

SECOND DIVISION

[G.R. NO. 129807, December 09, 2005]

DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. CRISTINA OPEÑA AND TEOFILO RAMOS, JR., RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals in CA-G.R. CV No. 35114 dated 29 May 1997 affirming, with modification, the decision^[2] of the Regional Trial Court (RTC), Branch 17, Davao City, in Civil Case No. 19,648-89 declaring as null and void the documents presented by petitioner with regard to respondents' unbilled consumption.

The records establish the following facts:

In their complaint filed on 19 July 1989 before the RTC of Davao City, respondents, as plaintiffs below, alleged that petitioner Davao Light and Power Co., Inc. (DLPC), defendant below, is a franchise holder authorized to operate an electric and power plant in Davao City. Respondents, on the other hand, are petitioner's customers as electric meter nos. 47019 and 1587 were attached to respondent Teofilo Ramos, Jr.'s (respondent Ramos, Jr.) office and residence, respectively. Under the agreement between respondents, respondent Ramos, Jr. was supposed to pay the electric bills to petitioner although both electric meters were under the account name of his mother-in-law, respondent Cristina Opeña (respondent Opeña).

Sometime in 1988, petitioner, through its fieldmen or inspection team, examined the electric meter in respondent Ramos, Jr.'s office allegedly in response to a report of an alleged "broken Davao Light seal." As a consequence of said inspection, both electric meters were removed and eventually replaced. Respondents purportedly observed that their electric consumption a few months after the installation of the replacement meters were relatively similar with their usage as recorded by the previous electric meters. Thus, they were taken aback when petitioner charged them the amount of P 7,894.99 for one billing month. After they complained about this excessive amount, petitioner made an adjustment and subsequently reduced said electric bill to P5,625.55 which respondents paid under protest.

On 17 May 1989, petitioner wrote respondent Opeña charging her P84,398.76 for the alleged unbilled electric consumption of respondent Ramos, Jr.'s office from September 1983 to September 1988.^[3] The amount was allegedly arrived at based on the highest recorded consumption from 1983 to 1988.

On 17 June 1989, petitioner sent another letter^[4] to respondent Opeña reiterating its demand for the payment of the unbilled electric consumption. This time, the letter contained a threat that respondents' failure to settle their obligation within ten

days would compel petitioner to take the necessary legal action before the proper court and would result in the immediate disconnection of the electric supply to respondents.

On 23 June 1989, petitioner again wrote respondent Opeña demanding the amount of P49,512.63 allegedly representing the amount of unbilled electric consumption of respondent Ramos, Jr.'s residence.^[5] As was stated in the 17 May 1989 letter, petitioner claimed that this amount was computed based on the highest recorded consumption from 1983 to 1988.

Respondents asserted in their complaint that these demands by petitioner were without proper and correct basis as they had paid all their electric bills for the period 1983 to 1988. They also stated that the charges for unbilled electric consumption could have emanated from fraudulent manipulations executed by petitioner itself.

Respondents, therefore, prayed for the following reliefs from the trial court:

- a) Forthwith issue a temporary restraining order before notice and a writ of preliminary injunction, directing the defendants or any person acting for and in its behalf to desist and refrain from doing any act that would disconnect the electrical light connection at plaintiffs' house and office, and also desist in enforcing the so-called "Computations" referred to.
- b) Order the defendants to adjust correctly or calibrate the electric meters by competent men or persons.
- c) To declare null and void the documents (Annexes "C" to "C-*" and "G" to "G-*") denoted as "Computation of Tampered Meter".
- d) Order the payment of moral and exemplary damages in the amounts of P 200,000.00 and P 50,000.00 respectively.
- e) Direct defendants to reimburse plaintiffs the amount of P 2,000.00 as initial expenses in the preparation and filing of the complaint; and to further pay the amount of P 33,477.86 in concept of attorney's fee.
- f) To make the preliminary injunction final.

PLAINTIFFS further pray for such other relief that may be just and proper in the premises.^[6]

Traversing the allegations of the complaint, petitioner declared in its answer^[7] that at the time of the institution of this suit, petitioner continuously supplied electrical services to respondents pursuant to the service contracts it entered into with respondent Opeña. One of these service contracts was dated 30 May 1977^[8] under account number 510-4019 with meter number 47019. The other service contract was dated 07 November 1950^[9] under account number 510-4020 with meter number 1587.

On 16 September 1988, petitioner's representatives, together with an energy

regulation analyst of the Energy Regulatory Board (ERB) and a photographer, went to respondents' office building and residential house to examine and test the electric meters installed thereat. The examination and testing of electric meter number 47019 was allegedly witnessed by respondent Ramos, Jr.'s employee named Myrna Galagar (Galagar). In the case of electric meter number 1587, Joy Perucho (Perucho),^[10] another employee of respondent Ramos, Jr., purportedly observed the procedure.

According to petitioner, the examination of electric meter number 47019 showed that petitioner's murray seal, otherwise known as the outer seal, was already broken while the government seal or inner seal was deformed. In addition, the meter testing conducted by the ERB regulation analyst Engr. Carlos V. Reyes (Engr. Reyes) revealed that electric meter number 47019 was not registering any electric consumption at light load and, when it was tested at full load, the same only recorded a 27.57% consumption.

On the other hand, the examination of electric meter number 1587 indicated that its murray seal was no longer attached thereto and had been substituted with an unauthorized lead seal and the government seal which should be attached to said electric meter was already missing. The inspection team also noticed that said electric meter's second and third dials from the right were misaligned. Just like electric meter number 47019, Engr. Reyes also subjected electric meter number 1587 to a test which revealed that it was not registering any electric consumption at light load and recorded only 33.53% of electricity utilized at full load.

As the two electric meters in question were already inaccurate, Engr. Reyes and petitioner decided to remove them and had them individually wrapped, sealed, and brought to petitioner's office for safekeeping.

Pursuant to the procedure adopted by petitioner in cases of meter tampering, respondents were required to make a deposit for the repair and replacement of the two electric meters. The amount of deposit required in this case was pegged at P4,000.00 for each account which was paid by respondent Ramos, Jr. on 19 September 1988. With this payment, petitioner immediately installed "good meters" at respondents' residence and office.

Everything seemed back to normal following the replacement of the allegedly tampered electric meters on 19 September 1988. Problem, however, arose anew when in January 1989, respondents received from petitioner an electric bill charging them with the amount of P7,894.99 for account number 510-4019 prompting respondents to file a complaint with petitioner. On verification, it was discovered that electric meter number 7168 which replaced electric meter number 47019 erroneously recorded respondents' electric consumption beginning November 1989. Accordingly, respondents' January electric bill was revised to only P5,625.55 and credit memorandum no. 38711 dated 07 February 1989^[11] was issued in favor of respondents.

On or about 17 March 1989, petitioner's customer relations department received a letter-complaint from Konsumo Dabaw regarding respondents' recomputed electric bill for account number 510-4019. Petitioner thereafter conducted another verification of electric meter number 7168 and it was then discovered that said

meter was running backwards, and that no error was committed by petitioner in respondents' meter reading on 14 January 1989. Accordingly, petitioner sent a letter^[12] to Konsumo Dabaw explaining this matter and on 30 March 1989, petitioner replaced electric meter number 7168 with electric meter number 24305.

In the third week of June 1989, petitioner adjusted respondents' December 1988 to May 1989 electric bills based on the latter's monthly consumption as registered by electric meter number 24305 and taking into consideration credit memorandum no. 3887.

Petitioner likewise claimed in its answer that respondents' unbilled consumption amounting to P84,398.76 relative to account number 510-4019^[13] and P49,512.63 for account number 510-4020^[14] covered the period September 1983 to September 1988 and was based on the highest registration of the electric meter for each account – 1,047 kilowatthours for account number 510-4019^[15] and 963 kilowatthours in the case of account number 510-4020.^[16] The amounts claimed as unbilled consumption, however, merely represented petitioner's initial bargaining position with respondents in the hope that the latter would come clean and submit proof as to when they had the electric meters tampered and made additions to their connected load.

