

## THIRD DIVISION

[ G.R. No. 231679, April 28, 2021 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. BOHOL I  
ELECTRIC COOPERATIVE, INC. (BOHECO I), REPRESENTED BY  
GENERAL MANAGER, ENGR. CARLOS B. ITABLE, AND NATIONAL  
ELECTRIFICATION ADMINISTRATION (NEA), RESPONDENTS. D E  
C I S I O N**

**INTING, J.:**

This is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to set aside the Decision<sup>[2]</sup> dated April 28, 2017 of the Court of Appeals (CA) in CA-G.R. CEB CV. No. 04344 which affirmed with modification the Decision<sup>[3]</sup> dated December 16, 2011 of Branch 49, Regional Trial Court (RTC), City of Tagbilaran, Bohol in Civil Case No. 5672 declaring Bohol I Electric Cooperative (BOHECO) as the true and legal owner of the 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001 (subject transformer).

*The Antecedents*

The case stemmed from a complaint for recovery of possession and payment of back rentals filed by BOHECO against NAPOCOR.

NAPOCOR filed a third-party complaint against NEA as the third-party defendant.

The complaint alleged the following:

On September 13, 1979, BOHECO received a radio message from one Director Santos of NEA, stating:

"REUR AVAILABLE 5 MVA SUBSTATION TRANSFORMER PD REQUEST  
ALLOW PERSONNEL OF NPC TO BORROW SAID TRANSFORMER FOR  
THEIR TONGONAN GEOTHERMAL PLANT IN ORMOC PD END

DIRECTOR SANTOS"<sup>[4]</sup>

Thereafter, NAPOCOR's Engineer Virgilio Ungab (Engr. Ungab) prepared a requisition voucher for "One (1) set of Substation Transformer, 5MVA 15.2/7.62/4.16 KV complete with SN-540808001, dated 1972 and its accessories"<sup>[5]</sup> which BOHECO's Acting General Manager Melchor B. Bobis (GM Bobis) approved. A handwritten note located at the lower left portion of the voucher reads, "[s]ubject to NEA, NPC & BOHECO I negotiations."<sup>[6]</sup>

On September 14, 1979, another requisition voucher was prepared requesting for some materials or supplies for "NPC, Tongonan, Ormoc City," which GM Bobis likewise approved. BOHECO's Warehouseman B.C. Angcahan then issued a material charge ticket for the same materials/supplies which Engr. Ungab received. The same

persons issued and received, respectively, another material charge ticket to which a typewritten note reads, "[s]ubject to NEA, NPC & BOHECO I Negotiation."<sup>[7]</sup>

On March 26, 1985, BOHECO's Officer-in-Charge Engineer Carlos B. Itable (Engr. Itable) wrote a letter to Mr. Romeo A. Perlado (Mr. Perlado), NAPOCOR's Regional Manager for the Visayas Utility Operations, reminding him about the subject transformer and notifying him that there was nothing in BOHECO's records showing of any agreement between NEA and NAPOCOR regarding the subject transformer. He also asked for possible rental payment as compensation for the depreciation of the subject transformer's value. On April 20, 1985, BOHECO sent a telegram to Mr. Perlado asking for copies of all documents pertinent to NEA and NAPOCOR's agreement concerning the replacement of the latter's 5MVA substation transformer and reiterating its request for rental payment. The request fell on deaf ears. Hence, BOHECO's complaint.<sup>[8]</sup>

In its answer, NAPOCOR averred the following:

NAPOCOR's possession of the subject transformer was legitimate from the very beginning as it was NEA's replacement of its transformer that was withdrawn from NAPOCOR's Tongonan power plant in Leyte. It relied on NEA's authority to validly and legally transfer ownership and possession of the subject transformer without obligations or conditions on its part. BOHECO did not make any objection or protest when the subject transformer was pulled out from its office in 1981.<sup>[9]</sup>

NAPOCOR had been in open, notorious, and uninterrupted possession of the subject transformer. As its defense, it stressed that BOHECO's right to enforce its claim had already prescribed; and that the complaint failed to comply with the Court's Administrative Circular No. 04-94<sup>[10]</sup> regarding the additional requirements concerning the filing of petitions in the Supreme Court and the CA.<sup>[11]</sup>

Thereafter, NAPOCOR filed a motion for leave to file third-party complaint against NEA alleging that it acquired possession of the subject transformer through the latter's directives and maintained that the subject transformer was a replacement of its own transformer which was withdrawn by NEA.<sup>[12]</sup>

BOHECO, in its answer to the affirmative defense, averred that NAPOCOR merely borrowed the subject transformer; that whatever contract NAPOCOR had with NEA, it was not a party to it; and that while NAPOCOR came into possession of the subject transformer lawfully, its possession, however, became adversarial after Antonio Corpuz, NAPOCOR's Vice-President, insisted that the subject transformer was swapped for NAPOCOR's own 3MVA substation transformer.

