

AMELIA C. YUTUK, PLAINTIFF AND APPELLEE, VS. MANILA ELECTRIC COMPANY, DEFENDANT AND APPELLANT.*G.R. No. 13016. May 31, 1961*

Ponente: DIZON, J.

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It is not disputed that sometime in December, 1954 appellee, a lawyer by profession, occupied the premises located at No. 1, Bay View Drive, Tambo, Parañaque, Rizal, then recently vacated by one Paul Harrigan. The electric services installed thereat, instead of being disconnected—as was usually done by appellant in similar situations—were retained upon her request, for obvious reasons of convenience. The electric meter in said premises was installed on an outside wall.

Appellee's evidence—which the lower court found preponderant over appellant's—shows that at about 11:00 o'clock in the morning of October 13, 1955, Eliseo Jaime, a meter inspector of appellant, rang the doorbell at appellee's residence. As he told the maid who opened the door that he was a Meralco employee and that he wanted to enter the premises to read the electric meter, the maid informed appellee—who was then convalescing from a broncho-pneumonia ailment—of his desire, but appellee directed her maid to tell him that he did not have to enter the premises just to read the electric meter because the same was installed outside. After a short while, however, Jaime rang the doorbell again and asked the maid who opened the door for a chair on which he could stand to read the meter; but, following appellee's instructions, the maid refused his request because appellant's meter readers had never in the past used any chair to read the electric meter. Apparently Jaime left to borrow a chair from the next door resident because he came back to appellee's place with one on which he stood and forthwith proceeded to disconnect the meter. As the electric service in the premises was thus cut off, and the lights therein went out, Emerenciana Miranda, one of appellee's maids, peeped through a window and saw Jaime standing on a chair in front of the meter. When she asked him what had happened to their lights, Jaime replied that he had disconnected them, and then knocked at the door anew. When the same was opened, from the mezzanine where appellee was, she saw Jaime holding what to her appeared to be electrical parts; on a stool near the door she saw a round piece of crystal, and scattered on the pavement other parts of the electric meter. When she asked Jaime what the trouble was, the latter, instead of giving a responsive answer, asked her why she was paying only 50% of her electric bills. It turned out that prior to that day appellee had suspected that her electric meter was registering exorbitant consumption and had imparted such suspicion to appellants' collectors. So when she heard Jaime's reply, she mistakenly thought that the latter had come in connection with her complaint, and for this reason thanked him for having come and at last discovered that the electric meter in the premises was defective. To this, however, Jaime replied that the electric meter was not defective but that she was instead stealing electric current by using a "jumper". Appellee indignantly denied the charge and told him to stop insulting her, especially because she was sick. Jaime, however, disregarded her remonstrances and told her that he would return the "jumper" and would fix it so that, if she had been paying plenty theretofore, she would pay much more thereafter, as a sort of punishment for her being a thief. Because of this violent incident appellee suffered a relapse.

On October 18, 1955 appellee requested the Public Service Commission to check the electric meter in question, and after making the required test on October 20, the Commission informed her that there was nothing wrong with it.

On November 12, 1955 appellant sent the letter Exhibit A to appellee, demanding payment of the sum of P254.40 representing the cost of the electricity allegedly used or consumed by her but not registered in the electric meter installed at her residence. This was followed a month later by an Overdue Account notice (Exh. B) served on appellee warning her that unless the P254.40 account was paid, the electric service in her premises would be discontinued without further notice. Because of this demand and threat appellee commenced the present action on January 17, 1956 to secure: (a) an injunction restraining appellant, its attorneys, agents and employees from disconnecting the electric service at that time being furnished to her residence, and (b) a judgment denying appellant the right to collect the aforesaid sum of P254.40 and ordering it, instead, to pay appellee the sum of P100,000.00 as moral damages.

It must be stated in this connection that prior to the filing of this action, appellee had charged Eliseo Jaime with slander in time Court of First Instance of Rizal (Criminal Case No. 72-R) where, after due trial, he was convicted. He, however, appealed to the Court of Appeals.

