

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. RAMON G. CODILLA, JR., PRESIDING JUDGE, RTC OF CEBU, BR. 19, BANGPAI SHIPPING COMPANY, AND WALLEM SHIPPING, INCORPORATED, RESPON...

G.R. NO. 170491. April 03, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure, assailing the Decision[1] of the Court of Appeals in CA-G.R. CEB-SP No. 00848, dated 9 November 2005, which dismissed the Petition for Certiorari filed by the National Power Corporation seeking to set aside the Order[2] issued by the Regional Trial Court (RTC) of Cebu, Branch 19 dated 16 November 2004, denying admission and excluding from the records plaintiff's (herein petitioner) Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J", and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R" and "S" and its sub-markings.

On 20 April 1996, M/V Dibena Win, a vessel of foreign registry owned and operated by private respondent Bangpai Shipping, Co., allegedly bumped and damaged petitioner's Power Barge 209 which was then moored at the Cebu International Port. Thus, on 26 April 1996, petitioner filed before the Cebu RTC a complaint for damages against private respondent Bangpai Shipping Co., for the alleged damages caused on petitioner's power barges.

Thereafter, petitioner filed an Amended Complaint dated 8 July 1996 impleading herein private respondent Wallem Shipping, Inc., as additional defendant, contending that the latter is a ship agent of Bangpai Shipping Co. On 18 September 1996, Wallem Shipping, Inc. filed a Motion to Dismiss which was subsequently denied by public respondent Judge in an Order dated 20 October 1998. Bangpai Shipping Co. likewise filed a Motion to Dismiss which was also denied by public respondent Judge in an Order issued on 24 January 2003.

Petitioner, after adducing evidence during the trial of the case, filed a formal offer of evidence before the lower court on 2 February 2004 consisting of Exhibits "A" to "V" together with the sub-marked portions thereof. Consequently, private respondents Bangpai Shipping Co. and Wallem Shipping, Inc. filed their respective objections to petitioner's formal offer of evidence.

On 16 November 2004, public respondent judge issued the assailed order denying the admission and excluding from the records petitioner's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R" and "S" and its sub-markings. According to the court a quo:

The Court finds merit in the objections raised and the motion to strike out filed respectively by the defendants. The record shows that the plaintiff has been given every opportunity to present the originals of the Xerox or photocopies of the documents it offered. It never produced the originals. The plaintiff attempted to justify the

admission of the photocopies by contending that "the photocopies offered are equivalent to the original of the document" on the basis of the Electronic Evidence (Comment to Defendant Wallem Philippines' Objections and Motion to Strike). But as rightly pointed out in defendant Wallem's Reply to the Comment of Plaintiff, the Xerox copies do not constitute the electronic evidence defined in Section 1 of Rule 2 of the Rules on Electronic Evidence as follows:

"(h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other models of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any printout, readable by sight or other means which accurately reflects the electronic data message or electronic document. For the purpose of these Rules, the term "electronic document" may be used interchangeably with "electronic data message".

The information in those Xerox or photocopies was not received, recorded, retrieved or produced electronically. Moreover, such electronic evidence must be authenticated (Sections 1 and 2, Rule 5, Rules on Electronic Evidence), which the plaintiff failed to do. Finally, the required Affidavit to prove the admissibility and evidentiary weight of the alleged electronic evidence (Sec. 1, Rule 9, Ibid) was not executed, much less presented in evidence.

The Xerox or photocopies offered should, therefore, be stricken off the record. Aside from their being not properly identified by any competent witness, the loss of the principals thereof was not established by any competent proof.

x x x x

WHEREFORE, plaintiff's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J", and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, and "R" are hereby DENIED admission and excluded from the records. However, these excluded evidence should be attached to the records of this case to enable the appellate court to pass upon them should an appeal be taken from the decision on the merits to be rendered upon the termination of the trial of this case.

Exhibits "S" and its sub-markings are also DENIED admission for lack of proper identification since the witness who brought these pictures expressly admitted that he was not present when the photos were taken and had not knowledge when the same were taken.[3]

Upon denial of petitioner's Motion for Reconsideration in an Order dated 20 April 2005, petitioner filed a Petition for Certiorari under Rule 65 of the Rules of Civil Procedure before the Court of Appeals maintaining that public respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying the admission of its Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, "R", and "S" and its sub-markings.

