

**MANILA ELECTRIC COMPANY, VICENTE MONTERO, MR. BONDOC,
AND MR. BAYONA, PETITIONERS, VS. NORDEC PHILIPPINES AND/OR
MARVEX INDUSTRIAL CORP. REPRESENTED BY ITS PRESIDENT, DR.
POTENC...**

G.R. No. 196020. April 18, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

A distribution utility is mandated to strictly comply with the legal requisites before disconnecting an electric supply due to the serious consequences this disconnection may have on the consumer.

These are two (2) Petitions for Review on Certiorari[1] under Rule 45 of the Rules of Court, both assailing the January 21, 2011 Decision[2] and March 9, 2011 Resolution[3] of Court of Appeals in CA-G.R. CV No. 85564. The Court of Appeals reversed and set aside the June 15, 2005 Decision[4] of Branch 85, Regional Trial Court, Quezon City in Civil Case No. Q-49651. It ordered Manila Electric Company (Meralco) to pay Nordec Philippines (Nordec) the amounts of P5,625.00, representing overbilling for November 23, 1987; P200,000.00 as exemplary damages; P100,000.00 as attorney's fees; and costs of suit.

Meralco was contracted to supply electricity to Marvex Industrial Corporation (Marvex) under an Agreement for Sale of Electric Energy, with Service Account No. 9396-3422-15.[5] It installed metering devices at Marvex's premises on January 18, 1985. Marvex was billed according to the monthly electric consumption recorded in its meter.[6]

On May 29, 1985, Meralco service inspectors inspected Marvex's electric metering facilities and found that the main meter terminal and cover seals had been tampered with. During a second inspection on September 18, 1985, Meralco found that the metering devices were tampered with again. Subsequently, Meralco assessed Marvex a differential billing of P371,919.58 for January 18, 1985 to May 29, 1985, and P124,466.71 for June 17, 1985 to September 18, 1985, in the total amount of P496,386.29. Meralco sent demand letters dated August 7, 1985 and November 29, 1985, and disconnected Marvex's electric service when it did not pay.[7]

On December 23, 1986, Nordec, the new owner of Marvex,[8] sued Meralco for damages with prayer for preliminary mandatory injunction with Branch 85, Regional Trial Court, Quezon City.[9] Likewise, impleaded as defendants were Meralco's legal officer, Vicente Montero, and two (2) Meralco employees, Mr. Bondoc and Mr. Bayona.[10] It alleged that Meralco's service inspectors conducted the 1985 inspections without its consent or approval. Following the inspections, Meralco's inspectors gave an unnamed Nordec employee a Power Field Order that did not mention the alleged defects in the metering devices. Nordec further claimed that the parties exchanged letters on the alleged unregistered electric bill, and that it requested a recomputation, which Meralco denied in its April 25, 1986 letter. However, in May 1986, Meralco asked Nordec to show the basis for its recomputation request, to which Nordec complied in its June 10, 1986 letter. On August 14, 1986, Meralco required Nordec to pay P371,919.58 for the unregistered electricity bill. Nordec then informed Meralco of the

pending resolution of the recomputation. Nordec claimed that Meralco then disconnected its service without prior notice on December 18, 1986, resulting to loss of income and cancellation of other business opportunities.[11]

In its defense, Meralco claimed that the 1985 inspections had been conducted in the presence of Nordec's representatives. Further, Meralco had repeatedly warned Nordec of service disconnection in case of failure to pay the differential bill. Finally, it averred that there was no contractual relation between Nordec and Marvex, and that Nordec and its president, Dr. Potenciano Malvar (Dr. Malvar), failed to show proof that they were authorized to sue on Marvex's behalf.[12]

On January 22, 1987, the Regional Trial Court issued a writ of preliminary injunction directing Meralco to restore Nordec's electric supply.[13]

On November 23, 1987, Meralco conducted another inspection of Nordec's premises in the presence of Nordec's president, Dr. Malvar. The inspecting group observed that there were irregularities in Nordec's metering devices, as they continued to register power consumption even though its entire power supply equipment was turned off. Meralco offered to reimburse Nordec's excess bill of P5,625.10, but Nordec rejected this offer.[14]

Nordec filed a second supplemental complaint on January 4, 1991, praying that Meralco be declared guilty of tampering, and be made to refund its excess bill of not less than P5,625.10.[15]

In its June 15, 2005 Decision,[16] the Regional Trial Court dismissed Nordec's original complaint and second supplemental complaint. The trial court found that there was sufficient evidence to prove that the electric meter and metering installation at Marvex premises had been tampered with.[17] It found that Nordec did not dispute that the inspections of its premises were conducted with the consent and in the presence of its representatives. Moreover, Nordec failed to prove that Meralco's inspectors had ill motives to falsify their findings regarding the tampered meter, or that the inspectors were responsible for the tampering.[18]

