



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIONAL
CORPORATION,

POWER G.R. No. 231679

Petitioner, Present:

- versus -

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

BOHOL I ELECTRIC
COOPERATIVE, INC. (BOHECO
I), represented by General
Manager, ENGR. CARLOS B.
ITABLE, and NATIONAL
ELECTRIFICATION
ADMINISTRATION (NEA),

Promulgated:

Respondents.

April 28, 2021

MisDOC B-11

X-----X

DECISION

INTING, J.:

This is a Petition for Review¹ under Rule 45 of the Rules of Court seeking to set aside the Decision² dated April 28, 2017 of the Court of Appeals (CA) in CA-G.R. CEB CV. No. 04344 which affirmed with modification the Decision³ dated December 16, 2011 of Branch 49, Regional Trial Court (RTC), City of Tagbilaran, Bohol in Civil Case No. 5672 declaring Bohol I Electric Cooperative (BOHECO) as the true and legal owner of the 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001 (subject transformer).

¹ *Rollo*, pp. 11-33.

² *Id.* at 39-57; penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi, concurring.

³ *Id.* at 58-63; penned by Presiding Judge Fernando G. Fuentes III.

The Antecedents

The case stemmed from a complaint for recovery of possession and payment of back rentals filed by BOHECO against NAPOCOR.

NAPOCOR filed a third-party complaint against NEA as the third-party defendant.

The complaint alleged the following:

On September 13, 1979, BOHECO received a radio message from one Director Santos of NEA, stating:

“REUR AVAILABLE 5 MVA SUBSTATION TRANSFORMER PD
REQUEST ALLOW PERSONNEL OF NPC TO BORROW SAID
TRANSFORMER FOR THEIR TONGONAN GEOTHERMAL
PLANT IN ORMOC PD END

DIRECTOR SANTOS”⁴

Thereafter, NAPOCOR’s Engineer Virgilio Ungab (Engr. Ungab) prepared a requisition voucher for “One (1) set of Substation Transformer, 5MVA 15.2/7.62/4.16 KV complete with SN-540808001, dated 1972 and its accessories”⁵ which BOHECO’s Acting General Manager Melchor B. Bobis (GM Bobis) approved. A handwritten note located at the lower left portion of the voucher reads, “[s]ubject to NEA, NPC & BOHECO I negotiations.”⁶

On September 14, 1979, another requisition voucher was prepared requesting for some materials or supplies for “NPC, Tongonan, Ormoc City,” which GM Bobis likewise approved. BOHECO’s Warehouseman E.C. Angchan then issued a material charge ticket for the same materials/supplies which Engr. Ungab received. The same persons issued and received, respectively, another material charge ticket to which a typewritten note reads, “[s]ubject to NEA, NPC & BOHECO I Negotiation.”⁷

⁴ *Id.* at 41.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

On March 26, 1985, BOHECO's Officer-in-Charge Engineer Carlos B. Itable (Engr. Itable) wrote a letter to Mr. Romeo A. Perlado (Mr. Perlado), NAPOCOR's Regional Manager for the Visayas Utility Operations, reminding him about the subject transformer and notifying him that there was nothing in BOHECO's records showing of any agreement between NEA and NAPOCOR regarding the subject transformer. He also asked for possible rental payment as compensation for the depreciation of the subject transformer's value. On April 20, 1985, BOHECO sent a telegram to Mr. Perlado asking for copies of all documents pertinent to NEA and NAPOCOR's agreement concerning the replacement of the latter's 5MVA substation transformer and reiterating its request for rental payment. The request fell on deaf ears. Hence, BOHECO's complaint.⁸

In its answer, NAPOCOR averred the following:

NAPOCOR's possession of the subject transformer was legitimate from the very beginning as it was NEA's replacement of its transformer that was withdrawn from NAPOCOR's Tongonari power plant in Leyte. It relied on NEA's authority to validly and legally transfer ownership and possession of the subject transformer without obligations or conditions on its part. BOHECO did not make any objection or protest when the subject transformer was pulled out from its office in 1981.⁹

NAPOCOR had been in open, notorious, and uninterrupted possession of the subject transformer. As its defense, it stressed that BOHECO's right to enforce its claim had already prescribed; and that the complaint failed to comply with the Court's Administrative Circular No. 04-94¹⁰ regarding the additional requirements concerning the filing of petitions in the Supreme Court and the CA.¹¹

Thereafter, NAPOCOR filed a motion for leave to file third-party complaint against NEA alleging that it acquired possession of the subject transformer through the latter's directives and maintained that the subject

⁸ *Id.* at 41-42.

⁹ *Id.* at 42

¹⁰ Entitled, "Additional Requisites for Civil Complaints, Petitions and other Initiatory Pleadings Filed in all Courts and Agencies, other than the Supreme Court and the Court of Appeals, to Prevent Forum Shopping or Multiple Filing of such Pleadings," approved on February 8, 1994.

¹¹ *Rollo*, p. 42.

transformer was a replacement of its own transformer which was withdrawn by NEA.¹²

BOHECO, in its answer to the affirmative defense, averred that NAPOCOR merely borrowed the subject transformer; that whatever contract NAPOCOR had with NEA, it was not a party to it; and that while NAPOCOR came into possession of the subject transformer lawfully, its possession, however, became adversarial after Antonio Corpuz, NAPOCOR's Vice-President, insisted that the subject transformer was swapped for NAPOCOR's own 3MVA substation transformer.

NEA, in its answer to the third-party complaint alleged the following:

The parties' cause of action had already prescribed and barred by laches. NEA stressed that BOHECO and NAPOCOR took approximately 16 years before filing their respective complaints; that recovery of possession of movable personal property acquired in good faith prescribes in four years; and if in bad faith, the action prescribes in eight years. NAPOCOR had no cause of action against it for failure to exhaust all administrative remedies mandated by Presidential Decree No. (PD) 242,¹³ which prescribes the procedure for administrative settlement of disputes, claims, and controversies between and among government offices, including government-owned and -controlled corporations.¹⁴

On June 24, 1996, the RTC found merit in NEA's motion to dismiss the third-party complaint. Accordingly, the Third-party Complaint was dismissed. However, on October 15, 1996, upon NAPOCOR's motion for reconsideration, the RTC granted NAPOCOR's motion on the ground that NEA failed to file an opposition to NAPOCOR's amended motion for reconsideration.¹⁵

Trial on the merits ensued.

¹² *Id.*

¹³ Entitled, "Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, including Government-owned or controlled Corporations, and For Other Purposes," approved on July 9, 1973.

¹⁴ *Rollo*, pp. 42-43.

¹⁵ *Id.* at 43.

Evidence for BOHECO

Engr. Itable's testimony is as follows:

BOHECO owns the subject transformer, which is presently in the possession of NAPOCOR. It was by reason of a radio message sent by NEA directing BOHECO to accommodate NAPOCOR's request to borrow the subject transformer that it came to the possession of NAPOCOR. Pertinent documents like requisition vouchers and material charge tickets were prepared, approved, and signed by the concerned officials or representatives.¹⁶

BOHECO acquired the subject transformer at the price of ₱712,221.38. At the time the subject transformer was released to NAPOCOR, BOHECO was still paying the monthly amortizations to NEA. At present, the subject transformer would already cost ₱3 to 4 Million.¹⁷

It was Engr. Ungab of NAPOCOR who pulled out the subject transformer from BOHECO's office on September 18, 1979.

On March 26, 1985, Engr. Itable wrote a letter addressed to NAPOCOR asking rental payment for the use of the subject transformer. It was followed by a telegram dated April 22, 1985, this time addressed to NAPOCOR and NEA, asking for a copy of the agreement between the two regarding the subject transformer, but to no avail.¹⁸

On April 29, 1985, Engr. Itable wrote a letter to NEA's Cooperative Administrator, Gen. Pedro G. Dumol. On June 15, 1987, he wrote another letter addressed to Engr. Teodulo J. Pinlac of NAPOCOR in Tagbilaran City. He likewise sent a letter to the General Manager of LEYECO V in Ormoc City, who received the subject transformer. On January 21, 1991, he wrote a response letter to the letter of NAPOCOR's Vice-President. On July 4, 1994, he wrote a letter to NAPOCOR's Vice-President for the Visayas requesting for a replacement of the subject transformer as there were areas in Bohol that were encountering low

¹⁶ *Id.* at 43-44.