NEA, in its answer to the third-party complaint alleged the following:

The parties' cause of action had already prescribed and barred by laches. NEA stressed that BOHECO and NAPOCOR took approximately 16 years before filing their respective complaints; that recovery of possession of movable personal property acquired in good faith prescribes in four years; and if in bad faith, the action prescribes in eight years. NAPOCOR had no cause of action against it for failure to exhaust all administrative remedies mandated by Presidential Decree No. (PD) 242,<sup>[13]</sup> which prescribes the procedure for administrative settlement of disputes,

claims, and controversies between and among government offices, including government-owned and -controlled corporations.<sup>[14]</sup>

On June 24, 1996, the RTC found merit in NEA's motion to dismiss the third-party complaint. Accordingly, the Third-party Complaint was dismissed. However, on October 15, 1996, upon NAPOCOR's motion for reconsideration, the RTC granted NAPOCOR's motion on the ground that NEA failed to file an opposition to NAPOCOR's amended motion for reconsideration.<sup>[15]</sup>

Trial on the merits ensued.

#### *Evidence for BOHECO*

Engr. Itable's testimony is as follows:

BOHECO owns the subject transformer, which is presently in the possession of NAPOCOR. It was by reason of a radio message sent by NEA directing BOHECO to accommodate NAPOCOR's request to borrow the subject transformer that it came to the possession of NAPOCOR. Pertinent documents like requisition vouchers and material charge tickets were prepared, approved, and signed by the concerned officials or representatives.<sup>[16]</sup>

BOHECO acquired the subject transformer at the price of P712,221.38. At the time the subject transformer was released to NAPOCOR, BOHECO was still paying the monthly amortizations to NEA. At present, the subject transformer would already cost P3 to 4 Million.<sup>[17]</sup>

It was Engr. Ungab of NAPOCOR who pulled out the subject transformer from BOHECO's office on September 18, 1979.

On March 26, 1985, Engr. Itable wrote a letter addressed to NAPOCOR asking rental payment for the use of the subject transformer. It was followed by a telegram dated April 22, 1985, this time addressed to NAPOCOR and NEA, asking for a copy of the agreement between the two regarding the subject transformer, but to no avail.<sup>[18]</sup>

On April 29, 1985, Engr. Itable wrote a letter to NEA's Cooperative Administrator, Gen. Pedro G. Dumol. On June 15, 1987, he wrote another letter addressed to Engr. Teodulo J. Pinlac of NAPOCOR in Tagbilaran City. He likewise sent a letter to the General Manager of LEYECO V in Ormoc City, who received the subject transformer. On January 21, 1991, he wrote a response letter to the letter of NAPOCOR's Vice-President. On July 4, 1994, he wrote a letter to NAPOCOR's Vice-President for the Visayas requesting for a replacement of the subject transformer as there were areas in Bohol that were encountering low voltage; however, the request was denied.<sup>[19]</sup>

In his recollection of events, Engr. Itable said that BOHECO passed Resolution No. 13, Series of 1986, addressed to NEA, seeking assistance for the recovery of the subject transformer. Then, on April 4, 1987, another board resolution was passed demanding from NAPOCOR the return of the subject transformer. Likewise, demands for payment of rental in the amount of P10,000.00 per month were made.<sup>[20]</sup>

#### *Evidence for NAPOCOR*

NAPOCOR presented Engr. Ungab, Engr. Alfredo Tumagan (Engr. Tumagan), and Engr. Ernesto Oreiro<sup>[21]</sup> (Engr. Oreiro).

In his testimony, Engr. Ungab stated that he was instructed to pull out the subject transformer from BOHECO and to ship it to Tongonan, Ormoc City. BOHECO did not react to the pulling out of the subject transformer when it was told that the order came from the "higher-ups." The reason for the pulling out of the subject transformer was to save on the cost of shipping; that instead of shipping BOHECO's transformer to Masbate, it was NAPOCOR's transformer that was shipped to Masbate and BOHECO's transformer was the one shipped to Tongonan. He insisted that NAPOCOR has its own supply of transformers that makes it unnecessary to borrow transformers from BOHECO. He clarified that Masbate Electric Cooperative (MASELCO) and BOHECO are separate and distinct cooperatives, but both are under NEA.<sup>[22]</sup>

Engr. Tumagan corroborated Engr. Ungab's testimony.

