



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**MANILA ELECTRIC COMPANY
(MERALCO),**

Petitioner,

- versus -

**ATTY. PABLITO M. CASTILLO,
doing business under the trade
name and style of PERMANENT
LIGHT MANUFACTURING
ENTERPRISES and GUIA S.
CASTILLO,**

Respondents.

G.R. No. 182976

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

JAN 14 2013

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DECISION

VILLARAMA, JR., J.:

Before us is a petition¹ for review on certiorari seeking to set aside the Decision² dated May 21, 2008 of the Court of Appeals in CA-G.R. CV No. 80572. The Court of Appeals had affirmed with modification the Decision³ dated July 9, 2003 of the Regional Trial Court (RTC) of Pasig City, Branch 168, in Civil Case No. 65224. The appellate court deleted the award to petitioner Manila Electric Company (Meralco) of the amount of ₱1,138,898.86, representing overpaid electric bills, and ordered petitioner to pay temperate damages to respondents in the amount of ₱500,000.

The facts follow.

¹ *Rollo*, pp. 9-27.

² *Id.* at 28-39. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña III and Romeo F. Barza concurring.

³ *Records*, Vol. II, pp. 252-276. Penned by Judge Leticia Querubin Ulibarri.

Respondents Pablito M. Castillo and Guia S. Castillo are spouses engaged in the business of manufacturing and selling fluorescent fixtures, office steel cabinets and related metal fabrications under the name and style of Permanent Light Manufacturing Enterprises (Permanent Light).

On March 2, 1994, the Board of Trustees of the Government Service Insurance System (GSIS) approved the award to Permanent Light of a contract for the supply and installation of 1,200 units of lateral steel filing cabinets worth ₱7,636,800.⁴ Immediately, Permanent Light began production of the steel cabinets so that it can obtain the award for the supply of 500 additional units.

In the afternoon of April 19, 1994, Joselito Ignacio and Peter Legaspi, Fully Phased Inspectors of petitioner Meralco, sought permission to inspect Permanent Light's electric meter. Said inspection was carried out in the presence of Mike Malikay, an employee of respondents.

The results of the inspection, which are contained in a Special Investigation Report,⁵ show that the terminal seal of Permanent Light's meter was deformed, its meter seal was covered with fake lead, and the 100th dial pointer was misaligned. On the basis of these findings, Ignacio concluded that the meter was tampered with and electric supply to Permanent Light was immediately disconnected. The questioned meter was then taken to Meralco's laboratory for verification.

By petitioner Meralco's claim, it sustained losses in the amount of ₱126,319.92 over a 24-month period,⁶ on account of Permanent Light's tampered meter. The next day, in order to secure the reconnection of electricity to Permanent Light, respondents paid ₱50,000 as down payment on the differential bill to be rendered by Meralco.⁷

⁴ Records, Vol. I, p. 213.

⁵ Records, Vol. II, p. 107.

⁶ *Rollo*, p. 68.

⁷ Records, Vol. II, p. 113.

Thereafter, Meralco performed a Polyphase Meter Test on the disputed meter and made the following findings:

1. The ST-5 seal#A217447 padlock type was tampered by forcibly pulling out the sealing hasp while the lead cover seals (ERB#1 (1989) and Meralco#21) were found fake.

2. The meshing adjustment between the 1st driven gear and the rotating disc was found altered causing the said gear to [disengage] totally from the driving gear of the same disc. Under this condition, the meter failed to register, hence, had not been registering the energy [(KWhrs)] and kw demand used by the customer.

3. The 100th dial pointer of the register was found out of alignment which indicates that the meter had been opened to manipulate said dial pointer and set manually to the desired reading.⁸

Petitioner Meralco billed Permanent Light the amount of ₱61,709.11, representing the latter's unregistered electric consumption for the period of September 20, 1993 to March 22, 1994. Meralco, however, credited the initial payment of ₱50,000 made by respondents. It assessed respondents a balance of ₱11,709.11, but later reduced said amount to ₱5,538.20 after petitioner allowed respondents a 10% discount on their total bill. Then, petitioner received the amount of ₱5,538.20 as full settlement of the remaining balance.

Subsequently, respondents received an electric bill in the amount of ₱38,693.53 for the period of March 22, 1994 to April 21, 1994. This was followed by another bill for ₱192,009.64 covering the period from November 19, 1993 to April 21, 1994. Respondents contested both assessments in a Letter dated October 12, 1994.⁹ They likewise complained of a significant increase in their electric bills since petitioner installed the replacement meter on April 20, 1994.