¹⁷ *Id.* at 44.

¹⁸ *Id.*

voltage; however, the request was denied.¹⁹

In his recollection of events, Engr. Itable said that BOHECO passed Resolution No. 13, Series of 1986, addressed to NEA, seeking assistance for the recovery of the subject transformer. Then, on April 4, 1987, another board resolution was passed demanding from NAPOCOR the return of the subject transformer. Likewise, demands for payment of rental in the amount of ₱10,000.00 per month were made.²⁰

Evidence for NAPOCOR

NAPOCOR presented Engr. Ungab, Engr. Alfredo Tumagan (Engr. Tumagan), and Engr. Ernesto Oreiro²¹ (Engr. Oreiro).

In his testimony, Engr. Ungab stated that he was instructed to pull out the subject transformer from BOHECO and to ship it to Tongonan, Ormoc City. BOHECO did not react to the pulling out of the subject transformer when it was told that the order came from the "higher-ups." The reason for the pulling out of the subject transformer was to save on the cost of shipping; that instead of shipping BOHECO's transformer to Masbate, it was NAPOCOR's transformer that was shipped to Masbate and BOHECO's transformer was the one shipped to Tongonan. He insisted that NAPOCOR has its own supply of transformers that makes it unnecessary to borrow transformers from BOHECO. He clarified that Masbate Electric Cooperative (MASELCO) and BOHECO are separate and distinct cooperatives, but both are under NEA.²²

Engr. Tumagan corroborated Engr. Ungab's testimony.

Further, Engr. Oreiro testified that he did not see any document relating to the subject transformer, but knows only of the verbal instructions coming from the "higher-ups." NAPOCOR does not borrow, lease, or has ever borrowed or leased any equipment in the construction or operation of its power plant because NAPOCOR, in itself, installs transformers. He was involved in the installation of the subject transformer, but he was not in Bohol to witness its pulling out and

¹⁹ *Id.*

²⁰ *Id.*

²¹ Spelled as Oriero in some parts of the *rollo*.

²² *Rollo*, pp. 44-45.

shipment. The subject transformer is still in Tongonan and is still operational.²³

Sometime in 1999, BOHECO asked NAPOCOR for rental payment for the use of the subject transformer, but the latter did not pay because of the internal agreement entered into by and between NAPOCOR and NEA to swap NAPOCOR's 3MVA transformer with BOHECO's 5MVA transformer. He confirmed that a 5MVA transformer is valued more than a 3MVA transformer; that a 5MVA transformer would roughly cost around ₱100,000.00, but as to its present value, he could not give an estimate because he was only involved in the operation and maintenance of the plant; and that he was not familiar with the charge sheet or receipt where the value of the 5MVA transformer was indicated.²⁴

Evidence for NEA

NEA presented BOHECO's witness, Engr. Oreiro as its hostile witness to prove that contrary to his testimony, there was no swapping of transformers that happened between BOHECO and NAPOCOR. As a hostile witness, he reiterated his statement that he only assisted in the installation of the subject transformer; neither did he receive the subject transformer when it arrived in Tongonan. Moreover, he confirmed that the transfer of the subject transformer was upon the instruction of his plant manager in BOHECO, who, on other other hand, received an instruction from NAPOCOR's Regional Office in Cebu.²⁵

Ruling of the RTC

On December 16, 2011, the RTC rendered a Decision²⁶ in favor of BOHECO. It declared that BOHECO was entitled to the restoration of the subject transformer which was unlawfully withheld from it. It also ordered the payment of back rentals in arrears for the use of the subject transformer.

The *fallo* of the Decision reads:

²³ *Id.* at 45.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 58-63.

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the plaintiff in the instant case, BOHECO, as the true and legal owner of the 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001;
2. Directing and Ordering defendant, the National Power Corporation (NPC), to return forthwith to BOHECO, possession, custody and control of the above-adverted 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001, which it has illegally retained;
3. Directing and Ordering third-party plaintiff, the NPC and the third-party defendant, the National Electrification Administration (NEA) to pay BOHECO, jointly and severally, the sum of Four Hundred Fifty Thousand Pesos (P450,000.00), representing the sought (sic) for back rentals and attorney's fees equivalent to 20% of the stated amount and the costs of the suit.