The trial court further found that *Ridjo Tape & Chemical Corporation v. Court of Appeals* was inapplicable to this case, since that case did not involve tampering of meters. It held Nordec liable for violating its Terms and Conditions of Service with Meralco, such that Meralco was justified in disconnecting its electric service.[19] Because it was Nordec which committed the tampering, it was not entitled to the reliefs prayed for because it did not come to court with clean hands.[20]

There was also no contractual relationship between Nordec and Meralco, since the service contract was between Meralco and Marvex. Thus, Nordec had no cause of action against Meralco.[21]

The dispositive portion of the Regional Trial Court June 15, 2005 Decision stated:

WHEREFORE, the original complaint as well as the second supplemental complaint are hereby DISMISSED.

Anent the second supplemental complaint, the same is found to be without merit, for failure of plaintiff to substantiate with clear and convincing evidence.

And, finding defendant's counterclaim to be with merit, the same is GRANTED. Accordingly, plaintiffs are hereby ordered to pay, jointly and severally, defendants the total amount of FOUR HUNDRED NINETY[-]SIX THOUSAND THREE HUNDRED EIGHTY-SIX PESOS & 29/100 (Php 496,386.29), representing the value of used but unregistered electric current; the sum of TEN THOUSAND PESOS (Php 10,000.00) as exemplary damages; and the sum of TWENTY THOUSAND PESOS (Php 20,000.00) as and for attorney's fees plus costs.

SO ORDERED.[22]

Nordec appealed to the Court of Appeals, which docketed the case as CA-G.R. CV No. 85564. On January 21,

2011, the Court of Appeals issued its Decision,[23] reversing and setting aside the Regional Trial Court June 15, 2005 Decision.

First, it held that there was a contractual relationship between Nordec and Meralco. It found that after the service contract between Meralco and Marvex, Nordec bought Marvex from the Development Bank of the Philippines. Thus, Nordec stepped into Marvex's shoes and assumed its rights and obligations as its assignee or successor-in-interest. As Marvex's right to receive electricity is not intransmissible, it was deemed to have been transmitted to Nordec. Moreover, Meralco's continued supply of electricity to Nordec and Nordec's payment for this supply indicate that there was an implied contract existing between these two (2) parties.[24]

Second, the Court of Appeals found that Meralco was negligent in discovering the alleged tampering only on May 29, 1985, or four (4) months after it first found irregularities in the metering devices, despite the monthly meter readings. There was no evidence that Nordec was responsible for tampering with its own metering devices. The Court of Appeals found that it was unlikely that a company previously charged with tampering and had been demanded payment for differential billing would again tamper with a newly installed meter. On the other hand, there was proof that the new metering devices were defective, since they continued to run despite a complete power shutdown. Meralco even offered to refund P5,625.10 due to the defect in the new meter.[25]

Third, Meralco did not deny that there was a pending communication on Nordec's request for recomputation. Citing *Spouses Quisumbing v. Manila Electric Company*, the Court of Appeals found that Meralco failed to give the 'required 48-hour written notice of disconnection before disconnecting Nordec's power supply.[26]

Finally, the Court of Appeals awarded Nordec exemplary damages and attorney's fees, but not actual damages. As to actual damages, Nordec failed to prove that it actually sustained pecuniary losses due to Meralco's disconnection. But Nordec was entitled to exemplary damages as an example or correction for the public good, and to attorney's fees since Nordec was forced to litigate to protect its rights.[27] The Court of Appeals granted only the P5,625.00 refund since there was no proof presented beyond this amount.[28]

The dispositive portion of the Court of Appeals January 21, 2011 Decision stated:

Accordingly, the appeal is GRANTED. The Decision dated June 15, 2005 of the Regional Trial Court (RTC), Quezon City, Branch 85 is REVERSED and SET ASIDE and a new one rendered ordering [Meralco] to pay [Nordec]:

- 1.) P5,625.00, representing overbilling for November 23, 1987[;]
- 2.) P200,000.00 as exemplary damages;
- 3.) P100,000.00 as attorney's fees; and
- 4.) Costs of suit.