On 9 November 2005, the appellate court issued a Decision dismissing petitioner's petition for certiorari, the pertinent portions of which elucidate:

After a judicious scrutiny of the record of the case on hand, together with the rules and jurisprudence which are applicable in the premises, we have come up with a finding that the petition for certiorari filed in this case is not meritorious.

It appears that there is no sufficient showing by the petitioner that the respondent judge acted with grave abuse of discretion in issuing the assailed orders in Civil Case No. CEB-18662. As what our jurisprudence tells us,

grave abuse of discretion is meant such capricious and whimsical exercise of judgment as would be equivalent to lack of jurisdiction x x x.

In the case at bench, what has been shown to the contrary by the totality of the record on hand is that the respondent judge acted correctly and within the pale of his sound discretion in issuing the assailed order, dated November 16, 2004, in Civil Case No. CEB-18662.

Indeed, it appears that the pieces of petitioner's documentary evidence which were denied admission by the respondent judge were not properly identified by any competent witness. As pointed out by the respondent Bangpai Shipping Company in its comment on the petition filed in this case which reproduces some excerpts of the testimonies in the court a quo of Atty. Marianito De Los Santos, Engr. Nestor Enriquez, Jr. and Mr. Rodolfo I. Pagaling, the said witnesses did not have personal knowledge of and participation in the preparation and making of the pieces of documentary evidence denied admission by respondent judge x x x. In other words, there was lack of proper identification of said pieces of documentary evidence. x x x.

Then another ground for denying admission of petitioner's Exhibits A, C, D, E, H, I, J, K, L, M, N, O, P, Q, R, and S by the respondent judge is that said pieces of documentary evidence were merely photocopies of purported documents or papers. There is no gainsaying the fact that the respondent judge acted within the pale of his discretion when he denied admission of said documentary evidence. Section 3 of Rule 130 of the Rules of Court of the Philippines is very explicit in providing that, when the subject of inquiry are the contents of documents, no evidence shall be admissible other than the original documents themselves, except in certain cases specifically so enumerated therein, and the petitioner has not shown that the non-presentation or non-production of its original documentary pieces of evidence falls under such exceptions. As aptly pointed out by the respondent judge in the order issued by him on November 16, 2004:

"x x x The record shows that the plaintiff (petitioner herein) has been given every opportunity to present the originals of the Xerox or photocopies of the documents it offered. It never produced said originals."

So, the petitioner has only itself to blame for the respondent judge's denial of admission of its aforementioned documentary evidence.

Of course, the petitioner tries to contend that the photocopies of documents offered by it are equivalent to the original documents that it sought to offer in evidence, based on the Rules on Electronic Evidence which were in force and effect since August 1, 2001. However, such a contention is devoid of merit. The pieces of documentary evidence offered by the petitioner in Civil Case CEB-18662 which were denied admission by the respondent judge do not actually constitute as electronic evidence as defined in the Rules on Electronic Evidence. The informations therein were not received, retrieved or produced electronically. The petitioner has not adequately established that its documentary evidence were electronic evidence. it has not properly authenticated such evidence as electronic documents, assuming arguendo that they are. Lastly, the petitioner has not properly established by affidavit pursuant to Rule 9 of the Rules on Electronic Evidence the admissibility and evidentiary weight of said documentary evidence.

Thus, by any legal yardstick, it is manifest that the respondent judge did not commit grave abuse of discretion in denying admission of the aforementioned documentary evidence of petitioner.

But even if it be granted just for the sake of argument that the respondent judge committed an error in denying the aforementioned documentary evidence of the petitioner, still the petition for certiorari filed in this case must fail. Such error would at most be only an error of law and not an error of jurisdiction. In *Lee vs. People*, 393 SCRA 397, the Supreme Court of the Philippines said that certiorari will not lie in case of an error of law. x x x.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the petition filed in this case and **AFFIRMING** the assailed orders issued by respondent judge in Civil Case No.

CEB-18662.[4]

Aggrieved by the aforequoted decision, petitioner filed the instant petition.

The focal point of this entire controversy is petitioner's obstinate contention that the photocopies it offered as formal evidence before the trial court are the functional equivalent of their original based on its inimitable interpretation of the Rules on Electronic Evidence.

Petitioner insists that, contrary to the rulings of both the trial court and the appellate court, the photocopies it presented as documentary evidence actually constitute electronic evidence based on its own premise that an "electronic document" as defined under Section 1(h), Rule 2 of the Rules on Electronic Evidence is not limited to information that is received, recorded, retrieved or produced electronically. Rather, petitioner maintains that an "electronic document" can also refer to other modes of written expression that is produced electronically, such as photocopies, as included in the section's catch-all proviso: "any print-out or output, readable by sight or other means".

We do not agree.

In order to shed light to the issue of whether or not the photocopies are indeed electronic documents as contemplated in Republic Act No. 8792 or the Implementing Rules and Regulations of the Electronic Commerce Act, as well as the Rules on Electronic Evidence, we shall enumerate the following documents offered as evidence by the petitioner, to wit:

- Exhibit "A" is a photocopy of a letter manually signed by a certain Jose C. Troyo, with "RECEIVED" stamped thereon, together with a handwritten date;
- Exhibit "C" is a photocopy of a list of estimated cost of damages of petitioner's power barges 207 and 209 prepared by Hopewell Mobile Power Systems Corporation and manually signed by Messrs. Rex Malaluan and Virgilio Asprer;
- Exhibit "D" is a photocopy of a letter manually signed by a certain Nestor G. Enriquez, Jr., with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received;
- Exhibit "E" is a photocopy of a Standard Marine Protest Form which was filled up and accomplished by Rex Joel C. Malaluan in his own handwriting and signed by him. Portions of the Jurat were handwritten, and manually signed by the Notary Public;
- Exhibit "H" is a photocopy of a letter manually signed by Mr. Nestor G. Enriquez, Jr. with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received;
- Exhibit "I" is a photocopy of a computation of the estimated energy loss allegedly suffered by petitioner which was manually signed by Mr. Nestor G. Enriquez, Jr.;
- Exhibit "J" is a photocopy of a letter containing the breakdown of the cost estimate, manually signed by Mr. Nestor G. Enriquez, Jr., with "RECEIVED" stamped thereon, together with a handwritten notation of the date it was received, and other handwritten notations;
- Exhibit "K" is a photocopy of the Subpoena Duces Tecum Ad Testificandum written using a manual typewriter, signed manually by Atty. Ofelia Polo-De Los Reyes, with a handwritten notation when it was received by the party;
- Exhibit "L" is a photocopy of a portion of the electricity supply and operation and maintenance agreement between petitioner and Hopewell, containing handwritten notations and every page containing three unidentified

manually placed signatures;

- Exhibit "M" is a photocopy of the Notice of Termination with attachments addressed to Rex Joel C. Malaluan, manually signed by Jaime S. Patinio, with a handwritten notation of the date it was received. The sub-markings also contain manual signatures and/or handwritten notations;
- Exhibit "N" is a photocopy of a letter of termination with attachments addressed to Virgilio Asprer and manually signed by Jaime S. Patino. The sub-markings contain manual signatures and/or handwritten notations;
- Exhibit "O" is the same photocopied document marked as Annex C;
- Exhibit "P" is a photocopy of an incident report manually signed by Messrs. Malaluan and Bautista and by the Notary Public, with other handwritten notations;
- Exhibit "Q" is a photocopy of a letter manually signed by Virgilio Asprer and by a Notary Public, together with other handwritten notations.

On the other hand, an "electronic document" refers to information or the representation of information, data, figures, symbols or other models of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.[5] It includes digitally signed documents and any printout, readable by sight or other means which accurately reflects the electronic data message or electronic document.[6]

The rules use the word "information" to define an electronic document received, recorded, transmitted, stored, processed, retrieved or produced electronically. This would suggest that an electronic document is relevant only in terms of the information contained therein, similar to any other document which is presented in evidence as proof of its contents.[7] However, what differentiates an electronic document from a paper-based document is the manner by which the information is processed; clearly, the information contained in an electronic document is received, recorded, transmitted, stored, processed, retrieved or produced electronically.

A perusal of the information contained in the photocopies submitted by petitioner will reveal that not all of the contents therein, such as the signatures of the persons who purportedly signed the documents, may be recorded or produced electronically. By no stretch of the imagination can a person's signature affixed manually be considered as information electronically received, recorded, transmitted, stored, processed, retrieved or produced. Hence, the argument of petitioner that since these paper printouts were produced through an electronic process, then these photocopies are electronic documents as defined in the Rules on Electronic Evidence is obviously an erroneous, if not preposterous, interpretation of the law. Having thus declared that the offered photocopies are not tantamount to electronic documents, it is consequential that the same may not be considered as the functional equivalent of their original as decreed in the law.