All other claims are hereby DISMISSED.

SO ORDERED.²⁷

Both NAPOCOR and NEA appealed to the CA.

Ruling of the CA

On April 28, 2017, the CA rendered the assailed Decision²⁸ denying the appeal of NAPOCOR, but granting the appeal of NEA.

The CA affirmed the RTC Decision with modification in that it deleted the award of attorney's fees. It further found NAPOCOR as the only liable party for the payment of rentals in arrears reckoned from the time the subject transformer was pulled out from BOHECO's office until NAPOCOR surrenders it to BOHECO. It furthermore imposed legal interest on NAPOCOR's obligation following the ruling in *Nacar v. Gallery Frames, et al.*²⁹ (*Nacar*).

²⁷ *Id.* at 62-63.

²⁸ *Id.* at 39-57.

²⁹ 716 Phil. 267 (2013).

The dispositive portion of the CA Decision reads:

WHEREFORE, NAPOCOR's appeal is DENIED and NEA's appeal is GRANTED. The Decision dated 16 December 2011 of the Regional Trial Court, 7th Judicial Region, Branch 49, City of Tagbilaran, in Civil Case No. 5672, is hereby AFFIRMED with modification deleting the award of attorney's fees; finding only the National Power Corporation (NAPOCOR) liable for payment of rentals-in-arrears from the time it pulled-out the subject substation transformer until it surrenders the same to BOHECO; and imposing legal interest on NAPOCOR's obligation. In view of the foregoing:

- (1) The RTC is DIRECTED to appoint, with dispatch, three (3) commissioners for the purpose of determining the reasonable and fair rent on the subject substation transformer.
- (2) NAPOCOR is DIRECTED to surrender to BOHECO the subject substation transformer, within fifteen (15) days from notice hereof.
- (3) Legal interest is imposed on NAPOCOR's obligation with BOHECO, computed as follows, viz -
 - (i) 12% interest per *annum* shall be imposed on the total obligation computed from June 26, 1985, until June 30, 2013;
 - (ii) 6% interest per *annum* from July 1, 2013, until finality of this judgment; and
 - (iii) the total amount of the obligation, inclusive [of] the interest, shall earn interest at 6% per *annum*, from finality of this decision until full payment thereof.

SO ORDERED.³⁰

Hence, the instant petition.

NAPOCOR raises a sole ground for consideration of the Court, to wit:

THE COURT OF APPEALS ERRED IN HOLDING THAT NPC ALONE IS LIABLE FOR PAYMENT OF RENTALS-IN-ARREARS TO BOHECO ON THE GROUND THAT NEA ALLEGEDLY DID

³⁰ *Id.* at 56-57.

NOT EVEN BENEFIT FROM THE USE OF THE SUBJECT SUBSTATION TRANSFORMER CONTRARY TO THE FINDING OF THE TRIAL COURT AND THE ADMISSION OF BOHECO ITSELF, THAT BOTH NPC AND NEA BENEFIT[T]ED FROM THE USE OF THE SUBSTATION TRANSFORMER.³¹

The Petition

NAPOCOR maintains that the CA erred in holding it solely liable for payment of rentals in arrears to BOHECO.³² It argues that based on the evidence presented, it appears that its possession of the subject transformer is legitimate from the very beginning because it was upon NEA's directive that it pulled out the subject transformer from BOHECO as a replacement of its 3MVA transformer, which was transferred to MASELCO.³³ NAPOCOR stresses the full authority of NEA over all electric cooperatives pursuant to PD 269³⁴ to justify its possession and exercise of control over the subject transformer.³⁵

On the question of what happened to the subject transformer of BOHECO, Engr. Tumagan testified in this manner:

x x x "Because there was a plan of National Electrification Administration (NEA) to transfer the 5MVA to Masbate. But they agreed that in order to lessen the expenses of the National Electrification Administration (NEA), National Power Corporation (NPC) will be the one to get the transformer from Bohol to Leyte. And the transformer of NPC at Leyte will be brought to Masbate in order to lessen the expenses because from Leyte is nearer to Masbate compared to Bohol."³⁶

NAPOCOR asserts that it would not have taken possession of the subject transformer had there been no order from NEA.³⁷ Thus, as a possessor in good faith, NAPOCOR insists that it is entitled to all the

³¹ *Id.* at 21.