In a Letter dated December 7, 1994,¹⁰ petitioner Meralco explained that the bill for ₱38,693.53 was already a "corrected bill." According to petitioner, the bill for ₱192,009.64 was adjusted on August 25, 1994 to reflect respondents' payment of ₱61,709.11 as settlement of Permanent

⁸ Id. at 108.

⁹ Id. at 402.

¹⁰ Id. at 116.

Light's electric bills from September 20, 1993 to March 22, 1994. It assured respondents that Permanent Light's meter has been tested on November 29, 1994 and was found to be in order. In the same letter, petitioner informed respondents that said meter was replaced anew on December 1, 1994 after it sustained a crack during testing. While respondents continued to pay, allegedly under protest, the succeeding bills of Permanent Light, they refused to pay the bill for ₱38,693.53.

On August 2, 1995, respondents filed against Meralco a Petition¹¹ for Injunction, Recovery of a Sum of Money and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction. The case was raffled to Branch 162 of the Pasig RTC, which was presided over by Judge Manuel S. Padolina, and docketed as Civil Case No. 65224.

Mainly, respondents prayed for the issuance of a permanent injunction to enjoin petitioner from cutting power supply to Permanent Light, refrain from charging them unrecorded electric consumption and demanding payment of ₱38,693.53, representing their bill for March 22, 1994 to April 21, 1994. Corollary to this, respondents sought reimbursement of the ₱55,538.20 that they had paid as the estimated electric bill of Permanent Light from September 20, 1993 to March 22, 1994. They likewise prayed for the reinstatement of their old meter, which respondents believe accurately records Permanent Light's electric consumption.

In an Order¹² dated August 29, 1995, the RTC directed the issuance of a TRO to restrain petitioner Meralco from disconnecting electricity to Permanent Light. Later, in an Order¹³ dated September 8, 1995, the RTC directed the issuance of a writ of preliminary injunction upon the posting of a bond in the amount of ₱95,000.

While trial was pending, respondents reiterated their request for a

¹¹ *Rollo*, pp. 46-55.

¹² Records, Vol. I, p. 18.

¹³ *Id.* at 24.

replacement meter. According to them, the meters installed by Meralco ran faster than the one it confiscated following the disconnection on April 19, 1994.

In 1997, Judge Manuel S. Padolina retired. Thus, the case was heard by Pairing Judge Aurelio C. Trampe until the parties had presented all their witnesses. On October 30, 1998, respondents rested their case and submitted a Written Offer of Exhibits.¹⁴ Meanwhile, petitioner filed a Formal Offer of Evidence¹⁵ on September 22, 1999. By then, a regular presiding judge had been appointed to Branch 162 in the person of Hon. Erlinda Piñera Uy. However, on November 8, 1999, respondents filed an Urgent Motion to Inhibit Ad Cautelam.¹⁶ Judge Uy voluntarily recused herself from hearing the case by Order¹⁷ dated November 10, 1999. Eventually, the case was raffled to Branch 168 of the Pasig RTC presided by Judge Leticia Querubin Ulibarri.

On November 28, 2001, Meralco installed a new electric meter at the premises of Permanent Light. Following this, on January 29, 2002, respondents filed an Urgent Motion to Proffer and Mark the Latest Meralco Bill of ₱9,318.65 which was Reflected in the 3rd Meralco Electric Meter Recently Installed by Defendant Meralco.¹⁸ Despite petitioner's opposition, the RTC admitted said bill into evidence.

On July 9, 2003, the Pasig RTC, Branch 168, rendered judgment in favor of respondents. The *fallo* of said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioners and against the respondent ordering the latter to pay the former the following:

1. P1,138,898.86 representing overpayments made by the petitioners from May 1994 to November 2001;
2. P200,000.00 as and for moral damages;

¹⁴ Id. at 360-374.

¹⁵ Records, Vol. II, pp. 97-104.

¹⁶ Id. at 149-155.

¹⁷ Id. at 156-157.

¹⁸ Id. at 198-203.

3. P100,000.00 as and for exemplary damages;
4. P100,000.00 as and for attorney's fees; and
5. the costs of this suit.

On the other hand, petitioners are hereby ordered to pay to the respondent the amount of P38,693.53 representing the billing differential.

The Preliminary Injunction issued by the Court is hereby made **PERMANENT**.

SO ORDERED.¹⁹

The trial court ruled that petitioner failed to observe due process when it disconnected electricity to Permanent Light. It explained that under Section 4 of Republic Act No. 7832²⁰ (RA 7832), in order that a tampered meter may constitute *prima facie* evidence of illegal use of electricity by the person benefited thereby, the discovery thereof must have been witnessed by an officer of the law or an authorized representative of the Energy Regulatory Board (ERB). In this case, however, the RTC noted that no officer of the law or authorized ERB representative was present when the tampered meter was discovered. Moreover, the trial court found no direct evidence to prove that respondents were responsible for tampering with said meter.

On the basis of the proffered bill dated December 29, 2001,²¹ the RTC concluded that the replacement meter installed by Meralco did not accurately register Permanent Light's electric consumption. Consequently, it ordered petitioner to reimburse respondents in the amount of ₱1,138,898.86, representing the supposed overpayment from April 1994 to November 2001. For failure to observe due process in disconnecting electricity to Permanent Light, the trial court likewise imposed upon petitioner Meralco moral and exemplary damages in the amount of ₱200,000 and ₱100,000, respectively.

In the assailed Decision dated May 21, 2008, the Court of Appeals affirmed with modification the Decision of the RTC. It deleted the award of

¹⁹ Id. at 275-276.

²⁰ AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF, AND FOR OTHER PURPOSES.

²¹ Records, Vol. II, p. 213.

₱1,138,898.86 in favor of respondents and instead ordered petitioner to pay temperate damages in the amount of ₱500,000.

The Court of Appeals held that petitioner abused its right when it disconnected the electricity of Permanent Light. The appellate court upheld the validity of the provision in petitioner's service contract which allows the utility company to disconnect service upon a customer's failure to pay the differential billing. It however stressed that under Section 97²² of Revised Order No. 1 of the Public Service Commission, the right of a public utility to discontinue its service to a customer is subject to the requirement of a 48-hour written notice of disconnection. Petitioner's failure in this regard, according to the appellate court, justifies the award of moral and exemplary damages to respondents.

The Court of Appeals ordered petitioner to reimburse respondents for overpayment on their electric bills. It sustained the finding of the trial court that the electric meter installed by petitioner in Permanent Light's premises on April 20, 1994 was registering a higher reading than usual. The appellate court based its conclusion on the marked difference between Permanent Light's net billing from 1985 to 2001 compared to its consumption after the new meter was installed, and the consequent decrease after said meter was replaced on November 28, 2001. However, instead of actual damages, the Court of Appeals awarded respondents temperate damages in the amount of ₱500,000.

Hence, this petition.

Petitioner submits the following assignment of errors:

²² Section 97. *Payment of bills.* -A public service may require that bills for service be paid within a specified time after rendition. When the billing period covers a month or more, the minimum time allowed will be ten days and upon expiration of the specified time, service may be discontinued for the nonpayment of bills, provided that a 48 hours' written notice of such disconnection has been given the customer: *Provided, however,* That disconnections of service shall not be made on Sundays and official holidays and never after 2 p.m. of any working day: *Provided, further,* That if at the moment the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the operator who is to effect the disconnection, the said agent or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE AWARD OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF THE RESPONDENTS[;]²³

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING P500,000.00 FOR AND AS TEMPERATE DAMAGES IN FAVOR OF THE RESPONDENTS.²⁴

Amplified, the issues for our resolution are two-fold: (1) Are respondents entitled to claim damages for petitioner's act of disconnecting electricity to Permanent Light on April 19, 1994? and (2) Are respondents entitled to actual damages for the supposed overbilling by petitioner Meralco of their electric consumption from April 20, 1994 to November 28, 2001?

Petitioner faults the Court of Appeals for affirming the award of moral and exemplary damages to respondents. It argues that respondents failed to establish how the disconnection of electricity to Permanent Light for one day compromised its production. Petitioner cites respondents' admission that soon after the power went out, they used generators to keep the operations of Permanent Light on track.

Petitioner further negates bad faith in discontinuing service to Permanent Light without notice to respondents. It contends that the 48-hour notice requirement in Section 97 of Revised General Order No. 1 applies only to a customer who fails to pay the regular bill. Petitioner insists that the discovery by its Fully Phased Inspectors of Permanent Light's tampered meter justified disconnection of electricity to the latter.

Also, petitioner challenges the award of temperate damages to respondents for the alleged overbilling. It objects to the admission into evidence of Permanent Light's December 29, 2001 electric bill, which respondents proffered two years after the case was submitted for decision by the court *a quo*. Petitioner disputes the finding of the RTC and the Court of

²³ *Rollo*, p. 18.

²⁴ *Id.* at 22.

