

**SPOUSES CONRAD N.M. CELDRAN AND SUSANA S. CELDRAN,
PLAINTIFFS-APPELLEES, VS. MANILA ELECTRIC CO., INC.,
DEFENDANT-APPELLANT.**

Ponente: BARRIOS, J.

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BARRIOS, J.:

We have here the trite situation where the utility company unilaterally declares that the subscriber is using a jumper, disconnects services, and requires the payment of a usually humongous amount as precondition to reconnection. The subscriber makes vigorous denials and cries foul, but still coughs up the amount and pays under protest. Usually that is the end of the story. But sometimes the subscriber brings this to court, as in this case.

The appellees spouses Conrad and Susana Celdran (or the Celdrans for brevity unless referred to by their first names) filed a case for Damages against the appellant Manila Electric Company, Inc. (or MERALCO), where judgment was rendered by the trial court disposing that:

WHEREFORE, premises considered, judgment is hereby rendered for the plaintiffs. Defendant is hereby ordered to pay the plaintiffs the following amounts:

- Two hundred thousand pesos (P200,000.00) for moral damages;
- One hundred thousand pesos (P100,000.00) for exemplary damages;
- Fifty thousand pesos (P50,000.00) for attorney's fees; and
- Cost of suit. (Decision, p. 184, record)

On February 11, 1999, the MERALCO Inspection Team Squad 3 went to San Antonio Village in Makati City to conduct an inspection on the metering and electrical facilities of its subscribers in the area. Among those inspected was the residence of the Celdrans at Unit No. 5 in a compound of ten (10) units at # 7747 St. Paul St.. Claiming that they discovered an illegal electrical connection they described as a "Two Line Permanent Jumper Tapped at Service Wire Inside Elbow Conduit Passing Through Deliberately Bored Hole", the team disconnected the electrical services of the Celdrans. At the time Conrad was not home and was at work in Tagaytay Highlands where he is the General Manager. Susana too was out of the house as she was coincidentally at the MERALCO Offices in Ortigas in connection with a research she was conducting. The only ones at home was a maid and their daughter Claire who was with a classmate preparing their term paper. Claire called up her mother and told her that the inspection team was about to cut off their electrical services. Susana pleaded with the team leader of the inspection team to wait for her as she was just at the MERALCO offices, but she was not heeded and the team proceeded to cut off their electrical supply and to pull out their electric meter. They made Claire sign two form documents prepared by the MERALCO team, a Meter/Socket Inspection Report (MSIR) and a Notice of Disconnection.

The Celdrans averred that while at the MERALCO offices Susana went to see the manager and requested that

their electricity be reconnected as they never tampered with their electric meter. She explained that they are merely renting the place and that they are not the first to reside there. Despite her explanations the manager arrogantly told her to first pay the amount of P62,040.25, but which she of course did not have at the time and the banks were already closed. That night the whole Celdran family had to check-in at the Shangri-la Hotel as their residence was already in total darkness. It was only the following day when the Celdrans were able to pay the amount required of them for reconnection, and this they did under protest. The outright disconnection of their electrical services was unwarranted and unlawful, and the Celdrans were humiliated and embarrassed before their neighbors who were present and observed the shameful cutting of their electricity. The Celdrans thus demanded that MERALCO be made to pay actual, moral, and exemplary damages as well as attorney's fees.

MERALCO on the other hand denied that its personnel displayed arrogance in disconnecting the Celdrans' electrical services. According to MERALCO its personnel comprising the inspection team were able to discover a "jumper" connected at the metering and electrical facilities of the Celdrans during a routine inspection. As a result of this, the inspection team executed an MSIR detailing therein the illegal electrical connection. Conformably with Republic Act No. 7832, the inspection was made in the presence of a police officer and the consent of the customer's representative, Claire Celdran. The MSIR as well as the Notice of Disconnection was acknowledged by Claire Celdran. The mere discovery of a "jumper" is a prima facie evidence of illegal use of electricity, and per billing analysis the Celdrans were liable for the differential billing of P62,040.25 representing the amount of energy actually consumed but was not registered in the electric meter. The immediate payment they made is a manifestation of conformity of the Celdrans to the differential billing and is not an indication of a protest. MERALCO defended that the Celdrans have no cause of action and that they have come to court with unclean hands having been found to have illegally and unlawfully used an illegal connection. Because of this illegal connection, it had the right to discontinue and disconnect the electric service of the Celdrans. MERALCO then countered that since the Celdrans acted with evident malice and bad faith in filing this suit, they have gravely damaged its business reputation and integrity hence should be made liable for moral and exemplary damages and attorney's fees.

The court a quo however was convinced that the disconnection was conducted by MERALCO in a manner prejudicial to the Celdrans hence it rendered its judgment against it.