Further, Engr. Oreiro testified that he did not see any document relating to the subject transformer, but knows only of the verbal instructions coming from the "higher-ups." NAPOCOR does not borrow, lease, or has ever borrowed or leased any equipment in the construction or operation of its power plant because NAPOCOR, in itself, installs transformers. He was involved in the installation of the subject transformer, but he was not in Bohol to witness its pulling out and shipment. The subject transformer is still in Tongonan and is still operational.<sup>[23]</sup>

Sometime in 1999, BOHECO asked NAPOCOR for rental payment for the use of the subject transformer, but the latter did not pay because of the internal agreement entered into by and between NAPOCOR and NEA to swap NAPOCOR's 3MVA transformer with BOHECO's 5MVA transformer. He confirmed that a 5MVA transformer is valued more than a 3MVA transformer; that a 5MVA transformer would roughly cost around P100,000.00, but as to its present value, he could not give an estimate because he was only involved in the operation and maintenance of the plant; and that he was not familiar with the charge sheet or receipt where the value of the 5MVA transformer was indicated.<sup>[24]</sup>

#### *Evidence for NEA*

NEA presented BOHECO's witness, Engr. Oreiro as its hostile witness to prove that contrary to his testimony, there was no swapping of transformers that happened between BOHECO and NAPOCOR. As a hostile witness, he reiterated his statement that he only assisted in the installation of the subject transformer; neither did he receive the subject transformer when it arrived in Tongonan. Moreover, he confirmed that the transfer of the subject transformer was upon the instruction of his plant manager in BOHECO, who, on the other hand, received an instruction from NAPOCOR's Regional Office in Cebu.<sup>[25]</sup>

#### *Ruling of the RTC*

On December 16, 2011, the RTC rendered a Decision<sup>[26]</sup> in favor of BOHECO. It declared that BOHECO was entitled to the restoration of the subject transformer which was unlawfully withheld from it. It also ordered the payment of back rentals in arrears for the use of the subject transformer.

The *fallo* of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the plaintiff in the instant case, BOHECO, as the true and legal owner of the 5MVA "Substation Transformer 13.2/7.62/4.16 KV with SN-540808001;
2. Directing and Ordering defendant, the National Power Corporation (NPC), to return forthwith to BOHECO, possession, custody and control of the above-adverted 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001, which it has illegally retained;
3. Directing and Ordering third-party plaintiff, the NPC and the third-party defendant, the National Electrification Administration (NEA) to pay BOHECO, jointly and severally, the sum of Four Hundred Fifty Thousand Pesos (P450,000.00), representing the sought (sic) for back rentals and attorney's fees equivalent to 20% of the stated amount and the costs of the suit.

All other claims are hereby DISMISSED.

SO ORDERED.<sup>[27]</sup>

Both NAPOCOR and NEA appealed to the CA.

*Ruling of the CA*

On April 28, 2017, the CA rendered the assailed Decision<sup>[28]</sup> denying the appeal of NAPOCOR, but granting the appeal of NEA.

The CA affirmed the RTC Decision with modification in that it deleted the award of attorney's fees. It further found NAPOCOR as the only liable party for the payment of rentals in arrears reckoned from the time the subject transformer was pulled out from BOHECO's office until NAPOCOR surrenders it to BOHECO. It furthermore imposed legal interest on NAPOCOR's obligation following the ruling in *Nacar v. Gallery Frames, et al.*<sup>[29]</sup> (Nacar).

The dispositive portion of the CA Decision reads:

WHEREFORE, NAPOCOR's appeal is DENIED and NEA's appeal is GRANTED. The Decision dated 16 De ember 2011 of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 49, City of Tagbilaran, in Civil Case No. 5672, is hereby AFFIRMED with modification deleting the award of attorney's fees; finding only the National Power Corporation (NAPOCOR) liable for payment of rentals-in-arrears from the time it pulled-out the subject substation transformer until it surrenders the same to BOHECO; and imposing legal interest on NAPOCOR's obligation. In view of the foregoing:

- (1) The RTC is DIRECTED to appoint, with dispatch, three (3) commissioners for the purpose of determining the reasonable and fair rent on the subject substation transformer.