SO ORDERED.[29]

The Court of Appeals denied Meralco's Motion for Reconsideration[30] and Nordec's Motion for Partial Reconsideration[31] in its March 9, 2011 Resolution.[32]

On March 29, 2011, Meralco filed a motion for extension of time, praying for additional 30 days within which to file its petition for review.[33]

This was docketed as G.R. No. 196020. On April 4, 2011, Nordec filed its motion for extension of time, likewise praying for additional 30 days within which to file its petition for review, which was docketed as G.R. No. 196116.[34]

This Court consolidated G.R. Nos. 196020 and 196116 in its April 11, 2011 Resolution.[35]

On May 3, 2011, Meralco filed its Petition for Review in G.R. No. 196020, assailing the Court of Appeals January 21, 2011 Decision and March 9, 2011 Resolution.[36]

Meralco argues that the Court of Appeals erred in making its findings, which were contrary to the findings of the Regional Trial Court. It claims that the Court of Appeals relied on Nordec's unsubstantiated arguments; first, in finding that Nordec was Marvex's assignee or successor-in-interest, and second, that Meralco was inexcusably negligent in the late discovery of the tampered metering devices.[37]

Meralco claims that at the time of the inspections, the applicable law was Commonwealth Act No. 349, which provided that distribution utilities were required to discover tampered meters during the prescribed inspections, which were only once every two (2) years. In contrast, the four (4)-month period as found by the Court of Appeals was unreasonable, and even contrary to the rules laid down by the Energy Regulatory Commission on the conduct of meter testing.[38] Meralco argues that distribution utilities' meter readers are not required to discover any defect or tampering in the meters installed in their customers' premises, and are only required to test their customers' meters only once every two (2) years, unless the customer requests otherwise. It avers that cases of meter tampering should not be equated with cases involving defective meters, since the former prejudices public utilities like Meralco, due to consumers' unlawful acts.[39]

Further, Meralco claims that the inspections conducted on Marvex's metering facilities were valid and in accordance with Presidential Decree No. 401, as amended.[40] It argues that this law did not require the presence of the customer during inspections. Nonetheless, the two (2) inspections in 1985 were conducted with the consent and in the presence of Nordec's representatives.[41]

Meralco also claims that it exercised due diligence in maintaining its electric meters, which was the standard set by law. By applying *Ridjo Tape v. Court of Appeals*,[42] the Court of Appeals imposed a degree of diligence beyond what Commonwealth Act No. 349 provided.[43] Meralco asserts that the imposition of a degree of diligence beyond what the law provides its judicial legislation.[44]

Moreover, Meralco holds that the demand letter on the assessed value of the differential billing contained a notice that Marvex's electric service would be disconnected if the billing was not paid, and that this was sufficient notice. Thus, Marvex, as the registered customer, was aware that the non-payment of the differential billing would result in the disconnection of the electric service.[45]

Meralco argues that Nordec was not Marvex's assignee or successor-in-interest. It maintains that the service contract was never transferred in Nordec's name. As such, at the time Nordec filed its complaint against Meralco, it had no authority to act on Marvex's behalf. Meralco pointed out that the Deed of Absolute Sale between Nordec and the Development Bank of the Philippines was executed only three (3) years after the 1985 inspections, or on August 16, 1988. There was also no implied contract between Meralco and Nordec, since there was no act or conduct on Meralco's part to be bound to this contract.[46]

Finally, Meralco contests the awards of refund, exemplary damages, and attorney's fees to Nordec. It claims that Nordec was not entitled to the refund since it already refused without just cause to accept it, and thus, had waived its right to accept the payment.[47] It argues that since the Court of Appeals itself found that Nordec was not entitled to actual damages, it could not award exemplary damages or attorney's fees to Nordec.[48]

In its Comment,[49] Nordec argues that Meralco's reliance on Commonwealth Act No. 349 was misplaced, since the two (2)-year period stated in it referred to testing conducted by the Standardizing Meter Laboratory, and not by the distribution utilities themselves.[50] Further, Nordec claims that what Meralco failed to comply with was

the 48-hour written notice of disconnection rule, and its previous demand letters did not constitute this notice.[51]

In its Reply,[52] Meralco reiterated its claims that *Ridjo Tape v. Court of Appeals* was inapplicable[53] and that it gave Nordec due notice of the disconnection.[54]

On May 5, 2011, Nordec filed its Petition for Review in G.R. No. 196116, assailing the Court of Appeals March 9, 2011 Resolution, denying its Motion for Partial Reconsideration and praying for the modification of the Court of Appeals January 21, 2011 Decision.[55]

Nordec claims that it should be awarded at least P500,000.00 in temperate damages, P150,000.00 in moral damages, and legal interest by the Court of Appeals. It argues that temperate damages are warranted since Meralco's unceremonious and unreasonable disconnection led to Nordec's inability to fulfill its contractual obligations and was even forced to cancel its clients' purchase orders.[56]

Further, Nordec claims that the Court of Appeals erred in finding that it was entitled to only P5,625.00 as a refund. It argues that it proved overbilling in excess of P5,625.00, through a letter showing that Nordec had been charged P103,412.48 by Meralco, when a past billing was only for P78,860.58, which Meralco did not refute. While Nordec admits that it failed to adduce proof of the accurate amount of damages that it sustained, it holds that it estimates Meralco's acts to cause at least P1,000,000.00 worth of damage due to Meralco's electricity disconnection, fraud in downgrading the overbilling, and installation of defective meters.[57]

