

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



JOHN P. KISELIS,
Complainant,

- versus -

ERC CASE NO. 2016-011 CC

**DAVID A. YOUNG IN HIS
CAPACITY AS MANAGING
DIRECTOR OF COLLIERS
INTERNATIONAL PHILIPPINES,
INC., LEE GARDENS
CONDOMINIUM ASSOCIATION,
INC. (LGCAI) AND ITS BOARD
OF DIRECTORS, CHARMAINE
UY OF LEE GARDENS
PROPERTY DEVELOPMENT
COMPANY, INC., AND THE
MANILA ELECTRIC COMPANY
(MERALCO),**

Respondent.

X-----X

D O C K E T E D
Date: AUG 09 2017
By: [Signature]

DECISION

For resolution before the Commission is the complaint filed on February 12, 2016 by Mr. John P. Kiselis against respondents, Mr. David Young, in his capacity as Managing Director of Colliers International Philippines, Inc. (CIPI), the Lee Gardens Condominium Association, Inc. (LGCAI) and its Board of Directors, Ms. Charmaine Uy of Lee Gardens Property Development Company, Inc. (LGPDCI), and the Manila Electric Company (MERALCO), for their alleged refusal to provide electric service at Unit No. 2808 NT, Lee Gardens Condominium, Shaw Boulevard corner Lee Street, Mandaluyong City.

Statement of Facts

The present complaint arose from a dispute in the payment of utility bills. Mr. John P. Kiselis is the lessee of Unit No. 2808, NT Lee Gardens Condominium. Aside therefrom, he also rented a storage room¹ at the condominium's B5 basement. LGCAI bills Mr. Kiselis his water and electricity charges, and for rental fees for the use of storage room through CIPI, a real estate managing firm.²

¹ Paragraph (a) (13) of complainant's "Position Paper"
² Paragraph 3 of the "Complaint"

On November 5, 2015, LGCAI sent a billing statement to Mr. Kiselis and demanded the payment of his electricity and water bills. Mr. Kiselis, however, refused to settle the amount upon his firm belief that he had no outstanding obligation to LGCAI and insisted that he had already made advance payments of his bills. Thus, he sought the assistance of the Oliva Firme and Associates Law Firm who wrote a letter³ to CIPI's Managing Director, Mr. David Young informing him that Mr. Kiselis had already paid his storage fees until March 2016 and that his payments were not properly posted due to the lack of adequate accounting system of CIPI.

In response, CIPI claimed that it has no record of the alleged payment or advance payments made by Mr. Kiselis. It verified LGCAI's bank account and found no records that it had received any amount from Kiselis⁴. To ascertain and verify Mr. Kiselis's claim of payment, LGCAI demanded that Mr. Kiselis present the original copies of Metrobank deposit slips and Official Receipts. Mr. Kiselis, however, failed to present copies of deposit slips⁵ or any Official Receipt.

On December 10, 2016, LGCAI served Mr. Kiselis a final Disconnection Notice⁶ reminding him to pay his electricity and water bills⁷, and rental fees for the use of storage room in the total amount of PHP97,725.05. The said disconnection notice carried a warning that should Mr. Kiselis fail to pay within seven (7) days from date of Disconnection Notice, LGCAI would cut-off Mr. Kiselis's supply of electricity and water at his rented condominium unit.

Mr. Kiselis, however, remained adamant and chose not to settle the amount prompting CIPI to disconnect his electricity and water utilities at his rented unit on December 18, 2015.

Mr. Kiselis thus sought the assistance of his new counsels, The Law Firm of Mallari Fiel Lascano Brillante and Ronquillo, which then wrote a demand letter⁸ to CIPI's Managing Director, Mr. Young. In the said letter, they demanded CIPI to reconnect their client's electricity and water supply at his rented unit. They also insisted that CIPI and its staff should cease and desist from coercing their client to pay, and to communicate with them in order to amicably settle the matter.

In its reply-letter dated January 19, 2016, CIPI's managing director, Mr. Young, informed Mr. Kiselis's counsels that their client had not paid his outstanding accounts with the LGCAI. CIPI further apprised counsels that it extended every opportunity for Mr. Kiselis to

³ Dated November 11, 2015

⁴ Paragraph 4.16 Respondent LGCAI's "Answer"

⁵ Paragraph 4.14 Respondent LGCAI's "Answer"

⁶ Dated December 10, 2015

⁷ In the total amount of PHP2,111.70 for the period of October 20, 2015 to November 19, 2015. Of this amount, PHP1,773.29 accounts for Mr. Kiselis's electricity and PHP112.16 for water

⁸ Dated January 14, 2016

clear any of his unpaid accounts, but Mr. Kiselis failed to present any official receipt. Since his outstanding obligation remained unsettled, CIPI had the authority to cut-off and withhold utility services such as water and electricity pursuant to LGCAI's Board Resolution directing that should a unit owner/tenant fail to settle in full any outstanding accounts, his or her utility services such as electricity and water would be disconnected⁹.

Undeterred, Mr. Kiselis sought this Commission's intervention by filing on February 12, 2016 a complaint against respondents, Mr. David Young in his capacity as Managing Director of Colliers International Philippines, Inc. (CIPI), the Lee Gardens Condominium Association, Inc. (LGCAI) and its Board of Directors, Ms. Charmaine Uy of Lee Gardens Property Development Company, Inc. (LGPDCI), and the Manila Electric Company (MERALCO). In his complaint, Mr. Kiselis alleged that he already paid his water and electricity bills and rental fees for the use of storage room. He prays for the reconnection of his electric service at his rented unit. In support thereof, he presented Exhibit "P" and Annexes "C-2", "D-2", "F-2", "C-3", "D-3", "F-3", "C-4", and "D-4" which are **photocopies** of Metrobank Deposit Slips. He also claimed that on December 1, 2015, he deposited with the Metrobank the amount of PhP2,111.70¹⁰ as payment of his October 20, 2015 and November 19, 2015 electricity bills.

Further, he also claimed to have deposited with the Metrobank the amount of PhP7,000.00 on January 4, 2016¹¹ as advance payment for his water and electricity bills.

Thereafter, the Commission on various dates¹² conducted several conferences in order for parties to settle the case amicably. Instead, Mr. Kiselis opted to have his complaint heard in a formal proceeding. Thus, the Commission terminated its mediation efforts and conducted several hearings¹³ to afford the parties the opportunity to ventilate their respective positions.

Subsequently, Mr. Kiselis filed his "*Amended Complaint*" on May 31, 2016, praying for the issuance of an injunctive relief/temporary restraining order to enjoin respondents,¹⁴ to reconnect his electricity services. He also claimed that he deposited the amount of PhP20,000.00¹⁵ with the Metrobank on May 31, 2016 as advance payment for his water and electricity bills.

⁹ CIPI's Reply-Letter dated January 19, 2016

¹⁰ Of this amount, PhP1,773.29 accounts for Mr. Kiselis's electricity and PhP112.16 for water (LGCAI Billing Statement No. 7649)

¹¹ Subparagraph (iii) Paragraph 87 of Complainant's "*Amended Complaint*" at Page 34

¹² February 29, 2016 and March 8, 2016

¹³ May 10, 2016, May 19, 2016, May 31, 2016 and July 20, 2016

¹⁴ Mr. David Young in his capacity as Managing Director of Colliers International Philippines, Inc. (CIPI), the Lee Gardens Condominium Association, Inc. (LGCAI) and its Board of Directors, Ms. Charmaine Uy of Lee Gardens Property Development Company, Inc. (LGPDCI), and the Manila Electric Company (MERALCO)

¹⁵ "*Complainant's Ex-Parte Motion for Temporary Restraining Order and Injunction and Protective Order and Status Quo and Extension of Time for Complainant to File Responsive Pleading*" At Page 30

On July 20, 2016, respondents David Young, LGCAI and its Board of Directors, Ms. Charmaine Uy, filed their consolidated "Answer." In their consolidated "Answer", they argued that Mr. Kiselis failed to prove payment since he only presented unintelligible copies of deposit slips¹⁶, as proof of his claim for payment of his water and electricity bills and rents for use of the storage room. Moreover, they argued that Mr. Kiselis failed to establish a clear legal right for him to be entitled of an injunctive relief.

On the other hand, respondent MERALCO moved for the dismissal of the complaint on the ground that the complaint failed to state a cause of action. It argued that Mr. Kiselis's complaint did not state what act and omission MERALCO had committed which violated Mr. Kiselis' rights.

Issues

The following are the issues for resolution by the Commission:

1. Whether or not the Commission has jurisdiction over the complaint filed by Mr. Kiselis;
2. Whether or not there exists substantial evidence on record to support the fact that Mr. Kiselis had indeed paid for his October 20, 2015 to November 19, 2015 electricity bills;
3. Whether or not LGCAI, through CIPI, was justified in disconnecting and withholding electricity services of complainant at his rented unit; and
4. Whether or not Mr. Kiselis has a cause of action against MERALCO.

Discussion

The Commission has jurisdiction only with respect the issue of the disconnection of Mr. Kiselis's electricity services

The express grant of jurisdiction over the present complaint maybe found under the applicable provisions of Section 41 of Republic

¹⁶ Paragraph 4.16 of Respondent's "Answer" at Page 9

Act No. 9136 (R.A. No. 9136), or the EPIRA, and Section 3, Rule 34 of EPIRA's Implementing Rules and Regulations, to wit:

Section 41 of the EPIRA:

"Section 41. *Promotion of Consumer Interests.* - The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

Section 23 or Rule 34 of EPIRA's IRR:

SECTION 3. *Consumer Protection.* — The ERC shall ensure consumer choice and promote consumer interests. It shall issue the appropriate guidelines and mechanisms to handle the following:

- (a) **Speedy resolution of consumer complaints;**
- (b) **Creation of a permanent consumer complaint desk at ERC** and in all electric utilities and other providers of electric power to oversee the promotion of consumer interests; and
- (c) Dissemination of rate-related resolutions, including posting in the ERC website and the publication of all notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation. (Emphasis supplied)

In its previous issuances,¹⁷ the Commission had the opportunity to articulate the implication of Section 41 in relation to Section 3, Rule 34 of EPIRA's IRR. In particular, the Commission stated:

"It can be clearly gathered from the above provision that the Commission, in compliance with its mandate under Section 41 of the EPIRA, is **tasked to create a permanent consumer complaint desk for purposes of receiving and addressing consumer complaints** against electric utilities and other providers of electric power. Not only that, the Commission is also **authorized and directed to speedily resolve consumer complaints.**

The word "resolve" means "to make a formal decision about something usually by a vote or to declare" or "to decide by a formal resolution and vote." Evidently, by virtue of the foregoing legal provisions, **the Commission is legally**

¹⁷ Order dated December 5, 2016 resolving Motion for Reconsideration filed in ERC Case Nos. 2001-817 CC and 2001-818 CC and Order dated February 14, 2017 resolving Motion for Reconsideration filed in ERC Case No. 2016-040 CC

mandated to decide consumer complaints filed before it. It goes without saying that the Commission cannot decide or render decisions on consumer complaints without first conducting the requisite hearing for otherwise, it would highly offend the basic constitutionally guaranteed right to due process.

With the foregoing discussion taken altogether, it is now beyond cavil that the Commission has jurisdiction to receive, take cognizance of, hear and decide consumer complaints under Section 41 of the EPIRA and Section 3, Rule 34 of the EPIRA IRR.

Additionally, it must not be forgotten that the EPIRA has made it a policy of the State to establish a strong and purely independent regulatory body and system, *i.e.* the ERC, to **ensure consumer protection** and enhance the competitive operation of the electricity market under Section 2, paragraph (j) thereof.”

It was not disputed that electric power at the said Condominium was being supplied by the respondent MERALCO with respondent LGCAI as the power re-distributor. Unavoidably, there existed a relationship between Mr. Kiselis as a unit-user and LGCAI as a power re-distributor, and both have respective rights and obligations that are governed by both the provisions of the Magna Carta for Residential Electricity Consumers (MCREC)¹⁸ and the Distribution Services and Open Access Rules, (DSOAR), as amended¹⁹.