Also, petitioner asserted in its answer that its letter dated 16 June 1989^[17] giving respondents the period of ten days within which to settle the matter with petitioner was designed to bring respondents to the bargaining table for a fair and just settlement of petitioner's claim and that the threatened actions contained in said letter were never implemented by petitioner.

Furthermore, based on the summaries of respondents' monthly electric consumption from September 1983 to June 1989^[18] it would appear that the tampering of electric meter number 47019 occurred between late December 1983 or early January 1984 when said meter registered only 302 kilowatthours – a drastic drop in consumption considering its recording of 708 kilowatthours for the previous billing period. As regards electric meter number 1587, its tampering allegedly occurred sometime in late July or early August 1985 when this electric meter registered only 170 kilowatthours which was way below its previous recording of 663 kilowatthours for the previous billing period.

In its answer, petitioner moreover presented another method of computing respondents' unbilled consumption which was arrived at using respondents' daily average consumption registered by the new electric meters and multiplying this by thirty days. Thus, for account number 510-4019, petitioner charged respondents the amount of P65,918.13 as of September 1988 plus 2% monthly surcharge from October 1988 to July 1989 totalling P8,636.12. In addition, this amount was supposed to carry the 2% monthly surcharge until fully paid. With respect to account number 510-4020, petitioner claimed the amount of P28,328.45 for the period August 1985 to September 1988, plus P4,028.74 representing 2% monthly surcharge from October 1988 to July 1989. Similarly, this amount would carry the 2% surcharge until fully settled by respondents.

Ultimately, petitioner prayed that judgment in its favor be given ordering respondents to jointly and severally pay:

- (1) The sum of P74,554.25 as unbilled consumption under Account No. 510-4019 inclusive of 2% monthly surcharge up to July, 1989, plus 2% monthly surcharge thereon from August, 1989 until fully paid.
- (2) The sum of P32,357.19 as unbilled consumption under Account No. 510-4020 inclusive of 2% monthly surcharge up to July, 1989, plus 2% monthly surcharge thereon from August, 1989 until fully paid.
- (3) The sum of P50,000.00 as damages for attorney's fee and expenses of litigation, plus an additional P30,000.00 should there be an appeal or petition for certiorari.
- (4) The sums of P20,000.00 and P10,000.00 as moral damages and exemplary damages.^[19]

On 20 July 1989, Presiding Judge Renato A. Fuentes, considering the nature of the complaint and the urgency of the provisional remedy prayed for, ordered petitioner from doing any act complained of within twenty days from receipt of said order and scheduled the hearing for the issuance of the writ of preliminary injunction on 01 August 1989.^[20]

After the pre-trial, the continuous trial of the case proceeded in reverse order as agreed upon by the parties in order for petitioner, as defendant below, to prove its allegation of meter tampering.

JOSE ROBERTO A. SARDINIA (Sardinia) testified that at the time material to this case, he was the legal assistant in petitioner's Legal Affairs and Public Relation Department. On 16 September 1988, petitioner's system department ordered the conduct of inspection and examination of alleged tampered electric meters. Relative to said directive, two teams were formed, one of which was headed by Sardinia himself. The other members of his team were an instrument technician from petitioner's laboratory department named Alfredo Lucero (Lucero); driver; lineman; photographer; a representative of the city electrician office; and Engr. Reyes.

In the afternoon of said date, his team proceeded to the place where the electric meters in question were installed. There, they were met by respondent Ramos, Jr.'s employees Perucho and Galagar. Perucho and Galagar informed Sardinia that it was their employer, respondent Ramos, Jr., who actually paid the electric bills under the account name of respondent Opeña. In addition, Perucho and Galagar told the team that respondent Ramos, Jr., was in Manila during that time. Despite this information, the inspection team proceeded with their planned examination of the two electric meters. Engr. Reyes conducted the meter testing which was witnessed by Perucho and Galagar. The photographer who accompanied the inspection team likewise took photos of the two electric meters while these were being examined.^[21]

As part of his duty as the team leader, Sardinia made written reports of the results of the meter testing. According to Sardinia, the government seal (inner seal) of the electric meter bearing serial number 47019 was deformed and its DLPC seal (outer