Furthermore, no error can be ascribed to the court a quo in denying admission and excluding from the records petitioner's Exhibits "A", "C", "D", "E", "H" and its sub-markings, "I", "J" and its sub-markings, "K", "L", "M" and its sub-markings, "N" and its sub-markings, "O", "P" and its sub-markings, "Q" and its sub-markings, and "R". The trial court was correct in rejecting these photocopies as they violate the best evidence rule and are therefore of no probative value being incompetent pieces of evidence. Before the onset of liberal rules of discovery, and modern technique of electronic copying, the best evidence rule was designed to guard against incomplete or fraudulent proof and the introduction of altered copies and the withholding of the originals.[8] But the modern justification for the rule has expanded from the prevention of fraud to a recognition that writings occupy a central position in the law.[9] The importance of the precise terms of writings in the world of legal

relations, the fallibility of the human memory as reliable evidence of the terms, and the hazards of inaccurate or incomplete duplicate are the concerns addressed by the best evidence rule.[10]

Moreover, as mandated under Section 2, Rule 130 of the Rules of Court:

"SECTION 2. Original writing must be produced; exceptions. — There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases:

- (a) When the original has been lost, destroyed, or cannot be produced in court;
- (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original is a record or other document in the custody of a public officer;
- (d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;
- (e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole."

When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[11] The offeror of secondary evidence is burdened to prove the predicates thereof: (a) the loss or destruction of the original without bad faith on the part of the proponent/offeror which can be shown by circumstantial evidence of routine practices of destruction of documents;[12] (b) the proponent must prove by a fair preponderance of evidence as to raise a reasonable inference of the loss or destruction of the original copy; and (c) it must be shown that a diligent and bona fide but unsuccessful search has been made for the document in the proper place or places.[13] However, in the case at bar, though petitioner insisted in offering the photocopies as documentary evidence, it failed to establish that such offer was made in accordance with the exceptions as enumerated under the abovequoted rule. Accordingly, we find no error in the Order of the court a quo denying admissibility of the photocopies offered by petitioner as documentary evidence.

Finally, it perplexes this Court why petitioner continued to obdurately disregard the opportunities given by the trial court for it to present the originals of the photocopies it presented yet comes before us now praying that it be allowed to present the originals of the exhibits that were denied admission or in case the same are lost, to lay the predicate for the admission of secondary evidence. Had petitioner presented the originals of the documents to the court instead of the photocopies it obstinately offered as evidence, or at the very least laid the predicate for the admission of said photocopies, this controversy would not have unnecessarily been brought before the appellate court and finally to this Court for adjudication. Had it not been for petitioner's intransigence, the merits of petitioner's complaint for damages would have been decided upon by the trial court long ago. As aptly articulated by the Court of Appeals, petitioner has only itself to blame for the respondent judge's denial of admission of its aforementioned documentary evidence and consequently, the denial of its prayer to be given another opportunity to present the originals of the documents that were denied admission nor to lay the predicate for the admission of secondary evidence in case the same has been lost.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. CEB-SP No. 00848, dated 9 November 2005 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.
Nachura, J., no part.

- [1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 40-49.
- [2] Civil Case No. CEB-18662, penned by Judge Ramon. G. Codilla, Jr.; id. at 153-160.
- [3] RTC Order, pp. 5-6; id. at 54-55.
- [4] CA Decision, pp. 6-9; id. at 45-48.
- [5] RULES ON ELECTRONIC EVIDENCE, Rule 2, Sec. 1, par. (h).
- [6] Id.
- [7] REVISED RULES ON EVIDENCE, Rule 130, Sec. 2.
- [8] Lee v. People of the Philippines, G.R. No. 159288, 19 October 2004, 440 SCRA 662, 683.
- [9] Id.
- [10] Id. citing Seller v. Lucas Films Ltd., 808 F. 2d 1316 (1989).
- [11] Id. citing RULES OF COURT, Rule 130, Sec. 5.
- [12] Id. citing United States v. Balzano, 687 Fed. 6; Wright v. Farmers Co-op, 681 F. 2d. 549.
- [13] Id. citing 32 Corpus Juris Secundum, id. at 773.

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