not a "relevant undertaker". The solution to the preliminary issue therefore lies in whether, having regard to the contractual arrangements between the Intervener and the Claimant, the Claimant provides to the Defendant a supply of piped water which the Intervener has supplied, directly or indirectly to the Claimant.

The Agreements

11. The factual basis on which the preliminary issue is to be determined is to be found in agreements which govern the relationship between the Claimant and the Intervener. There are 3 such agreements made on the following dates:

    a. 16 May 2005

    b. 23 March 2012

[1] http://www.ofwat.gov.uk/wp-content/uploads/2015/10/prs_lft_guidetowresale.pdf

c. 25 November 2014

12. The agreement of 16 May 2005:

a. Commenced on 1 April 2005 and ran for a period of 5 years

b. Recital B records the fact that the Intervener is responsible for "providing water" to the relevant area and may recover charges for so doing

c. Recital C records that the Claimant (in fact its predecessor as Landlord) has a power to enter into "an agreement for the collection and recovery" by them "on behalf of" the Intervener of "Charges fixed by the [Intervener] for the supply of water…."

d. Recital D records that the Intervener and the Claimant's predecessor in title have agreed "that the [Claimant] will collect and recover the charges fixed by [the Intervener] for the supply of water"

e. The term "Charges" is defined as liability to pay for water "provided by [the Intervener]"

f. The term "Customer" is defined as tenants who are liable to pay water charges to the Intervener

g. Clause 2.1 records that the Claimant will provide certain services to the Intervener in exchange for payment.

h. The services (defined at schedule 1) to be provided include the "collection and recovery of the Charges from the Customers"

i. Clause 2.2 records that the Intervener "authorises" the Claimant to collect the Charges on behalf of the Intervener

13. The agreement of 23 March 2012:

a. Commenced on 1 April 2010 for a period of 5 years

b. The recitals are similar to those in the 2005 agreement

c. "Charges" are defined as charges for water services "provided to the Customers by the [Intervener] which would but for the operation of this agreement have been charged and billed by the [Intervener] directly to the Customers…"

d. "Customers" are defined as customers of the Intervener

e. Clause 2.1 and schedule 1 define the services to be performed by the Claimant as "collection and recovery of the Charges from the Customers"

14. The agreement of 25 November 2014:

a. Commenced on 1 April 2015 for a period of 5 years

b. Recital B records the Intervener's wish "to engage [the Claimant] for the purpose of providing collection services in respect of [the Intervener's] water….charges due from [the Intervener's] Customers…."

c. "Charges" are defined as the Intervener's charges for water "provided to the Customers by [the Intervener] which would, but for the operation of this agreement have been charged and billed by [the Intervener] directly to the Customers"

d. "Customers" are defined as customers of the Intervener

e. By clause 2.1 and schedule 1 the services to be provided by the Claimant include the "collection and recovery of the Charges from the Customers"

f. By clause 3.1 the Claimant is bound to "collect and recover" the Charges

Interpretation of the Agreements

15. In *Rochdale Borough Council v Dixon* [2011] EWCA Civ. 1173, His Honour Judge Platts sitting at first instance in the Oldham County Court in 2010, determined that the 2005 agreement did not give rise to a vendor and reseller situation and did not therefore make the local authority a water reseller. The argument that the local

authority was a re-seller was not pursued in the Court of Appeal but was described by Rix LJ (at para.37) as "an impossible submission".

16. His Honour Judge Platts held (see paragraph 23 of the first instance judgment) that the 2005 agreement was "entirely consistent with being an agreement for collection and recovery of water charges on behalf of United Utilities".