³² *Id.* at 23.

³³ *Id.* at 25.

³⁴ Entitled, "Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the said Objective, Prescribing Terms and Conditions for their Operations, The Repeal of Republic Act No. 6038, and For Other Purposes," approved on August 6, 1973.

³⁵ *Rollo*, p. 26.

³⁶ *Id.* at 27-28.

³⁷ *Id.*, at 28.

fruits of the subject property and is not under obligation to pay any rentals thereof.³⁸

Further, NAPOCOR believes that NEA benefitted from the use of the subject transformer because per testimony of Engr. Itable, BOHECO continued to pay the monthly amortizations to NEA even after NAPOCOR already pulled out the subject transformer from BOHECO. Hence, by BOHECO's continued payment to NEA, the latter gained benefits from the subject transformer even if it was in the possession of NAPOCOR.³⁹

BOHECO's Comment

BOHECO argues that the CA erred in holding NAPOCOR as solely liable for the payment of rentals in arrears. BOHECO asserts that the RTC was correct when it declared that NAPOCOR and NEA were jointly liable for payment of reasonable rentals of the subject transformer because both gained benefits from the use of the subject transformer—NAPOCOR has the subject transformer under its possession and is exercising dominion over it; while NEA was continuously accepting payments for the subject transformer from BOHECO even after it was pulled out from the latter's office and transferred to NAPOCOR in Leyte.⁴⁰

NEA's Comment/Opposition

NEA insists on the following: NAPOCOR presented no evidence to prove that NEA instructed it to take the subject transformer from BOHECO's office.⁴¹ The only proof NAPOCOR presented was a handwritten marginal note in the requisition voucher stating "subject to NEA, NPC, and BOHECO I Negotiations"⁴² without bearing a signature coming from NEA's representative.⁴³ The phrase "to negotiate" means that there is no agreement that has been reached yet,⁴⁴ and that pending negotiation, there is no agreement or decision that exists to bind the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ As culled from the Comment (On the Petition for Review on *Certiorari* Dated July 3, 2017) dated October 12, 2017 of Bohel I Electric Cooperative, Inc., *id.* at 79.

⁴¹ As culled from the Comment/Opposition (On NPC's Petition for Review on *Certiorari*) dated October 6, 2017 of National Electrification Administration, *id.* at 68.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 69.

parties.⁴⁵ NEA maintains that Engr. Tumagan of NAPOCOR testified that there was only a plan to transfer the subject transformer from BOHECO to NAPOCOR.⁴⁶

NEA further argues that the testimonies made by NAPOCOR's witnesses were made true by BOHECO's letter dated March 26, 1985 addressed to Mr. Perlado, who was then Regional Manager of Visayas Utility Operations of NAPOCOR which reads, "*since September 1979 when it was withdrawn by Engr. Virgilio Ungab for shipment to Tongonan, Leyte geothermal plant and we cannot find in our record of any written conditions between the [NPC] and the [NEA] regarding its transfer x x x.*"⁴⁷

Hence, NEA maintains that NAPOCOR's claim is just a bare allegation not supported by evidence or by law.⁴⁸

NAPOCOR's Consolidated Reply

NAPOCOR reiterates, among others, the RTC's findings that it acquired custody, control, and possession of the subject transformer by virtue of NEA's directive.⁴⁹ Thus, it is wrong for the CA to rule that the payment of the back rentals was NAPOCOR's sole liability.⁵⁰

Further, NAPOCOR claims that NEA cannot simply escape liability by denying participation in the transaction on the ground that there is no written document to prove its claims.⁵¹

Issue

Did the CA err in holding NAPOCOR solely liable for the payment of rentals in arrears to BOHECO on the ground that NEA did not benefit from the use of the subject transformer?

⁴⁵ *Id.* at 69.

⁴⁶ *Id.*

⁴⁷ *Id.* at 70.

