

## FIRST DIVISION

[ G.R. No. 171624, December 06, 2010 ]

**BF HOMES, INC. AND THE PHILIPPINE WATERWORKS AND  
CONSTRUCTION CORP., PETITIONERS, VS. MANILA ELECTRIC  
COMPANY, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision<sup>[1]</sup> dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 82826, nullifying and setting aside (1) the Order<sup>[2]</sup> dated November 21, 2003 of the Regional Trial Court (RTC), Branch 202 of Las Piñas City, in Civil Case No. 03-0151, thereby dissolving the writ of injunction against respondent Manila Electric Company (MERALCO); and (2) the Resolution<sup>[3]</sup> dated February 7, 2006 of the Court of Appeals denying the Motion for Reconsideration of petitioners BF Homes, Inc. (BF Homes) and Philippine Waterworks and Construction Corporation (PWCC).

MERALCO is a corporation duly organized and existing under Philippine laws engaged in the distribution and sale of electric power in Metro Manila. On the other hand, BF Homes and PWCC are owners and operators of waterworks systems delivering water to over 12,000 households and commercial buildings in BF Homes subdivisions in Parañaque City, Las Piñas City, Caloocan City, and Quezon City. The water distributed in the waterworks systems owned and operated by BF Homes and PWCC is drawn from deep wells using pumps run by electricity supplied by MERALCO.

On June 23, 2003, BF Homes and PWCC filed a Petition [With Prayer for the Issuance of Writ of Preliminary Injunction and for the Immediate Issuance of Restraining Order] against MERALCO before the RTC, docketed as Civil Case No. 03-0151.

In their Petition before the RTC, BF Homes and PWCC invoked their right to refund based on the ruling of this Court in *Republic v. Manila Electric Company*<sup>[4]</sup>:

7. It is of judicial notice that on November 15, 2002, in G.R. No. 141314, entitled *Republic of the Philippines vs. Manila Electric Company*, and G.R. No. 141369, entitled *Lawyers Against Monopoly and Poverty (LAMP) et al. vs. Manila Electric Company (MERALCO)*, (both cases shall hereafter be referred to as "MERALCO Refund cases," for brevity), the Supreme Court ordered MERALCO to refund its customers, which shall be credited against the customer's future consumption, the excess average amount of P0.167 per kilowatt hour starting with the customer's billing cycles beginning February 1998. The dispositive portion of the Supreme

Court Decision in the MERALCO Refund cases reads:

WHEREFORE, in view of the foregoing, the instant petitions are GRANTED and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is REVERSED. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of P0.017 kilowatthour, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, the excess average amount of P0.167 per kilowatt hour starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.

x x x x.

8. The Motion for Reconsideration filed by MERALCO in the MERALCO Refund cases was DENIED WITH FINALITY (the uppercase letters were used by the Supreme Court) in the Resolution of the Supreme Court dated April 9, 2003.

9. The amount that MERALCO was mandated to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases is in the amount of P11,834,570.91.<sup>[5]</sup>

BF Homes and PWCC then alleged in their RTC Petition that:

10. On May 20, 2003, without giving any notice whatsoever, MERALCO disconnected electric supply to [BF Homes and PWCC's] sixteen (16) water pumps located in BF Homes in Parañaque, Caloocan, and Quezon City, which thus disrupted water supply in those areas.

11. On June 4, 2003, [BF Homes and PWCC] received by facsimile transmission a letter from MERALCO, x x x, in which MERALCO demanded to [BF Homes and PWCC] the payment of electric bills amounting to P4,717,768.15.

12. [MERALCO] replied in a letter dated June 11, 2003, x x x, requesting MERALCO to apply the P4,717,768.15 electric bill against the P11,834,570.91 that MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases. x x x

13. Displaying the arrogance that has become its distinction, MERALCO, in its letter dated June 16, 2003, x x x, denied [BF Homes and PWCC's] request alleging that it has not yet come up with the schedule for the refund of large amounts, such as those of [BF Homes and PWCC].

14. Even while MERALCO was serving its reply-letter to [BF Homes and PWCC], MERALCO, again, without giving any notice, cut off power supply to [BF Homes and PWCC's] five (5) water pumps located in BF Homes Parañaque and BF Resort Village, in Pamplona, Las Piñas City.

15. In its letter dated June 4, 2003 (Annex A), MERALCO threatened to cut off electric power connections to all of [BF Homes and PWCC's] water pumps if [BF Homes and PWCC] failed to pay their bills demanded by MERALCO by June 20, 2003.<sup>[6]</sup>

BF Homes and PWCC thus cited the following causes of action for their RTC Petition:

16. In refusing to apply [MERALCO's] electric bills against the amounts that it was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases and in making the implementation of the refund ordered by the Supreme Court dependent upon its own will and caprice, MERALCO acted with utmost bad faith.

17. [BF Homes and PWCC] are clearly entitled to the remedies under the law to compel MERALCO to consider [BF Homes and PWCC's] electric bills fully paid by the amounts which MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases, to enjoin MERALCO to reconnect electric power to all of [BF Homes and PWCC's] water pumps, and to order MERALCO to desist from further cutting off power connection to [BF Homes and PWCC's] water pumps.