17. In *Jones v London Borough of Southwark* [2016] EWHC 457 (Ch) Newey J was concerned with a different agreement made between a statutory undertaker (Thames Water) and a local authority (Southwark). The agreement is described at paragraph 8 of the judgment as having the following traits:

    a. Thames Water was described as the "Provider" and Southwark as the "Customer"

    b. Recitals provided that Thames Water provided water to premises managed by Southwark and that Southwark would "pay for the services in respect of some of the premises"

    c. By clause 2.1 Southwark agreed to pay for all of Thames Water's charges

    d. By clause 2.2 Southwark was entitled to certain allowance and reductions (defined at clause 3) on the charges it was to pay

18. The judgment described the practice under the agreement that Thames Water would bill Southwark for water services.

19. At paragraphs 38 to 53 of the judgment, Newey J deals with the relevant agreement before him. It is noted that the agreement between Thames Water and Southwark, in contrast to that with which the Court of Appeal was concerned in Dixon, contained no reference (for example):

    a. to tenants being liable to pay water charges to Thames Water

    b. to Thames Water authorising Southwark to collect such charges

The Evidence

20. The evidence is agreed and I therefore heard no oral evidence. By reason of the nature of the issue I am to deal with no evidence has been filed by the Defendant.

21. Mr Gareth Swarbrick, the Claimant's Chief Executive provides some very helpful background and an historical prospective. Before 1989 the North West Water Board was responsible for the provision of water and sewerage services in Rochdale. Tenants of the local authority were billed for the water they used by the local authority. On privatisation, the Water Board became North West Water PLC. It took over responsibility for billing council tenants for the water they used. In 1995 North West Water PLC merged with Norweb PLC and became United Utilities PLC. The Intervener is a subsidiary of United Utilities PLC responsible for the provision of water services.

22. In or about 2003 the Intervener approached the Claimant's predecessor, with a view to re-introducing the collection of water charges as part of rent paid to the Claimant. After an extensive consultation period and following a detailed report presented on 10 January 2005 to the Claimant's predecessor as landlord, the collection of water charges was re-introduced.

23. The report (a copy of which is produced in evidence) refers at paragraph 2.1, to "collection of water rates on behalf of United Utilities" and the decision made by the Claimant's predecessor in a cabinet meeting on 10 January 2005 (see paragraph 191) refers to the presentation of a proposal to enable Rochdale "to collect water charges on behalf of United Utilities".

24. Mr Swarbrick notes that the Dixon litigation was well known to the Claimant and that it "necessarily formed the background to the subsequent agreements between the Council, the Claimant and United Utilities". He notes that when the second agreement was entered into "in operational terms the delivery of the collection services did not change at all". A report was prepared for the Claimant on the desirability of entering into the 2014 agreement. The report recommended that a new contract should be entered into, and noted that the Claimant and its predecessor as landlord, had "been collecting water charges on behalf of United Utilities as part of tenants' rent since 2005. The recommendations of the report were accepted at a meeting held on 22 September 2014.

25. Dealing with the 2014 agreement compared to the other agreements, Mr Swarbrick notes again, that "in operational terms there is no practical difference…" between it and the other earlier agreements. He goes on to note that the charges collected from tenants are fixed by the Intervener and are the same as would be charged to tenants if they were billed directly. There is no "mark-up". Revenue received by the Claimant is payment from the Intervener in return for the provision of the collection service.

26. Mr Ian Pilling is the Intervener's operations Development Manager for collections. He explains how the water charge is calculated. In summary, without I hope doing a disservice to the care with which the evidence is set out and subject to minor variations, the position is that the Intervener tells the Claimant what the charge is, a small discount is applied and the Claimant (on the instruction of the Intervener) collects the charge as part of the rent collected from tenants. As it is put in evidence: "what this process means is that the prices which [the Intervener] tells [the Claimant] to collect from its tenants ….are those set out in the annual charges scheme which [the Intervener] negotiates with Ofwat….the Defendant does not pay any more than she would if the collection agreements were not in place".

27. Mr Pilling makes it clear that the Intervener remains responsible for dealing with complaints about the adequacy of water supplies, water quality and meters and provides a number of examples where such complaints have been raised.

The Law

28. I have been taken through the relevant provisions of the Water Industry Act 1991. A useful summary is set out at paragraphs 16 to 21 of the Defendant's skeleton argument. There was no disagreement between the parties as to the general scheme of the Act and so I do not think it is necessary for me to set it out here and at length.

29. In interpreting the relevant agreements I must apply the guidance set out by the Supreme Court in *Arnold v Brittan* [2015] 2 WLR 1593. A summary appears at paragraphs 15 of the judgment of Lord Neuberger, with whom Lord Sumption and Lord Hughes agreed.

"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101 , para 14. And it does so by focussing on the meaning of the relevant words…… in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions……

[the relevant factors are]

First, the reliance placed in some cases on commercial common sense and surrounding circumstances….. should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the

court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made....

Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a

contractual provision, to take into account a fact or circumstance known only to one of the parties….."

The arguments

30. The Defendant's argument can be summarised as follows:

a. The court is not bound to follow *Dixon* so that the issue of whether the Claimant is a water reseller is one for me to determine by reference to the particular relevant contract and background against which it was made.

b. On a proper interpretation of the relevant contracts (of 2012 and 2014) the Claimant has assumed responsibility for the payment of water charges in respect of all of its properties, whether occupied or not. The Intervener's charging scheme provides that the occupier of property is responsible for the Intervener's charges "except where another person….has agreed with [the Intervener] to accept responsibility". Mr Markus points out that the 2012 and 2014 agreements in contrast to the 2005 agreement define charges as set out at paragraph 13(c) and 14(c) above. He places particular reliance on the reference to charges which "but for the operation of this scheme [would] have been charged ….directly to the [tenants]". He submits that those words reflect an agreement that the Claimant has taken responsibility for the charges. He submits that the point is reinforced by clauses 7.1 of the 2012 agreement and 6.1 of the 2014 agreement, both of which refer to "charges payable by the [Claimant]".

c. The Claimant has no authority to collect water charges on behalf of the intervener and so is not the intervener's agent.

d. Following *Jones* the court must conclude that the Claimant is a re-seller.

e. The Defendant points out that the 1991 Act defines "consumer" as the person on whom the liability to pay charges falls (see sect.93) and that the duty to

supply water is owed to the consumer (see sect.54).

31. The Claimant's position can be summarised as follows:

    a. The 2012 and 2014 agreement were drafted in full knowledge of the decision in *Dixon* and as continuations of an arrangement which had been in place and had worked well for a long time. This should be borne in mind when interpreting those contracts.

    b. As a matter of interpretation, the Claimant cannot be regarded as a reseller.

32. The Intervener's arguments support those of the Claimant and can be summarised as follows: the Claimant is not a reseller within the meaning of the 2006 Order. The contracts with the Claimant are collection agreements on their true construction.

Discussion

33. If, as a matter of contract, the Claimant has become liable to pay water charges to the Intervener then it appears to be the "consumer" of those services in accordance with the statutory definitions referred to by the Defendant. If the Claimant is the consumer of the services then it seems to follow (at least on the Defendant's argument) that the Claimant is a reseller.

34. The question then is, as the parties agree, has the Claimant become liable to pay water charges? In determining that question I propose to start with the interpretation of the contracts without reference to the authorities. In so doing I will consider the guidelines set out by Lord Neuberger in *Arnold v Brittan* (see paragraph 29 above), bearing in mind that I am here not interpreting a given clause of an agreement but instead interpreting the agreement as a whole. It seems to me that context is everything.

35. The "documentary, factual and commercial context" of the agreement includes the following highly material points:

a. The 2014 agreement is one in a series of contracts all of which appear to have (at least on the face of it) a common aim. In interpreting the 2014 contract it must be looked at in context.

b. The Claimant and its predecessors as landlord are highly regulated bodies with wide ranging social and general duties. Each is obliged to take certain steps before entering into agreements to ensure that they (broadly) further the aims and responsibilities of the contracting party.

c. Before the 2005 agreement was entered into, the then landlord canvassed the views of tenants and prepared a detailed report dealing with the proposed contract to place before cabinet, the landlord's decision making body (see paragraph 23 above). Both the report and the decision of the landlord to sanction the 2005 contract refer to the collection of water rates or charges "on behalf of" the Intervener.

