

LELIZA DELABAJAN, PLAINTIFF-APPELLEE, V. MANILA ELECTRIC COMPANY, DEFENDANT-APPELLANT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Questioned in this Appeal[1] filed under Rule 41 of the Rules of Court is the Decision[2] dated February 15, 2011 of the Regional Trial Court of Makati City, Branch 136 (“lower court” for brevity) in Civil Case No. 01-1539 for “Damages.”[3] The Appeal also assails the lower court’s Resolution[4] dated June 6, 2011, which denied defendant-appellant’s eventual Motion for Reconsideration.[5]

The salient antecedents are those as stated in the assailed Decision[6] of the lower court:

“This complaint was brought by plaintiff Leliza A. Delabajan (plaintiff-appellee here) against defendant Manila Electric Company (MERALCO) (defendant-appellant MERALCO here) for damages (with application for a preliminary injunction).

Plaintiff resides at no. 1374 Corregidor Street, Barangay Guadalupe Nuevo, Makati City. On February 1, 2001, persons from defendant MERALCO inspected the house’s electrical facilities and found those facilities to have been tampered with.

On June 27, 2001, the parties entered into three Installment Payment Agreements (the June 27, 2001 IPAs) wherein the plaintiff agreed to pay defendant MERALCO the total amount of P577,756.70 for unpaid electricity xxx.

Plaintiff’s family uses two television sets, two refrigerators, two airconditioners and other electric appliances.

On September 12, 2001, the plaintiff, through her lawyer, wrote defendant MERALCO a letter seeking reassessment and reconsideration of the penalties and charges imposed upon the plaintiff xxx.

On September 27, 2001, defendant MERALCO disconnected plaintiff’s electric supply.

On October 17, 2001, plaintiff filed the present complaint for damages (with application for a preliminary mandatory injunction).

Defendant MERALCO filed an ANSWER alleging that it properly disconnected the electric services being used by the plaintiff in view of the provisions of the Electric Services Contracts that allow it to disconnect tampered electric facilities coupled with plaintiff’s failure to pay fully her differential and adjusted billings.

In seeking to recover damages against defendant MERALCO, plaintiff contends that she was only forced to enter into IPAs inasmuch as defendant MERALCO was threatening to disconnect her electric supply. Given her lawyers['] pending request for a recomputation and reassessment, plaintiff ascribes bad faith to defendant MERALCO’s disconnection of the electric supply without prior sufficient warning.

On the part of defendant MERALCO, it contends that the plaintiff signed the IPAs knowingly fully well the contents thereof. It relies on the provisions of the contracts of service to justify its right to effect immediate disconnection of the electric service.”[7] (Emphasis supplied)

On February 15, 2011, the lower court rendered the assailed Decision,[8] ordering defendant-appellant Manila Electric Company (“defendant-appellant MERALCO” for brevity) to pay Damages to plaintiff-appellee Leliza A. Delabajan (“plaintiff-appellee” for brevity). The dispositive portion of the Decision decreed:

“WHEREFORE, in view of the foregoing, the Court RENDERS judgment ORDERING defendant Manila Electric Company (MERALCO) to immediately supply plaintiff Leliza A. Delabajan with electric power and to pay the following to her:

- P100,000.00 as moral damages;
- P50,000.00 as exemplary damages;
- P20,000.00 as attorneys fees; and
- Cost of suit.

The Court DISMISSES defendant's counterclaim.

SO ORDERED.”[9]

After defendant-appellant MERALCO's Motion for Reconsideration[10] was denied by the lower court in its assailed Resolution[11] dated June 6, 2011, defendant-appellant MERALCO filed the Appeal[12] at bench, praying that:

“WHEREFORE, in the light of the foregoing, it is respectfully prayed of this Honorable Court that the assailed Decision dated February 15, 2011 BE REVERSED AND SET-ASIDE and a new one RENDERED finding that 1) the portion of the decision directing defendant-appellant Meralco to immediately supply plaintiff-appellant (sic) Leliza A. Delabajan with electric power and to pay to her P100,000.00 as moral damages, P50,000.00 as exemplary damages, P20,000.00 as attorney's fees and cost of suit null and void; and 2) ordering plaintiff-appellee to pay the following to defendant-appellant:

- 1) The balance of the differential bills in the amount of P311,322.92;
- 2) The sum of P500,000.00 by way of moral damages;
- 3) The sum of P500,000.00 by way of exemplary damages; and
- 4) Attorney's fees in the amount of twenty percent (20%) of the damages herein claimed.

