

THIRD DIVISION

[G.R. No. 171534, June 30, 2008]

MANILA ELECTRIC COMPANY, PETITIONER, VS. WILCON BUILDERS SUPPLY, INC., RESPONDENT.

DECISION

NACHURA, J.:

For review is the Decision^[1] of the Court of Appeals (CA) dated June 30, 2005 and its Resolution^[2] dated February 10, 2006 in CA-G.R. CV No. 60723. The assailed decision in turn reversed and set aside the Decision^[3] of the Regional Trial Court (RTC), Branch 262, Pasig City in Civil Case No. 64678.

The facts of the case, as culled from the records, are as follows:

Petitioner Manila Electric Company (Meralco) is a utility company engaged in the business of distribution and sale of electric power; while respondent Wilcon Builders Supply, Inc. is one of its registered customers under Account No. 05380-0800-19.^[4]

On January 17, 1991, petitioner's service inspectors conducted a routine inspection of the electric meters installed at respondent's premises at No. 24, Quezon Avenue, Quezon City.^[5] The inspection was witnessed by respondent's president and general manager, Mr. William Belo.^[6] Allegedly, the meter was found to be tampered with and did not register the correct electric current consumed and used by respondent.^[7] The results of the inspection were reflected in the Service Inspection Report^[8] prepared by the inspectors. Thereafter, they prepared a Power Metering Field Order^[9] and Meter Removal Form.^[10] The subject meter was then removed, placed in a plastic bag and brought to the petitioner's office for further laboratory examination.^[11]

After the laboratory test, otherwise known as Polyphase Meter Test, petitioner, through its technician, allegedly found, as written in the Report,^[12] that: 1) the terminal seal was missing; 2) the lead cover seals were tampered with by cutting the sealing wire; and 3) the 1000th, 100th, and 10th dial pointers of the register were found out of alignment and scratches were present on the face dial of the register, which indicated that the meter had been opened to manipulate said dial pointers and set them manually to the desired readings.^[13]

On February 20, 1991, petitioner wrote the respondent informing the latter of the alleged tampering and further demanding the payment of P250,565.59^[14] representing its unregistered consumption.^[15] A final demand was, thereafter, made on December 6, 1991.^[16] For failure of the respondent to pay the amount

claimed, petitioner commenced the instant suit by filing a Complaint^[17] for damages asking the court that respondent be ordered to pay the above differential billing with interest at the legal rate, plus attorney's fees.^[18]

For its part, respondent denied having tampered with the subject meter. It instead explained that the increase in their electricity consumption was due to the installation of the 7.5 ton air-conditioning unit on June 6, 1981. Sometime in 1985, said unit started to break down; and in 1986, it was no longer functional, which thus caused the abrupt decrease in its consumption.^[19] Respondent, likewise, averred that petitioner offered the settlement of the case and reduced its demand to more or less P70,000.00, but the former did not accede.^[20] Hence, the complaint.

At the pre-trial, the parties agreed to limit the issues, as follows:

1. Whether or not the defendant's meter was tampered, and as a result thereof, failed to register the correct amount of energy consumed;
2. Whether or not the defendant is at fault or is responsible for such tampering;
3. Whether or not the defendant is liable to pay the plaintiff the amount of P250,565.59 representing the value of electricity consumed but not registered in defendant's meter;
4. Whether or not the defendant is liable to pay the plaintiff attorney's fees and expenses of litigation;
5. Whether or not the plaintiff is liable under the defendant's counterclaim;
6. Whether or not the defendant is entitled to discounted rate.^[21]

For failure of the parties to reach an amicable settlement, trial on the merits ensued. On June 29, 1998, the RTC rendered a Decision^[22] in favor of the petitioner and against the respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendant, WILCON BUILDERS SUPPLY, INC., to pay the plaintiff, Manila Electric Company, the following:

1. Actual damages in the sum of One Hundred Eighty-Seven Thousand Nine Hundred Twenty-Four Pesos and Nineteen Centavos (P187,924.19);
2. Attorney's fees in the sum of Ten Thousand Pesos (P10,000.00); and
3. Costs of suit.