d. The 2005 agreement makes clear in its recitals (see paragraph 12 above) that the agreement is one to collect charges "on behalf" of the Intervener and the definition of "customer" makes it clear that tenants are liable to pay the charges to the Intervener. The essence of the contract (see schedule 1) is that the landlord will "collect" charges from "customers", defined as those liable to pay charges to the Intervener.

e. When the agreement had expired by effluxion of time a new agreement was entered into. The new agreement was not in precisely the same terms, but the definition of the services to be provided (see paragraph 13 above) was set out in precisely the same terms.

f. The evidence is that "in operational terms" the delivery of the contracted for services under the 2012 agreement was no different to the delivery of the services under the 2005 agreement.

g. When the 2012 agreement ran its course a fresh contract was entered into, again not in the exact terms of the 2012 agreement, but once again the definition of the services to be provided was identical.

h. The Claimant commissioned its own internal report into the desirability of entering into the 2014 agreement. The report referred to the history of the agreements with the intervener noting that the landlord had been "collecting water charges on behalf of [the Intervener]" since 2005. Part of the context then is the perceived continuity of the arrangements. The evidence is that there was no practical difference between the operation of the 2014 agreement and the 2012 agreement.

36. The recitals to the agreements set out the agreed relevant background to the making of the agreements (see Lewison on Interpretation of Contracts 6th ed. Chapter 10 section 11). The recitals therefore can properly be used as an aid to interpretation. The recitals to the 2014 agreement are shorter than those of the 2005 and 2012 agreements. I take that simply as a matter of drafting style and a reflection of the fact that the local authority, whose statutory power to enter in the agreement had previously been set out, was no longer a party to the 2014 agreement. The recitals consistently refer to the facts that:

a. the Intervener is responsible for providing water to the tenants and has a power to charge for those services

b. the local authority (in the case of the 2005 and 2012 agreements) has the power to enter into an agreement "for the collection" of water charges "on behalf of" the intervener.

c. The Claimant will provide "collection services" in respect of the Intervener's water charges (the 2014 agreement)

37. I remind myself that my task is to ascertain "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean". In doing so I must

focus on the words chosen by the parties and consider their meaning in the context of the whole agreement and against the background of the facts and circumstances known or assumed by the parties at the point the agreement was entered into.

38. The Defendant reminds me that part of the context is the definition of "Charges" in the 2012 and 2014 agreements. Charges are defined as:

"the aggregate of all the Company's charges for water.....provided to the [tenants] by the [Intervener] which would, but for the operation of this Agreement, have been charged and billed by [the Intervener] directly to the [tenants]...such amount to be notified to the [Claimant] by the [Intervener] in respect of each Charging Year...."

39. The Defendant's point (in summary) is, if the agreement was not in place, the Intervener would have "charged and billed" the tenants for water charges. The Defendant submits that the agreement changes that situation so that the Intervener is not charging and billing the tenants for water charges. It follows that the Intervener must be billing the Claimant who is therefore the "consumer".

40. At this stage of the process I approach the task of interpretation without reference to the authorities. I will go on below to explain why the decision in Dixon is in my judgment an important part of the context which supports the conclusion on interpretation which I now set out.

Conclusion

41. In my judgment the 2014 agreement is concerned with the Claimant's right to collect money owed by tenants to the Intervener and there is no assumption of the responsibility to pay charges to the Intervener.

42. The particular definition of "Charges" relied on by the Defendant is in my judgment misplaced. I accept that the definition carries a clear implication that the agreement creates a change. The position with the agreement in place is not the same as the position that would prevail if there was no agreement. However, the key to that

change is that under the terms of the agreement, the Intervener does not "charge and bill" the tenant customer "directly".

43. This is entirely consistent with the fact that under the contract the Claimant collects money from tenants which is owed by the tenants to the Intervener. The Intervener does not bill the tenant directly or collect money directly from the tenant, instead (as Mr Pilling's evidence makes clear) the Intervener tells the Claimant what the charge is and the Claimant collects it.

44. When read against the correct documentary, factual and commercial context of the whole of the agreement and in particular against the background I have set out and in the context of the services to be provided being "collection" services in respect of the "recovery" of the defined charges from customers, I can see nothing in the definition of "Charges" in the 2012 or the 2014 agreement that changes the meaning I have set out. Neither in my judgment does reference to "charges payable by the [claimant or its predecessor landlord]" alter that fundamental position.

