

## THIRD DIVISION

[ G.R. NO. 131723, December 13, 2007 ]

**MANILA ELECTRIC COMPANY, PETITIONERS, VS. T.E.A.M. ELECTRONICS CORPORATION, TECHNOLOGY ELECTRONICS ASSEMBLY AND MANAGEMENT PACIFIC CORPORATION; AND ULTRA ELECTRONICS INSTRUMENTS, INC., RESPONDENTS.**

### DECISION

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated June 18, 1997 and its Resolution<sup>[2]</sup> dated December 3, 1997 in CA-G.R. CV No. 40282 denying the appeal filed by petitioner Manila Electric Company.

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

Respondent T.E.A.M. Electronics Corporation (TEC) was formerly known as NS Electronics (Philippines), Inc. before 1982 and National Semi-Conductors (Phils.) before 1988. TEC is wholly owned by respondent Technology Electronics Assembly and Management Pacific Corporation (TPC). On the other hand, petitioner Manila Electric Company (Meralco) is a utility company supplying electricity in the Metro Manila area.

Petitioner and NS Electronics (Philippines), Inc., the predecessor-in-interest of respondent TEC, were parties to two separate contracts denominated as Agreements for the Sale of Electric Energy under the following account numbers: 09341-1322-16<sup>[3]</sup> and 09341-1812-13.<sup>[4]</sup> Under the aforesaid agreements, petitioner undertook to supply TEC's building known as Dyna Craft International Manila (DCIM) located at Electronics Avenue, Food Terminal Complex, Taguig, Metro Manila, with electric power. Another contract was entered into for the supply of electric power to TEC's NS Building under Account No. 19389-0900-10.

In September 1986, TEC, under its former name National Semi-Conductors (Phils.) entered into a Contract of Lease<sup>[5]</sup> with respondent Ultra Electronics Industries, Inc. (Ultra) for the use of the former's DCIM building for a period of five years or until September 1991. Ultra was, however, ejected from the premises on February 12, 1988 by virtue of a court order, for repeated violation of the terms and conditions of the lease contract.

On September 28, 1987, a team of petitioner's inspectors conducted a surprise inspection of the electric meters installed at the DCIM building, witnessed by Ultra's<sup>[6]</sup> representative, Mr. Willie Abangan. The two meters covered by account numbers 09341-1322-16 and 09341-1812-13, were found to be allegedly tampered

with and did not register the actual power consumption in the building. The results of the inspection were reflected in the Service Inspection Reports<sup>[7]</sup> prepared by the team.

In a letter dated November 25, 1987, petitioner informed TEC of the results of the inspection and demanded from the latter the payment of P7,040,401.01 representing its unregistered consumption from February 10, 1986 until September 28, 1987, as a result of the alleged tampering of the meters.<sup>[8]</sup> TEC received the letters on January 7, 1988. Since Ultra was in possession of the subject building during the covered period, TEC's Managing Director, Mr. Bobby Tan, referred the demand letter to Ultra<sup>[9]</sup> which, in turn, informed TEC that its Executive Vice-President had met with petitioner's representative. Ultra further intimated that assuming that there was tampering of the meters, petitioner's assessment was excessive.<sup>[10]</sup> For failure of TEC to pay the differential billing, petitioner disconnected the electricity supply to the DCIM building on April 29, 1988.

TEC demanded from petitioner the reconnection of electrical service, claiming that it had nothing to do with the alleged tampering but the latter refused to heed the demand. Hence, TEC filed a complaint on May 27, 1988 before the Energy Regulatory Board (ERB) praying that electric power be restored to the DCIM building.<sup>[11]</sup> The ERB immediately ordered the reconnection of the service but petitioner complied with it only on October 12, 1988 after TEC paid P1,000,000.00, under protest. The complaint before the ERB was later withdrawn as the parties deemed it best to have the issues threshed out in the regular courts. Prior to the reconnection, or on June 7, 1988, petitioner conducted a scheduled inspection of the questioned meters and found them to have been tampered anew.<sup>[12]</sup>