It is the precise reason of relationship between Mr. Kiselis and LGCAI, as unit-user of electricity and as redistributor of electricity, respectively, that this Commission limits the resolution of the issue of disconnection of Mr. Kiselis’s electricity service. It must be recalled that LGCAI claimed Mr. Kiselis to have not paid his October 20, 2015 and November 19, 2015 bill in the amount of PhP2,111.70²⁰. This is the reason why LGCAI disconnected Mr. Kiselis electricity as he could not present proof to support claim of payment.

It is well to emphasize at this juncture that **the Commission has no jurisdiction to resolve the issue on whether or not the complainant has paid, prepaid, or have already paid for his storage rents.** As this involves merely a tenant/unit owner and the Condominium Association issue, the relationship is primarily governed by Republic Act No. 4726 (R.A. 4726) or the “*The Condominium Act*” and by Republic Act No. 9904 (R.A. No. 9904) or the “*Magna Carta for Homeowners and Homeowners’ Association*”.

¹⁸ Magna Carta for Residential Electricity Consumers (MCREC)

¹⁹ Distribution Services and Open Access Rules (DSOAR), As Amended

²⁰ Of this amount, PhP1,773.29 accounts for Mr. Kiselis’s electricity and PhP112.16 for water (LGCAI Billing Statement No. 7649)

Consequently, the Commission is also without jurisdiction to determine the civil liability of LGCAI and the individual members of its Board of Directors, the MERALCO, Mr. David A. Young in his capacity as Managing Director of CIPI, and Ms. Charmaine Uy of LGPDCI and over respondent's counterclaims for damages including the issuance of any injunctive relief in favor of Mr. Kiselis. The jurisdiction to resolve the said issues pertain to another tribunal or in the regular courts of justice, which have the power and duty to determine the rights and claims of parties.

Mr. Kiselis failed to prove payment of the electricity bill

The general rule is that "one who pleads payment has the burden of proving it."²¹ This burden never parts from the party who raises the affirmative defense of payment. It remains with the party who pleads payment, and the burden can only be shifted to the other once the party pleading the affirmative defense of payment was able to present a prima facie evidence in his favor. Hence, the rule—"The burden of evidence is shifted only if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim."²²

In the present case, Mr. Kiselis insists that he had already paid his electricity bills by depositing with Metrobank the amount of PhP2,111.70²³ on December 1, 2015. He also claims to have deposited with Metrobank on January 4, 2016 the amount of PhP7,000.00. In addition, Mr. Kiselis asserts that on May 31, 2016, he deposited with Metrobank the amount PhP 20,000.00, as shown by Exhibit "P", which he submitted as evidence.²⁴ These transactions, Mr. Kiselis believes, are sufficient to cover his outstanding accounts for electrical services with LGCAI.

This notwithstanding, the Commission rules that Mr. Kiselis failed to prove his alleged deposit transactions in the amount PhP2,111.70 and PhP7,000.00, to establish his payment for electricity services. **First**, Mr. Kiselis did not present the corresponding official receipts or deposit slips despite having been given several opportunities to do so.²⁵ **Second**, assuming without conceding that he lost these documents, Mr. Kiselis could have easily obtained from the Metrobank branch a certification that on several occasions he made several deposit payments in LGCAI's Metrobank Account No. 631-3-663110704-5. His failure to present these vital pieces of evidence

²¹ *Vitarich Corporation versus Chona Locsin*, G.R. No. 181560, November 15, 2010 citing *Jimenez versus NLRC*

²² *Bank of the Philippine Islands versus Spouses Reynaldo and Victoria Royeca*, G.R. No. 176664, July 21, 2008 citing *Philippine Airlines, Inc. versus Court of Appeals*, G.R. No. 49188, January 30, 1990

²³ Of this amount, PhP1,773.29 accounts for Mr. Kiselis's electricity and PhP112.16 for water (LGCAI Billing Statement No. 7649)

²⁴ Subparagraph (iii) paragraph 87 of complainant's "Amended Complaint" at Page 34

²⁵ CIPI's Reply-Letter dated January 19, 2016

fatally affects his case. **Third**, Exhibit "P" which allegedly shows the alleged prepayment of electricity bill is unintelligible, and thus could not be properly appreciated by the Commission to establish the fact in issue.