Appeals that respondents overpaid on Permanent Light's electric bill. It reasons that the volume of business of any establishment varies from season to season such that it cannot be expected to constantly register the same electric consumption. Lastly, petitioner protests the award of ₱500,000 in temperate damages as excessive and unconscionable.

In a Memorandum dated May 27, 2009, respondents denied any involvement in the tampering of Permanent Light's electric meter. Respondents reiterate that petitioner violated their right to due process when it disconnected electricity to Permanent Light without apprising them of their violation and affording them an opportunity to pay the differential bill within the 10-day grace period provided by law. Respondents claim that such disconnection imperiled the prompt completion of Permanent Light's contract with GSIS, thereby causing them anxiety. They believe that the "embarrassment, humiliation and pain" brought about by such disconnection justify the award of moral damages in their favor. Respondents invoke Article 24²⁵ of the Civil Code on *parens patriae* against the alleged abuse by petitioner Meralco of its monopoly as an electric service provider.

Respondents also rely on the testimony of Enrique Katipunan, Meralco Billing Expert, to prove that the sudden increase in Permanent Light's electric consumption was caused by the "high-speed" replacement meter installed by petitioner. They reiterate their claim for actual damages, arguing that absolute certainty as to its amount need not be shown since the loss has been established.

Upon a careful consideration of the circumstances of this case, the Court resolves to deny the petition.

The pertinent law relative to the immediate disconnection of electricity is Section 4, RA 7832, which reads:

²⁵ Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

SEC. 4. *Prima Facie Evidence*.—(a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph, or log;

x x x x

(viii) x x x *Provided, however*, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

Thus, in order for the discovery of a tampered, broken or fake seal on the meter to constitute *prima facie* evidence of illegal use of electricity by the person who benefits from such illegal use, the discovery thereof must have been personally witnessed and attested to by an officer of the law or a duly authorized representative of the ERB.

Citing *Quisumbing v. Manila Electric Company*,²⁶ we reiterated the significance of this requirement in *Manila Electric Company (MERALCO) v. Chua*,²⁷ thus:

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers.

On cross-examination, Meralco's Fully Phased Inspector, Joselito M. Ignacio, recounted who were present during the inspection:

- Q. Mr. Ignacio, let us reconstruct the evidence on April 19, 1994. Before you came across the Meralco meter of the plaintiffs, where did you come from?
- A. We were inspecting other meters within that vicinity.
- Q. So you mean to tell us that you were cruising in the vicinity of Cubao, Quezon City on April 19?

²⁶ G.R. No. 142943, April 3, 2002, 380 SCRA 195, 208.

²⁷ G.R. No. 160422, July 5, 2010, 623 SCRA 81, 94.

- A. Yes, sir.
- Q. And were you alone?
- A. No, sir, we were two.
- Q. Who was with you?
- A. Mr. Peter Legaspi, sir.²⁸

On further cross-examination by Atty. Pablito M. Castillo, Ignacio confirmed that only he and another Fully Phased Inspector were present when they discovered Permanent Light's tampered meter:

- Q. Who was with you when you entered the compound of the plaintiffs?

ATTY. BONA: Already answered, Mr. Legaspi.

ATTY. CASTILLO: No. They were both on board but the question now is more particular.

ATTY. BONA: At what particular time?

WITNESS:

A. Mr. Legaspi.

COURT: Only?

WITNESS: Yes, sir.²⁹

Absent any showing that an officer of the law or a duly authorized representative of the ERB personally witnessed and attested to the discovery of Permanent Light's tampered electric meter, such discovery did not constitute *prima facie* evidence of illegal use of electricity that justifies immediate disconnection of electric service.

Besides, even if there is *prima facie* evidence of illegal use of electricity, Section 4, RA 7832 requires due notice to the person benefited before disconnection of electricity can be effected. Specifically, Section 6 of RA 7832 calls for prior written notice or warning, thus:

SEC. 6. *Disconnection of Electric Service.* - The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect, without the need of a court or

²⁸ TSN, January 26, 1999, p. 4.

²⁹ Id. at 8.

administrative order, and deny restoration of the same, **when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *in flagrante delicto* doing any of the acts enumerated in Section 4(a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time:** *Provided*, That in the second case, a written notice or warning shall have been issued upon the first discovery: x x x (Emphasis supplied)

Thus, even when the consumer, or someone acting in his behalf, is caught *in flagrante delicto* or in the act of doing any of the acts enumerated in Section 4 of RA 7832, petitioner may not immediately disconnect electricity without serving a written notice or warning to the owner of the house or establishment concerned.

