

MANILA ELECTRIC COMPANY, Petitioner vs. MATILDE MACABAGDAL RAMOY, BIENVENIDO RAMOY, ROMANA RAMOY-RAMOS, ROSEMARIE RAMOY, OFELIA DURIAN and CYRENE PANADO, Respondents.

G.R. No. 158911. March 04, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Review on Certiorari under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated December 16, 2002, ordering petitioner Manila Electric Company (MERALCO) to pay Leoncio Ramoy[2] moral and exemplary damages and attorney's fees, and the CA Resolution[3] dated July 1, 2003, denying petitioner's motion for reconsideration, be reversed and set aside.

The Regional Trial Court (RTC) of Quezon City, Branch 81, accurately summarized the facts as culled from the records, thus:

The evidence on record has established that in the year 1987 the National Power Corporation (NPC) filed with the MTC Quezon City a case for ejectment against several persons allegedly illegally occupying its properties in Baesa, Quezon City. Among the defendants in the ejectment case was Leoncio Ramoy, one of the plaintiffs in the case at bar. On April 28, 1989 after the defendants failed to file an answer in spite of summons duly served, the MTC Branch 36, Quezon City rendered judgment for the plaintiff [MERALCO] and “ordering the defendants to demolish or remove the building and structures they built on the land of the plaintiff and to vacate the premises.” In the case of Leoncio Ramoy, the Court found that he was occupying a portion of Lot No. 72-B-2-B with the exact location of his apartments indicated and encircled in the location map as No. 7. A copy of the decision was furnished Leoncio Ramoy (Exhibits 2, 2-A, 2-B, 2-C, pp. 128-131, Record; TSN, July 2, 1993, p. 5).

On June 20, 1990 NPC wrote Meralco requesting for the “immediate disconnection of electric power supply to all residential and commercial establishments beneath the NPC transmission lines along Baesa, Quezon City (Exh. 7, p. 143, Record). Attached to the letter was a list of establishments affected which included plaintiffs Leoncio and Matilde Ramoy (Exh. 9), as well as a copy of the court decision (Exh. 2). After deliberating on NPC's letter, Meralco decided to comply with NPC's request (Exhibits 6, 6-A, 6-A-1, 6-B) and thereupon issued notices of disconnection to all establishments affected including plaintiffs Leoncio Ramoy (Exhs. 3, 3-A to 3-C), Matilde Ramoy/Matilde Macabagdal (Exhibits 3-D to 3-E), Rosemarie Ramoy (Exh. 3-F), Ofelia Durian (Exh. 3-G), Jose Valiza (Exh. 3-H) and Cyrene S. Panado (Exh. 3-I).

In a letter dated August 17, 1990 Meralco requested NPC for a joint survey to determine all the establishments which are considered under NPC property in view of the fact that “the houses in the area are very close to each other” (Exh. 12). Shortly thereafter, a joint survey was conducted and the NPC personnel pointed out the electric meters to be disconnected (Exh. 13; TSN, October 8, 1993, p. 7; TSN, July 1994, p. 8).

In due time, the electric service connection of the plaintiffs [herein respondents] was disconnected (Exhibits D

to G, with submarkings, pp. 86-87, Record).

Plaintiff Leoncio Ramoy testified that he and his wife are the registered owners of a parcel of land covered by TCT No. 326346, a portion of which was occupied by plaintiffs Rosemarie Ramoy, Ofelia Durian, Jose Valiza and Cyrene S. Panado as lessees. When the Meralco employees were disconnecting plaintiffs' power connection, plaintiff Leoncio Ramoy objected by informing the Meralco foreman that his property was outside the NPC property and pointing out the monuments showing the boundaries of his property. However, he was threatened and told not to interfere by the armed men who accompanied the Meralco employees. After the electric power in Ramoy's apartment was cut off, the plaintiffs-lessees left the premises.

During the ocular inspection ordered by the Court and attended by the parties, it was found out that the residence of plaintiffs-spouses Leoncio and Matilde Ramoy was indeed outside the NPC property. This was confirmed by defendant's witness R.P. Monsale III on cross-examination (TSN, October 13, 1993, pp. 10 and 11). Monsale also admitted that he did not inform his supervisor about this fact nor did he recommend re-connection of plaintiffs' power supply (Ibid., p. 14).

The record also shows that at the request of NPC, defendant Meralco re-connected the electric service of four customers previously disconnected none of whom was any of the plaintiffs (Exh. 14).[4]

The RTC decided in favor of MERALCO by dismissing herein respondents' claim for moral damages, exemplary damages and attorney's fees. However, the RTC ordered MERALCO to restore the electric power supply of respondents.

