

## THIRTEENTH DIVISION

[ CA-G.R. CV NO. 99605, March 26, 2015 ]

### **DELTA P, INC., PLAINTIFF-APPELLEE, VS. NATIONAL POWER CORPORATION, DEFENDANT-APPELLANT.**

#### **DECISION**

##### **CORALES, J.:**

This is an appeal<sup>[1]</sup> from the March 30, 2012 Decision<sup>[2]</sup> and the July 4, 2012 Order<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 47, Puerto Princesa City in Civil Case No. 3997 entitled "*Delta P, Inc. v. National Power Corporation*" for sum of money (sum of money case). The assailed decision declared as null and illegal the P24,449,247.36 deduction made by defendant-appellant National Power Corporation (NPC) against the account of plaintiff-appellee Delta P, Inc. (Delta P) and ordered it to pay the said amount plus legal interest from finality of the decision until full payment and attorney's fees. The challenged order denied NPC's subsequent motion for reconsideration.

#### **The Antecedents**

On December 23, 2002, Delta P, an independent power producer, took over the operations of Paragua Power Corporation's (PPC) generating plant in Puerto Princesa City. At that time, PPC had a Power Purchase Agreement<sup>[4]</sup> (PPA) with NPC wherein the latter agreed to purchase the electricity generated by the former to meet NPC's obligation to supply the consumers of Palawan Electric Cooperative, Inc. (PALECO) in Puerto Princesa City and the towns of Narra, Aborlan, and Quezon, Palawan.

As a result of the takeover, NPC was requested to direct its payment to Delta P. However, NPC refused to do so, insisting that PPC, not Delta P, is the contracting party to the PPA. Later on, Delta P advised NPC that it could no longer operate the power station for lack of funds.

On February 26, 2003, NPC Vice-President for Strategic Power Utilities Group (SPUG), Lorenzo S. Marcelo (Marcelo), issued a Memorandum<sup>[5]</sup> to NPC President Rogelio M. Murga (Murga) seeking the latter's approval to supply the fuel and pay the manpower services of PPC's generating plant due to the imminent power shortage in Puerto Princesa, Palawan caused by Delta P's inability to produce the required electricity due to the lack of bunker fuel. The relevant portions of the Memorandum read:

x x x The request is being made to address the imminent power shortage in Puerto Princesa, Palawan as a result of the inability of Delta Phi, the current operator of the Paragua plant, to produce required electricity due to lack of bunker fuel (Please refer to attached letter of Governor Joel T. Reyes).

## **Background**

x x x

Delta-P has recently indicated that it can no longer support its plant operations without the payment from NPC. Delta-P has not placed any fuel order and informed that its fuel inventory will last only until 10 March 2003.

Because of the above situation, SPUG is operating its existing plants for base load and only dispatches PPC's plant as complementary supply for meeting the demand of Puerto Princesa and Narra.

### **Costs of Fuel and Personnel Services to be Shouldered by NPC**

The personnel services cost that NPC will have to pay for the operation of the PPC plant amounts to P500,000 a month. The costs of fuel to be supplied by NPC will depend on the usage of the PPC plant as follows:

**Case 1:** Full utilization of the PPC plant + NPC as back-up

**Case 2:** 8 MW PPC Plant + NPC

**Case 3:** 3.50 MW PPC Plant + NPC

**Case 4:** Total NPC (with 3-hour rotating brownout during peak hour because of NPC's limited capability)

x x x

Of the four (4) cases mentioned above, we recommend Case 3 because it will entail the least upfront (*sic*) financial exposure on the part of NPC and at the same time, avoid brownouts. x x x All costs amounting to P7.7 million and incidental expenses shall be chargeable to Paragua Power Corp. (Emphasis and underscoring appear in the original text of the letter)

Murga approved Marcelo's recommendation,<sup>[6]</sup> thus, the latter sent a March 7, 2003 letter<sup>[7]</sup> to Delta P's Plant Manager informing him that upon the request of the local government of Palawan, NPC would supply fuel to Delta P's power plant and pay the salaries of its manpower while the latter's internal problem is being resolved.

Insisting on its right to collect payment of electricity "off-taken" by NPC from its generating plant, Delta P instituted on March 12, 2003 an action for collection of sum of money against NPC, docketed as Civil Case No. 3766 and raffled to RTC, Branch 95. In its July 15, 2003 Judgment,<sup>[8]</sup> the RTC, Branch 95 upheld Delta P's right to be paid for the electricity "off-taken" by NPC from the months of December 2002 to June 2003 under Invoice Nos. 2003-001 to 2003-009 even though there is no existing contract between them. It stressed that NPC benefited from the electricity "off-taken" from Delta P without paying a single centavo, thus, based on

the doctrines of *accion in rem verso* and unjust enrichment, NPC should be held liable for the said obligation. To do otherwise would cause injustice not only on the part of Delta P but also to the people of Puerto Princesa City, who have been paying their electric bills to PALECO, for they are the ones directly affected by the continuous power interruption. It ordered NPC to pay P87,944,215.67 representing the P90,394,855.86 total value of the invoices from January 28, 2003 to June 27, 2003 less P2,450,640.19 for adjustment in billing due to reduction in tariff effective March 9, 2003 for the billing period February 25, 2003 to March 25, 2003. The July 15, 2003 Judgment in Civil Case No. 3766 attained finality and was implemented against NPC.

On July 30, 2003, NPC sent to Delta P a Notice of Termination<sup>[9]</sup> reminding the latter that it undertook the supply of fuel requirement of the generating plant as a remedial measure to address the imminent power shortage in Puerto Princesa City, but with the payment of the adjudged amount in Civil Case No. 3766, there is no longer any basis for NPC to continue with the fuel supply; thus, it will terminate the said supply of fuel to the 16MW Power Plant effective August 15, 2003.

Subsequently, the parties agreed that Delta P should continue generating and supplying electricity in Palawan with the express undertaking of NPC to pay monthly invoices for the services rendered by Delta P at the power station.<sup>[10]</sup> The contractual relationship of the parties went on smoothly until NPC issued on December 4, 2003 Debit Memo No. SI-03-12-0041<sup>[11]</sup> (Debit Memo) deducting P24,449,247.36 from Delta P's account for the alleged incremental costs of the fuel it had supplied to Delta P from February 25, 2003 to June 25, 2003.

On July 20, 2004, Delta P filed the sum of money case assailing the validity of the Debit Memo for lack of prior agreement authorizing payment of the fuel costs. It never requested NPC to supply fuel in the power station but the latter voluntarily did so to avoid a disruption of operation. Its acceptance of NPC's fuel should not be construed as an implied approval to bear the incremental costs of such fuel and in fact, in its previous invoices to NPC from February 25, 2003 to June 25, 2003, it did not include the fuel costs component of the electricity it generated and supplied at the power station. It prayed for the payment of the amount deducted by NPC from its account plus exemplary damages and attorney's fees.<sup>[12]</sup>

In its defense, NPC invoked the principle of *solutio indebiti* and the innominate contract of *facio ut des* meaning "I do that you may give". It argued that Delta P voluntarily accepted and benefited from the fuel supplied by NPC, thus, equity and justice demand that Delta P should give back what is due to NPC. It added that during the processing of the disbursement voucher for the payment of the monetary judgment in Civil Case No. 3766, Delta P was already informed that the invoices subject of the July 15, 2003 Decision would be audited and adjusted in the next monthly billing. Upon audit, it was discovered that there were variances between the actual costs of fuel and the fuel costs tariff, *i.e.*, Delta P computed total tariff based on forex rates and fuel costs tariff but refused to take into account occasional fluctuations in the same or the actual fuel costs from month to month. NPC informed Delta P's representative of the discrepancies and explained that the P24,449,247.36 incremental costs of fuel would be debited in the next invoice in order to recover the overpayment erroneously made by NPC. It claimed that the correctness of Delta P's invoices was never resolved in Civil Case No. 3766, in fact, the same were neither

pre-audited nor identified in court. Lastly, NPC denied liability for damages and interposed counterclaims for litigation expenses plus moral and exemplary damages.  
[13]

Delta P filed its Reply<sup>[14]</sup> refuting NPC's arguments as to the incorrect computation of fuel costs in the invoices subject of Civil Case No. 3766. Delta P insisted that it did not intend or agree to bear the fuel costs, rather, it was NPC which undertook to supply fuel at its own cost. It disputed the applicability of the doctrine of *solutio indebiti* arguing that it was a judgment creditor of NPC by virtue of the July 15, 2003 Decision in Civil Case No. 3766 which clearly ordered NPC to pay the amounts subject of Delta P's invoices, without need of post audit or any other condition.

In the ensuing trial, Delta P's Plant Manager, Engr. Edmund Abayon, its Chief Finance Officer, Anthony Katigbac (Katigbac), and its Vice-President for Operations from March 2003 to May 2007, Engr. Cesar Solleza (Solleza), all testified that the invoices subject of NPC's Debit Memo were the same as that referred in the July 15, 2003 Decision in Civil Case No. 3766. They recounted that Delta P never included the fuel costs component in its invoices while NPC regularly paid the same. Katigbac and Solleza added that the fuels supplied by NPC to Delta P were purchased at spot market prices, which were higher than the average contracted price used by Delta P as basis for its adjustment; thus, NPC's purchase price went up to such an extent that it even exceeded Delta P's revenue and the fuel costs component could no longer be adjusted. The unrecovered fuel costs therefore referred to the difference between the spot market price and the contracted price.<sup>[15]</sup>

On the other hand, NPC presented Engr. Rafael Lorenzo Abergas (Abergas) and its Budget Control and Monitoring Officer, Salvacion F. Aragon (Aragon). Abergas claimed that Marcelo's February 26, 2003 Memorandum stated that NPC would not incur incremental costs while the PPA stipulated that should NPC supply fuel, it would not incur additional costs. When the invoices subject of Civil Case No. 3766 were audited, a difference of P24,449,247.36 between the fuel price cap allowed in the PPA and the actual fuel costs was discovered.<sup>[16]</sup> According to Aragon, such invoices are still subject to adjustment and audit on the part of NPC, as annotated on Delta P's June 27, 2003 consolidated billing.<sup>[17]</sup> NPC's Legal Department recommended to debit the incremental fuel costs to Delta P's account because prior to NPC's supply of fuel to Delta P, the latter had included the fuel costs component in its billings pursuant to the PPA between PPC and NPC. Meanwhile, NPC did not charge Delta P with any fuel tariff during the time that the former supplied fuel to the latter.<sup>[18]</sup>

### **The Ruling of the RTC**

In its March 30, 2012 Decision,<sup>19</sup> the RTC ruled in favor of Delta P and held that its cause of action is based on the final and executory judgment in Civil Case No. 3766, thus, the PPA between NPC and PPC, as well as the internal communications of NPC, *i.e.*, the February 26, 2003 Memorandum of Marcelo and the annotation on the June 27, 2003 Disbursement Voucher, are immaterial. It stressed that there is nothing in the July 15, 2003 Judgment in Civil Case No. 3766 which allows the adjustment of the amounts covered by Delta P's invoices either due to post audit or prior agreement between the parties. The obligation to satisfy the judgment is actually unconditional and already final, as such, NPC could no longer assail the correctness

of the invoices which was clearly mentioned in the dispositive portion of the July 15, 2003 Judgment in Civil Case No. 3766. The court *a quo* also dismissed the application of the principle of *solutio indebiti* considering that the payment made by NPC was by virtue of the July 15, 2003 Judgment in Civil Case No. 3766, not by mere mistake. It disposed the case as follows:

**WHEREFORE**, premises considered, judgment is hereby rendered, to wit:

1. Declaring the debit made by the National Power Corporation on the account of the Delta P, Incorporated for the period from February 25, 2003 to June 25, 2003 for "cost of fuel delivered to DELTA P" in the total amount of TWENTY FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND THRITY-SIX (*sic*) CENTAVOS (PHP24,449,247.36) to be void and illegal;

2. Ordering the National Power Corporation to pay Delta P, Incorporated:

a. TWENTY FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND THRITY-SIX (*sic*) CENTAVOS (PHP24,449,247.36) plus legal interest from the finality of this Decision until full payment;

b. FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) as attorney's fees;

With costs against the defendant.

SO ORDERED.

NPC moved for reconsideration but the RTC denied the same through its July 4, 2012 Order.<sup>[20]</sup>

Hence, this appeal with the following assignment of errors:<sup>[21]</sup>

I.

THE TRIAL COURT ERRED IN DECLARING THE DEBIT MADE BY THE NATIONAL POWER CORPORATION ON THE ACCOUNT OF DELTA P. INC. FOR THE PERIOD OF FEBRUARY 25, 2003 TO JUNE 25, 2003 FOR "COST OF FUEL DELIVERED TO DELTA P." IN THE TOTAL AMOUNT OF TWENTY FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND THIRTY SIX CENTAVOS (PHP 24,449,247.36) TO BE VOID AND ILLEGAL.

II.

THE TRIAL COURT ERRED IN ORDERING THE NATIONAL POWER CORPORATION TO PAY DELTA P. INC. TWENTY FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND THIRTY SIX CENTAVOS (PHP 24,449,247.36) PLUS LEGAL INTEREST AND ATTORNEY'S FEES.