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Decision 97-02-029 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Precision Die Cutting, Inc.,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 96-08-032
(Filed August 15, 1996)

ORIGINAL

O P I N I O N

Jon R. Vaught, Attorney at Law, for Precision Die Cutting, Inc., complainant.

Terrie L. Robinson, Attorney at Law, for Pacific Gas and Electric Company, defendant.

Summary

Complainant, Precision Die Cutting (PDC), disputes responsibility for a utility bill for service from August 23, 1994, to January 4, 1995, in the amount of \$2,527.84. PDC believes its landlord is responsible for the bill since he occupied the premises where usage occurred.

Defendant, Pacific Gas and Electric Company (PG&E), contends that complainant is responsible for the bill, since the landlord has refused to pay it and the relationship between PDC and the landlord is that of "roommates" sharing lights connected to Meter C, from which the disputed usage was billed.

The case, originally filed under the expedited complaint procedure, was recalendared as a regular complaint because complainant desired to be represented by counsel. Evidentiary hearing was held in San Francisco, California, on December 16, 1996. Both parties presented testimony, evidence, and argument, and were afforded an

opportunity to cross-examine opposing witnesses. The case was submitted upon receipt of the transcript on December 23, 1996.

Based upon the evidence and argument, the complaint is granted in part and denied in part.

Background

PDC received service from PG&E from 1989 to January 1995. From 1989 to 1992 or 1993, PDC paid a proportionate share of the utility bill for the entire commercial building, pursuant to its lease. In 1993, the landlord installed separate meters for the tenants. PDC was assigned Meters J and D and billed for this service in its name; Bay Area Metal Coatings (BAMC) was assigned Meters C, E, and H and billed for service in its name. Since 10% of lighting usage billed to Meter C was for lights used by PDC, PDC paid BAMC approximately \$50-60 per month for this usage. BAMC moved in July 1994. PG&E placed the bill for Meter C in the new tenant's name, Advanced Metal Coatings (AMC), which was the landlord's company.

PDC moved effective January 4, 1995. After PDC moved, it received a bill for \$2,527.84 for Meter C. PDC has not been able to resolve the dispute with his landlord over this bill. PDC is willing to pay \$50 per month for the period of this bill, but contends it is not liable for the remaining usage and the bill does not reflect its pattern of usage on Meter C for the prior year.

Liability for Disputed Usage

PG&E argues that AMC, the landlord's company, and PDC are like "roommates" sharing utility usage. As such, PG&E contends that each company is jointly and severally liable under Tariff Rule 3D which states, in part, "...where two or more adults occupy the same premises, they shall be jointly and severally liable for bills for energy supplied."

PG&E also argues that Civil Code § 1940.9 requires that, under circumstances of shared utility meters, an aggrieved tenant may bring an action against the landlord in a court of competent jurisdiction to require that the landlord be made the customer of

record for the tenant's meter or that the landlord reimburse the tenant for payments to the utility.

We cannot agree with either argument. The billing arrangement to pay for lighting in a space occupied by PDC but wired to a different meter distinguishes itself from our "roommate" cases. This is not a case where a second party has access to the entire premises of a customer of record and benefits from all utility service provided to that customer. Therefore, the presumption of joint and several liability in roommate cases must be critically reviewed in this case.

Even where this presumption is raised, the presumption of joint and several liability is rebuttable. (§ 184 Contracts, 14 CalJur 3d 448.) PDC's evidence adequately rebuts this presumption. The same evidence provides a basis for apportioning the disputed bill.

PDC called as a witness Cliff Keddie, the owner of BAMC, which was the prior customer of record for Meter C. Meter C accommodates lighting for PDC's front office and BAMC's rented space. BAMC moved in January 1994. Keddie substantiated two crucial facts related to PDC's liability for the disputed bill. First, PDC paid an average of \$50 per month, or 10% of the total bill, to Keddie for PDC's office lighting connected to Meter C. Second, the landlord's company, AMC, occupied the space Keddie previously rented and operated the same type of business using the same equipment previously rented to Keddie. Thus, we can presume AMC's usage was similar to that of BAMC. Keddie's credible and undisputed testimony provides a reasonable apportionment of the disputed bill, 10% to PDC and 90% to AMC. Under these circumstances, it would be patently unfair to hold PDC responsible for the entire bill.

Initially, PG&E made AMC the customer of record for Meter C. Sometime at the beginning of the disputed period, PG&E changed the customer of record to PDC, after AMC was billed, paid the bills, requested a refund, and insisted that PDC be made the customer of record. However, PDC was never lawfully the customer of record; therefore, Civil Code § 1040.9 does not apply.

PDC was made the customer of record by either fraud or mistake initiated by the landlord. At no time was PDC a "roommate," nor can it be implied that PDC accepted

responsibility for the entire usage on Meter C. According to PDC's correspondence attached to its complaint, PDC complained to PG&E as soon as it received the first bill for Meter C.

Although we allow a utility customer to accept responsibility as a third party for the usage of another customer, the reverse is not true. We do not allow any customer, including a landlord, to transfer his or her responsibility for utility charges to another customer without some verification that such a transfer is warranted or acceptable to the second customer. This is the root of the problem in this dispute. In addition, this problem could have been avoided if the facilities serving PDC's office lighting had been separately metered or wired to Meters J or D. PG&E should discuss this matter with the landlord.

Accordingly, we grant the complaint in part and deny it in part. PG&E is allocated 10% of the amount deposited at the Commission in this proceeding, or \$252.78, based upon complainant's prior usage history. The remainder of the deposit is disbursed to complainant. PG&E will cease billing PDC for usage during the disputed period.

Findings of Fact

1. PDC rented a commercial space from 1989 to January 4, 1995, supplied with utility service by PG&E. From 1989 to 1992 or 1993, PDC paid a proportionate share of the entire bill for the commercial building, pursuant to its lease. After 1993, PDC was assigned Meters J and D. PDC also paid \$50-60 per month to another tenant, BAMC, for office lighting connected to BAMC's Meter C.
2. BAMC was a tenant in the same building during PDC's tenancy and moved in January 1994.
3. The landlord's company, AMC, replaced BAMC and operated the same equipment as BAMC.
4. Sometime after BAMC moved, PG&E made AMC the customer of record for Meter C. However, in January 1995, PG&E changed the customer of record to PDC without PDC's knowledge or agreement.

Conclusions of Law

1. PDC did not occupy the same space and benefit from utility service provided to BAMC or AMC during the disputed period. Therefore, PDC was not jointly and severally liable for the disputed charges.
2. PDC should pay 10% of the charges for the disputed period.

O R D E R

IT IS ORDERED that:

1. Of the amount deposited in this proceeding, \$252.78 is disbursed to Pacific Gas and Electric Company. The remainder of these funds are disbursed to complainant, Precision Die Cutting, Inc.
2. Case 96-08-032 is closed.

This order is effective today.

Dated February 19, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners