

MANILA ELECTRIC COMPANY, PETITIONER, VS. WILCON BUILDERS SUPPLY, INC., RESPONDENT.

G.R. No. 171534. June 30, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) dated June 30, 2005 and its Resolution[2] dated February 10, 2006 in CA-G.R. CV No. 60723. The assailed decision in turn reversed and set aside the Decision[3] of the Regional Trial Court (RTC), Branch 262, Pasig City in Civil Case No. 64678.

The facts of the case, as culled from the records, are as follows:

Petitioner Manila Electric Company (Meralco) is a utility company engaged in the business of distribution and sale of electric power; while respondent Wilcon Builders Supply, Inc. is one of its registered customers under Account No. 05380-0800-19.[4]

On January 17, 1991, petitioner's service inspectors conducted a routine inspection of the electric meters installed at respondent's premises at No. 24, Quezon Avenue, Quezon City.[5] The inspection was witnessed by respondent's president and general manager, Mr. William Belo.[6] Allegedly, the meter was found to be tampered with and did not register the correct electric current consumed and used by respondent.[7] The results of the inspection were reflected in the Service Inspection Report[8] prepared by the inspectors. Thereafter, they prepared a Power Metering Field Order[9] and Meter Removal Form.[10] The subject meter was then removed, placed in a plastic bag and brought to the petitioner's office for further laboratory examination.[11]

After the laboratory test, otherwise known as Polyphase Meter Test, petitioner, through its technician, allegedly found, as written in the Report,[12] that: 1) the terminal seal was missing; 2) the lead cover seals were tampered with by cutting the sealing wire; and 3) the 1000[th], 100[th], and 10[th] dial pointers of the register were found out of alignment and scratches were present on the face dial of the register, which indicated that the meter had been opened to manipulate said dial pointers and set them manually to the desired readings.[13]

On February 20, 1991, petitioner wrote the respondent informing the latter of the alleged tampering and further demanding the payment of P250,565.59[14] representing its unregistered consumption.[15] A final demand was, thereafter, made on December 6, 1991.[16] For failure of the respondent to pay the amount claimed, petitioner commenced the instant suit by filing a Complaint[17] for damages asking the court that respondent be ordered to pay the above differential billing with interest at the legal rate, plus attorney's fees.[18]

For its part, respondent denied having tampered with the subject meter. It instead explained that the increase in their electricity consumption was due to the installation of the 7.5 ton air-conditioning unit on June 6, 1981. Sometime in 1985, said unit started to break down; and in 1986, it was no longer functional, which thus caused the abrupt decrease in its consumption.[19] Respondent, likewise, averred that petitioner offered the settlement of the case and reduced its demand to more or less P70,000.00, but the former did not accede.[20] Hence, the

complaint.

At the pre-trial, the parties agreed to limit the issues, as follows:

- Whether or not the defendant's meter was tampered, and as a result thereof, failed to register the correct amount of energy consumed;
- Whether or not the defendant is at fault or is responsible for such tampering;
- Whether or not the defendant is liable to pay the plaintiff the amount of P250,565.59 representing the value of electricity consumed but not registered in defendant's meter;
- Whether or not the defendant is liable to pay the plaintiff attorney's fees and expenses of litigation;
- Whether or not the plaintiff is liable under the defendant's counterclaim;
- Whether or not the defendant is entitled to discounted rate.[21]

For failure of the parties to reach an amicable settlement, trial on the merits ensued. On June 29, 1998, the RTC rendered a Decision[22] in favor of the petitioner and against the respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendant, WILCON BUILDERS SUPPLY, INC., to pay the plaintiff, Manila Electric Company, the following:

- Actual damages in the sum of One Hundred Eighty-Seven Thousand Nine Hundred Twenty-Four Pesos and Nineteen Centavos (P187,924.19);
- Attorney's fees in the sum of Ten Thousand Pesos (P10,000.00); and
- Costs of suit.

SO ORDERED.[23]

The court gave credence to the testimonial and documentary evidence presented by petitioner which it held to be regular and authentic, and which indisputably showed that the subject meter was tampered with.[24] As to the authorship of the tampering, the court relied on the disputable presumption that respondent committed the act because the tampered meter was installed in its premises. Consequently, respondent was held liable for the differential billing. However, for failure of the respondent to use its air-conditioning unit, the court gave the former a discount of 25% of the amount due the petitioner. Since the petitioner was compelled to litigate, it was awarded attorney's fees.[25]

On appeal to the CA, respondent was able to obtain favorable relief. The appellate court reversed and set aside the earlier ruling of the trial court. Contrary to the trial court's conclusion, the CA found that respondent's reduced electric consumption was the result of the breakdown of its air-conditioning unit and not the "tampered" electric meter.[26] It also applied the rule on negligence on the part of petitioner because of its failure to discover the alleged "tampered" meter from 1984 until 1991 pursuant to the doctrine enunciated in *Ridjo Tape & Chemical Corp. v. Court of Appeals*. [27]

Aggrieved, petitioner comes before this Court raising the following issues:

- IT IS REVERSIBLE ERROR TO RULE THAT THE RIDJO TAPE DOCTRINE APPLIES IN THE INSTANT CASE FOR TAMPERING.
- IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO MAKE

ITS OWN FINDINGS OF FACTS, IN EFFECT, SUBSTITUTING THE FINDINGS OF FACTS OF THE COURT A QUO CONTRARY TO ESTABLISHED AND SETTLED JURISPRUDENCE.

- IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO DISMISS CIVIL CASE NO. 64678.[28]

The petition is bereft of merit.

Petitioner faults the CA for applying the doctrine pronounced by this Court in *Ridjo Tape & Chemical Corp. v. CA*[29] because of the difference in the factual circumstances surrounding the instant case. It argues that the *Ridjo* doctrine applies only to cases when the meter is defective and not when there is an allegation of tampering. Besides, petitioner contends, such claim of negligence on the part of the public utility only serves to mitigate the consumer's liability, but not to exempt him from paying the differential billing.[30]

We do not agree.

The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability.[31] The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing. This is apparent in the rationale behind the ruling which states that:

The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. Certainly, we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on *MERALCO's* omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public.[32]

This Court had the occasion to apply the foregoing rule in *Manila Electric Company v. Macro Textile Mills Corp.*,[33] *Davao Light & Power Co., Inc. v. Opeña*,[34] and *Manila Electric Company v. T.E.A.M. Electronics Corporation, et al.*[35] Although there were allegations of tampering with the consumers' electric meters, this Court did not hesitate to apply the *Ridjo* doctrine in imputing negligence on the part of the public utility and in totally barring it from collecting its claim of differential billing.

In *Macro Textile Mills*,[36] there were allegations of tampering allegedly discovered during a routine inspection, coupled with the drastic slump in the electric consumption of the consumer several years before the inspection. The Court decided in favor of the consumer, ratiocinating that if indeed there was an unusual drop in electric consumption reflected in the statements of account, the public utility could have easily verified the error, considering its technical knowledge and vast experience in providing electric service. If there really was a mistake, the electric meters themselves should have been inspected for possible defects or breakdowns and forthwith repaired and, if necessary, replaced.[37] The Court went on to say that the utility company could have filed the appropriate criminal complaint against the erring consumer under Presidential Decree No. 401.[38]

In *Davao Light*,[39] the public utility claimed that there was a sudden drop in the consumer's registered electric consumption as early as 1983, but the inspection of its meters was conducted only in 1988. The court considered

the public utility negligent in allowing several years to lapse before deciding to conduct an inspection of the electric meters. Hence, the case was decided in favor of the consumer.

Lastly, in *T.E.A.M Electronics*,^[40] the public utility claimed that the consumer's electric meter was discovered to have been tampered with in 1987 and again, in 1988. This Court again refused to sustain the public utility's claim for payment of the differential because of negligence on its part when it failed to correct the meter upon discovery of the "tampering." By reason of such negligence, it ran the risk of forfeiting amounts originally due from its customers.

Applying the foregoing rules to the instant case, we sustain the CA's finding of negligence on the part of the petitioner and thus negate its claimed entitlement to a differential billing.

According to the petitioner, there was a sudden drop in respondent's electric consumption during the last quarter of 1984. Yet, petitioner conducted an inspection only in 1991 allowing the "defect" to remain unrepaired for a period of more or less seven (7) years. Besides, if we accept petitioner's contention that it was not the first time that the subject meter was tampered with because it allegedly discovered earlier that the same meter was tampered, although it was not made known to the respondent, with greater reason can we not excuse its inaction. If this contention were true, the moment a sudden drop of electric consumption was reflected in its records, petitioner should have conducted an immediate investigation to make sure that there was nothing wrong with the meter, especially because, by its own account, the subject meter had a history of previous tampering.

It is noteworthy that both the trial court and the appellate court agreed that the installation and the eventual breakdown of respondent's 7.5 ton air-conditioning unit affected the consumer's electric consumption. The non-use of said air-conditioning unit impelled the trial court to deduct 25% from the petitioner's claim. We hold, however, that the appellate court's conclusion is the more logical; that is, that the non-use of the air-conditioning unit, not the alleged tampering, sufficiently explains why the respondent had a reduced electric consumption during the subject period.

Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumption, and results in a reduced monthly electric bill while continuing to enjoy the same power supply. Only the registration of actual electric energy consumption, not the supply of electricity, is affected when a meter is tampered with.^[41] Stated otherwise, when the meter is tampered with, the registered electric consumption is reduced. Consequently, in case of the removal of the tampered meter and the installation of a new one, the registered consumption necessarily increases. However, in the instant case, after the replacement of the "tampered" meter, respondent's consumption remained the same.^[42]

In view of the foregoing, we affirm the appellate court's findings of facts and conclusions of law.

We would like to emphasize at this point that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for a public utility, such as the petitioner, to employ mechanical devices and equipment for the orderly pursuit of its business.^[43] Indeed, it would be highly inequitable if we are to allow a public utility company to be continuously remiss in its duty and then later on charge the consumer exorbitant amounts for the alleged unbilled consumption or differential billing when such a situation could have been easily averted. We simply cannot sanction petitioner's utter neglect of its duty over a number of years, as this would undoubtedly be detrimental to the interest of the consuming public.^[44] In the final analysis, petitioner should bear the loss. Public service companies which do not exercise prudence in the discharge of their duties shall be made to bear the consequences of such oversight.^[45]

Petitioner further asserts that the CA erred in making its own factual determination, for appellate courts should

rely on the factual findings and conclusions of the trial court.

Again, such contention is misplaced.

Section 2, Rule 41 of the Rules of Court provides for the different modes of appeal from an RTC's judgment or final order, to wit:

Section 2. Modes of appeal. —

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

Respondent elevated the matter before the CA through an ordinary appeal under Rule 41. Clearly therefore, the CA was empowered to review questions of fact. Although the trial court's findings of facts are accorded great respect because of the judge's opportunity to observe the witnesses firsthand, appellate courts, like the CA, are not precluded from reviewing the factual findings of lower courts.

Jurisprudence has established that even the Supreme Court may review and at times reverse and set aside factual findings of both the trial court and the CA in the following cases: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[46]

Lastly, petitioner avers that the CA erred in dismissing its claim against the respondent, since the amount it collects redounds to the benefit of the consuming public and is used to lower the rates of electricity; and thus, any amount not claimed is likewise shouldered by the innocent consumers.

The right of the petitioner as a public utility to collect "systems losses" is a non-issue in the instant case. To be sure, in enacting Republic Act No. 7832[47] and Republic Act No. 9136,[48] the legislature did not intend to relax the rules in deciding cases of tampered electric meters. In no way can this Court grant a favorable judgment to the petitioner solely because of the benefit that the public will gain. To do so would result in unjust enrichment at the expense of the consumer accused of committing acts of tampering. Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove such entitlement.

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals dated June 30, 2005 and its Resolution dated February 10, 2006 in CA-G.R. CV No. 60723 are AFFIRMED.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Corona, Chico-Nazario, and Reyes, JJ., concur.

* In view of inhibition of Justice Consuelo Ynares-Santiago.

** Designated to sit as additional member replacing Justice Consuelo Ynares-Santiago per raffle dated June 23, 2008.

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring; rollo, pp. 30-41.

[2] Rollo, pp. 44-46.

[3] Penned by Judge Gregory S. Ong; records, pp. 384-402.

[4] Records, p. 1.

[5] Id.

[6] CA rollo, p. 132.

[7] Records, p. 1.

[8] Id. at 105.

[9] Id. at 119.

[10] Id. at 120.

[11] Ca rollo, p. 132.

[12] Records, pp. 106-107.

[13] Id. at 107.

[14] The VOC (Violation of Contract) Billing Unit used the period covering November 17, 1983 to November 20, 1984 as basis for the computation of the differential billing.

[15] Records, p. 117.

[16] Id. at 118.

[17] Id. at 1-3.

[18] Id. at 2.

[19] CA rollo, pp. 134-135.

[20] Id. at 135.

[21] Records, pp. 49-50.

[22] Id. at 384-402.

[23] Id. at 401-402.

[24] Id. at 397.

[25]Id. at 396-401.

[26] CA rollo, pp. 138-140.

[27] 350 Phil. 184 (1998).

[28]Rollo, p. 116.

[29]Supra note 27.

[30] Rollo, pp. 116-120.

[31] Ridjo Tape and Chemical Corp. v. CA, supra note 27, at 194-195. (Emphasis supplied.)

[32]Id. at 195.

[33] 424 Phil. 811 (2002).

[34]G.R. No. 129807, December 9, 2005, 477 SCRA 58.

[35] G.R. No. 131723, December 13, 2007.

[36]Supra note 33.

[37]Manila Electric Company v. Macro Textile Mills, supra note 33, at 827.

[38] Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters, and Other Acts, as amended by P.D. 401-A and further repealed by Republic Act No. 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."

[39]Supra note 34.

[40]Supra note 35.

[41] Manila Electric Company v. T.E.A.M. Electronics Corporation, supra.

[42] Records, p. 286.

[43]Ridjo Tape and Chemical Corporation v. CA, supra note 27, at 193.

[44] Davao Light & Power Co., Inc. v. Opeña, supra note 34, at 84.

[45] Manila Electric Company v. Macro Textile Mills, supra note 33, at 828.

[46] Superlines Transportation Company, Inc. v. Philippine National Construction Company, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441, citing Insular Life Assurance Company, Ltd. v. CA, 428 SCRA 79, 86 (2004); New City Builders, Inc. v. NLRC, G.R. No. 149281, June 15, 2005, 460 SCRA 220, 227.

[47]Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

[48]Electric Power Industry Reform Act of 2001.

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