Petitioner Meralco submitted a memorandum with Control No. 6033-94³⁰ dated April 19, 1994 to prove that respondents were duly notified of the disconnection. Notwithstanding, petitioner maintains that the 48-hour notice of disconnection does not apply in this case since Section 97 of Revised Order No. 1 of the Public Service Commission pertains to nonpayment of bills while the cause for discontinuing service to Permanent Light was the discovery of the tampered meter.

We do not agree.

On February 9, 1987, the Bureau of Energy approved³¹ the Revised Terms and Conditions of Service and Revised Standard Rules and Regulations of Meralco's Electric Service Contract. Pertinent to this case, the provision on Discontinuance of Service under the Revised Terms and Conditions of Service states:

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 case of or to prevent fraud, the Company may adjust the bill of said Customer accordingly and if the

³⁰ Records, Vol. II, p. 106.

³¹ Id. at 117-130.

adjusted bill is not paid, the Company may disconnect the same. **In case of disconnection, the provisions of Revised Order No. 1 of the former Public Service Commission (now the Board of Energy) shall be observed.** Any such suspension of service shall not terminate the contract between the Company and the Customer.³² (Emphasis supplied)

On August 3, 1995, the ERB passed Resolution No. 95-21 or the Standard Rules and Regulations Governing the Operation of Electrical Power Services which superseded and revoked Revised Order No. 1, which the Public Service Commission adopted on November 27, 1941. The relevant provision on disconnection of service is found in Section 48 of ERB Resolution No. 95-21, which reads:

SEC. 48. *Refusal or Discontinuance of Service.* – An electric utility shall not refuse or discontinue service to an applicant, or customer, who is not in arrears to the electric utility, even though there are unpaid charges due from the premises occupied by the applicant, or customer, on account of unpaid bill of a prior tenant, unless there is evidence of conspiracy between them to defraud the electric utility.

Service may be discontinued for the nonpayment of bills as provided for in Section 43 hereof, provided that a forty eight (48)-hour written notice of such disconnection has been given the customer; Provided, however, that disconnections of service shall not be made on Fridays, Saturdays, Sundays and official holidays; Provided, further, that if at the moment of the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the electric utility who is to effect the disconnection, the said agent, or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

The electric utility may discontinue service in case the customer is in arrear(s) in the payment of bill(s). Any such suspension of service shall not terminate the contract between the electric utility and the customer.

In the case of arrear(s) in the payment of bill(s), the electric utility may discontinue the service notwithstanding the existence of the customer's deposit with the electric utility which will serve as guarantee for the payment of future bill(s) after service is reconnected. (Emphasis supplied)

True, Section 48 of ERB Resolution No. 95-21 expressly provides for the application of the 48-hour notice rule to Section 43 on Payment of Bills. However, petitioner Meralco, through its Revised Terms and Conditions of Service, adopted said notice requirement where disconnection of service is warranted because (1) the consumer failed to pay the adjusted bill after the

³² Id. at 134.

meter stopped or failed to register the correct amount of energy consumed, (2) or for failure to comply with any of the terms and conditions, (3) or in case of or to prevent fraud upon the Company.

Considering the discovery of the tampered meter by its Fully Phased Inspectors, petitioner Meralco could have disconnected electricity to Permanent Light for no other reason but to prevent fraud upon the Company. Therefore, under the Revised Terms and Conditions of Service vis-a-vis Section 48 of ERB Resolution No. 95-21, petitioner is obliged to furnish respondents with a 48-hour notice of disconnection. Having failed in this regard, we find basis for the award of moral and exemplary damages in favor of respondents for the unceremonious disconnection of electricity to Permanent Light.

Moral damages are awarded to compensate the claimant for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.³³ Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.³⁴

Pertinent to the case at hand, Article 32 of the Civil Code provides for the award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated.³⁵ In *Quisumbing v. Manila Electric Company*, this Court treated the immediate disconnection of electricity without notice as a form of deprivation of property without due process of law, which entitles the

³³ *Quisumbing v. Manila Electric Company*, supra note 26 at 212.

³⁴ *Manila Electric Company (MERALCO) v. Chua*, supra note 27 at 111-112.

³⁵ *Id.* at 111.

subscriber aggrieved to moral damages. We stressed:

More seriously, the action of the defendant in maliciously disconnecting the electric service constitutes a breach of public policy. For public utilities, broad as their powers are, have a clear duty to see to it that they do not violate nor transgress the rights of the consumers. Any act on their part that militates against the ordinary norms of justice and fair play is considered an infraction that gives rise to an action for damages. Such is the case at bar.³⁶

Here, petitioner failed to establish factual basis for the immediate disconnection of electricity to Permanent Light and to comply with the notice requirement provided by law. As the court *a quo* correctly observed, there is no direct evidence that points to respondents as the ones who tampered with Permanent Light's electric meter. Notably, the latter's meter is located outside its premises where it is readily accessible to anyone.

