MANILA ELECTRIC COMPANY, PETITIONER, VS. HON. LORNA NAVARRO-DOMINGO, IN HER CAPACITY AS THE PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 201, LAS PIÑAS, AND CARMENCITA B. LOTA,...

G.R. NO. 161893. June 27, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition for certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure assails the Order[1] dated December 22, 2003 issued by public respondent, Presiding Judge of the Regional Trial Court (RTC), Branch 201, Las Piñas City, directing, on the application of private respondent, Carmencita B. Lota (Carmencita), the issuance of a writ of preliminary injunction in Civil Case No. LP-03-0260, and the Order[2] dated January 28, 2004 denying the motion for reconsideration of the first order.

On November 10, 2003, at about 11:00 o'clock in the morning,[3] service inspectors of the Manila Electric Company (MERALCO) conducted an inspection of Carmencita's electric metering installation at her residence and found therein a two-line "jumper" using a stolen meter. After taking photographs of the "jumper,"[4] it was confiscated.

At about 2:00 o'clock in the afternoon of the same day, MERALCO's field personnel Rener N. Musngi (Musngi) and M. Almeda III (Almeda), together with an unidentified companion, returned to Carmencita's house and served a Notice of Disconnection and Meter Facilities Inspection Report upon her son Raymond Lota.[5]

By MERALCO's claim, the illegal installation entailed losses to it in the amount of P1,302,239.25 representing unregistered electric consumption for a 3-year period from November 28, 2000 to November 10, 2003 for which it required Carmencita to pay.[6]

Carmencita refused to settle the bill, however, hence, MERALCO refused to reconnect her service line.

Carmencita thus filed before the RTC of Las Piñas a Complaint,[7] which was later amended,[8] for reconnection of electric service line with prayer for preliminary mandatory injunction and damages, docketed as Civil Case No. LP-03-0260 (the case) and raffled to Branch 201 presided by public respondent.

On Carmencita's motion, a hearing on her prayer for the issuance of a writ of preliminary mandatory injunction was conducted following which public respondent issued an order dated December 22, 2003 directing the issuance of a "Writ of Injunction." MERALCO moved to reconsider this order which public respondent denied, by the other assailed order of January 28, 2004.[9]

It appears, however, that public respondent had earlier motu proprio set aside the December 22, 2003 Order, by Order of January 9, 2004 reading:

> Manifestation having filed by plaintiff through counsel alleging that a Writ of Preliminary Mandatory

> Injunction be issued the Order dated December 22, 2003 is hereby set aside.
>
> Considering that the plaintiff has showed sufficient reasons alleged in the complaint and the affidavit of plaintiff as well as the evidence presented during the hearing of this case that a Writ of Preliminary Injunction should issue, the plaintiff is hereby required to post a bond as required by law in the sum of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency for approval of the Court within five (5) days from receipt hereof.
>
> SO ORDERED.[10] (Emphasis and underscoring supplied)

The immediately above-quoted Order of January 9, 2004 (first order) was likewise set aside by public respondent by Order also of January 9, 2004 (second order) reading:

> Under consideration is the Manifestation by plaintiff through counsel alleging that a Writ of Preliminary Mandatory Injunction be issued and finding the same to be well taken, the Orders dated December 22, 2003 and January 9, 2004 is (sic) hereby set aside.
>
> It appearing, further that the plaintiff has showed sufficient reasons alleged in the complaint and the affidavit of plaintiff as well as the evidence presented during the hearing of this case that a Writ of Preliminary Mandatory Injunction should issue, the plaintiff is hereby required to post a bond as required by law in the sum of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency for approval of the Court within five (5) days from receipt hereof.
>
> SO ORDERED.[11] (Emphasis and underscoring supplied)

Public respondent explains that she set aside the Order of December 22, 2003 and the first Order of January 9, 2004 to incorporate, in her second January 9, 2004 Order (second paragraph thereof), the word "mandatory," Carmencita having prayed for the reconnection, not prohibition of the disconnection, of her electric service line.[12]

Carmencita soon posted a bond in the amount of P10,000, and a Writ of Preliminary Mandatory Injunction[13] was issued on February 5, 2004 by public respondent, ordering the therein defendants MERALCO, Almeda, Musngi and John Does to immediately reconnect Carmencita's electric line/services and refrain from committing further acts of disconnection.

Hence, the present petition for certiorari of MERALCO.[14]

MERALCO (hereafter referred to as petitioner) posits that public respondent acted with grave abuse of discretion

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> . . . IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONER IN EXERCISING ITS RIGHT UNDER THE LAW; [AND]
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> II
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> . . . IN REQUIRING THE PRIVATE RESPONDENTS TO POST AN INJUNCTION BOND NOT IN THE AMOUNT OF THE DIFFERENTIAL BILLING BEING CLAIMED BY THE PETITIONER AS REQUIRED BY RA 7832.[15] (Underscoring supplied)

Petitioner argues that the inspection conducted on November 10, 2003 which resulted in the discovery of the illegal electrical connection, as well as the disconnection of the electric service, was done in full compliance with the requirements of Republic Act No. 7832, "ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994" – in the presence of a police officer, with notice of disconnection, albeit after the act, duly served on Carmencita's representative containing its findings and

differential billing.[16] It further argues that the said law allows "automatic" disconnection by the electric utility in case of illegal use of electricity.[17]

Petitioner furthermore argues that public respondent gravely abused her discretion amounting to lack or excess of jurisdiction when she fixed the injunction bond in the amount of P10,000 only, instead of P1,302,239.25, as under the law, the bond should be equal to the differential billing, penalties and other charges.[18]

Carmencita, on the other hand, contends that the petition is moot because the assailed December 22, 2003 Order directing the issuance of a "Writ of Injunction" had been set aside by public respondent by Order of January 9, 2004.

Petitioner counters, however, that public respondent merely reproduced, in its Order of January 9, 2004 (second), not set aside, its Order dated December 22, 2003 granting Carmencita's application for the issuance of a writ of preliminary injunction.

The record fails to show, and there is no word from the parties, that the Writ of Preliminary Mandatory Injunction eventually issued by public respondent had been implemented.

While the assailed December 22, 2003 Order was indeed set aside, it was reissued, by the first and second January 9, 2004 Orders, with the intercalation of the word "mandatory" in the first and second paragraphs of these January 9, 2004 Orders, respectively.

The decision of the present petition thus hinges on the propriety of the issuance of the Order directing the issuance of the Writ of Preliminary Mandatory Injunction requiring petitioner to reconnect Carmencita's electric service, conditioned upon her posting of a P10,000 bond.

Section 9 of Republic Act No. 7832 provides:

> SECTION 9. Restriction on the Issuance of Restraining Orders or Writs of Injunction. – No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority. (Emphasis and underscoring supplied)

Unless, therefore, there is prima facie evidence that the disconnection of electric service was made with evident bad faith or grave abuse of authority, a writ of injunction or restraining order may not issue against any private electric utility or rural electric cooperative exercising the right and authority to disconnect such service.

By petitioner's witness Almeda's own admission,[19] however, the Notice of Disconnection was served on her son three hours after the disconnection of Carmencita's electric service. Evidently, the prior notice requirement under the law was violated. This prima facie evinces bad faith or grave abuse of authority on the part of petitioner which sufficed as basis for the grant of the order for the issuance of the Writ of Preliminary Mandatory Injunction.

The requirement of prior notice before disconnection of electric service is not a futile expletive in the law. In fact, even if there is prima facie evidence of illegal use of electricity and immediate disconnection is warranted under the circumstances, prior notice is still required as mandated under Section 4 of R.A. 7832 which reads:

> SECTION 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 benefitted 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 a 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:
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> x x x x
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> (v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;
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> x x x x (Emphasis and underscoring supplied)

And even if the consumer is caught in flagrante delicto committing the acts enumerated in Section 4(a), Section 6 of the same law still requires prior written notice or warning, thus:

> SECTION 6. Disconnection of Electric Service. — The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect, without the need of a court or administrative order, and deny restoration of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught in flagrante delicto doing any of the acts enumerated in Section 4(a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time: Provided, That in the second case, a written notice or warning shall have been issued upon the first discovery x x x (Emphasis and underscoring supplied)

Petitioner's argument that immediate disconnection under the circumstances surrounding the case validly dispenses with prior notice of disconnection thus fails.

