

## **FIRST DIVISION**

**[ G.R. No. 167691, September 23, 2008 ]**

**CAMARINES SUR IV ELECTRIC COOPERATIVE, INC., PETITIONER,  
VS. EXPEDITA L. AQUINO, RESPONDENT.**

### **R E S O L U T I O N**

**CORONA, J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to set aside the January 5, 2005 decision<sup>[1]</sup> and March 22, 2005 resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 81666.

Respondent Expedita L. Aquino bought several personal computers and leased a commercial building in Tigaon, Camarines Sur for purposes of establishing a computer gaming business. She had the electrical service in the building restored because the former tenant, a certain Mrs. Paglinawan,<sup>[3]</sup> had it disconnected when she gave up the occupancy thereof. Respondent paid the reconnection fee as well as the fee corresponding to the electric consumption covering the period of April 17, 2002 to May 16, 2002 to petitioner Camarines Sur IV Electric Cooperative, Inc. in Mrs. Paglinawan's name. However, respondent failed to pay the electric bills in the succeeding months.

Because of adverse reports, petitioner conducted an inspection of the electrical wiring of the leased building, took pictures thereof and gave respondent's overseer a report of pilferage of electricity with the notation:

"Disconnected w/light/illegal tapping."

Petitioner alleged that respondent violated RA 7832<sup>[4]</sup> and required her to pay the differential billing and penalty within 48 hours; otherwise, the electric service would be disconnected. A conciliatory conference between the parties was held where petitioner presented respondent with two options: deposit the differential billing of P3,367.00 to avoid disconnection during the pendency of the criminal action to be filed by petitioner or pay the amount of the differential billing and the penalty of P15,000.00, in which case the matter would be considered closed and the filing of a criminal case dispensed with.

Respondent refused to choose any of the options as she felt that to do so would be tantamount to an admission of guilt. Consequently, her electrical service was permanently disconnected on January 23, 2003.

Respondent filed a complaint for damages against petitioner in the Regional Trial Court (RTC). She alleged that due to the disconnection of electrical services, her business operation was interrupted causing her damages in the form of unrealized income, rentals paid for the premises she was unable to use and renovation costs of

the leased building.

Petitioner filed an answer with affirmative defenses. It alleged, among others, that the complaint failed to state a cause of action. According to petitioner, no contract to supply electricity was entered into between them. Thus, respondent's complaint had no basis and should be dismissed.

Respondent subsequently amended her complaint. Petitioner still insisted on moving for its dismissal, reiterating that the complaint stated no cause of action.

The trial court initially denied the motion to dismiss in an order dated July 10, 2003. It held that, as respondent was in possession of the premises to which petitioner supplied electricity, there was, in a way, a contract between the parties.

When petitioner moved for reconsideration, the court *a quo*, in its December 22, 2003 order, made a turnaround and ruled in petitioner's favor (second RTC order).<sup>[5]</sup> It stated that respondent's payment of the reconnection fee did not suffice to create a new contract between the parties as the same was made in Mrs. Paglinawan's name, whose contract with petitioner was terminated upon the disconnection of the electrical service.

Respondent received a copy of the second RTC order on December 23, 2003 and moved for reconsideration thereof on January 5, 2004. Respondent mailed a copy of her motion for reconsideration (with notice of hearing) to petitioner's counsel only on the same date. The notice of hearing indicated that the hearing of the motion was set on January 9, 2004. Petitioner filed an opposition thereto, alleging, among others, that the motion should be denied as respondent did not comply with the 3-day rule (as provided in the Rules of Court).

On February 3, 2004, the trial court denied respondent's motion for reconsideration for lack of merit.<sup>[6]</sup> However, it was silent on the motion's non-compliance with the 3-day rule.

Respondent filed an appeal in the CA on February 5, 2004, insisting that the complaint sufficiently stated a cause of action for damages. For its part, petitioner reiterated its stand on the issue. It also called the CA's attention to the alleged flaw in respondent's motion for reconsideration in the

RTC. It argued that the motion was a pro forma motion (since it violated the 3-day rule) which should have been dismissed outright by the trial court. Furthermore, it did not stop the running of the 15-day period for respondent to appeal which should have been reckoned from her receipt of the second RTC order on December 23, 2003. Consequently, her February 5, 2004 notice of appeal (which was filed 44 days after she received a copy of the second RTC order) was filed late.

The appellate court held that the RTC erred in dismissing the complaint as indeed a cause of action existed. The CA ruled that the matter of whether or not a contract, express or implied, existed between the parties was a matter of defense that must be resolved in a trial on the merits. It stated that such issue was not relevant in a motion to dismiss based on failure to state a cause of action. However, it did not pass upon the issue relative to the timeliness of respondent's appeal.