Other reliefs just and equitable under the foregoing premises are also prayed for.”[13] (Emphasis was made in the original)

The Appeal raised the following errors:

“I. THE LOWER COURT ERRED GRAVELY IN FINDING THAT THE DISCONNECTION OF PLAINTIFF-APPELLEE'S ELECTRIC SERVICE WAS DUE TO INSPECTION CONDUCTED ON FEBRUARY 01, 2001

II. THE LOWER COURT ERRED GRAVELY IN FINDING THAT PLAINTIFF-APPELLEE IS ENTITLED TO PAYMENT OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES”[14]

Despite the failure of plaintiff-appellee to file its Appellee's Brief, it is nevertheless Our “primary duty to render or dispense justice”[15] in this case in accordance with the facts and law.

Contrary to defendant-appellant's arguments in its assigned error I, defendant-appellant MERALCO's disconnection of plaintiff-appellee's electric service was without proper basis.

Defendant-appellant MERALCO had argued as follows:

“x x x Defendant-appellant begs to differ with the findings of the lower court. The lower court, with all due respect, committed a serious error in ruling that plaintiff-appellee is entitled to immediate reconnection of service and in awarding damages and attorney’s fees in her favor despite the clear absence of any legal and factual bases thereof.

x x x On February 01, 2001, plaintiff-appellee was found using tampered electric service during the inspection conducted by defendant-appellant’s service inspectors registered in the name of Norie Ann, Reynaldo and Leonora (all surname[d] Restauro) but actually used by the plaintiff-appellee, to wit:

Norie Ann Restauro

A jumper was connected to her electric service

Reynaldo Restauro

Terminal Seal was cut. An airpump and airconditioning units were connected outside of his metered service.

Leonora Restauro

The terminal seal was cut.

The sealing wires of the lead cover seals were cut.

The meter was with an open potential link.

x x x Consequently, plaintiff-appellee was billed P577,756.65 as differential billings for the three (3) electric service she actually used registered under Service Identification Nos. 431305001 (P234,701.95), 431305101 (P231,802.10) and 431305201 (P111,252.70)[.] To forestall disconnection of her electric service, plaintiff-appellee entered and signed Installments Payment Agreement (IPA) with defendant-appellant on February 27, 2001 xxx.

x x x In the abovestated IPA’s, plaintiff-appellee agreed to pay the differential billings on installment basis xxx. Plaintiff-appellee likewise agreed that upon her failure to pay any of the installment when due and payable, the remaining balance shall be due and demandable and defendant-appellant shall have the right to disconnect the particular service covered by the contract. xxx For failure to pay the August and September 2001 installments, electric service of the plaintiff-appellee was disconnected on September 27, 2001.

Crystal clear, defendant Meralco was forced to exercise its right to disconnect plaintiff-appellee’s electric service on September 27, 2001, not because its electric meters were found tampered during the inspection conducted in her metering facilities on February 01, 2001, but because plaintiff-appellee failed to pay her August and September 2001 installments.

x x x During her testimony on October 25, 2001, plaintiff-appellee admitted that she failed to pay her August and September 2001 installments xxx.

xxx

x x x Notable also is the fact that there is no pronouncement that the subject IPA’s executed by plaintiff-appellee and defendant-appellant which are the basis (sic) in disconnecting plaintiff’s electric service on September 27, 2001 are null and void hence, valid and binding contract between the parties. xxx

xxx

x x x Disconnection for non-payment of bills is based on sound public policy. It would be extremely difficult for a public utility to collect payment of bills were it denied the right to disconnect services for non-payment of said bills. A public utility will be forced to institute a number of actions just to recover small accounts from numerous customers. xxx

x x x Even though, assuming *arguendo*, that the unregistered current was not due to plaintiff-appellee's deliberate tampering or interference, her obligation to pay stands. She had simply benefited! This has been confirmed by plaintiff-appellee's assumption of Norie Ann's, Reynaldo's, and Leonora's (all surnamed Restauro) obligations. Thus, in accordance with the principle embodied under Art. 2142 of the New Civil Code, 'no one shall be unjustly enriched or benefited at the expense of another.'"[16] (Emphasis supplied; underlining was made in the original)