Meanwhile, on April 25, 1988, petitioner conducted another inspection, this time, in TEC's NS Building. The inspection allegedly revealed that the electric meters were not registering the correct power consumption. Petitioner, thus, sent a letter dated June 18, 1988 demanding payment of P280,813.72 representing the differential billing.<sup>[13]</sup> TEC denied petitioner's allegations and claim in a letter dated June 29, 1988.<sup>[14]</sup> Petitioner, thus, sent TEC another letter demanding payment of the aforesaid amount, with a warning that the electric service would be disconnected in case of continued refusal to pay the differential billing.<sup>[15]</sup> To avert the impending disconnection of electrical service, TEC paid the above amount, under protest.<sup>[16]</sup>

On January 13, 1989, TEC and TPC filed a complaint for damages against petitioner and Ultra<sup>[17]</sup> before the Regional Trial Court (RTC) of Pasig. The case was raffled to Branch 162 and was docketed as Civil Case No. 56851.<sup>[18]</sup> Upon the filing of the parties' answer to the complaint, pre-trial was scheduled.

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

1. Whether or not the defendant Meralco is liable for the plaintiffs' disconnection of electric service at DCIM Building.
2. Whether or not the plaintiff is liable for (sic) the defendant for the differential billings in the amount of P7,040,401.01.

3. Whether or not the plaintiff is liable to defendant for exemplary damages.<sup>[19]</sup>

For failure of the parties to reach an amicable settlement, trial on the merits ensued. On June 17, 1992, the trial court rendered a Decision in favor of respondents TEC and TPC, and against respondent Ultra and petitioner. The pertinent portion of the decision reads:

WHEREFORE, judgment is hereby rendered in this case in favor of the plaintiffs and against the defendants as follows:

- (1) Ordering both defendants Meralco and ULTRA Electronics Instruments, Inc. to jointly and severally reimburse plaintiff TEC actual damages in the amount of ONE MILLION PESOS with legal rate of interest from the date of the filing of this case on January 19, 1989 until the said amount shall have been fully paid;
- (2) Ordering defendant Meralco to pay to plaintiff TEC the amount of P280,813.72 as actual damages with legal rate of interest also from January 19, 1989;
- (3) Ordering defendant Meralco to pay to plaintiff TPC the amount of P150,000.00 as actual damages with interest at legal rate from January 19, 1989;
- (4) Condemning defendant Meralco to pay both plaintiffs moral damages in the amount of P500,000.00;
- (5) Condemning defendant Meralco to pay both plaintiffs corrective and/or exemplary damages in the amount of P200,000.00;
- (6) Ordering defendant Meralco to pay attorney's fees in the amount of P200,000.00

Costs against defendant Meralco.

SO ORDERED.<sup>[20]</sup>

The trial court found the evidence of petitioner insufficient to prove that TEC was guilty of tampering the meter installations. The deformed condition of the meter seal and the existence of an opening in the wire duct leading to the transformer vault did not, in themselves, prove the alleged tampering, especially since access to the transformer was given only to petitioner's employees.<sup>[21]</sup> The sudden drop in TEC's (or Ultra's) electric consumption did not, *per se*, show meter tampering. The delay in the sending of notice of the results of the inspection was likewise viewed by the court as evidence of inefficiency and arbitrariness on the part of petitioner. More importantly, petitioner's act of disconnecting the DCIM building's electric supply constituted bad faith and thus makes it liable for damages.<sup>[22]</sup> The court further denied petitioner's claim of differential billing primarily on the ground of equitable negligence.<sup>[23]</sup> Considering that TEC and TPC paid P1,000,000.00 to avert the disconnection of electric power; and because Ultra manifested to settle the claims of petitioner, the court imposed solidary liability on both Ultra and petitioner for the payment of the P1,000,000.00.