After admitting some of the averments of the complaint and denying others, appellant filed an answer alleging therein the following defenses and counterclaim:

"AFFIRMATIVE DEFENSES

- Defendant repleads and incorporates herein by reference all the allegations contained in its foregoing answer.
- On October 13, 1955, defendant's employee Eliseo Jaime found the base connections of meter No. 33CSN-93570 installed in plaintiff's premises altered in such a manner that only 50% of the electric energy consumed in the premises was recorded in the meter.
- Plaintiff's meter, before its base connections were found altered on October 13, 1955, was duly sealed by the Public Service Commission and by the defendant. Investigation disclosed that the company seal was tampered with by prying the sides loose. There could be no access to the base meter installation without first tampering with the company seal.
- From August 26 to September 24, 1955, the last date being the billing period immediately preceding the discovery of the altered meter base connections, the consumption on plaintiff's meter was registered at 588 kwhs., or a daily consumption of 20 Kwhs. After the base connections were corrected by defendant, plaintiff's consumption of electricity rose to almost twice her former consumption.
- After defendant had corrected the altered base connections of plaintiff's meter, plaintiff complained to the Public Service Commission and requested that the meter be tested on the ground that plaintiff suspected that her meter had been tampered with by defendant. Representatives of the Public Service Commission tested and examined the meter in the presence of plaintiff and representatives of the company and the test showed that there was nothing wrong with the meter.

SPECIAL DEFENSES

- Defendant repleads and incorporates herein by reference all the allegations in its foregoing answer with affirmative defenses.
- Plaintiff has no cause of action against defendant and is not entitled to a preliminary writ of injunction, much less to a permanent writ of injunction.
- The verification of plaintiff's complaint is defective and cannot be made to support the issuance of either a

writ of preliminary or permanent injunction.

COUNTERCLAIM

- Defendant repleads and incorporates herein by reference all the allegations contained in its foregoing answer with affirmative and special defenses.

- On December 15, 1954, service to Bay View Drive No. 1, Parañaque, Rizal, was transferred in the name of the plaintiff herein.

- On October 13, 1955, the base connections of plaintiff's meter was found altered in such a way that only 50% of the electric energy actually consumed in plaintiff's premises was recorded in the meter.

- As soon as the base connections of plaintiff's meter were corrected, plaintiff's consumption almost doubled.

- The tampering of the base connections of plaintiff's meter resulted in loss to the defendant in the total amount of P254.40, representing the value of electric energy consumed by plaintiff but not registered on her meter and consequently not paid for.

- Because of plaintiff's unjustified and unwarranted filing of this action, defendant has found it necessary to engage the services of counsel and to incur expenses of litigation in defense of its interests, and it is only just and equitable that such attorney's fees and expenses of litigation so incurred, amounting to not less than P5,000.00, should be recovered by defendant from plaintiff.

WHEREFORE, it is respectfully prayed that the complaint be dismissed, with costs against plaintiff; that on the counterclaim, plaintiff be sentenced to pay defendant the sum of P254.40, with interest thereon at the legal rate from the filing of defendant's answer, until fully paid, including the sum of not less than P5,000.00 for and as attorney's fees and expenses of litigation."

On February 11, 1956, that is, almost a month after the commencement of the present action and four months since the alleged discovery of the "jumper" mentioned heretofore, appellant filed a criminal complaint for theft of electricity against appellee in the Office of the Provincial Fiscal of Rizal (Exh. E). After appellant had presented all its evidence to prove the alleged theft before Assistant Provincial Fiscal Noli Ma. Cortes, who conducted the investigation, the latter, upon motion of appellee, dismissed the case on October 10, 1956 on the ground that said evidence did not even establish a prima facie case against appellee (Exh. G). Two motions for reconsideration filed by appellant were denied, the first by Fiscal Cortés on November 19, 1956 (Exh. G-1) and the second by Provincial Fiscal Nicolas himself (Exh. H) on January 14, 1957.

After dismissal of appellant's complaint for theft, or more specifically, on January 17, 1957, appellee, with leave of court, filed a supplemental complaint for the recovery of the additional amount of P200,000.00 as moral damages and for whatever other amount the court may deem just, as exemplary damages. In its answer to this supplemental complaint appellant likewise admitted some allegations made therein and denied the others, and further alleged that the criminal complaint for theft was filed against appellee only after she had refused in bad faith to settle her obligation—to pay the cost of the electricity allegedly stolen by her—; that the criminal complaint was filed in good faith to protect the interests of appellant; that the dismissal of the criminal complaint was erroneous. Appellant likewise interposed its own counterclaim for damages and attorney's fees, to which appellee filed an answer in due time.

After due trial, the lower court rendered judgment sentencing appellant to pay appellee the sum of P250,000.00 as moral damages; the further sum of P8,000.00 as exemplary damages, and P5,000.00 by way of attorney's fees. The court also made final the preliminary injunction issued theretofore and dismissed appellant's counterclaim.

