

## EIGHTEENTH DIVISION

[ CA-G.R. CV NO. 04076, February 10, 2015 ]

**WILLIAM N. MIRANO, PLAINTIFF-APPELLEE, VS. CENTRAL NEGROS COOPERATIVE, INC. (CENECO) AND CHRISTOPHER RIOS, DEFENDANTS-APPELLANTS.**

### D E C I S I O N

**LOPEZ, J.:**

Before Us is a February 21, 2011 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 46 of Bacolod City in Civil Case No. 00-11267 for *Injunction with Preliminary Injunction With Damages* rendered in favor of plaintiff-appellee William Mirano, the decretal portion of which reads;

"WHEREFORE, in the light of the foregoing, Judgment is hereby rendered in favor of the plaintiff and against the defendants CENECO and Christopher Rios, who are hereby ordered to jointly and severally pay the plaintiff, Atty. William N. Mirano, the following:

1. P18,556.47 plus legal interest from the date of finality of this Decision until the said amount is completely paid;
2. P300,000.00 as moral damages;
3. P200,000.00 as exemplary damages;
4. P50,000.00 as attorney's fees; and
5. To pay the cost of suit.

SO ORDERED."<sup>[2]</sup>

### **ANTECEDENT FACTS**

Central Negros Cooperative, Inc. (CENECO) is an electric cooperative organized and existing under Philippine laws engaged in the business of power distribution with franchise area covering the Cities of Bacolod, Bago, Silay, Talisay and the Municipalities of Murcia and Don Salvador Benedicto. Its principal office is situated at CENECO Bldg., Mabini Street, Bacolod City, Philippines.

Plaintiff-appellee William N. Mirano is a member-consumer of CENECO with five (5) existing accounts therein, to wit:

1. Account Number 142816 for his residence at No. 21, De La Rama Drive, City Heights, Bacolod City
2. Account Number 101880-9 for the City Heights Athletic Club Basketball Court, City Heights
3. Account Number 127248-9 for Door No. 1 at Conchita Bldg., 13<sup>th</sup> Corner Aguinaldo Street, Bacolod City

4. Account Number 131215-4 for Door No. 2 at Conchita Bldg., 13<sup>th</sup> Corner Aguinaldo Street, Bacolod City
5. Account Number 49949-8 for Door No. 3 at Conchita Bldg., 13<sup>th</sup> Corner Aguinaldo Street, Bacolod City

The subject of the controversy is the electricity consumption of Account Number 131215-4 for Door No. 2 of plaintiff's Townhouse at 13<sup>th</sup> Aguinaldo Street, Bacolod City which was used as his law office and a portion of the first floor used for the computer business of his children which started on May 15, 2000 up to the present.

Plaintiff's electrical consumption for Door No. 2 from January to September 2000 were as follows:

Reading Period	Kilowatt Consumption	Amount
Jan. 19 – Feb. 18, 2000	193	PhP760.00
Feb. 18 – Mar. 17, 2000	244	PhP983.96
Mar. 17 – Apr. 15, 2000	265	PhP1,069.72
Apr. 15 – May 16, 2000	305	PhP1,228.17
May 16 – June 15, 2000	322	PhP1,324.68
June 15 – July 17, 2000	315	PhP1,327.63
July 17 – Aug. 15, 2000	354	PhP1,535.68
Aug. 15 – Sept. 15, 2000	256	PhP1,137.56

On September 15, 2000, CENECO sent a certain Tonette de Misa to make an electrical reading at Door No. 2 of plaintiff's townhouse. Per reading, plaintiff's electrical consumption for Account No. 131215-4 was 4,432 kilowatts. Thus, his bill for September, 2000 was PhP 18,556.47.

