

SECOND DIVISION

[G.R. No. 216600, November 21, 2016]

**FEDERAL EXPRESS CORPORATION AND RHICKE S. JENNINGS,
PETITIONERS, VS. AIRFREIGHT 2100, INC. AND ALBERTO D.
LINA, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court filed by Federal Express Corporation (*FedEx*) and Rhicke S. Jennings (*Jennings*), assailing the January 20, 2015 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 135835, which affirmed the May 7, 2014 Order^[3] of the Regional Trial Court, Branch 70, Pasig City (*RTC*), dismissing its petition for the issuance of a confidentiality/protective order.

FedEx is a foreign corporation doing business in the Philippines primarily engaged in international air carriage, logistics and freight forwarding, while Jennings serves as its Managing Director for the Philippines and Indonesia. Respondent Airfreight 2100 (*Air21*) is a domestic corporation likewise involved in the freight forwarding business, while Alberto Lina (*Lina*) is the Chairman of its Board of Directors.

The Antecedents

FedEx, having lost its International Freight Forwarder's (*IFF*) license to engage in international freight forwarding in the Philippines, executed various Global Service Program (*GSP*) contracts with Air21, an independent contractor, to primarily undertake its delivery and pick-up services within the country.^[4]

Under the GSP arrangement, the packages sent by FedEx customers from abroad would be picked up at a Philippine airport and delivered by Air21 to its respective consignees. Conversely, packages from Philippine clients would be delivered by Air21 to the airport and turned over to FedEx for shipment to consignees abroad. As stipulated in the GSP contracts, Air21 guaranteed that all shipments would be cleared through customs in accordance with Philippine law. In the implementation of these contracts, however, several issues relating to money remittance, value-added taxes, dynamic fuel charge, trucking costs, interests, and penalties ensued between the parties.

On May 11, 2011, in an effort to settle their commercial dispute, FedEx and Air21 agreed to submit themselves to arbitration before the Philippine Dispute Resolution Center (*PDRC*). Thus, on June 24, 2011, FedEx filed its Notice of Arbitration. On October 3, 2011, the Arbitral Tribunal was constituted.

As part of the arbitration proceedings, Jennings, John Lumley Holmes (*Holmes*), the

Managing Director of SPAC Legal of FedEx; and David John Ross (*Ross*), Senior Vice President of Operations, Middle East, India and Africa, executed their respective statements^[5] as witnesses for FedEx. Ross and Holmes deposed that Federal Express Pacific, Inc., a subsidiary of FedEx, used to have an IFF license to engage in the business of freight forwarding in the Philippines. This license, however, was suspended pending a case in court filed by Merit International, Inc. (*Merit*) and Ace Logistics, Inc. (*Ace*), both freight forwarding companies, which questioned the issuance of the IFF to FedEx. Absent the said license, FedEx executed the GSP contracts with Air21 to be able to conduct its business in the Philippines. Ross and Holmes, in their individual statements, averred that Merit and Ace were either owned or controlled by Air21 employees or persons connected with the Lina Group of Companies, which included Air21.

Jennings, in his cross-examination, was identified as the source of the information that Merit and Ace were Air21's proxies and was asked if he had any written proof of such proxy relationship.^[6] He answered in the negative. In his re-direct examination, he was made to expound on the supposed proxy relationship between Merit, Ace and Air21.^[7] He responded that Merit and Ace were just very small companies with meager resources, yet they were able to finance and file a case to oppose the grant of IFF license to FedEx. Jennings also disclosed that one of the directors of Ace was a friend of Lina and that Lorna Orbe, the President of Merit, was the former "boss" of Lito Alvarez, who was also associated with Air21.

Feeling aggrieved by those statements, Lina for himself and on behalf of Air21, filed a complaint for grave slander against Jennings before the Office of the City Prosecutor in Taguig City.^[8] Lina claimed that the defamatory imputation of Jennings that Merit and Ace were Air21's proxies brought dishonor, discredit and contempt to his name and that of Air21. Lina quoted certain portions of the written statements of Holmes and Ross and the Transcript of Stenographic Notes (*TSN*) of the April 25, 2013 arbitration hearing reflecting Jennings' testimony to support his complaint.

Consequently, FedEx and Jennings (*petitioners*) filed their Petition for Issuance of a Confidentiality/Protective Order with Application for Temporary Order of Protection and/or Preliminary Injunction before the RTC alleging that all information and documents obtained in, or related to, the arbitration proceedings were confidential.^[9] FedEx asserted that the testimony of Jennings, a witness in the arbitration proceedings, should not be divulged and used to bolster the complaint-affidavit for grave slander as this was inadmissible in evidence.

On January 16, 2014, the RTC granted petitioners' application for the Temporary Order of Protection.

Meanwhile, on February 3, 2014, the arbitral tribunal rendered an award in favor of FedEx.

Subsequently, in the assailed Order, dated May 7, 2014, the RTC denied FedEx's petition for lack of merit, stating that the statements and arbitration documents were not confidential information. It went on to state that "[t]he statement and 'Arbitration Documents' which purportedly consists the crime of Grave Slander under Articles 353 and 358 of the Revised Penal Code are not in any way related to the

subject under Arbitration." The RTC further wrote that "a crime cannot be protected by the confidentiality rules under ADR. The said rules should not be used as a shield in the commission of any crime." Thus, it disposed:

WHEREFORE, in view of the foregoing, the Petition for Issuance of a Confidentiality/Protective Order is hereby DENIED for lack of merit.