Resultantly, this appeal was brought to Us by MERALCO assigning that these reversible errors were committed by the court a quo:

I

WITH ALL DUE RESPECT, THE HONORABLE TRIAL A QUO GRAVELY AND SERIOUSLY ERRED WHEN IT HELD THAT THERE WAS NO ILLEGAL ELECTRICAL CONNECTION FOUND AT THE PREMISES OF THE PLAINTIFFS-APPELLEES;

II

WITH ALL DUE RESPECT, THE DECISION OF THE HONORABLE COURT A QUO WAS GRAVELY INFIRMED AND SERIOUSLY ERRED IN HOLDING THAT DEFENDANT-APPELLANT IS LIABLE FOR DAMAGES. (p. 54, rollo)

We sustain the findings of the trial court.

It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to

support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

Except for their characterization that the MERALCO people were arrogant and unreasonable, all other material facts needed to support the cause of action of the Celdrans were established largely by the admissions made in the pleadings and at the pre-trial conference, and by the satisfactory proofs they submitted at the trial.

On this disputed point of the haughty and insensible treatment of the MERALCO employees, noteworthy are these findings made by the trial court:

Meralco was just too in a hurry to cut off the electricity. Considering that the Meralco Team was able to converse with plaintiff Susana Celdran over the phone prior to the disconnection and that Susana Celdran was by coincidence already in Ortigas office of Meralco attending to another appointment, then why did Meralco still cut off the electricity despite pleas from Susana not to do it? Susana told the Meralco Team that they never tampered with their electric meter and that they were not the first tenants who occupied the apartment unit. The plaintiffs were not the ones who constructed the house. The Meralco team was not reasonable at that point. Since Susana was already at their office, there was no reason for Meralco to disconnect.

Worse, while at Meralco Office that same day, when Susana Celdran talked with the manager, she was arrogantly told that she has to pay the amount of P62,040.25 first. She was rudely told “BUTI NGA MALIIT LANG BABAYARAN MO.” As she does not have enough cash to cover the assessed amount of Php62,040.25 at that precise moment, she left the office feeling hurt, humiliated, embarrassed, tensed and angry. The aforementioned remark is unbecoming of a manager of an entity engaged in public service. By that remark, the plaintiffs were already prematurely condemned guilty of “pilferage” despite the constitutional guarantee of presumption of innocence. (Decision, pp. 182-183, record)

The well-settled rule is that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect (Manangan vs. Court of Appeals, G. R. No. 139908, March 10, 2004). This holds true not only for its findings that the MERALCO people were arrogant and oppressive, but also that it failed to prove its defense that the Celdrans were guilty of pilferage of the electricity it supplied.

MERALCO claims that the inspection team found that the Celdrans’ meter had an artifice described as a “Two Line Permanent Jumper Tapped at Service Wire Inside Elbow Conduit Passing Through Deliberately Bored Hole” such that the house continued to have electricity supply even when the meter is removed. This was testified to by members of the inspection team with their usual police consort.

But no proof was presented as to who installed the jumper and when this was done.

This factor is important for MERALCO has relied on the enabling and protective shelters of Republic Act No. 7832 for its defense. Under Section 6 of the said law it is allowed to disconnect immediately without the need of a court or administrative order if the owner of the house or his agent “shall have been caught en flagrante delicto doing any of the acts designated in Section 4(a), or when any of the circumstances so enumerated shall have been discovered for the second time”. In the case at hand, admittedly this was the first and only time that the Celdrans were imputed to have committed electric pilferage. As for being caught red-handed, the only household members present were the maid and Claire who though cooperative was not hep on what was going on.

Admittedly Unit #5 was built more than twenty (20) years earlier, and the Celdrans were not the first of its many lease occupants. The offending contraption may have been installed by the previous occupants and without the Celdrans knowing of its existence until that day. It is notable that the monthly electrical consumption and billing of the Celdrans have been appreciable and constant. This negates the assumption that they had installed and used the supposed bill shaving device.

These matters could have been explained by the Celdrans if the MERALCO people were not in a bullying rush to cut off their power connection. This was not cured by their simultaneous delivery to Claire of the Notice of Disconnection. The said notice is required to give the subscriber an ample opportunity to be heard and to make the required deposit to obviate the imposition of a disconnection. It is not there as a mere idle formality.

The Celdrans were asking only for a little time to explain their side and to pay the differential required. This was meager and reasonable considering the travel time required to reach home and the banks were already closed. But the MERALCO people did not deign to give them that chance and instead peremptorily cut off their electricity. The very next day the Celdrans paid the hefty P62,040.25 differential bill. This MERALCO negatively took as an admission by the Celdrans of the propriety of its acts and correctness of differential billing.

In all these the MERALCO people have been callous and cavalier towards the Celdrans. Certainly the P62,040.25 was paid only grudgingly and as a Hobson's choice for MERALCO is the sole service provider in the place of that vital commodity.

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — i.e., an "avoidance" of the claim (Republic vs. Estate of Menzi, G. R. Nos. 152578, 154487 & 154518, Nov. 23, 2005). The Celdrans have proven their case while MERALCO failed to substantiate its defense.

Considering the circumstances present in this case, this Court finds proper the award of damages as granted by the court a quo.

WHEREFORE, the appeal is DENIED and the appealed Decision is AFFIRMED.

SO ORDERED.

Guariña, III and Romilla-Lontok, JJ., concur.

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