Prevailing over defendant-appellant MERALCO's arguments however, is that defendant-appellant MERALCO failed to comply with the requirements for the immediate disconnection of electricity, which requirements are as set forth under Section 4 of Republic Act No. 7832, otherwise known as "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," ("R.A. No. 7832" for brevity), to wit:

"SEC. 4. Prima Facie Evidence. – (a) The presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:

xxx

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph, or log;

xxx

(viii) xxx Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB)." (Emphasis supplied)

Here, the discovery by defendant-appellant MERALCO thru its service inspection team, of plaintiff-appellee's illegal use of electricity was not personally witnessed and attested to by an officer of the law or by a duly authorized representative of the Energy Regulatory Board ("ERB" for brevity). Records revealed that SPO1 V.S. Reyes, who was present during the inspection by defendant-appellant MERALCO's inspectors of plaintiff-appellee's electric meters, was a police officer assigned at the Western Police District and not at Guadalupe, Nuevo, Makati City, where the service inspection was conducted. SPO1 V.S. Reyes even failed to present any written order from his police station allowing him to escort defendant-appellant MERALCO's inspectors in conducting their inspection of plaintiff-appellee's premises.

All of these matters were as also found by the lower court, to wit:

"Under the above provision, the prima facie presumption that will authorize immediate disconnection will arise only upon the satisfaction of certain requisites. One of these requisites is the personal witnessing and attestation by an officer of the law or by an authorized ERB representative when the discovery was made xxx.

Here, one SPO1 V.S. Reyes allegedly witnessed and attested to the conduct of the service inspection on February 1, 2001 xxx. However, there was irregularity in the conduct of operation by the defendant's inspection team. The service inspection was conducted in Guadalupe, Nuevo, Makati City, whereas SPO1 Reyes is a police officer assigned at the Western Police District. There is also no evidence presented that SPO1 Reyes is allowed to escort the Meralco inspection team in Guadalupe, Nuevo, Makati City. Police officers must act only within their assigned territory xxx. Moreover, SPO1 Reyes was never presented to testify."[17] (Emphasis supplied)

The immediate disconnection of electric service is unjustified if no showing was made - as was the situation here - that an officer of the law acted within his assigned territory,[18] or, that a duly authorized representative of the ERB had personally witnessed and attested to the discovery of the illegal use of electricity. That this is so, is pursuant to the following pronouncement of the Supreme Court in *Manila Electric Company v. Atty. Pablito Castillo*, G.R. No. 182976, January 14, 2013:

“Thus, in order for the discovery of a tampered, broken or fake seal on the meter to constitute prima facie evidence of illegal use of electricity by the person who benefits from such illegal use, the discovery thereof must have been personally witnessed and attested to by an officer of the law or a duly authorized representative of the ERB.

Citing *Quisumbing v. Manila Electric Company*, we reiterated the significance of this requirement in *Manila Electric Company (MERALCO) v. Chua*, thus:

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers.

xxx

Absent any showing that an officer of the law or a duly authorized representative of the ERB personally witnessed and attested to the discovery of Permanent Light’s tampered electric meter, such discovery did not constitute prima facie evidence of illegal use of electricity that justifies immediate disconnection of electric service.” (Emphasis supplied)

Defendant-appellant MERALCO could not also properly justify the disconnection of plaintiff-appellee's electric service on ground that plaintiff-appellee failed, as alleged by defendant-appellant MERALCO, to pay the differential billings pursuant to the Installment Payment Agreement (IPA) that was executed between plaintiff-appellee and defendant-appellant MERALCO. The reason is that defendant-appellant MERALCO failed to send a written notice or warning to plaintiff-appellee before effecting the disconnection. Such written notice or warning before any disconnection, is required under Section 48 of ERB Resolution No. 95-21, as follows:

“SEC. 48. Refusal or Discontinuance of Service. – An electric utility shall not refuse or discontinue service to an applicant, or customer, who is not in arrears to the electric utility, even though there are unpaid charges due from the premises occupied by the applicant, or customer, on account of unpaid bill of a prior tenant, unless there is evidence of conspiracy between them to defraud the electric utility.