⁴⁸ *Id.*

⁴⁹ As culled from the Consolidated Reply dated May 11, 2018 of National Power Corporation, *id.* at 89.

⁵⁰ *Id.* at 90.

⁵¹ *Id.* at 92.

The Court's Ruling

The Court denies the petition.

At the outset, there is no more question as to which entity owns the subject transformer. Both the RTC and the CA aptly ruled that BOHECO owns it. It is likewise beyond question that the possession and control of the subject transformer was transferred to NAPOCOR. The manner by which the subject transformer was transferred to the latter is established by reason of a radio message sent to and received by the General Manager of BOHECO from NEA's Director, which reads:

"REUR AVAILABLE 5MVA SUBSTATION TRANSFORMER PD
REQUEST ALLOW PERSONNEL OF NPC TO BORROW SAID
TRANSFORMER FOR THEIR TONGONAN GEOTHERMAL
PLANT IN ORMOC PD END

DIRECTOR SANTOS"⁵²

Further, the transfer of the subject transformer to NAPOCOR does not mean that its ownership was likewise transferred to NAPOCOR. Notably, there is a complete absence of records that will support NAPOCOR's allegation that ownership over the subject transformer was also transferred in its favor. Thus, the Court quotes with approval the finding of the CA, to wit :

It is beyond dispute that plaintiff BOHECO, the owner of the 5MVA Substation Transformer 13.2/7.62/4.16 KV with SN-540808001, subject of the instant case, was since 1979 been deprived of custody, control and possession of subject transformer. It is not disputed further, having judicially admitted such fact, that the subject transformer owned by BOHECO, is within the custody, control and possession of third-party plaintiff, the NPC installed as its Tongonan Geothermal Plant in Ormoc for the Leyte-Samar Grid.⁵³

Verily, the action for recovery of possession and for payment of back rentals against NAPOCOR is proper. Following the declaration that the ownership of the subject transformer belongs and still remains with BOHECO, both the CA and the RTC are correct in directing NAPOCOR to surrender the possession, custody, and control of the subject transformer to BOHECO.

⁵² *Id.* at 41.

⁵³ *Id.* at 60.

Accordingly, BOHECO is entitled to the payment of rentals-in-arrears from the time the subject transformer was pulled out from its premises until NAPOCOR surrenders it to the former.

Who then is liable for the payment of rentals in arrears?

The RTC declared that NAPOCOR and NEA should pay BOHECO, jointly and severally, the sum of ₱450,000.00 representing the back rentals and attorney's fees equivalent to 20% of the stated amount.⁵⁴

On appeal, the CA ruled that only NAPOCOR is liable.

NAPOCOR insists that NEA should be solely liable reiterating its claim that its possession of the subject transformer is legitimate from the very beginning as it was transferred to its possession and control upon NEA's instruction;⁵⁵ that it acted in good faith following the instruction from NEA to get the subject transformer of BOHECO in exchange for NAPOCOR's own 3MVA transformer which, on the other hand, was shipped to MASELCO.⁵⁶

The Court finds no merit in NAPOCOR's assertions.

There is nothing in the records that would show any written agreement between NAPOCOR and NEA regarding the transfer of the ownership of the subject transformer to NAPOCOR.

Well settled is the rule that there is solidary liability only when the obligation expressly so states, or when the obligation requires solidarity.⁵⁷ In the case, as correctly found by the CA, other than NEA's radio message sent to BOHECO directing the transfer of the subject transformer to NAPOCOR, there are no other pieces of evidence presented to prove that NEA bound itself with the latter to pay BOHECO

⁵⁴ *Id.* at 62-63.

⁵⁵ *Id.* at 25.

⁵⁶ *Id.* at 26-27.

⁵⁷ *Keihin-Everett Forwarding Co., Inc. v. Tokio Marine Malayan Insurance Co., Inc.*, G.R. No. 212107, January 28, 2019.

for the use of the subject transformer.⁵⁸

The Court likewise adheres to the findings of the CA that the RTC erred in concluding that NEA also benefitted from the use of the subject transformer.⁵⁹ The fact that BOHECO was still paying for the monthly amortizations on the subject transformer to NEA, even after BOHECO was deprived of possession thereof, does not mean that NEA also benefitted from the use of subject transformer to make it solidarily liable with NAPOCOR. Further, BOHECO's continuous payment of the monthly amortizations to NEA, after possession of the subject transformer was transferred to NAPOCOR, only proves that BOHECO retained ownership of the subject transformer.

