

**PANAY ELECTRIC CO., INC., PETITIONER, VS. COURT OF APPEALS,
MANUEL LORING, JR., DOING BUSINESS UNDER THE TRADE NAME
HOTEL DEL RIO AND HOTEL DEL RIO, INC., RESPONDENTS.**

G.R. No. 81939. June 29, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.

The only issue in this case is whether or not the trial court and the respondent Court of Appeals committed an error in denying petitioner's claim against private respondents in the amount of P297,497.47, representing additional electric power consumption charges covering a deficiency of 744,880 kilowatt-hours, brought about by a mistake in the computation made by the employees of petitioner for the period from September 1973 to September 1978.

Petitioner questions the Decision of the Third Division of the Court of Appeals dated December 22, 1987, in CA G.R. No. 08171 which affirmed the decision of the trial court denying the petitioner's claim with costs against petitioner.[1]

On November 7, 1979, a complaint for the collection of a sum of money was filed by petitioner Panay Electric Co., Inc. with the then Court of First Instance (CFI) of Iloilo against Manuel Loring, Jr., the proprietor of a certain Hotel del Rio. The case was docketed as Civil Case No. 13127 and was assigned to Branch III. Upon the filing of an answer by the defendant, the plaintiff filed an amended complaint to include the defendant Hotel del Rio, Inc. A joint answer to the amended complaint was filed by both defendants.

After trial, the Regional Trial Court (RTC) of Iloilo rendered a decision dated August 6, 1985 which dismissed both petitioner's claim and the counterclaim of the private respondents.

The undisputed facts summarized in the decision of the trial court and quoted in the decision of the Court of Appeals, follow:

"It appears that Panay Electric Company, Inc. is a public utility engaged in the business of supplying electricity to consumers. One of its customers was defendant Manuel Loring, Jr., the proprietor of Hotel del Rio in Iloilo City. On March 17, 1975, defendant Hotel del Rio, Inc. was incorporated as a private stock corporation with defendant Loring as one of the major stockholders and the president thereof (see Exh. 11).

'On July 30, 1973, the two current transformers installed at Hotel del Rio burned out due to over loading and they were replaced with new ones. (Exhs. C, C-1, C-2, C-3, C-4, and C-5). The multiplier factor of the burnt transformers was 400:5 i.e. 400-5-80, while that of the new transformers has been 600:5, i.e., 600-5-120. Thus, the monthly energy consumption of the hotel should be multiplied by 120 in order to arrive at the exact kilowatt-hours used.

'Defendant Loring was formally advised of the installation of the 600:5 C.T.S.' transformers. (Exh. C-2).

'In the case at bar, the plaintiff furnished electric current to Hotel del Rio from September 1973 up to September, 1978. The records concerning the energy consumption of the hotel are the ledger card for 1973 (Exh. M-2) as well as the meter reading sheets for the years 1974, 1975, 1976, 1977 and 1978 (Exhs. M and M-1). The multiplier factor employed by the plaintiff was "x 80", instead of "x 120". By applying the wrong multiplier factor of "x 80", only 1,489,760 kilowatt-hours were computed and charged against the defendants. However, had the multiplier factor of "x 120" been utilized, the result would be that the hotel used a total of 2,234,600 kilowatt-hours for the above-stated period. There was a difference of 744,880 kilowatt hours amounting to P297,497.47. (Exhs. F and F-1). Otherwise stated, the sum of P297,497.47 represented the money equivalent of 744,880 kilowatt-hours because of the failure to use the correct multiplier factor, which is "x 120", from September, 1973 up to September, 1978, or for 61 months.

'The blunder was discovered only sometime in 1978. In the middle Part of that year, the meter reading department was placed under Jesus Esguerra, the plaintiff's comptroller. As a result of the reorganization, it was ascertained that the kilowatt-hours which the plaintiff had generated did not result in the proper kilowatt-hours sold. There was a substantial discrepancy and numerous matters were looked into, especially the customers' consumption. Hotel del Rio was one of them.

'Agustin Solleza, a retired electrical superintendent of the plaintiff, was hired anew as consultant to help pinpoint the causes of the losses. Solleza conducted a ocular inspection of the hotel in 1978, and he saw that the transformers installed thereat were 600:5, i.e., the multiplier factor was "x 120". Moreover, Solleza declared that in the meter reading sheets from 1974 up to 1978, the figure applied was "x 80."

'In view of the discovery of the mistake, the plaintiff wrote defendant Loring a letter dated December 1, 1978 advising the latter that the former's billings for the months of October and November, 1978 were reached on the basis of the corrected multiplier factor of "x 120". (Exh. E.) In the same communication, the plaintiff announced that:

'... we are now researching into the corresponding past erroneous billings for which you have consumed the energy but have not paid the correct amounts, due to the wrong multiplier utilized.' (Ibid.)

'A summary together with the supporting lists of the electric energy consumed from September, 1973 up to September, 1978 enumerating therein, inter alia, the kilowatt-hours used, kilowatt-hours billed, kilowatt-hours unbilled and amounts unbilled totalling P-297,497.47 were delivered to and received by defendant Loring. (Exhs. F and F-1).

'Defendant Loring refused to pay the sum of P297,497.47, for the reasons that 'we are not liable for the amount' and '(i)f we comply with your demand, we will be absorbing unrecoverable expenses arising from your alleged

errors or inadvertence.' (Exhs. K and S.)"[2]

In dismissing the complaint, the trial court ruled that the mistake in billing was due to the negligence of petitioner and its employees. The trial court made the following disquisition:

'Jesus Esguerra', the plaintiffs comptroller since 1965, traced the real cause of the mistake to the meter reading department. According to Esguerra, the head of this department did not receive a copy of the letter dated August 10, 1973 informing defendant Loring of the change of the multiplier factor to "x 120" (see Exh. C-2), for which reason he failed to note it down on the meter reading sheet. The responsibility for the omission was, in turn, imputed by Esguerra to the customers' service department.

'Did the defendants have any participation in the reading of the meter and the recording of energy consumed, the computation of the kilowatt-hours used and the determination of the money value thereof, and the billing of plaintiff s customers?

'Pertinently, Esguerra testified on the procedure followed monthly by the plaintiff in recording and computing the electric current consumption as well as the billing and collecting the money value of such consumption.

'Esguerra's courtroom declaration reveals that the customer's meter is read regularly once a month by the meter reader. The reading of the meter is indicated on the meter reading sheet of each customer and the consumption is computed therein. Then the meter reader initials his reading to attest that he actually did the reading.

'The meter reading sheet is submitted to the head of the meter reading department who checks the subtraction of the previous reading from the present reading in order to find out if the difference is correctly computed therein. The difference is supposed to be the current consumption of the customer for the month. Parenthetically, the head of the meter reading department assumes that the reading as recorded on the meter reading sheet is exact, unless there is a significant variation. A significant variation means a big difference between the previous consumption and the present consumption whether over or under.

'Another function of the head of the meter reading department is to check the accuracy of the multiplication with the multiplier factor. The multiplier factor is written on the meter reading sheet by the head of the meter reading department.

Thereafter, the meter reading sheet is sent to the bill section of the accounting department where the consumption is multiplied by the approved rates. The money value of the consumption is placed in a bill form. This bill is run through the accounting machine together with others for the 'purpose of simultaneous recording of the amount of the bill on the ledger of each customer.'

'Finally, the bill is forwarded to the credit and collection department which presents the bill to the customer for collection.

'Are the defendants liable to pay the plaintiff the sum of P297,497.47?

'All the aforementioned functions were performed monthly by the personnel of the plaintiff. From September, 1973 up to September, 1978, the same procedure was followed 61 times. Defendants had no participation whatsoever in any of those functions during the said period or at any other time.

'Furthermore, the use by the plaintiff of the wrong multiplier factor was exclusively brought about by its own negligence. This error lasted for five years and one month, or 61 months. In other words, there were 61 consecutive mistakes during a period of 61 months.

'On its part, the defendants paid in full the monthly electric bills presented by the plaintiff from September, 1973 to September, 1978.

'In fine, the payments made by the defendants of the monthly electric bills, during a period of 61 months, and received by the plaintiff without any single complaint, protest or objection were on the understanding that they were full and complete.

'x x x We do not want to be understood as saying that the mere fact of receiving money in payment will estop a creditor. But where, as in this case, the payments were made frequently, through a considerable period of time, and were received without objection or protest, and where there is no pretense of fraud, or circumstances constituting duress, it is legitimate to infer that such payments were made and received on the understanding of both parties that they were in full. Such a presumption is very much strengthened by the lapse of two years before the appellee thought fit to make any demand.' (U.S. v. Garlinger, 42 L. Ed. 762, 764.)

"In Royal Electric Co. v. Davis, Rap. Jud. Quebec 9 B.R. 445, a contrary conclusion is reached under a very similar state of facts, the court denying the right to recover for electricity furnished in excess of bills rendered monthly on the ground that if the purchaser had known the actual costs of the current he was consuming, he might have abandoned that form of lighting, and to enforce against him the additional charge would deprive him of the opportunity to abandon the agreement or change his system of lighting.' (Annotation in Lawyers' Reports, Annotated, 19158 712)."[3]

The trial court also concluded that to allow petitioner to collect the deficiency resulting from its own error and fault would unfairly prejudice the private respondents who could have charged their customers from September, 1973 to September, 1978, additional rates proportionate to the alleged deficiency in the electric bills, which could no longer be done considering that hotel customers are transients. The trial court ruled as follows:

" 'Lastly, if the plaintiff is allowed to collect the sum of P297,497.47, will the defendants be prejudiced?

'Apropos, the defendants have sufficiently proved through the unrefuted testimony of Jesus Ledesma, the

manager of Hotel del Rio who was appointed by defendant Loring sometime between 1973 and 1974, that one of the principal factors in determining the rates of rooms rented out to the guests is the cost of electricity. It is definitely one of the major expenses of the hotel, because the rooms have individual airconditioning units. Should the defendants be required to pay the plaintiff P297,497.47, there seems to be no-way by which they can recover this sum of money from the hotel guests since most of them were transients, i.e., foreigners or residents of far cities in the country.

'Additionally, Ledesma endeavored to explain how the room charge is correspondingly raised if there is an increase in the cost of electricity thus:

"Q How do you increase the room rate if there is an increase of electricity or in the rate charge?

A For instance, Your Honor, if say Panay Electric advices us that there is a 20% increase in their rate of electricity, we usually arrive to the amount of increase that we have to add in the room by determining the occupancy, average occupancy rate that the hotel enjoys. For instance, if we have say an 80% occupancy rate based on 50 rooms, that _ would be 40 rooms occupied a day, times say 30 days for the month, we arrived at 1,200 room nights that we sell for the whole month. And from there estimating the average consumption per room, adding to it other input like direct labor cost and from there we compute and come up with approximately the desired room rate that we would like to price our rooms.' (Nobleza, tsn, p. 28, Nov. 19, 1984)."

'In fact, as a consequence of the increase of the cost of electricity, the hotel petitioned the Ministry of Tourism for a hike in its room rates, (see Exhs. 9 and 10.)' (Record, pp. 323-324)"[4]

The trial court concluded that the petitioner was estopped, by its own fault and negligence from collecting the difference between what should have been paid by the private respondents and what was actually paid, or the amount of P297,497.47, as claimed by petitioner.

As the Court of Appeals affirmed the decision of the trial court, the case was elevated to this Court for review. Petitioner claims that the Court of Appeals "decided a legal question of first impression in this jurisdiction" and it "made conclusions based on speculations, surmises, and conjectures, or on a misappreciation of facts or without a citation of specific evidence on which they are based."

The petition is bereft of merit.

We agree with the private respondents that the principal issue in this case can be narrowed down to the question, as follows: Can an electric company which had erroneously billed a consumer of electricity for sixty-one (61) consecutive months (5 years and one month) due to continuous and successive mistakes of the electric company's employees in its meter reading department and the customer's service department, without any participation of the consumer, and where the consumer relied upon such bills presented to him and paid the same, be barred by estoppel, from claiming P297,497.47 as monthly accumulated deficiency due to the company?

Certainly, mistakes committed by the employees of petitioner for sixty-one (61) times corresponding to sixty-one (61) monthly billings, cannot, by any means, be considered simple mistakes. Mistakes committed sixty-one (61)

consecutive times, repeatedly, by employees who are supposed and presumed, technically speaking, to know what they were doing, would certainly fall under the classification of inexcusable negligence. A few acts of negligence, and certain circumstances providing an excuse for them, may be considered simple mistakes, but not repeated acts of negligence committed by men who are supposed to know what they are doing. To Us, the repeated acts of petitioner's employees amounted to culpable or inexcusable negligence.

The principle of estoppel is recognized in Title IV, Articles 1431 to 1439 of the Civil Code. According to the Code Commission "(a)n important branch of American Law is estoppel. It is a source of many rules which work out justice between the parties, thru the operation of the principle that an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." [5]

Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. [6]

Estoppel in pais (equitable estoppel) arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally, or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. [7]

We must consider here that private respondents paid all the monthly bills presented by petitioner for five years. Petitioner acknowledged said payment. Private respondents relied on those billings. Five years afterwards, petitioner suddenly claimed an alleged deficiency of P297,497.47, based on alleged errors committed by its own employees, errors of computation that can be attributed only to itself and its employees.

The attempt of petitioner to pass on the blame to private respondents or to impute that private respondents could have known of the errors by a verification of the meter reading and transformers cannot be countenanced. If the employees of petitioner who regularly read the meters failed to detect this error, can private respondents, as ordinary consumers, be expected to discover the same?

We are convinced that both the trial court and the Court of Appeals did not commit any error in concluding that mistakes in computation done by petitioner's employees constituted gross inefficiency, culpable negligence and lack of diligence and supervision, without any fault or participation of private respondents. Petitioner is the only one to blame for such mistakes, repeatedly made, arising from culpable negligence of its employees.

Even if We assume that both petitioner and private respondents were not negligent under the doctrine of equitable estoppel, when one of two innocent persons, each guiltless of any intentional or moral wrong, must suffer a loss, it must be borne by that one of them whose erroneous conduct, either of omission or commission, was the cause of the injury. Clearly, in this case, petitioner caused the injury.

WHEREFORE, and by reason of the foregoing, this petition is DENIED for lack of merit, with costs against petitioner.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Penned by Associate Justice Felipe B. Kalalo, ponente, concurred in by Justices Rodolfo A. Nocon and Ricardo F. Tensuan.

- [2] Pages 319 and 320, Record.
- [3] Pages 56 to 59, Rollo.
- [4] Pages 59 and 60, Rollo.
- [5] Report of the Code Commission.
- [6] Article 1431, Civil Code.
- [7] 31 Corpus Juris Secundum, 237.

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