18. MERALCO's unjust and oppressive acts have cast dishonor upon [BF Homes and PWCC's] good name and besmirched their reputation for which [BF Homes and PWCC] should be indemnified by way of moral damages in the amount of not less than P1,000,000.00.

19. As an example for the public good, to dissuade others from emulating MERALCO's unjust, oppressive and mercenary conduct, MERALCO should be directed to pay [BF Homes and PWCC] exemplary damages of at least P1,000,000.00.

20. MERALCO's oppressive and inequitable conduct forced [BF Homes and PWCC] to engage the services of counsel to defend their rights and thereby incur litigation expenses in the amount of at least P500,000.00 for which [BF Homes and PWCC] should be indemnified.<sup>[7]</sup>

BF Homes and PWCC additionally prayed that the RTC issue a writ of preliminary injunction and restraining order considering that:

21. As indicated in its letter dated June 4, 2003 (Annex A), unless seasonably restrained, MERALCO will cut off electric power connections to all of [BF Homes and PWCC's] water pumps on June 20, 2003.

22. Part of the reliefs herein prayed for is to restrain MERALCO from cutting off electric power connections to [BF Homes and PWCC's] water pumps.

23. Unless MERALCO'S announced intention to cut off electric power

connections to [BF Homes and PWCC's] water pumps is restrained, [BF Homes and PWCC] will suffer great and irreparable injury because they would not [be] able to supply water to their customers.

24. [BF Homes and PWCC] therefore pray that a writ for preliminary injunction be issued upon posting of a bond in an amount as will be determined by this Honorable Court.

25. [BF Homes and PWCC] further pray that, in the meantime and immediately upon the filing of the above captioned Petition, a restraining order be issued before the matter of preliminary injunction can be heard.

[8]

On August 15, 2003, MERALCO filed before the RTC its Answer with Counterclaims and Opposition to the Application for Writ of Preliminary Injunction<sup>[9]</sup> of BF Homes and PWCC.

According to MERALCO:

2.2. Both petitioners BF Homes, Incorporated and Philippine Waterworks Corporation are admittedly the registered customers of [MERALCO] by virtue of the service contracts executed between them under which the latter undertook to supply electric energy to the former for a fee. The following twenty-three (23) Service Identification Nos. (SINs) are registered under the name of BF Homes, Incorporated: x x x. While the following twenty-one (21) Service Identification Nos. (SINs) are registered under the name of Philippine Waterworks Construction Corporation: x x x

x x x x

2.4. The service contracts as well as the terms and conditions of [MERALCO's] service as approved by BOE [Board of Energy], now ERC [Energy Regulatory Commission], provide in relevant parts, that [BF Homes and PWCC] agree as follows:

*DISCONTINUANCE OF SERVICE:*

**The Company reserves the right to discontinue service in case the customer is in arrears in the payment of bills**

or for failure to pay the adjusted bills in those cases where the meter stopped or failed to register the correct amount of energy consumed, or for failure to comply with any of these terms and conditions, or in case of or to prevent fraud upon the Company. Before disconnection is made in the case of, or to prevent fraud, the Company may adjust the bill of said customer accordingly and if the adjusted bill is not paid, the Company may disconnect the same." (Emphasis supplied)

2.5. This contractual right of [MERALCO] to discontinue electric service for default in the payment of its regular bills is sanctioned and approved by the rules and regulations of ERB (now the ERC). This right is necessary and reasonable means to properly protect and enable [MERALCO] to perform and discharge its legal and contractual obligation under its legislative franchise and the law. Cutting off service for non-payment by the customers of the regular monthly electric bills is the only practical way a public utility, such as [MERALCO], can ensure and maintain efficient service in accordance with the terms and conditions of its legislative franchise and the law.

x x x x

2.14. Instead of paying their unpaid electric bills and before [MERALCO] could effect its legal and contractual right to disconnect [BF Homes and PWCC's] electric services, [BF Homes and PWCC] filed the instant petition to avoid payment of [MERALCO's] valid and legal claim for regular monthly electric bills.

2.15. [BF Homes and PWCC's] unpaid regular bills totaled P6,551,969.55 covering the May and June 2003 electric bills. x x x

x x x x

2.17. [BF Homes and PWCC] knew that [MERALCO] is already in the process of implementing the decision of the Supreme Court as to the refund case. But this refund has to be implemented in accordance with the guidelines and schedule to be approved by the ERC. Thus [BF Homes and PWCC's] filing of the instant petition is merely to evade payment of their unpaid electric bills to [MERALCO].<sup>[10]</sup>

Hence, MERALCO sought the dismissal of the RTC Petition of BF Homes and PWCC on the following grounds:

3.1 The Honorable Court has no jurisdiction to award the relief prayed for by [BF Homes and PWCC] because:

a) The petition is in effect preempting or defeating the power of the ERC to implement the decision of the Supreme Court.

b) [MERALCO] is a utility company whose business activity is wholly regulated by the ERC. The latter, being the regulatory agency of the government having the authority over the respondent, is the one tasked to approve the guidelines, schedules and details of the refund.

c) The decision of the Supreme Court, dated November 15, 2002, clearly states that respondent is directed to make the refund to its customers in accordance with the decision of the ERC (formerly ERB) dated February 16, 1998. Hence, [MERALCO] has to wait for the schedule and details of