With respect to the incident that took place on October 13, 1955 appellant's version, culled mainly from the

testimony of its meter inspector, Eliseo Jaime, is as follows:

"On October 13, 1955, at approximately 11:00 o'clock in the morning, Eliseo Jaime, a district meterman in the employ of the appellant and who was then on a routine inspection of service meters in the vicinity, found an unusual connection in the meter base of the service meter at Bayview Drive No. 1. It appears that one side of the load side was directly connected with the line side, such that only 1/2 or 50% of the electric current actually consumed by Atty. Yutuk was recorded on the meter. (t.s.n., session of March 19, 1957, p. 61; see also Exhibits '1' and '6'). Jaime returned the connection to normal and reported his findings (see Exhibits '1', '4' to '5-B')." (Appellant's brief, p. 4)

It will thus be seen that Jaime's own testimony corroborates appellee's claim that Jaime opened or dismantled the electric meter alone or by himself, without giving appellee or one of her maids, at least, an opportunity to be present. This, obviously, he could have easily done if he wanted to be fair and to act completely above suspicion.

Of course, appellant attempted to prove that one Almario Santos was present when Jaime opened the meter, but after going over Santos' testimony, we agree with the trial court that it cannot be given any credence. As the lower court said:

"His declarations are replete with too many inconsistencies. For instance, he stated that he was in the vicinity to collect newspaper fees from an apartment nearby. We cannot understand how, if he was merely passing by plaintiff's apartment, he could have heard the entire conversation that transpired between Eliseo Jaime and the plaintiff to the last detail. Also, by another coincidence, Almario Santos happens to be an electrician himself. He testified that he did not know of the case, but when he heard that a case had been filed against a MERALCO inspector, he immediately guessed that Eliseo Jaime was that meterman, although they did not know each other then at the time. Furthermore, this witness admitted that he is applying for a job with the defendant company. All these factors, in the opinion of the Court, lend a highly suspicious character to his testimony."

It is likewise true that Jaime claims to have asked appellee to look at and see the-meter, but the evidence is clear that he did so only after he had opened or dismantled the meter. Appellee's refusal to sign and accept the statements contained in Jaime's Sketch-Report (Exhibit 1) and her own statement or certificate written thereon proves this convincingly.

Besides, Jaime himself admitted that, to test the meter, it was necessary to break the Meralco seal that protected it; that he was the one who broke said seal and that when he opened the meter, nobody was present. These admissions not only strengthen the lower court's refusal to take the testimony of Almario Santos seriously, but also render unassailable its finding that Jaime opened or dismantled the electric meter without any witness being present.

Another weighty circumstance induces us to agree with the lower court's conclusion that Jaime's version of the whole affair is not worthy of belief. According to the latter, after discovering or verifying the existence of an unusual connection in the meter base of the service meter in question, he returned the connection to normal and then went to appellant's office in Parañaque where he prepared the sketch-report mentioned heretofore. Appellant's own evidence on this matter is to the effect that its usual practice is to have reports of this kind accomplished in the presence of the customer concerned—which is fair and logical. Jaime, therefore, to serve his own purposes, did not follow this usual practice of his employer and instead prepared his report far from and at the back of the customer concerned. And what did he do afterwards? He had the temerity to present this self-serving sketch-report to the customer and wanted her to sign it. It is not surprising that the customer refused to do so and instead wrote on the same report and signed in Jaime's presence her own statement to this effect: "I certify that meter was tested and torn to pieces without my presence. Mr. Jaime called my attention when all parts

have already (been) severed not with my presence". This circumstance shows trickery and bad faith on the part of Jaime, as in so doing he attempted to take appellee by surprise and sought to have her bound by the statements therein to the effect that "meter tested at the presence of the customer"; * * * "that the wire connection in the meter socket as shown on the above sketch is the actual connection found by the meterman and myself"—statements which he knew were false. Fortunately, the customer he thus attempted to trick into making such damaging admissions was an intelligent person and frustrated his evil design.