Wretchedly shocked and astonished, plaintiff immediately filed a Complaint to then general manager of CENECO, defendant Christopher Rios through a letter of Protest<sup>[3]</sup> dated September 16, 2000. He declared that the reading results were improbable due to the following reasons:

1. They were not residing at Door No. 2 of Conchita Building because they have their own residence at City Heights, Bacolod City;
2. They stay at Door No. 2 only during office hours from 8:00 in the morning up to 6:00 in the evening and they have a noon break from 12:00 noon to 2:00 in the afternoon;
3. The area is only approximately 60 square meters;

4. For the last three (3) months, they only have an average monthly consumption of 330 kilowattss
5. The sudden increase from 330 to 4,432 kilowatts is almost 135% increase.

In the said letter, plaintiff requested for an inspection on the electric meter of the said premises. Accordingly, CENECO, through its meter reader, conducted another reading for the period August 16 to September 15, 2000 which resulted to a consumption of only 256 kilowatts in the amount of Php1,150.56. Plaintiff thereafter made a payment of such amount.

On September 29, 2000, CENECO, through its General Manager made a letter<sup>[4]</sup> response declaring that:

"Assessment of your connected loads was conducted to determine your probable monthly consumption. It was found out that your registered monthly consumption for 4 months from June to September 2000 is way below the consumption of your connected loads. Based on the interview of our electrical inspector with your representative, the computer gaming business started its operations sometime in the middle of May, 2000. This factor attributed to the increase in your kwhr consumption.

**A review of your billing history disclosed that your consumption for the months June to September, 2000 were undercharged.**

Listed below are your "As Billed" monthly billings based on reading as reflected in your electric bill and prorated monthly consumption covering the period from May 16 to September 15, 2000 based on the usage of your additional connected loads:

Billing Month	Period Covered	No. of Days	"As Billed" KwHr Consumption	Prorated Monthly Consumption	Undercharge KwHr Consumption
June/2000	5/16 – 6/15	31	322	1378	1056
July/2000	6/15 – 7/17	29	315	1289	974
Aug/2000	7/17 – 8/15	32	354	1422	1068
Sept/2000	8/15 – 9/15	30	256	1334	1078
	TOTAL	122	1247	5423	4176

We will be able to compute your average daily consumption of 44.45 kwhrs based on the actual reading from May 16 to September 15, 2000 with a total consumption of 5423 kwhrs divided by 122 days (total number of days covering the monthly reading period of 4 months). The prorated monthly consumption is based on your average daily consumption of 44.45 kwhrs multiplied by no. of days of the monthly reading period.

Furthermore, an inspection conducted on September 20, 2000 can confirm the validity of your actual consumption of 44.45 kwhrs per day.

Findings showed that your consumption for 5 days from September 15 to September 20, 2000 is 242 kwhrs or a daily average consumption of 48.4 kwhrs based on the reading taken during the inspection which is 8996 less 8754 previous reading of the meter reader. This proved that the 44.45 kwhrs per day based on your prorated billing is your actual consumption.

**Therefore, for a period of four (4) months, there is a shortage or undercharge of 4176 kwhrs.** The matter would have been corrected if we cancelled your September 2000 bill which charged only 256 kwhrs, and instead issued the corrected billing of 4432 kwhrs.

However, since you paid the undercharged September bill on September 25, 2000, we have no recourse but to issue an additional bill for September, 2000 to recover the undercharged billing of 4176 kwhrs. Please find the attached electric bill.

Considering the above findings, the kwhr consumption as registered by your previous meter reflects the actual consumption of your connected loads. Your monthly billing of 4 months from June to September, 2000 could not be the basis for the true and actual consumption of your connected loads considering the number of appliances assessed by our inspector.”

Unsatisfied of the foregoing explanation of CENECO’s general manager thinking that such undercharging was purely baseless and unfounded; and asserting that CENECO’s act of arbitrarily prorating his electrical consumption so as to collect the uncollected amount of Php18,556.47 which he refused to pay is manifestly whimsical and capricious, plaintiff Mirano filed a Complaint<sup>[5]</sup> on October 3, 2000 before the Regional Trial Court, Branch 46 of Bacolod City.