SO ORDERED.^[23]

The court gave credence to the testimonial and documentary evidence presented by petitioner which it held to be regular and authentic, and which indisputably showed that the subject meter was tampered with.^[24] As to the authorship of the tampering, the court relied on the disputable presumption that respondent committed the act because the tampered meter was installed in its premises. Consequently, respondent was held liable for the differential billing. However, for failure of the respondent to use its air-conditioning unit, the court gave the former a discount of 25% of the amount due the petitioner. Since the petitioner was compelled to litigate, it was awarded attorney's fees.^[25]

On appeal to the CA, respondent was able to obtain favorable relief. The appellate court reversed and set aside the earlier ruling of the trial court. Contrary to the trial court's conclusion, the CA found that respondent's reduced electric consumption was the result of the breakdown of its air-conditioning unit and not the "tampered" electric meter.^[26] It also applied the rule on negligence on the part of petitioner because of its failure to discover the alleged "tampered" meter from 1984 until 1991 pursuant to the doctrine enunciated in *Ridjo Tape & Chemical Corp. v. Court of Appeals*.^[27]

Aggrieved, petitioner comes before this Court raising the following issues:

- A. IT IS REVERSIBLE ERROR TO RULE THAT THE RIDJO TAPE DOCTRINE APPLIES IN THE INSTANT CASE FOR TAMPERING.
- B. IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO MAKE ITS OWN FINDINGS OF FACTS, IN EFFECT, SUBSTITUTING THE FINDINGS OF FACTS OF THE COURT A *QUO* CONTRARY TO ESTABLISHED AND SETTLED JURISPRUDENCE.
- C. IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO DISMISS CIVIL CASE NO. 64678.^[28]

The petition is bereft of merit.

Petitioner faults the CA for applying the doctrine pronounced by this Court in *Ridjo Tape & Chemical Corp. v. CA*^[29] because of the difference in the factual circumstances surrounding the instant case. It argues that the *Ridjo* doctrine applies only to cases when the meter is defective and not when there is an allegation of tampering. Besides, petitioner contends, such claim of negligence on the part of the public utility only serves to mitigate the consumer's liability, but not to exempt him from paying the differential billing.^[30]

We do not agree.

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.^[31] 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. This is apparent in the rationale behind the ruling which states that:

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.^[32]

This Court had the occasion to apply the foregoing rule in *Manila Electric Company v. Macro Textile Mills Corp.*,^[33] *Davao Light & Power Co., Inc. v. Opeña*,^[34] and *Manila Electric Company v. T.E.A.M. Electronics Corporation, et al.*^[35] Although there were allegations of tampering with the consumers' electric meters, this Court did not hesitate to apply the *Ridjo* doctrine in imputing negligence on the part of the public utility and in totally barring it from collecting its claim of differential billing.

In *Macro Textile Mills*,^[36] there were allegations of tampering allegedly discovered during a routine inspection, coupled with the drastic slump in the electric consumption of the consumer several years before the inspection. The Court decided in favor of the consumer, ratiocinating that if indeed there was an unusual drop in electric consumption reflected in the statements of account, the public utility could have easily verified the error, considering its technical knowledge and vast experience in providing electric service. If there really was a mistake, the electric meters themselves should have been inspected for possible defects or breakdowns and forthwith repaired and, if necessary, replaced.^[37] The Court went on to say that the utility company could have filed the appropriate criminal complaint against the erring consumer under Presidential Decree No. 401.^[38]

In *Davao Light*,^[39] the public utility claimed that there was a sudden drop in the consumer's registered electric consumption as early as 1983, but the inspection of its meters was conducted only in 1988. The court considered the public utility negligent in allowing several years to lapse before deciding to conduct an inspection of the electric meters. Hence, the case was decided in favor of the consumer.

Lastly, in *T.E.A.M Electronics*,^[40] the public utility claimed that the consumer's electric meter was discovered to have been tampered with in 1987 and again, in 1988. This Court again refused to sustain the public utility's claim for payment of the differential because of negligence on its part when it failed to correct the meter upon discovery of the "tampering." By reason of such negligence, it ran the risk of forfeiting amounts originally due from its customers.

Applying the foregoing rules to the instant case, we sustain the CA's finding of