Simply put by the CA, "*neither is there any proof to show that NEA had, at one time or another gained possession of the subject transformer.*"⁶⁰

As to the fair and reasonable amount of rental, the Court adopts the findings of the CA that the RTC awarded to BOHECO back rentals in the amount as prayed for by the latter without even making any findings thereon.⁶¹

*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.*⁶² Thus, the findings of the CA:

More importantly, BOHECO omitted to present any other evidence at all on what it considers to be fair rental value by way of testimonies of persons who are in the power business/industry to show how much the rent is being charged on 5MVA substation transformers, with the same specifications as the subject substation transformer, and that it is the amount prevailing in the power industry. This way, the courts will be aided in arriving with reasonable certainty at the amount of rents which BOHECO failed to earn.

"In civil cases, the party having the burden of proof must

⁵⁸ *Rollo*, p. 52.

⁵⁹ *Id.* at 52-53.

⁶⁰ *Id.* at 53.

⁶¹ *Id.*

⁶² *Manila Electric Company v. T.E.A.M. Electronics Corp.*, 564 Phil. 639, 656 (2007), citing *Quisimbing v. Manila Electric Company*, 429 Phil. 727, 747 (2000).

establish his case by preponderance of evidence. He who alleges a fact has the burden of proving it and a mere allegation is not evidence.” Hence, the amount awarded to BOHECO, as payment for rentals, is deleted, and accordingly, we remand the case to the RTC to determine, with aid of court-appointed commissioners, the fair rental value on the subject transformer, from the time it was pulled-out from BOHECO’s office until NAPOCOR surrenders it to BOHECO.

Worth mentioning is that the nature of the funds for disbursement is public. As such, the amount of rental must be ascertained with absolute certainty and supported by factual and legal bases.⁶³

In all, the Court finds that the CA did not err in holding NAPOCOR solely liable for the payment of rentals in arrears to BOHECO on the ground that it was the only one that benefitted from the use of the subject transformer.

Further, the CA is correct in deleting the award of attorney’s fees for failure of the RTC to state the grounds to warrant its award in BOHECO’s favor. Settled is the rule that the lower court must state the factual, legal, or equitable justification for the award of attorney’s fees;⁶⁴ that the grant thereof cannot be stated in the dispositive portion of the decision without stating the reasons therefor.⁶⁵ In fact, the CA is precluded from supplementing the bases for the award of attorney’s fees when the lower court failed to provide a discussion of the grounds or reasons for the award thereof in its decision.⁶⁶

As to the imposition of the legal interest, the CA correctly applied the ruling in *Nacar*, thus:

Applying the aforestated ruling, NAPOCOR is, therefore, liable for payment of interest, at twelve percent (12%) per *annum* computed from March 26, 1985 (date of extrajudicial demand for payment of rentals-in-arrears and rentals due in the interim until surrender of the subject substation transformer), until June 30, 2013, and from July 1, 2013, six percent (6%) shall be imposed, until finality of this judgment. Furthermore, the total obligation shall, itself, earn interest at the rate of six percent (6%) per annum from [*sic*] finality of judgment until full payment thereof.⁶⁷

⁶³ *Rollo*, pp. 53-54.

⁶⁴ *Marilag v. Martinez*, 764 Phil. 576 (2015), citing *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752 (2013).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Rollo*, p. 56.

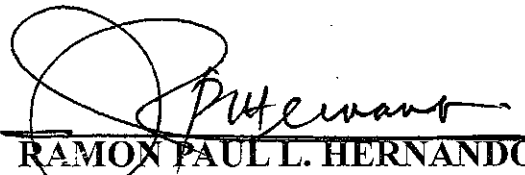
WHEREFORE, the petition is **DENIED**. The Decision dated April 28, 2017 of the Court of Appeals in CA-G.R. CEB CV. No. 04344 is **AFFIRMED** *in toto*.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest 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.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


ALEXANDER G. GESMUNDO
Chief Justice