Furthermore, a careful consideration of the evidence leads one to the conclusion that, in reality, the alleged unusual connection in the electric meter in question was nonexistent. In Jaime's testimony given in the Office of the Provincial Fiscal of Rizal (Exh. 8-C) he admits that the meter in question was protected by two seals, one placed by the Public Service Commission and the other by the Meralco; that the meter could not be opened without first breaking the Meralco seal; that when he inspected the meter he found the Meralco seal "badly twisted". Of course, this could not possibly mean that the Meralco seal had been found "broken". As a matter of fact, Jaime himself, as already stated before, had admitted in the course of his testimony in the lower court that he was the one who "broke" the Meralco seal in order to test the meter (transcript, pp. 60-61, hearing of March 19, 1957). Therefore, although it was "badly twisted", Jaime still had to break the seal so that he could open and test the meter. In view of these circumstances, we agree with the trial court that "it is logical to conclude that from the time said seal had been placed on the meter in question by the defendant company until the morning of October 13, 1955 when Jaime admittedly broke it, it had not been tampered with nor had been opened".

Appellant contends, however, that the existence and use of the "jumper" by the appellee is indirectly proven by the fact that appellee's consumption of electricity for several months after October 13, 1955, registered a notable increase. This circumstance is not only utterly insufficient to prove the criminal act attributed to appellee, but the alleged increase of consumption—which was not, at any rate, extraordinary—has been satisfactorily explained. Appellee's evidence in this connection shows that due to the violent incident with Jaime on October 13, 1955, she suffered a relapse and had to be confined at home, this resulting in more use of her electric facilities and appliances. At that time, because of her relapse, her married sisters and their families came to keep her company and this, inevitably, resulted in increased consumption of electricity. A comparative study of the electric bills sent to her before and after October 13, 1955 supports her contention. Said bills show that from June 23 to September 23, 1955—immediately prior to the incident—her average monthly consumption was P32.07 (Exhs. D, D-1 and D-2). On the other hand, from September 23 to December 23—the three months following the incident—her average monthly consumption rose to P46.47 (Exhs. D-3, D-4 and D-5), but from December 23, 1955 to January 23, 1956 her bill was only P24.40 (Exh. D-6); from January 23 to February 23, 1956 it went down to P22.10 (Exh. D-7); from February 23 to March 23, 1956, it went up to P29.60 (Exh. D-8) and from March 23 to April 23, 1956 it was P32.80 (Exh. D-9). From this one may reasonably conclude that the increase in appellee's electric consumption from October 13 to December 23, 1955 was due to the causes mentioned by her, for otherwise, the consumption after December 23, 1955 would not have returned to the normal consumption prior to October 13, 1955.

We now come to the question of whether or not, upon the facts of the case, appellant is liable in damages to appellee.

We believe with the trial court that this question must be resolved affirmatively.

Moral damages, under the New Civil Code, includes, *inter alia*, mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation (Art. 2217). While these moral damages are incapable of pecuniary estimation, they are made recoverable, in the amount determined by the court, provided they are the proximate result of the defendant's wrongful act or omission. As most of these damages affect the aggrieved party's moral feeling and personal pride, "these should be weighed in the determination of the

indemnity" (*Layda vs. Court of Appeals*, 90 Phil., 724.)

On the other hand, aside from moral, temperate and other damages, exemplary damages are imposed by way of example or correction for the public good (New Civil Code, Art. 2229). Of course, for one to recover exemplary damages, he must first show that he is entitled to moral, temperate, liquidated or compensatory damages (*Id.* Art. 2234).

Appellant claims that nowhere in its answer, defenses and counterclaims is there a categorical imputation that appellee had placed an unusual connection in the electric meter for her premises in order to steal current. Perhaps no such categorical imputation was made in black and white—as in commonly said—in appellant's pleadings, but it cannot be denied that the allegations made therein amount, to say the least, to an indirect but nonetheless clear and positive imputation that appellee had used a "jumper" in her electric meter for the purpose of making the same register only one half of the electric current actually consumed, which in plain words would, of course, mean "stealing" electric current. Be that as it may, after appellant filed a complaint for theft of electricity against appellee in the Office of the Provincial Fiscal of Rizal, it can no longer deny that it had charged appellee, a lady member of the Bar, with the commission of that ugly and denigrating criminal offense.

Did appellant do so in bad faith or at least with negligence? At the very least, the facts of the case show that appellant did it with reckless negligence. In this connection it is worth bearing in mind several factors.

When appellee complained to appellant for the abusive language Jaime—its employee—used against her, appellant clearly showed unwillingness to entertain the complaint, for it not only informed appellee that it would take no action on the matter until and unless Jaime was convicted in the slander case filed by her against him, but went to the extent of furnishing Jaime with the services of its own legal counsel to defend him in the slander case. This notwithstanding, however, he was convicted by the Court of First Instance.