In addition to moral damages, exemplary damages are imposed by way of example or correction for the public good. In this case, to serve as an example - that before disconnection of electric supply can be effected by a public utility, the requisites of law must be complied with - we sustain the award of exemplary damages to respondents.

In the assailed Decision dated May 21, 2008, the Court of Appeals affirmed the award of moral damages and exemplary damages to respondents in the amount of ₱200,000 and ₱100,000, respectively. In line with prevailing jurisprudence, however, this Court deems the award of moral damages in the amount of ₱100,000³⁷ and exemplary damages in the amount of ₱50,000³⁸ appropriate in cases where Meralco has wrongfully disconnected electric service to its customer.

Nonetheless, the Court finds no reason to order the reimbursement to respondents of the ₱55,538.20, which petitioner received as full settlement of Permanent Light's "differential billing" for its unregistered consumption

³⁶ *Quisumbing v. Manila Electric Company*, supra note 26 at 213.

³⁷ *Manila Electric Company (MERALCO) v. Chua*, supra note 27 at 112-113; *Manila Electric Company v. Vda. de Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315, 320.

³⁸ *Manila Electric Company v. Vda. de Santiago*, id.

from September 20, 1993 to March 22, 1994. At this point, it is well to clarify that RA 7832 assigns a specific meaning to “differential billing” and utilizes various methodologies as basis for determining the same. More particularly, Section 6³⁹ of RA 7832 defines “differential billing” as the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him. However, since RA 7832 was approved only on December 8, 1994 and introduced such concept only on said date, it would be improper to treat the term “differential billing” as used by Meralco in this case in such context. Rather, we shall treat the same as a generic term to refer to the unbilled electricity use of Permanent Light from September 20, 1993 to March 22, 1994.

The Computation Worksheet⁴⁰ of said “differential billing” shows that the amount of ₱61,709.11 was derived based on Permanent Light’s average KWhour consumption for the six months immediately preceding September 20, 1993. We find such method of computation in accord with the Terms of Service approved by the Bureau of Energy on February 9, 1987, thus:

PAYMENTS:

Bills will be rendered by the Company to the Customer monthly in accordance with the applicable rate schedule. Said bills are payable to collectors or at the main or branch offices of the Company or at its authorized banks within ten (10) days after the regular reading date of the electric meters. The word “month” as used herein and in the rate schedule is hereby defined to be the elapsed time between two succeeding meter readings approximately thirty (30) days apart. **In the event of the stoppage or the failure by any meter to register the full amount of energy consumed, the Customer shall be billed for such period on an estimated consumption based upon his use of energy in a similar**

³⁹ SEC. 6. *Disconnection of Electric Service.*-x x x

For purposes of this Act, “differential billing” shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either: (a) the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery, (c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: *Provided, however,* That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

⁴⁰ Records, Vol. II, p. 110.

period of like use or the registration of a check meter.⁴¹ (Emphasis supplied)

Spreading the ₱61,709.11 over the 6-month period covered by the “differential billing” will yield a monthly rate of ₱10,284.85 - well within Permanent Light’s average net bill for the previous months. It is undisputed by respondents that from September 20, 1993 to March 22, 1994, Permanent Light continued to enjoy petitioner’s services even as its electric meter stopped functioning and no monthly electric bills were issued to it. We cannot therefore allow respondents to enrich themselves unjustly at the expense of petitioner public utility.

However, we are at a loss as to how petitioner Meralco arrived at the second “differential billing” for ₱38,693.53, which represents Permanent Light’s unregistered consumption from March 22, 1994 to April 21, 1994. It bears mentioning that it was not until April 19, 1994 that petitioner’s Fully Phased Inspectors replaced Permanent Light’s electric meter. In months prior to that, Permanent Light’s electric meter had been stationary; hence, the first differential bill for its consumption from September 20, 1993 to March 22, 1994. The first differential bill was computed in accordance with the Terms of Service approved by the Bureau of Energy. It is only proper that the same standard be used in estimating Permanent Light’s consumption for the period of March 22, 1994 to April 21, 1994.