The case is hereby **DISMISSED**.

SO ORDERED.^[10]

Dissatisfied, petitioners challenged the RTC order before the CA *via* a petition for review.

On January 20, 2015, the CA denied the petition. In its assailed decision, the CA explained that the declarations by Jennings were not confidential as they were not at all related to the subject of mediation as the arbitration proceedings revolved around the parties' claims for sum of money.^[11] Thus, the CA ruled that "statements made without any bearing on the subject proceedings are not confidential in nature." It must be emphasized that other declarations given therein, if relative to the subject of mediation or arbitration, are certainly confidential.^[12]

Hence, this present petition before the Court.

GROUND IN SUPPORT OF THE PETITION

A.

THE COURT OF APPEALS FAILED TO APPLY, OR OTHERWISE MISAPPLIED, SECTIONS 3(H) AND 23 OF THE ADR ACT.

B.

THE COURT OF APPEALS FAILED TO APPLY RULE 10.5 OF THE SPECIAL ADR RULES.

C.

THE TEST APPLIED BY THE COURT OF APPEALS FOR DETERMINING CONFIDENTIALITY OF INFORMATION IS NOT SANCTIONED BY AND IS INCONSISTENT WITH THE ADR ACT AND THE SPECIAL ADR RULES.

D.

THE ASSAILED DECISION RESULTS TO SUBSTANTIAL PREJUDICE TO PETITIONERS.

E.

THE ASSAILED DECISION DEFEATS PUBLIC POLICY ON

CONFIDENTIALITY OF THE RECORDS OF AND COMMUNICATIONS MADE IN THE COURSE OF ARBITRATION.^[13]

FedEx argues that the Jennings' statements were part of the (a) records and evidence of Arbitration (Section 23); (b) witness statements made therein (Section 3[h][3]); and (c) communication made in a dispute resolution proceedings (Section 3 [h][1]).^[14] They, thus, averred that Jennings' oral statements made during the April 25, 2013 arbitration hearing and the TSN of the hearings, conducted on April 22 and 25, 2013, form part of the records of arbitration and must, therefore, be considered confidential information.

For said reason, petitioners assert that Rule 10.5 of the Special Alternative Dispute Resolution (ADR) Rules, allowing for the issuance of a confidentiality/protective order, was completely disregarded by the CA when it denied the petition filed by FedEx as a result of Lina divulging what were supposed to be confidential information from ADR proceedings.

Petitioners also claim that in ruling that Jennings' statements were not confidential information, by applying the test of relevance that "statements made without any bearing on the subject proceedings are not confidential in nature," the CA used a "test" that had no basis in law and whose application in its petition amounted to judicial legislation.^[15]

Respondent Air21 and Lina (*respondents*), in their Comment,^[16] essentially countered that:

While the Alternative Dispute Resolution Act of 2004 (the "ADR Law") confers communications made during arbitration the privilege against disclosure, otherwise known as the confidentiality principle, to assist the parties in having a speedy, efficient and impartial resolution of their disputes, said privilege cannot be invoked to shield any party from criminal responsibility. The privilege is not absolute. The ADR Law does not exist in a vacuum without regard to other existing jurisprudence and laws, particularly the Revised Penal Code. Otherwise, we will permit a dangerous situation where arbitration proceedings will be used by an unscrupulous disputant as a venue for the commission of crime, which cannot be punished by the simple invocation of the privilege. Such an absurd interpretation of our laws cannot be deemed to be the underlying will of our Congress in framing and enacting our law on arbitration. To be sure, a crime cannot be protected or extinguished through a bare invocation of the confidentiality rule.^[17]

The Court's Ruling

The crucial issue in this case is whether the testimony of Jennings given during the arbitration proceedings falls within the ambit of confidential information and, therefore, covered by the mantle of a confidentiality/protection order.

The Court finds the petition meritorious.

Section 3(h) of Republic Act (R.A.) No. 9285 or the Alternative Dispute Resolution of 2004 (*ADR Act*) defines confidential information as follows:

"Confidential information" means any information, **relative to the subject of mediation or arbitration**, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. **It shall include (1) communication, oral or written, made in a dispute resolution proceedings**, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing or reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, **witness statements**, reports **filed or submitted in an arbitration** or for expert evaluation. [Emphases Supplied]

The said list is not exclusive and may include other information as long as they satisfy the requirements of express confidentiality or implied confidentiality.^[18]

Plainly, Rule 10.1 of A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*) allows "[a] party, counsel or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential x x x the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure." Thus, the rules on confidentiality and protective orders apply when:

1. An ADR proceeding is pending;
2. A party, counsel or witness disclosed information or was otherwise compelled to disclose information;
3. The disclosure was made under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential;
4. The source of the information or the party who made the disclosure has the right to prevent such information from being disclosed;
5. The source of the information or the party who made the disclosure has not given his express consent to any disclosure; and
6. The applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during the ADR proceeding.

Gauged by the said parameters, the written statements of witnesses Ross, Holmes and Jennings, as well as the latter's oral testimony in the April 25, 2013 arbitration hearing, both fall under Section 3 (h) [1] and [3] of the ADR Act which states that "*communication, oral or written, made in a dispute resolution proceedings*, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; and (3) pleadings, motions, manifestations, *witness statements*, reports filed or submitted in an arbitration or for expert