Ultra and petitioner appealed to the CA which affirmed the RTC decision, with a

modification of the amount of actual damages and interest thereon. The dispositive portion of the CA decision dated June 18, 1997, states:

WHEREFORE, this Court renders judgment affirming in toto the Decision rendered by the trial court with the slight modification that the interest at legal rate shall be computed from January 13, 1989 and that Meralco shall pay plaintiff T.E.A.M. Electronics Corporation and Technology Electronics Assembly and Management Pacific Corporation the sum of P150,000.00 per month for five (5) months for actual damages incurred when it was compelled to lease a generator set with interest at the legal rate from the above-stated date.

SO ORDERED.<sup>[24]</sup>

The appellate court agreed with the RTC's conclusion. In addition, it considered petitioner negligent for failing to discover the alleged defects in the electric meters; in belatedly notifying TEC and TPC of the results of the inspection; and in disconnecting the electric power without prior notice.

Petitioner now comes before this Court in this petition for review on *certiorari* contending that:

The Court of Appeals committed grievous errors and decided matters of substance contrary to law and the rulings of this Honorable Court:

1. In finding that the issue in the case is whether there was deliberate tampering of the metering installations at the building owned by TEC.
2. In not finding that the issue is: whether or not, based on the tampered meters, whether or not petitioner is entitled to differential billing, and if so, how much.
3. In declaring that petitioner ME RALCO had the burden of proof to show by clear and convincing evidence that with respect to the tampered meters that TEC and/or TPC authored their tampering.
4. In finding that petitioner Meralco should not have held TEC and/or TPC responsible for the acts of Ultra.
5. In finding that TEC should not be held liable for the tampering of this electric meter in its DCIM Building.
6. In finding that there was no notice of disconnection.
7. In finding that petitioner MERALCO was negligent in informing TEC of the alleged tampering.
8. In making the finding that it is difficult to believe that when petitioner MERALCO inspected on June 7, 1988 the meter installations, they were found to be tampered.

9. In declaring that petitioner MERALCO estopped from claiming any tampering of the meters.
10. In finding that “the method employed by MERALCO to as certain (sic) the ‘correct’ amount of electricity consumed is questionable”;
11. In declaring that MERALCO all throughout its dealings with TEC took on an “attitude” which is oppressive, wanton and reckless.
12. In declaring that MERALCO acted arbitrarily in inspecting TEC’s DCIM building and the NS building.
13. In declaring that respondents TEC and TPC are entitled to the damages which it awarded.
14. In not declaring that petitioner is entitled to the differential bill.
15. In not declaring that respondents are liable to petitioner for exemplary damages, attorney’s fee and expenses for litigation.<sup>[25]</sup>

The petition must fail.

The issues for resolution can be summarized as follows: 1) whether or not TEC tampered with the electric meters installed at its DCIM and NS buildings; 2) If so, whether or not it is liable for the differential billing as computed by petitioner; and 3) whether or not petitioner was justified in disconnecting the electric power supply in TEC’s DCIM building.

Petitioner insists that the tampering of the electric meters installed at the DCIM and NS buildings owned by respondent TEC has been established by overwhelming evidence, as specifically shown by the shorting devices found during the inspection. Thus, says petitioner, tampering of the meter is no longer an issue.

It is obvious that petitioner wants this Court to revisit the factual findings of the lower courts. Well-established is the doctrine that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Court. We would like to stress that this Court is not a trier of facts and may not re-examine and weigh anew the respective evidence of the parties. Factual findings of the trial court, especially those affirmed by the Court of Appeals, are binding on this Court.<sup>[26]</sup>

Looking at the record, we note that petitioner claims to have discovered three incidences of meter-tampering; twice in the DCIM building on September 28, 1987 and June 7, 1988; and once in the NS building on April 24, 1988.

The first instance was supposedly discovered on September 28, 1987. The inspector allegedly found the presence of a short circuiting device and saw that the meter seal was deformed. In addition, petitioner, through the Supervising Engineer of its Special Billing Analysis Department,<sup>[27]</sup> claimed that there was a sudden and unexplainable drop in TEC’s electrical consumption starting February 10, 1986. On the basis of the foregoing, petitioner concluded that the electric meters were tampered with.