Admittedly, Mr. Kiseslis presented several pieces of documentary evidence in the form of deposit slips, namely Exhibits "C-2", "D-2", "F-2", "C-3", "D-3", "F-3", "C-4", and "D-4". These pieces of evidence, while intelligible, are irrelevant to the issue of the present case because these pertain to the payment of storage fees, as annotated on the face of the deposit slips themselves.

While it is true that administrative bodies like this Commission are not bound by the technical rules of evidence²⁶, still this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. One of these rules in evidence, to repeat, is that a party charged with the burden of proving his allegation of facts must present **clear, positive and convincing evidence**.²⁷

Applying the foregoing rules, **Mr. Kiseslis has not presented any preponderant or substantial evidence to prove payment**. By virtue thereof, it would be unfair for Mr. Kiseslis to pass the buck to respondent LGCAI to take the responsibility of proving non-payment²⁸ of his electricity bills. By the failure of Mr. Kiseslis to present clear, positive, and convincing evidence to prove payment, LGCAI had no legal obligation to discharge the burden of proving non-payment.

LGCAI has the right to withhold water and electricity services due to Mr. Kiseslis's unpaid storage rents

The LGCAI Board Resolution provides that:

"If the Unit Owner/Tenant fails to pay, the Building Administration shall cut off or withhold from the respective unit utility services (such as water and electricity) and other services and facilities that are provided or administered by the Condominium Association until full payment has been settled."

LGCAI's measure of withholding the water and electricity of Mr. Kiseslis is an act of self-preservation. It was an act necessary in order to secure stability and maintenance of peace and order in the living

²⁶ *Canete vs. NLRC*, G.R. No. 114161, 23 November 1995, 250 SCRA 259

²⁷ *Ligaya R. Machica versus Roosevelt Services Center, Inc.*, G.R. No. 168664, May 4, 2006

²⁸ Subparagraph (i) Paragraph 105 complainant's "Amended Complaint" at Page 39

conditions at the Lee Gardens Condominium²⁹. In this regard, LGCAI is well within its right to withhold Mr. Kiselis's electricity service due to the unjustified refusal of Mr. Kiselis to pay.

On this score, the Commission respects the LGCAI's lawful exercise of a right resulting in the implementation of its Board Resolution. It would be a grave abuse of discretion on the part of the Commission to order reconnection since such an order would amount to a deprivation of property and in derogation of the proprietary rights of the respondent LGCAI.

Mr. Kiselis has no cause of action against the respondent MERALCO

Section 2, Rule 2 of the 1997 Rules of Civil Procedure defines a cause of action as an act or omission by which a person violates the right of another. In *Philippine Charter Insurance Corporation versus Central Colleges of the Philippines*,³⁰ it was settled that a cause of action has the following elements:

- 1) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
- 2) An obligation on the part of the named defendant to respect or not to violate such right; and
- 3) An act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.

It bears stressing that it is only when the last element occurs that a cause of action is completed and arises.

A perusal of the complaint shows that it fails to mention any act or omission committed by MERALCO, which gives rights to any cause of action on the part of Mr. Kiselis. In other words, there was no allegation of any wrong-doing on the part of MERALCO, which would entitle Mr. Kiselis to recover damages from it. On this score, the complaint is dismissible with respect to MERALCO based on Section 1 (g³¹) of Rule 16 of the 1997 Rules of Civil Procedures.

²⁹ CIPI's Reply-Letter dated January 19, 2016

³⁰ G.R. Nos. 180631-33, July 2, 2014

³¹ "Section 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) Xxx,

(g) That the pleading asserting the claim states no cause of action;"

WHEREFORE, the foregoing premises considered, the verified complaint filed by Mr. John P. Kiselis is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Pasig City, July 4, 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION

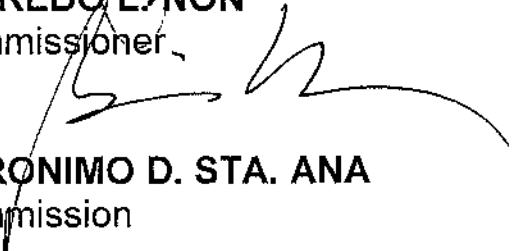

GLORIA VICTORIA C. YAP-TARUC
Commissioner

We Concur:

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Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
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