In its Comment,[58] Meralco argues that Nordec's petition should be denied outright for failing to raise questions of law, but merely prayed for a modification of the Court of Appeals January 21, 2011 Decision.[59] It claims that the Court of Appeals correctly denied the award of actual and temperate or moderate damages.[60] Further, it asserts that Nordec, as a corporation, was not entitled to moral damages.[61] Finally, it reiterates that Nordec was not entitled to any award, since Meralco acted in accordance with the standard set by law.[62]

In its Reply,[63] Nordec claims that this Court may take cognizance of its petition since there was no longer any need to examine the probative value of the evidence presented.[64] It argues that corporations may be entitled to damages if their reputations have been besmirched, such as in this case.[65] Nordec reiterates its entitlement to the damages it prayed for.[66]

The issues for this Court's resolution are:

First, whether or not the Court of Appeals erred in making findings of fact contrary to those of the Regional Trial Court;

Second, whether or not Nordec Philippines has a cause of action against Manila Electric Company;

Third, whether or not Manila Electric Company was inexcusably negligent when it disconnected Nordec Philippines' electric supply; and

Finally, whether or not Nordec Philippines is entitled to actual, temperate, moral or exemplary damages, attorney's fees, and legal interest.

I

In its petition for review, Meralco faults the Court of Appeals for making findings of fact contrary to those of the Regional Trial Court. It claims that the trial court's findings of fact should be accorded the highest degree of respect and that the Court of Appeals failed to find that the trial court's findings were based on mere conjecture, and not evidence. Thus, Meralco claims that this Court must review the facts and evidence of this case

Meralco is mistaken in arguing that this Court is duty-bound to review the factual findings in this case due to the contrary findings of the Regional Trial Court and of the Court of Appeals. The Court of Appeals has the jurisdiction to review, and even reverse, the factual findings of the trial court. For the Court of Appeals' factual findings to be reviewed by this Court, it must be shown that it gravely abused its discretion in appreciating the parties' respective evidence. In *Pascual v. Burgos*:^[67]

The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. Grave abuse of discretion is defined, thus:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases which, for various reasons, there has been a gross misapprehension of facts. (Citations omitted)

This exception was first laid down in *Buyco v. People, et al.*:

In the case at bar, the Tenth Amnesty Commission, the court of first instance and the Court of Appeals found, in effect, that the evidence did not suffice to show that appellant had acted in the manner contemplated in the amnesty proclamation. Moreover, unlike the *Barrioquinto* cases, which were appealed directly to this Court, which, accordingly, had authority to pass upon the validity of the findings of fact of the court of first instance and of its conclusions on the veracity of the witnesses, the case at bar is before us on appeal by certiorari from a decision of the Court of Appeals, the findings and conclusions of which, on the aforementioned subjects, are not subject to our review, except in cases of grave abuse of discretion, which has not been shown to exist.^[68] (Citations omitted)

Meralco has failed to show how the Court of Appeals acted with grave abuse of discretion in arriving at its factual findings and conclusions, or how it grossly misapprehended the evidence presented as to warrant a finding that its review and reversal of the trial court's findings of fact had been in error.

II

A cause of action "is the act or omission by which a party violates a right of another."^[69] For a cause of action to exist, there must be, first, a plaintiff's legal right; second, defendant's correlative obligation; and third, an injury to the plaintiff as a result of the defendant's violation of plaintiff's right.^[70] Here, the Regional Trial Court found that Nordec had no cause of action against Meralco since they had no contractual relationship, as Meralco's service contract was with Marvex.

The beneficial users of an electric service have a cause of action against this distribution utility. In *Manila Electric Company v. Spouses Chua*,^[71] it was the beneficial users who were awarded damages due to the unjust disconnection of the electric supply, even though the service contract with Meralco was registered in the name of another person.

Further, Meralco is deemed to have knowledge of the fact that Nordec was the beneficial user of Marvex's service contract with Meralco. It admits that the inspections of the metering devices were conducted in the presence of Nordec's maintenance personnel and with the consent of its manager.^[72] It further admits that it corresponded with Nordec regarding the differential billing, and entertained Nordec's demand for an explanation on the finding

of tampering and the recomputation of the amount to be paid by Nordec.[73] Clearly, Meralco knew that it was dealing with Nordec as the beneficial user of the electricity supply.

III

It is well-settled that electricity distribution utilities, which rely on mechanical devices and equipment for the orderly undertaking of their business, are duty-bound to make reasonable and proper periodic inspections of their equipment. If they are remiss in carrying out this duty due to their own negligence, they risk forfeiting the amounts owed by the customers affected.

In *Ridjo Tape & Chemical Corporation v. Court of Appeals*:^[74]

At this juncture, we hasten to point out that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for public utilities, such as MERALCO, to employ mechanical devices and equipment for the orderly pursuit of its business.

It is to be expected that the parties were consciously aware that these devices or equipment are susceptible to defects and mechanical failure. Hence, we are not prepared to believe that petitioners were ignorant of the fact that stoppages in electric meters can also result from inherent defects or flaws and not only from tampering or intentional mishandling....

....

Corollarily, it must be underscored that MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.

A review of the records, however, discloses that the unpaid charges covered the periods from November 7, 1990 to February 13, 1991 for Civil Case No. Q-92-13045 and from July 15, 1991 to April 13, 1992 for Civil Case No. 13879, approximately three months and nine months, respectively. On such basis, we take judicial notice that during those periods, personnel representing MERALCO inspected and examined the electric meters of petitioners regularly for the purpose of determining the monthly dues payable. So, why were these defects not detected and reported on time?

It has been held that notice of a defect need not be direct and express; it is enough that the same had existed for such a length of time that it is reasonable to presume that it had been detected, and the presence of a conspicuous defect which has existed for a considerable length of time will create a presumption of constructive notice thereof. Hence, MERALCO's failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence. Furthermore, we need not belabor the point that as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence.^[75] (Citations omitted)

Moreover, the duty of inspecting for defects is not limited to inherent mechanical defects of the distribution utilities' devices, but extends to intentional and unintentional ones, such as those, which are due to tampering and mistakes in computation.^[76] In *Manila Electric Co. v. Wilcon Builders Supply, Inc.*:^[77]

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. 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.[78] (Citation omitted)

Meralco argues that the degree of diligence imposed upon it was beyond the prevailing law at the time, namely, Commonwealth Act No. 349. It claims that under this law, it is only required to test metering devices once every two (2) years. Thus, for it to be penalized for taking four (4) months to rectify and repair the defective meter, was tantamount to judicial legislation.

However, as pointed out by Nordec, the two (2)-year period prescribed under Commonwealth Act No. 349[79] is for the testing required of meters and appliances for measurements used by all public services by a standardized meter laboratory under the control of the then Public Service Commission. It does not pertain to distribution utilities inspections of the metering devices installed in their consumers' premises.

Further, contrary to Meralco's claim, the duty imposed upon it pursuant to *Ridjo* is not beyond the standard of care imposed by law. Distribution utilities are public utilities vested with public interest, and thus, are held to a higher degree of diligence. In *Ridjo*:

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.

....

To summarize, it is worth emphasizing that it is not our intention to impede or diminish the business viability of MERALCO, or any public utility company for that matter. On the contrary, we would like to stress that, being 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.[80]

Should a distribution utility not exercise the standard of care required of it due to its negligence in the inspection and repair of its apparatus, then it can no longer recover the amounts of allegedly used but uncharged electricity.

The distribution utility's negligence is all the more apparent when it had made prior findings of tampering, and yet still failed to correct these defects. In *Manila Electric Company v. T.E.A.M. Electronics Corp.*,^[81] Meralco conducted an inspection on September 28, 1987 and found that the meters therein were tampered, and then conducted a second inspection on June 7, 1988, which yielded similar evidence of tampering. Likewise, the respondent in that case was in the midst of a differential billing dispute with Meralco, and had previously been assessed P7,000,000.00 due to alleged tampering. There, this Court found that Meralco was negligent for failing to repair the defects in respondent's meters after the first inspection:

Petitioner likewise claimed that when the subject meters were again inspected on June 7, 1988, they were found to have been tampered anew. The Court notes that prior to the inspection, [T.E.A.M. Electronics Corporation] was informed about it; and months before the inspection, there was an unsettled controversy between [T.E.A.M. Electronics Corporation] and petitioner, brought about by the disconnection of electric power and the non-payment of differential billing. We are more disposed to accept the trial court's conclusion that it is hard to believe that a customer previously apprehended for tampered meters and assessed P7 million would further jeopardize itself in the eyes of petitioner. If it is true that there was evidence of tampering found

on September 28, 1987 and again on June 7, 1988, the better view would be that the defective meters were not actually corrected after the first inspection. If so, then *Manila Electric Company v. Macro Textile Mills Corporation* would apply, where we said that we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly, the public utilities demand payment for the unrecorded electricity utilized when they could have remedied the situation immediately. Petitioner's failure to do so may encourage neglect of public utilities to the detriment of the consuming public. Corollarily, it must be underscored that petitioner has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence. By reason of said negligence, public utilities run the risk of forfeiting amounts originally due from their customers.[82] (Citations omitted)

Here, as observed by the Court of Appeals, Meralco itself claimed that the irregularities in the electricity consumption recorded in Nordec's metering devices started on January 18, 1985, as evidenced by their August 7, 1985 demand letter, covering January 18, 1985 to May 29, 1985. However, the alleged tampering was only discovered during the May 29, 1985 inspection. Considering that Nordec's meters were read monthly, Meralco's belated discovery of the cause of the alleged irregularities, or four (4) months after they purportedly started, can only lead to a conclusion of negligence. Notice of a defect may be constructive when it has conspicuously existed for a considerable length of time.[83] It is also worth noting that during a third inspection on November 23, 1987, further irregularities in Nordec's metering devices were observed, showing electricity consumption even when Nordec's entire power supply equipment was switched off. Clearly, Meralco had been remiss in its duty as required by law and jurisprudence of a public utility.

Meralco is also duty-bound to explain the basis for its billings, especially when these are for unregistered consumption, to prevent consumers from being solely at its mercy.[84] Here, the Power Field Orders given to Nordec following the inspections did not mention the alleged defects that were discovered. Nordec's request for recomputation of the alleged unregistered electric bill was still pending when its electric supply was disconnected on December 18, 1986.

Finally, as found by the Court of Appeals, Meralco failed to comply with the 48-hour disconnection notice rule. Meralco claims that the statements in its demand letters, that failure to pay would result in disconnection, were sufficient notice. However, pursuant to Section 97 of Revised General Order No. 1, the governing rule when the disconnection occurred, disconnection due to non-payment of bills requires that a 48-hour written notice be given to the customer.[85]

It must be emphasized that electricity is "a basic necessity whose generation and distribution 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." [86] The serious consequences on a consumer, whose electric supply has been cut off, behoove a distribution utility to strictly comply with the legal requisites before disconnection may be done.[87] This is all the more true considering Meralco's dominant position in the market compared to its customers' weak bargaining position.[88]

IV

At the outset, a party's entitlement to damages is a question of fact not generally cognizable in a petition for review.[89] However, in this case, the Court of Appeals' failure to apply the applicable law and jurisprudence by awarding damages to Nordec prompts this Court's review.

The Court of Appeals declined to award actual damages to Nordec as it failed to prove its pecuniary losses due to Meralco's disconnection:

We concede that MERALCO's service disconnection bore a domino effect on NORDEC's business but in the absence of actual proof of losses, We cannot award actual damages to NORDEC. For one is only entitled to adequate compensation for pecuniary loss that he has duly proven.[90]

The Court of Appeals then proceeded to award exemplary damages to Nordec by way of example or correction for the public good. This is contrary to the requirement in Article 2234 of the Civil Code, which requires proof of entitlement to moral, temperate or compensatory damages before exemplary damages may be awarded:

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

Exemplary damages, which cannot be recovered as a matter of right, may not be awarded if no moral, temperate, or compensatory damages have been granted.[91] Since exemplary damages cannot be awarded, the award of attorney's fees should likewise be deleted.

Moral damages are also not proper, in line with *Manila Electric Company v. T.E.A.M Electronics Corporation*: [92]

We, however, deem it proper to delete the award of moral damages. [T.E.A.M. Electronics Corporation] claim was premised allegedly on the damage to its goodwill and reputation. As a rule, a corporation is not entitled to moral damages because, not being a natural person, it cannot experience physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is when the corporation has a reputation that is debased, resulting in its humiliation in the business realm. But in such a case, it is imperative for the claimant to present proof to justify the award. It is essential to prove the existence of the factual basis of the damage and its causal relation to petitioner's acts. In the present case, the records are bereft of any evidence that the name or reputation of [T.E.A.M. Electronics Corporation/Technology Electronics Assembly and Management Pacific Corporation] has been debased as a result of petitioner's acts. Besides, the trial court simply awarded moral damages in the dispositive portion of its decision without stating the basis thereof.[93] (Citations omitted)

Here, the records are bereft of evidence that would show that Nordec's name or reputation suffered due to the disconnection of its electric supply.

Moreover, contrary to Nordec's claim, it cannot be awarded temperate or moderate damages. Under Article 2224 of the Civil Code:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

When the court finds that a party fails to prove the fact of pecuniary loss, and not just the amount of this loss, then Article 2224 does not apply. In *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*: [94]

In contrast, under Article 2224, temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. This principle was thoroughly explained in *Araneta v. Bank of America*, which cited the Code Commission, to wit:

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the

following comment:

In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act. (Emphasis ours)

Thus, in *Tan v. OMC Carriers, Inc.*, temperate damages were rightly awarded because plaintiff suffered a loss, although definitive proof of its amount cannot be presented as the photographs produced as evidence were deemed insufficient. Established in that case, however, was the fact that respondent's truck was responsible for the damage to petitioner's property and that petitioner suffered some form of pecuniary loss. In *Canada v. All Commodities Marketing Corporation*, temperate damages were also awarded wherein respondent's goods did not reach the Pepsi Cola Plant at Muntinlupa City as a result of the negligence of petitioner in conducting its trucking and hauling services, even if the amount of the pecuniary loss had not been proven. In *Philtranco Services Enterprises, Inc. v. Paras*, the respondent was likewise awarded temperate damages in an action for breach of contract of carriage, even if his medical expenses had not been established with certainty. In *People v. Briones*, in which the accused was found guilty of murder, temperate damages were given even if the funeral expenses for the victim had not been sufficiently proven.

Given these findings, we are of the belief that temperate and not nominal damages should have been awarded, considering that it has been established that respondent herein suffered a loss, even if the amount thereof cannot be proven with certainty.[95] (Citations omitted)

Here, the Court of Appeals found that Meralco's disconnection had a "domino effect"[96] on Nordec's business, but that Nordec did not offer actual proof of its losses. Nordec even admitted in its petition for review that there was an "oversight" on its part in "adducing proof of the accurate amount of damages it sustained" due to Meralco's acts.[97] No pecuniary loss has been established in this case, apart from the claim in Nordec's complaint that the "serious anxiety" of the disconnection had caused Nordec's president to cancel business appointments, purchase orders, and fail to fulfill contractual obligations, among others.[98]

In this instance, nominal damages may be awarded. In *Philippine Telegraph & Telephone Corporation v. Court of Appeals*:[99]

Temperate or moderate damages may only be given if the "court finds that some pecuniary loss has been suffered but that its amount cannot, from the nature of the case, be proved with certainty." The factual findings of the appellate court that respondent has failed to establish such pecuniary loss or, if proved, cannot from their nature be precisely quantified precludes the application of the rule on temperate or moderate damages. The result comes down to only a possible award of nominal damages. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered by him. The court may award nominal damages in every obligation arising from any source enumerated in article 1157 of the Civil Code or, generally, in every case where property right is invaded.[100] (Citations omitted)

Nominal damages are awarded to vindicate the violation of a right suffered by a party, in an amount considered by the courts reasonable under the circumstances.[101] Meralco's negligence in not providing Nordec sufficient notice of disconnection of its electric supply, especially when there was an ongoing dispute between them concerning the recomputation of the electricity bill to be paid, violated Nordec's rights. Because of this, Nordec is entitled to nominal damages in the amount of P30,000.00.

WHEREFORE, the Petitions for Review on Certiorari in G.R. Nos. 196020 and 196116 are DENIED. The Court of Appeals January 21, 2011 Decision and March 9, 2011 Resolution in CA-G.R. CV No. 85564 are AFFIRMED with MODIFICATION. Manila Electric Company is ordered to pay Nordec Philippines P5,625.00, representing overbilling for November 23, 1987; P30,000.00 in nominal damages; and costs of suit. The awards for exemplary damages and attorney's fees are deleted.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

[1] Rollo (G.R. No. 196020), pp. 30-82; Rollo (G.R. No. 196116), pp. 30-60.

[2] Rollo (G.R. No. 196116), pp. 62-76. The Decision was penned by Associate Justice Amy C. Lazaro--Javier and concurred in by Associate Justices Sesonando E. Villon and Stephen C. Cruz of the Special Fifth Division, Court of Appeals, Manila.

[3] Rollo (G.R. No. 196020), p. 108. The Resolution was penned by Associate Justice Amy C. Lazaro--Javier and concurred in by Associate Justices Sesonando E. Villon and Stephen C. Cruz of the Special Fifth Division, Court of Appeals, Manila.

[4] Id. at 109-117. The Decision was penned by Judge Marlene B. Gonzales-Sison.

[5] Id. at 93.

[6] Id. at 111.

[7] Id. at 93.

[8] Id. at 98.

[9] Id.

[10] Id. at 110.

[11] Id. at 93-95.

[12] Id. at 95.

[13] Id. While the CA Decision mentioned January 22, 1987, Nordec's Petition stated January 5, 1987. See rollo (G.R. No. 196116), p. 39.

[14] Id. at 95-96.

[15] Id. at 96.

[16] Id. at 109-117.

[17] Id. at 113.

[18] Id. at 114.

[19] Id. at 114-116.

[20] Id. at 116.

[21] Id.

[22] Id.

[23] Id. at 92-106.

[24] Id. at 98-99.

[25] Id. at 102-103.

[26] Id. at 103-104.

[27] Id. at 104.

[28] Id. at 105

[29] Id. at 105-106. The CA Decision awarded P5,625.00 only but it consistently mentioned P5,625.10 in its discussion. See also p. 36.

[30] Id. at 118-139.

[31] Id. at 140-150.