45. I do not accept that the fact that charges apply to empty properties is a factor that assists the Defendant. In my judgment that is simply part of the overall accounting arrangements between the parties, designed to simplify the task of calculating the sums to be paid over to the Intervener. Viewed in context the overall effect of the agreements is clear.

Considering the Authorities

46. The decision in Dixon is an important part of the background knowledge that the reasonable person would have had when the 2012 and 2014 agreements were entered into. That is confirmed by Mr Swarbrick in his evidence. The effect of the Dixon decision was, to put it broadly, that the predecessor to the Claimant (the local authority) had "got it right". That is, it had set out to create an agreement which allowed it to collect water charges on behalf of the Intervener without assuming responsibility for those charges and had achieved just that.

47. When the importance of the decision, and the vindication it represents is taken into account the conclusion I have reached in respect of the interpretation of the

agreements is further justified. I bear in mind, and accept, that I am not concerned about the subjective intention of the parties to the agreement. It is however a striking feature of the argument before me that the contracting parties (that is, the intervener and the Claimant) agree about the meaning of the contract they entered into.

48. The present case can be contrasted with *Jones v Southwark*. In the contract with which the court was concerned in that case, Southwark was under a contractual obligation to pay for services provided by Thames Water. The present case is, for the reasons I have set out, very different.

The sub issues

49. The parties agreed a list of sub-issues as follows:

a. What is the ratio of Dixon?

b. Does Dixon bind this court to hold that the Claimant is not a reseller?

c. If not, is the Claimant a "reseller" within the meaning of the 2006 Order?

50. I have found it convenient to approach the question in a different way. In effect I have dealt with issue (c) and dealt with issue (b) to a limited extent.

Determination of the sub-issues

51. I can deal with issue (a) shortly. There were four issues before the Court of Appeal in Dixon. The issue which concerns the present claim was whether the local authority had acted within its powers by entering into the 2005 agreement. The extent of its power was taken as being limited by the Water Consolidation (Consequential Provisions) Act 1991 (see para.10 of the judgment). If the local authority had entered into an agreement "for the collection and recovery by the authority, on behalf of any water undertaker…., of any charges fixed by the undertaker…" then its actions were lawful and within its powers.

52. The tenant in Dixon argued before the Court of Appeal that the 2005 agreement was outwith the power of the local authority. In advancing his case, the tenant did not (see para.37 of the judgment) argue that the local authority "had taken over as provider" of water to its tenants. That argument was described as "impossible". The tenant advanced 3 arguments in support of his case: first that the agreement was not for the "collection and recovery" of charges. Secondly and in any event the "water charges" were not collected "on behalf of" the Intervener and thirdly the charges were neither fixed nor demanded by the Intervener.

53. Those arguments were thought by the Court of Appeal to all boil down to the same thing, namely an argument that the Intervener had "dropped completely out of the picture". The argument was rejected (see para.39). It was found that the 2005 agreement was one "for the collection and recovery by the authority, on behalf of any water undertaker…., of any charges fixed by the undertaker…". In my judgment that is the ratio of the Court of Appeal's decision.

54. In considering issue (b) I must bear in mind that the 2012 and 2014 agreements are not in exactly the same terms as the 2005 agreement. In my judgment it is not therefore helpful to consider if Dixon is binding on me in the sense that it provides the full answer to the issue before me. I prefer to express the view that Dixon is an important part of the factual background against which the 2012 and 2014 agreements were entered into. I also bear in mind that the question of the Claimant's power to enter into the agreement is, first, not before me, but more importantly, is not determined by 1991 Act.

55. As to issue (c) for all the reasons I have set out, and taking the decision in Dixon as an important part of the context against which the 2012 and 2014 agreements were entered into, I am satisfied that neither agreement makes the Claimant a "reseller" of water.

56. For all of those reasons, the correct answer to the preliminary issue is (to reflect the brevity of the issue): no.