Service may be discontinued for the nonpayment of bills as provided for in Section 43 hereof, provided that a forty eight (48)-hour written notice of such disconnection has been given the customer; Provided, however, that disconnections of service shall not be made on Fridays, Saturdays, Sundays and official holidays; Provided, further, that if at the moment of the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the electric utility who is to effect the disconnection, the said agent, or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

The electric utility may discontinue service in case the customer is in arrear(s) in the payment of bill(s). Any such suspension of service shall not terminate the contract between the electric utility and the customer.

In the case of arrear(s) in the payment of bill(s), the electric utility may discontinue the service notwithstanding the existence of the customer’s deposit with the electric utility which will serve as guarantee for the payment of future bill(s) after service is reconnected.” (Emphasis supplied)

Considering that defendant-appellant's disconnection of plaintiff-appellee's electric service was without basis, and that no notice of disconnection was sent to plaintiff-appellee, then, contrary to defendant-appellant's arguments in its assigned error II, the lower court properly awarded Moral and Exemplary Damages and Attorney's Fees in favor of plaintiff-appellee. That this is the consequence is pursuant to the following pronouncement of the Supreme Court in *Manila Electric Company v. Atty. Pablito Castillo*, G.R. No. 182976, January 14, 2013:

“Moral damages are awarded to compensate the claimant for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

Pertinent to the case at hand, Article 32 of the Civil Code provides for the award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated. In *Quisumbing v. Manila Electric Company*, this Court treated the immediate disconnection of electricity without notice as a form of deprivation of property without due process of law, which entitles the subscriber aggrieved to moral damages. We stressed:

More seriously, the action of the defendant in maliciously disconnecting the electric service constitutes a breach of public policy. For public utilities, broad as their powers are, have a clear duty to see to it that they do not violate nor transgress the rights of the consumers. Any act on their part that militates against the ordinary norms of justice and fair play is considered an infraction that gives rise to an action for damages. Such is the case at bar.

xxx

In addition to moral damages, exemplary damages are imposed by way of example or correction for the public good. In this case, to serve as an example - that before disconnection of electric supply can be effected by a public utility, the requisites of law must be complied with – we sustain the award of exemplary damages to respondents.” (Emphasis supplied)

Indeed, the findings of the lower court are entitled to great weight and respect on appeal, and are in fact accorded finality when supported by sufficient evidence on the record,[19] as in this case. The lower court's conclusions and findings of fact should not be disturbed unless for strong and cogent reasons because it is in a better position to examine real evidence, as well as observe the demeanor of the witnesses during trial.[20]

After careful consideration of all the facts, arguments, and issues appearing on the records as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

GIVEN ALL THESE, the Appeal is DENIED. The Decision of the lower court is AFFIRMED.

SO ORDERED.

Didican (Chairperson) and Dimagiba,[*] JJ., concur.

[*] Vice J. Paredes per Office Order No. 34-14-RSF

[1] Rollo, pp. 64-92.

- [2] Rollo, pp. 93-97.
- [3] Records, pp. 1-6.
- [4] Records, p. 501
- [5] Rollo, pp. 98-109.
- [6] Rollo, pp. 93-97.
- [7] Rollo, pp. 93-94.
- [8] Rollo, pp. 93-97..
- [9] Rollo, p. 97.
- [10] Rollo, pp. 98-109.
- [11] Records, p. 501.
- [12] Rollo, pp. 64-92.
- [13] Rollo, pp. 89-90.
- [14] Rollo, p. 79.
- [15] Paz Reyes Aguam vs. Court of Appeals, et. al., G.R. No. 137672, May 31, 2000.
- [16] Rollo, pp. 80-86.
- [17] Rollo, p. 96.
- [18] Manila Electric Company v. Santiago, G.R. No. 170482, September 4, 2009.
- [19] Spouses Patricio and Myrna Bernales vs. Heirs of Julian Sambaan, et al., G.R. No. 163271, January 15, 2010.
- [20] Spouses Patricio vs. Heirs of Sambaan, G.R. No. 163271, January 15, 2010.

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