Respondents then appealed to the CA. In its Decision dated December 16, 2002, the CA faulted MERALCO for not requiring from National Power Corporation (NPC) a writ of execution or demolition and in not coordinating with the court sheriff or other proper officer before complying with the NPC's request. Thus, the CA held MERALCO liable for moral and exemplary damages and attorney's fees. MERALCO's motion for reconsideration of the Decision was denied per Resolution dated July 1, 2003.

Hence, herein petition for review on certiorari on the following grounds:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND MERALCO NEGLIGENT WHEN IT DISCONNECTED THE SUBJECT ELECTRIC SERVICE OF RESPONDENTS.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AWARDED MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AGAINST MERALCO UNDER THE CIRCUMSTANCES THAT THE LATTER ACTED IN GOOD FAITH IN THE DISCONNECTION OF THE ELECTRIC SERVICES OF THE RESPONDENTS. [5]

The petition is partly meritorious.

MERALCO admits[6] that respondents are its customers under a Service Contract whereby it is obliged to supply respondents with electricity. Nevertheless, upon request of the NPC, MERALCO disconnected its power supply to respondents on the ground that they were illegally occupying the NPC's right of way. Under the Service Contract, "[a] customer of electric service must show his right or proper interest over the property in order that he will be provided with and assured a continuous electric service." [7] MERALCO argues that since there is a Decision of the Metropolitan Trial Court (MTC) of Quezon City ruling that herein respondents were among the illegal occupants of the NPC's right of way, MERALCO was justified in cutting off service to respondents.

Clearly, respondents' cause of action against MERALCO is anchored on culpa contractual or breach of contract for the latter's discontinuance of its service to respondents under Article 1170 of the Civil Code which provides:

Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

In *Radio Communications of the Philippines, Inc. v. Verchez*,^[8] the Court expounded on the nature of culpa contractual, thus:

“In culpa contractual x x x the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promisee that may include his “expectation interest,” which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his “reliance interest,” which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his “restitution interest,” which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. The effect of every infraction is to create a new duty, that is, to make recompense to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like proof of his exercise of due diligence x x x or of the attendance of fortuitous event, to excuse him from his ensuing liability.”^[9] (Emphasis supplied)

Article 1173 also provides that the fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. The Court emphasized in *Ridjo Tape & Chemical Corporation v. Court of Appeals*^[10] that “as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence.”^[11]

The Court agrees with the CA that under the factual milieu of the present case, MERALCO failed to exercise the utmost degree of care and diligence required of it. To repeat, it was not enough for MERALCO to merely rely on the Decision of the MTC without ascertaining whether it had become final and executory. Verily, only upon finality of said Decision can it be said with conclusiveness that respondents have no right or proper interest over the subject property, thus, are not entitled to the services of MERALCO.

Although MERALCO insists that the MTC Decision is final and executory, it never showed any documentary evidence to support this allegation. Moreover, if it were true that the decision was final and executory, the most prudent thing for MERALCO to have done was to coordinate with the proper court officials in determining which structures are covered by said court order. Likewise, there is no evidence on record to show that this was done by MERALCO.

The utmost care and diligence required of MERALCO necessitates such great degree of prudence on its part, and failure to exercise the diligence required means that MERALCO was at fault and negligent in the performance of its obligation. In *Ridjo Tape*,^[12] the Court explained:

[B]eing a public utility vested with vital public interest, MERALCO is impressed with certain obligations towards its customers and any omission on its part to perform such duties would be prejudicial to its interest. For in the final analysis, the bottom line is that those who do not exercise such prudence in the discharge of their duties shall be made to bear the consequences of such oversight.^[13]

This being so, MERALCO is liable for damages under Article 1170 of the Civil Code.

The next question is: Are respondents entitled to moral and exemplary damages and attorney's fees?

Article 2220 of the Civil Code provides:

Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

In the present case, MERALCO wilfully caused injury to Leoncio Ramoy by withholding from him and his tenants the supply of electricity to which they were entitled under the Service Contract. This is contrary to public policy because, as discussed above, MERALCO, being a vital public utility, is expected to exercise utmost care and diligence in the performance of its obligation. It was incumbent upon MERALCO to do everything within its power to ensure that the improvements built by respondents are within the NPC's right of way before disconnecting their power supply. The Court emphasized in *Samar II Electric Cooperative, Inc. v. Quijano*[14] that:

Electricity is a basic necessity the generation and distribution of which is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power. Failure to comply with these regulations will give rise to the presumption of bad faith or abuse of right.[15] (Emphasis supplied)

Thus, by analogy, MERALCO's failure to exercise utmost care and diligence in the performance of its obligation to Leoncio Ramoy, its customer, is tantamount to bad faith. Leoncio Ramoy testified that he suffered wounded feelings because of MERALCO's actions.[16] Furthermore, due to the lack of power supply, the lessees of his four apartments on subject lot left the premises.[17] Clearly, therefore, Leoncio Ramoy is entitled to moral damages in the amount awarded by the CA.

