747 Phil. 170

FIRST DIVISION

[G.R. No. 156330, November 19, 2014]

NEDLLOYD LIJNEN B.V. ROTTERDAM AND THE EAST ASIATIC CO., LTD., PETITIONERS, VS. GLOW LAKS ENTERPRISES, LTD., RESPONDENT.

D E C I S I O N

PEREZ, J.:

This is a Petition for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Revised Rules of Court, primarily assailing the 11 December 2002 Resolution rendered by the Special Former Sixteenth Division of the Court of Appeals in CA-G.R. CV No. 48277,[2] the decretal portion of which states:

> WHEREFORE, the appeal is GRANTED and the April 29, 1994 Decision of the Regional Trial Court of Manila, Branch 52 thereof in Civil Case No. 88-45595, SET ASIDE. Nedlloyd Lijnen B.V. Rotterdam and The East Asiatic Co., Ltd are ordered to pay Glow Laks Enterprises, Ltd. the following:
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> 1. The invoice value of the goods lost worth $53,640.00, or its equivalent in Philippine currency;
> 2. Attorney's fees of P50,000.00; and
> 3. Costs.[3]

The Facts

Petitioner Nedlloyd Lijnen B.V. Rotterdam (Nedlloyd) is a foreign corporation engaged in the business of carrying goods by sea, whose vessels regularly call at the port of Manila. It is doing business in the Philippines thru its local ship agent, co-petitioner East Asiatic Co., Ltd. (East Asiatic).

Respondent Glow Laks Enterprises, Ltd., is likewise a foreign corporation organized and existing under the laws of Hong Kong. It is not licensed to do, and it is not doing business in, the Philippines.

On or about 14 September 1987, respondent loaded on board M/S Scandutch at the Port of Manila a total 343 cartoons of garments, complete and in good order for pre-carriage to the Port of Hong Kong. The goods covered by Bills of Lading Nos. MHONX-2 and MHONX-3[4] arrived in good condition in Hong Kong and were transferred to M/S Amethyst for final carriage to Colon, Free Zone, Panama. Both vessels, M/S Scandutch and M/S Amethyst, are owned by Nedlloyd represented in the Phlippines by its agent, East Asiatic. The goods which were valued at US$53,640.00 was agreed to be released to the consignee, Pierre Kasem,

International, S.A., upon presentation of the original copies of the covering bills of lading.[5] Upon arrival of the vessel at the Port of Colon on 23 October 1987, petitioners purportedly notified the consignee of the arrival of the shipments, and its custody was turned over to the National Ports Authority in accordance with the laws, customs regulations and practice of trade in Panama. By an unfortunate turn of events, however, unauthorized persons managed to forge the covering bills of lading and on the basis of the falsified documents, the ports authority released the goods.

On 16 July 1988, respondent filed a formal claim with Nedlloyd for the recovery of the amount of US$53,640.00 representing the invoice value of the shipment but to no avail.[6] Claiming that petitioners are liable for the misdelivery of the goods, respondent initiated Civil Case No. 88-45595 before the Regional Trial Court (RTC) of Manila, Branch 52, seeking for the recovery of the amount of US$53,640.00, including the legal interest from the date of the first demand.[7]

In disclaiming liability for the misdelivery of the shipments, petitioners asserted in their Answer[8] that they were never remiss in their obligation as a common carrier and the goods were discharged in good order and condition into the custody of the National Ports Authority of Panama in accordance with the Panamanian law. They averred that they cannot be faulted for the release of the goods to unauthorized persons, their extraordinary responsibility as a common carrier having ceased at the time the possession of the goods were turned over to the possession of the port authorities.

After the Pre-Trial Conference, trial on the merits ensued. Both parties offered testimonial and documentary evidence to support their respective causes. On 29 April 2004, the RTC rendered a Decision[9] ordering the dismissal of the complaint but granted petitioners' counterclaims. In effect, respondent was directed to pay petitioners the amount of P120,000.00 as indemnification for the litigation expenses incurred by the latter. In releasing the common carrier from liability for the misdelivery of the goods, the RTC ruled that Panama law was duly proven during the trial and pursuant to the said statute, carriers of goods destined to any Panama port of entry have to discharge their loads into the custody of Panama Ports Authority to make effective government collection of port dues, customs duties and taxes. The subsequent withdrawal effected by unauthorized persons on the strength of falsified bills of lading does not constitute misdelivery arising from the fault of the common carrier. The decretal part of the RTC Decision reads:

> WHEREFORE, judgment is rendered for [petitioners] and against [Respondent], ordering the dismissal of the complaint and ordering the latter to pay [petitioners] the amount of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00) on their counterclaims.
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> Cost against [Respondent].[10]

On appeal, the Court of Appeals reversed the findings of the RTC and held that foreign laws were not proven in the manner provided by Section 24, Rule 132 of the Revised Rules of Court, and therefore, it cannot be given full faith and credit.[11] For failure to prove the foreign law and custom, it is presumed that foreign laws are

the same as our local or domestic or internal law under the doctrine of processual presumption. Under the New Civil Code, the discharge of the goods into the custody of the ports authority therefore does not relieve the common carrier from liability because the extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has the right to receive them. Absent any proof that the notify party or the consignee was informed of the arrival of the goods, the appellate court held that the extraordinary responsibility of common carriers remains. Accordingly, the Court of Appeals directed petitioners to pay respondent the value of the misdelivered goods in the amount of US$53,640.00.

The Issues

Dissatisfied with the foregoing disquisition, petitioners impugned the adverse Court of Appeals Decision before the Court on the following grounds:

I.

> THERE IS ABSOLUTELY NO NEED TO PROVE PANAMANIAN LAWS BECAUSE THEY HAD BEEN JUDICIALLY ADMITTED. AN ADMISSION BY A PARTY IN THE COURSE OF THE PROCEEDINGS DOES NOT REQUIRE PROOF.

II.

> BY PRESENTING AS EVIDENCE THE [GACETA] OFFICIAL OF REPUBLICA DE PANAMA NO. 17.596 WHERE THE APPLICABLE PANAMANIAN LAWS WERE OFFICIALLY PUBLISHED, AND THE TESTIMONY OF EXPERT WITNESSES, PETITIONERS WERE ABLE TO PROVE THE LAWS OF PANAMA.

III.

> IF WE HAVE TO CONCEDE TO THE COURT OF APPEALS' FINDING THAT THERE WAS FAILURE OF PROOF, THE LEGAL QUESTION PRESENTED TO THE HONORABLE COURT SHOULD BE RESOLVED FAVORABLY BECAUSE THE CARRIER DISCHARGED ITS DUTY WHETHER UNDER THE PANAMANIAN LAW OR UNDER PHILIPPINE LAW.[12]

The Court's Ruling

We find the petition bereft of merit.

It is well settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. Like any other fact, they must be alleged and proved.[13] To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court[14] which read:

> SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice- consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.**
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> SEC. 25. *What attestation of copy must state*. — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

For a copy of a foreign public document to be admissible, the following requisites are mandatory: (1) it must be attested by the officer having legal custody of the records or by his deputy; and (2) it must be accompanied by a certificate by a secretary of the embassy or legation, consul general, consul, vice-consular or consular agent or foreign service officer, and with the seal of his office.[15] Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof.[16] The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.[17] The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.[18]

Contrary to the contention of the petitioners, the Panamanian laws, particularly Law 42 and its Implementing Order No. 7, were not duly proven in accordance with Rules of Evidence and as such, it cannot govern the rights and obligations of the parties in the case at bar. **While a photocopy of the *Gaceta Official* of the Republica de Panama No. 17.596, the Spanish text of Law 42 which is the foreign statute relied upon by the court *a quo* to relieve the common carrier from liability, was presented as evidence during the trial of the case below, the same however was not accompanied by the required attestation and certification.**

It is explicitly required by Section 24, Rule 132 of the Revised Rules of Court that a copy of the statute must be accompanied by a certificate of the officer who has legal custody of the records and a certificate made by the secretary of the embassy or legation, consul general, consul, vice-consular or by any officer in the foreign service of the Philippines stationed in the foreign country, and authenticated by the seal of his office. The latter requirement is not merely a technicality but is intended to

justify the giving of full faith and credit to the genuineness of the document in a foreign country.[19] Certainly, the deposition of Mr. Enrique Cajigas, a maritime law practitioner in the Republic of Panama, before the Philippine Consulate in Panama, is not the certificate contemplated by law. At best, the deposition can be considered as an opinion of an expert witness who possess the required special knowledge on the Panamanian laws but could not be recognized as proof of a foreign law, the deponent not being the custodian of the statute who can guarantee the genuineness of the document from a foreign country. To admit the deposition as proof of a foreign law is, likewise, a disavowal of the *rationale* of Section 24, Rule 132 of the Revised Rules of Court, which is to ensure authenticity of a foreign law and its existence so as to justify its import and legal consequence on the event or transaction in issue.

The above rule, however, admits exceptions, and the Court in certain cases recognized that Section 25, Rule 132 of the Revised Rules of Court does not exclude the presentation of other competent evidence to prove the existence of foreign law. In *Willamete Iron and Steel Works v. Muzzal*[20] for instance, we allowed the foreign law to be established on the basis of the testimony in open court during the trial in the Philippines of an attorney-at-law in San Francisco, California, who quoted the particular foreign law sought to be established.[21] The ruling is peculiar to the facts. Petitioners cannot invoke the *Willamete* ruling to secure affirmative relief since their so called expert witness never appeared during the trial below and his deposition, that was supposed to establish the existence of the foreign law, was obtained *ex-parte.*

It is worth reiterating at this point that under the rules of private international law, a foreign law must be properly pleaded and proved as a fact. In the absence of pleading and proof, the laws of the foreign country or state will be presumed to be the same as our local or domestic law. This is known as processual presumption.[22] While the foreign law was properly pleaded in the case at bar, it was, however, proven not in the manner provided by Section 24, Rule 132 of the Revised Rules of Court. The decision of the RTC, which proceeds from a disregard of specific rules cannot be recognized.

Having settled the issue on the applicable Rule, we now resolve the issue of whether or not petitioners are liable for the misdelivery of goods under Philippine laws.

Under the New Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe **extraordinary diligence** in the vigilance over goods, according to the circumstances of each case.[23] Common carriers are responsible for loss, destruction or deterioration of the goods unless the same is due to flood, storm, earthquake or other natural disaster or calamity.[24] **Extraordinary diligence is that extreme care and caution which persons of unusual prudence and circumspection use for securing or preserving their own property or rights**.[25] This expecting standard imposed on common carriers in contract of carrier of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for the shipment.[26] Hence, in case of loss of goods in transit, the common carrier is presumed under the law to have been in fault or negligent.[27]