Considering, however, that Permanent Light’s electric meter had stopped registering its consumption for months prior to April 20, 1994, we shall base our estimate on Permanent Light’s use of energy in a similar period. Permanent Light’s Bill History⁴² shows that from March 19, 1992 to April 20, 1992, it consumed 3,648 KWhours of electricity. It last posted the same level of consumption for the period of July 20, 1993 to August 19, 1993, for which it was billed ₱10,834.58. We deem this amount a reasonable approximation of the net bill that respondents should pay for

⁴¹ Id. at 134.

⁴² Id. at 109.

Permanent Light's use of electricity from March 22, 1994 to April 21, 1994.

We now turn to the question of whether respondents are entitled to actual damages for the supposed overbilling by petitioner Meralco of their electric consumption from April 20, 1994 to November 28, 2001.

Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty premised upon competent proof or the best evidence obtainable.⁴³

Respondents anchor their claim for actual damages on the alleged overbilling by petitioner Meralco of Permanent Light's electricity use from April 20, 1994 to November 28, 2001. In support, respondents presented in evidence the Comparative Monthly Meralco Bills of Permanent Light Mfg. Enterprises from 1985-2001.⁴⁴ Said document lists the amounts which respondents supposedly paid based on Permanent Light's electric bills from the year 1985 to 2001 for a total of ₱2,466,941.22. In particular, respondents submitted "representative Meralco bills" of Permanent Light for the years 1985 to 1987, 1993 to 1997 and 2001 to 2002.

On January 29, 2002, respondents filed with the court *a quo* an Urgent Motion to Proffer and Mark the Latest Meralco Bill of ₱9,318.65 which was Reflected in the 3rd Meralco Electric Meter Recently Installed by Defendant Meralco. Attached to said pleading is a copy of Permanent Light's electric bill for the period of November 29, 2001 to December 29, 2001 for ₱9,318.65. Apparently, Meralco installed a new electric meter at the

⁴³ *Manila Electric Company v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, December 13, 2007, 540 SCRA 62, 79.

⁴⁴ Records, Vol. II, pp. 202-203.

premises of Permanent Light on November 28, 2001.

Respondents claim that the bill for ₱9,318.65 more accurately reflects Permanent Light's normal consumption, consistent with the latter's electric bills before its meter was first replaced on April 20, 1994. Respondents argue that, at most, their net bill should be at par with those of Permanent Light's neighboring establishments, Eureka Steel and Asiatic Steel Manufacturing Co., (Asiatic Steel) which are purportedly engaged in the same business. For the court's reference, respondents submitted "representative Meralco bills" of Eureka Steel for 1996 to 1997 and Asiatic Steel for the years 1994 to 1998. Using the figures in the latter bills vis-a-vis Permanent Light's "comparative bills" from 1986 to 2001, respondents seek the refund of ₱1,138,898.86, representing their alleged overpayment to Meralco.

However, Section 34,⁴⁵ Rule 132 of the 1997 Rules of Civil Procedure, as amended, dictates that the court shall consider no evidence which has not been formally offered. In this case, respondents rely heavily on the bill for ₱9,318.65 covering the period of November 29, 2001 to December 29, 2001 to demonstrate a defect in the replacement meter installed at Permanent Light on April 20, 1994. However, said bill was not included in the Written Offer of Exhibits which respondents filed much earlier, on October 30, 1998. To be sure, it could not have been made part thereof.

Yet, even if we disregard the bill for ₱9,318.65, we cannot ignore the sudden and unexplainable increase in Permanent Light's electric consumption following the replacement of its broken meter. Normally, when a tampered electric meter is replaced, assuming the same amount of monthly rate of usage, the new electric meter will register the increased use of electricity that had previously been concealed by the tampered meter.⁴⁶

⁴⁵ SEC. 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

⁴⁶ *Manila Electric Company (MERALCO) v. Chua*, supra note 27 at 102.

While Permanent Light's electric meter, indeed, registered a sharp increase in its electricity use after being replaced on April 20, 1994, there is no direct evidence to suggest that respondents tampered with said meter. Truth be told, respondents repeatedly sought technical assistance from Meralco after Permanent Light's electric meter stopped working on December 7, 1993,⁴⁷ *albeit*, without success. This fact remains undisputed by petitioner.

Based on Permanent Light's Meralco bills of record, its electricity use has increased by approximately 96.3% from an average of 1,672 KWhours per month in 1985 to 3,282 KWhours per month in 1993. On the other hand, the last recorded electric consumption of Permanent Light before its meter broke, that is, from August 19, 1993 to September 20, 1993, was 3,432 KWhours while it registered a reading of 11,904 KWhours from June 20, 1994 to July 20, 1994 – a 246.85% increase in consumption over a period of nine (9) months.