Leoncio Ramoy, the lone witness for respondents, was the only one who testified regarding the effects on him of MERALCO's electric service disconnection. His co-respondents Matilde Ramoy, Rosemarie Ramoy, Ofelia Durian and Cyrene Panado did not present any evidence of damages they suffered.

It is a hornbook principle that damages may be awarded only if proven. In *Mahinay v. Velasquez, Jr.*,[18] the Court held thus:

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. While respondent alleged in his complaint that he suffered mental anguish, serious anxiety, wounded feelings and moral shock, he failed to prove them during the trial. Indeed, respondent should have taken the witness stand and should have testified on the mental anguish, serious anxiety, wounded feelings and other emotional and mental suffering he purportedly suffered to sustain his claim for moral damages. Mere allegations do not suffice; they must be substantiated by clear and convincing proof. No other person could have proven such damages except the respondent himself as they were extremely personal to him.

In *Keirulf vs. Court of Appeals*, we held:

"While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. In *Francisco vs. GSIS*, the Court held that there must be clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his/her social humiliation, wounded feelings and anxiety, moral damages cannot be awarded. In *Cocoland Development Corporation vs. National Labor Relations Commission*, the Court held that "additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, x x x social humiliation, wounded feelings, grave anxiety, etc. that resulted therefrom."

x x x The award of moral damages must be anchored to a clear showing that respondent actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury. There was no better witness to this experience than respondent himself. Since respondent failed to testify on the witness stand, the trial court did not have any factual basis to award moral damages to him.[19] (Emphasis supplied)

Thus, only respondent Leoncio Ramoy, who testified as to his wounded feelings, may be awarded moral damages.[20]

With regard to exemplary damages, Article 2232 of the Civil Code provides that in contracts and quasi-contracts, the court may award exemplary damages if the defendant, in this case MERALCO, acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, while Article 2233 of the same Code provides that such damages cannot be recovered as a matter of right and the adjudication of the same is within the discretion of the court.

The Court finds that MERALCO fell short of exercising the due diligence required, but its actions cannot be considered wanton, fraudulent, reckless, oppressive or malevolent. Records show that MERALCO did take some measures, i.e., coordinating with NPC officials and conducting a joint survey of the subject area, to verify which electric meters should be disconnected although these measures are not sufficient, considering the degree of diligence required of it. Thus, in this case, exemplary damages should not be awarded.

Since the Court does not deem it proper to award exemplary damages in this case, then the CA's award for attorney's fees should likewise be deleted, as Article 2208 of the Civil Code states that in the absence of stipulation, attorney's fees cannot be recovered except in cases provided for in said Article, to wit:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

None of the grounds for recovery of attorney's fees are present.

WHEREFORE, the petition is PARTLY GRANTED. The Decision of the Court of Appeals is AFFIRMED with

MODIFICATION. The award for exemplary damages and attorney's fees is DELETED.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Josefina Guevara-Salonga and Danilo B. Pine, concurring; rollo, pp. 36-49.

[2] Leoncio Ramoy was one of the original plaintiffs who filed the complaint with the Regional Trial Court of Quezon City. However, Leoncio Ramoy died on July 19, 2001. Upon Motion for Substitution, the CA in its Resolution dated July 1, 2003 substituted Angelina Ramoy-Sanchez, Bienvenido Ramoy, and Romana Ramoy-Ramos, as plaintiffs-appellants.

[3] Rollo, pp. 51-53.

[4] RTC Decision dated September 24, 1996, penned by Presiding Judge Wenceslao I. Agnir, Jr., rollo, pp. 58-60.

[5] Id. at 20.

[6] Answer, rollo, p. 73.

[7] Petition, id. at 26; Memorandum, id. at 159-160.

[8] G.R. No. 164349, January 31, 2006, 481 SCRA 384.

[9] Id. at 393-394.

[10] 350 Phil. 184 (1998).

[11] Id. at 194.

[12] *Ridjo Tape & Chemical Corporation v. Court of Appeals*, supra note 10.

[13] Id. at 196.

[14] G.R. No. 144474, April 27, 2007, 522 SCRA 364.

[15] Id. at 375-376.

[16] TSN, April 21, 1993, p. 7.

[17] Id. at 9.

[18] 464 Phil. 146 (2004).

[19] Id. at 149-150.

[20] Respondents did not claim actual damages.

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