By way of special and affirmative defense, defendant-appellant CENECO, in their Answer<sup>[6]</sup>, asserted that on September 15, 2000 during the regular monthly reading conducted at Door No. 2 of plaintiff’s townhouse, it was verified that plaintiff’s consumption reached to 4,432 kilowatt hours covering the period from August 15 to September 15, 2000. When the foregoing consumption data was encoded to CENECO’s computer system, the data was not accepted resulting to an alleged error in plaintiff-appellee’s billing. He was billed on the basis of his average consumption of the previous months, that is Php1,137.56 for his consumption of 256 kilowatts.

CENECO was initially unaware of the discrepancy. Not until they received a complaint from plaintiff Mirano did they discover that plaintiff Mirano was undercharged. To address the problem, they immediately sent a representative to examine the meter reader of Door No. 2 of plaintiff’s townhouse. The CENECO representative requested plaintiff to defer the payment of the electric bill in the amount of Php1,137.56 as such did not reflect the actual energy consumed by the plaintiff. Despite such request, plaintiff nonetheless paid the bill on September 25, 2000 in the amount of Php1,137.56.

Defendant CENECO claimed that the discrepancies in plaintiff’s billing consumption at Door No. 2 started when he converted the same from an office to a computer gaming business sometime in May 2000. Besides, CENECO insisted that the

response letter sent to plaintiff Mirano did not, in any way, cause harm or injury to him as it was merely an explanation of the discrepancy that they just recently discovered, and informing him that the actual energy consumption of his account is 4,432 kilowatts and not the one reflected in the electric bill which is 256 kilowatts. CENECO claimed that the billing and notice of disconnection sent to plaintiff was a mere notification of his actual electrical consumption and the corresponding bill that he owes to the cooperative. However, plaintiff interpreted such notification as a threat to disconnect CENECO's services to him. In fine, defendant CENECO pleaded for the dismissal of plaintiff's Complaint for lack of merit.

During the pre-trial conference, both parties failed to amicably settle the case. Hence, trial ensued.

After the presentation of the witnesses for the plaintiff, it formally offered<sup>[7]</sup> Exhibits "A" to "N", opposed<sup>[8]</sup> by the defendant, but were admitted by the trial court in an Order<sup>[9]</sup> dated January 26, 2007.

On the part of the defendant, the testimony of its sole witness, Torebio Casas, was stricken off the record, as prayed for by plaintiff Mirano because the witness himself and defendant's counsel failed to appear in the hearing for his cross examination.<sup>[10]</sup>

On February 21, 2011, the Regional Trial Court found that plaintiff Mirano was able to prove with clear and compelling evidence that he was unjustifiably overbilled by defendant CENECO and that the ensuing billing statement sent by defendant CENECO to the plaintiff showed a clear notice that a disconnection will be effected three (3) days from notice if the amount of PHP18,556.47 will not be paid.

Pained, defendant-appellant CENECO files the instant appeal assailing the following errors, to wit:

I.

THE LOWER COURT GRAVELY ERRED IN HOLDING THAT THE DEFENDANT-APPELLANT COMMITTED A BREACH OF CONTRACT IN VIEW OF ITS THREAT TO DISCONTINUE ITS SERVICES TO THE PLAINTIFF-APPELLEE;

II.

THE LOWER COURT GRAVELY ERRED IN RULING THAT DEFENDANT-APPELLANT SHOULD BE HELD LIABLE FOR ACTUAL DAMAGES AMOUNTING TO P18,556.47 WHEN AS A MATTER OF FACT, PLAINTIFF-APPELLEE HAS NEVER PAID SUCH AMOUNT TO THE DEFENDANT-APPELLANT;

III.

THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT WAS NEGLIGENT IN HANDLING THE ACCOUNT OF THE PLAINTIFF-