[32] Id. at 108.

[33] Id. at 3-10.

[34] Rollo (G.R. No. 196116), pp. 3-8.

[35] Rollo (G.R. No. 196020), p. 27.

[36] Id. at 30-82.

[37] Id. at 48-49.

[38] Id. at 52-53.

[39] Id. at 54-55.

[40] Id. at 56.

[41] Id. at 57-58.

[42] 350 Phil. 184 (1998) [Per J. Romero, Third Division].

[43] Rollo (G.R. No. 196020), pp. 60-61.

[44] Id. at 62.

[45] Id. at 67-68.

[46] Id. at 68-71.

[47] Id. at 74.

[48] Id. at 74-76.

[49] Id. at 201-223.

[50] Id. at 208-209.

[51] Id. at 215-216.

[52] Id. at 237-264.

[53] Id. at 252-253.

[54] Id. at 256-257.

[55] Rollo (G.R. No. 196116), pp. 30-60.

[56] Id. at 48-55.

[57] Id. at 51-52.

[58] Id. at 172-203.

[59] Id. at 174-175.

[60] Id. at 177-178.

[61] Id. at 184.

[62] Id. at 190.

[63] Id. at 214-226.

[64] Id at 214.

[65] Id. at 221-222.

[66] Id. at 223.

[67] Pascual v. Burgos, G.R. No. 171722, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf>> [Per J. Leonen, Second Division].

[68] Id. at 12-13.

[69] RULES OF COURT, Rule 2, sec. 2.

[70] See *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171 (2014) [Per J. Perlas-Bernabe, First Division].

[71] 637 Phil. 80 (2010) [Per J. Brion, Third Division].

[72] Rollo (G.R. No. 196020), p. 41.

[73] Id. at 43-44.

[74] 350 Phil. 184 (1998) [Per J. Romero, Third Division].

[75] Id. at 193-194.

[76] See *Manila Electric Company v. Macro Textile Mills Corp.*, 424 Phil. 811 (2002) [Per J. Pardo, First Division]; *Manila Electric Company v. T.E.A.M. Electronics Corp.*, 564 Phil. 639 (2007) [Per J. Nachura, Third Division]; *Davao Light & Power Co. Inc. v. Opeña*, 513 Phil. 160 (2005) [Per J. Chico-Nazario, Second Division].

[77] 579 Phil. 214 (2008) [Per J. Nachura, Third Division].

[78] Id. at 222.

- [79] An Act creating a standardizing meter laboratory to carry out the provisions of the Public Service Act on meter testing and providing funds therefor (1938).
- [80] 350 Phil. 184, 195-196 (1998) [Per J. Romero, Third Division].
- [81] 564 Phil. 639 (2007) [Per J. Nachura, Third Division].
- [82] Id. at 653-654.
- [83] *Ridjo Tape & Chemical Corp. v. Court of Appeals*, 350 Phil. 184, 194 (1998) [Per J. Romero, Third Division].
- [84] *Manila Electric Company v. Macro Textile Mills Corp.*, 424 Phil. 811, 828 (2002) [Per J. Pardo, First Division].
- [85] *Manila Electric Company v. T.E.A.M. Electronics Corp.*, 564 Phil. 639, 656 (2007) [Per J. Nachura, Third Division].
- [86] *Manila Electric Company v. Spouses Chua*, 637 Phil. 80, 101 (2010) [Per J. Brion, Third Division].
- [87] Id.
- [88] Id.
- [89] See *Vda. De Formoso v. Philippine National Bank*, 665 Phil. 184 (2011) [Per J. Mendoza, Second Division].
- [90] Rollo (G.R. No. 196020), p. 104.
- [91] See *Francisco v. Government Service Insurance System*, 117 Phil. 586 (1963) [Per J. J.B.L. Reyes, En Banc]; *Singson v. Aragon*, 92 Phil. 514 (1953) [Per J. Bautista Angelo, En Banc].
- [92] 564 Phil. 639 (2007) [Per J. Nachura, Third Division].
- [93] Id. at 658.
- [94] 748 Phil. 692 (2014) [Per C.J. Sereno, First Division].
- [95] Id. at 701-702.
- [96] Rollo (G.R. No. 196020), p. 104.
- [97] Rollo (G.R. No. 196116), p. 52.
- [98] Id. at 93.
- [99] 437 Phil. 76 (2002) [Per J. Vitug, First Division].
- [100] Id. at 86.
- [101] See *Pryce Properties Corp. v. Spouses Octubre*, G.R. No. 186976, December 7, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/186976.pdf>> [Per J. Jardeleza, Third Division]; *Fontana Resort and Country Club, Inc. v. Spouses Tan*, 680 Phil. 395 (2012) [Per J. Leonardo-De Castro, First Division].

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