One month after the filing of the present action, appellant, as already stated, filed a complaint for theft against appellee in the Office of the Provincial Fiscal of Rizal. Appellant was there given ample opportunity to prove its case but failed miserably, thus forcing the investigating fiscal to dismiss the case due to complainant's "failure to establish even a *prima facie* case".

On the question of whether appellant filed the criminal charge in good faith, or out of vindictiveness and as a retaliatory measure, we can do no better than quote the pertinent portions, of the decision of the lower court which read as follows:

"Defendant alleges that it was merely acting to protect its interests when it filed the criminal case for theft of electric current against the plaintiff with the Office of the Provincial Fiscal of Rizal. The Court believes, taking into account the circumstances of this case, that the defendant was not justified in instituting said criminal complaint for theft against the plaintiff. When the criminal case was filed, the issues in the present case were already joined and defendant's interests were consequently protected in its answer and counterclaim. The defendant Company, before taking such step, should have inquired carefully into the matter. The notation made by the plaintiff on the sketch report. Exhibit 1-A, was a strongly-worded protest against the finding reported by Eliseo Jaime, and coupled with the administrative charge based on the incident of October 13, 1955, which plaintiff thereafter filed against said Jaime with defendant Company, should have been sufficient to give defendant reasonable ground for doubts and induce it to delve further into the case before taking such action." Furthermore, defendant Company was cognizant of the criminal complaint filed by the plaintiff against Eliseo Jaime for grave slander, not only because said defendant was notified thereof by the plaintiff when she filed the administrative charge against Jaime, but because the defendant Company furnished its own lawyers to Eliseo Jaime to defend him in said Criminal Case. Atty. Emiliano Garcia, of Ross, Selph, Carrascoso & Janda, counsel for the defendant in this case, is the same lawyer who appeared as counsel for the accused Eliseo Jaime

in Criminal Case No. 72-R of the Court of First Instance of Rizal.

"It appears further that the criminal complaint for theft against the herein plaintiff was filed on February 11, 1956 or about four months after October 13, 1955. If it is true, as maintained by the defendant, that due to the unusual connection allegedly found in plaintiff's meter, only one-half of the electric consumption was recorded therein, why is it that the defendant had to wait four months before filing said criminal complaint? This circumstance clearly shows that the defendant had brought said criminal charge motivated purely by malice and ill-will and as a retaliatory measure for the civil action filed by the plaintiff in this case."

To the above we only wish to add that appellant's own answer to the supplemental complaint alleges that it was only after the plaintiff had refused in bad faith to settle her obligation that the defendant was forced to protect its interests by charging the plaintiff with theft of electric current before the Provincial Fiscal of Rizal (Rec. on Appeal, pp. 24-25). It is a fact, however, that to protect its rights, appellant could have filed but did not file any civil suit to recover the value of the electric current allegedly consumed by appellee but not registered in the electric meter installed in her premises; instead it resorted to a criminal charge, which can only mean that it chose to brandish this weapon to force an alleged debtor to pay—a clear perversion of the function of criminal processes and of courts of justice.

The dismissal of the complaint for theft, filed by appellant, does not, by itself, show that the latter's act was wrongful as to make it liable for moral and exemplary damages. We have heretofore held that the law could not have meant to impose a penalty on the right to litigate; that such right is so precious that moral damages may not be charged on those who exercise it erroneously. (*Barreto vs. Arevalo, et al.*, 99 Phil., 771; 52 Off. Gaz., p. 5818), but in the light of the facts established by the evidence in this case, there appears to be not the slightest doubt that Jaime's acts, subsequently approved inferentially, but nonetheless clearly, by appellant—in spite of the manifest irregularity and suspicious character of Jaime's behaviour—and the appellant's own acts were wrongful and reckless. On the other hand, that they directly resulted in appellee suffering mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation, is too obvious to need any demonstration or comment.

While we agree with the trial court that appellant should be made to pay damages to appellee, we are of the opinion that the sum of P25,000.00 granted as moral damages is exorbitant. Considering appellee's personal circumstances and reputation, the mental anguish she suffered by reason of the false imputation made against her which resulted in besmirched reputation, ridicule and humiliation, we are of the opinion that appellee is entitled to the sum of P25,000.00 as moral damages, to the further sum of P10,000.00 as exemplary damages, and to the sum of P5,000.00 as attorney's fees.

Wherefore, modified as above indicated, the decision appealed from is affirmed in all other respects. With costs against appellant.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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