Respecting the sufficiency of the bond, there is no showing how petitioner arrived at the differential billing[20] of more than P1,000,000 to serve as substantial basis[21] therefor. Albeit the law fixes the bond to be "equivalent to the 'differential billing,' penalties and other charges, or to the total value of the subject matter of the action," a court, even for purposes of fixing the bond for the issuance of the writ of preliminary mandatory injunction, may not blindly rely on the bare assessment of the petitioner. For the purpose behind the requirement to post a bond is to secure the enjoined party against any damages it may incur if the injunction turns out to have been wrongfully issued.

The amount of the bond, then, ordinarily depends on the gravity of the potential harm to the enjoined party, and when the court determines that the risk of harm is remote, or that the circumstances otherwise warrant it, the court may fix the amount of the bond accordingly and, in some circumstances, a nominal bond may suffice.[22]

Parenthetically, that it took three years, as reflected above, for petitioner to discover the illegal installation evinces negligence[23] on its part which could serve as additional basis for the issuance of the writ of preliminary mandatory injunction.

At all events, petitioner was not without remedy against the issuance by public respondent of the writ. For Section 9 of still the same aforecited statute provides:

> Section 9.
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> x x x x
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> If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing," penalties and other charges, or to the total value of the subject matter of the action: Provided, however, That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: Provided, finally, That whenever such

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> injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reason for its order. (Emphasis and underscoring supplied)

It appears, however, that petitioner did not avail of such remedy to afford the trial court opportunity to assess the probable relative damages[24] which petitioner and herein private respondent Carmencita may suffer.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 27.

[2] Id. at 28-33.

[3] Records, p. 1.

[4] Rollo, pp. 10-11.

[5] Records, p. 2 and rollo, p. 11.

[6] Rollo, p. 11. Vide records, p. 236.

[7] Records, p. 1-4.

[8] Id. at 18-21.

[9] Supra note 2.

[10] Id. at 58.

[11] Id. at 59.

[12] See letter of public respondent to Deputy Court Administrator Christopher Lock dated March 3, 2004 rollo, pp. 86-87.

[13] Records, pp. 301-302.

[14] Rollo, pp. 3-24.

[15] Rollo, p. 12.

[16] Id. at 15-16.

[17] Id. at 16.

[18] Id. at 22.

[19] TSN, December 16, 2003, p. 20; rollo, p. 109.

[20] Section 6 of the law provides:

> For purposes of this Act, "differential billing" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed, either: (a) the highest recorded monthly consumption within the five-year billing period preceding

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> the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery, (c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months up to the time of discovery: Provided, however, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

[21] Vide: Manila Electric Company v. Macro Textile Mills Corporation, G.R. No. 126243, January 18, 2002, 374 SCRA 69, 82.

That the claim for differential billing must have substantial basis can be inferred from this Court's ruling in Quisumbing v. Manila Electric Company, 429 Phil. 727, 753 (2002), holding that:

> Not only did respondent show how the meter examination had been conducted by its experts, but it also established the amount of P193,332.96 that petitioners owed respondent. The procedure through which this amount was arrived at was testified to by Meralco's senior billing computer, Enrique Katipunan. His testimony was corroborated by documentary evidence showing the account's billing history and the corresponding computations. Neither do we doubt the documents of inspections and examinations presented by respondent to prove that, indeed, there had been meter tampering that resulted in unrecorded and unpaid electrical consumption.

[22] 42 Am Jur 864.

[23] Vide: Manila Electric Company v. Macro Textile Mills Corporation, supra at 85; Ridjo Tape & Chemical Corp. v. Court of Appeals, G.R. No. 126074, February 24, 1998, 286 SCRA 544, 553.

[24] Director of the Bureau of Telecommunications v. Aligaen, 144 Phil. 257, 275 (1990).

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