This inordinate surge in electric reading is inconsistent with the pattern of steady but gradual rise in Permanent Light's consumption over the years. To our mind, the fact that Permanent Light registered a significant increase in its electric use after the replacement meter was installed is no reason to automatically conclude that its meter had been running tampered long before the same stopped working. From 1985 to 1993, petitioner Meralco has observed nothing irregular with Permanent Light's recorded electric use such as a drastic and unexplainable drop in its consumption to arouse suspicion that its meter has been tampered. As the appellate court correctly observed, petitioner did not even present an iota of proof to refute the claim that the replacement meter was running at an unusually high speed.⁴⁸ It must be underscored that petitioner has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein.⁴⁹

⁴⁷ Records, Vol. II, p. 403.

⁴⁸ *Rollo*, p. 38.

⁴⁹ *Manila Electric Company v. T.E.A.M. Electronics Corporation*, supra note 43 at 77.

Notably, respondents complained of a sudden spike in Permanent Light's net bill in their Letter⁵⁰ to Meralco dated December 7, 1993 - two days before Permanent Light's meter stopped working. Thus, if it is true that there was evidence of tampering found on April 19, 1994 yet Permanent Light continued to register an increased consumption even after its meter was replaced, the better view would be that the defective meter was not actually corrected after the first inspection.

Be that as it may, we cannot award actual damages to respondents.

We reiterate that actual or compensatory damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. The award is dependent upon competent proof of the damage suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.⁵¹

In this case, respondents presented a summary of Permanent Light's electric bills from the years 1986 to 2001. Said list contains the amounts which respondents allegedly paid on Permanent Light's from 1986 to 2001. Curiously, respondents submitted mere "representative samples" of Permanent Light's electric bills for the years 1985 to 1987 and from 1993 to 1997. It appears, however, that respondents conveniently selected the bills which cover the period from December to mid-March - months in which demand for electricity is normally less. To our mind, respondents did this for no other reason than to magnify the disparity between Permanent Light's net bill before and after its meter was replaced on April 20, 1994 so that it can demand greater in damages.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages.⁵² Temperate or moderate damages, which are more than nominal but less than

⁵⁰ Records, Vol. I, p. 13.

⁵¹ *Quisumbing v. Manila Electric Company*, supra note 26 at 211-212.

⁵² *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.⁵³ The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

In this case, we are convinced that respondents sustained damages from the abnormal increase in Permanent Light's electric bills after petitioner replaced the latter's meter on April 19, 1994. However, respondents failed to establish the exact amount thereof by competent evidence. Considering the attendant circumstances, an award of temperate damages in the amount of ₱300,000 is just and reasonable.

Finally, we delete the award of attorney's fees for lack of basis.

An award of attorney's fees has always been the exception rather than the rule. Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate.⁵⁴ The trial court must make express findings of fact and law that bring the suit within the exception. What this demands is that factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.⁵⁵

Here, the award of attorney's fees in favor of respondents appeared only in the *fallo* of the trial court's Decision dated July 9, 2003. Neither did the appellate court proffer any justification for sustaining said award.

WHEREFORE, the Decision dated May 21, 2008 of the Court of Appeals in CA-G.R. CV No. 80572 is **AFFIRMED with**

⁵³ CIVIL CODE OF THE PHILIPPINES, Art. 2224.

⁵⁴ *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 92.

⁵⁵ *Id.* at 93-94.

MODIFICATIONS, as follows:

(a) Petitioner is ordered to pay respondents ₱300,000 as temperate damages, ₱100,000 as moral damages and ₱50,000 as exemplary damages;

(b) Respondents are ordered to pay petitioner ₱10,834.58, representing the estimate of its unregistered consumption for the period from March 22, 1994 to April 21, 1994; and

(c) The award of attorney's fees is **DELETED** for lack of basis.


Costs against petitioner.

SO ORDERED.




MARTIN S. VILLARAMA, JR.
Associate Justice

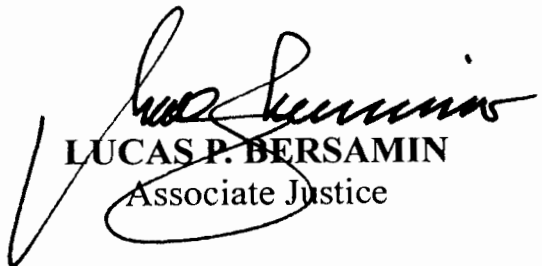
WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice