Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NEDLLOYD LIJNEN B.V. ROTTERDAM and THE EAST ASIATIC CO., LTD., Petitioners,	**G.R. No. 156330**
	Present:
- *versus* -	SERENO, *C.J.,* Chairperson, VELASCO, JR.,* LEONARDO DE-CASTRO, PEREZ, and PERLAS-BERNABE, *JJ.*
GLOW LAKS ENTERPRISES, LTD., Respondent.	Promulgated: **NOV 1 9 2014**

x - x

DECISION

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:

---

* Per Special Order No. 1870 dated 4 November 2014.

1 *Rollo*, pp. 23-58.

2 Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) with Associate Justices Oswaldo D. Agcaoili and Bernardo P. Abesamis, concurring. Id. at 118-119.

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

---

3 Id. at 119.
4 Folder of Exhibits, pp. 104-105.
5 Id. at 108.
6 Id. at 119-121.

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 ₱120,000.00 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 (₱120,000.00) on their counterclaims.
>
> 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

---

7 Complaint. Records, Vol. I, pp. 1-4.
8 Answer. Id. at 10-15.
9 RTC Decision. Records, Vol. II, pp. 528-536.
10 Id. at 536.

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]

---

11 CA Decision. *Rollo*, pp. 10-17.

12 Id. at 32-46.

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.**
>
> 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

---

13 *Wildvalley Shipping Co., Ltd. v. Court of Appeals*, 396 Phil. 383, 392 (2000).
14 *ATCI Overseas Corporation v. Echin*, G.R. No. 178551, 11 October 2010, 632 SCRA 528, 535.
15 *Wildvalley Shipping Co., Ltd., v. Court of Appeals*, supra note 13 at 395.
16 *Manufacturers Hanover Trust Co. v. Guerrero*, 445 Phil. 770, 778 (2003).
17 Id.

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

---

18 Id.

19 *Wildvalley Shipping Co., Ltd., v. Court of Appeals*, supra note 13 at 395.

20 61 Phil. 471 (1935).

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 *Willamette* 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

---

21 *Manufacturer Hanover Trust Co. v. Guerrero*, supra note 16 at 779 citing *Willamette Iron and Steel Works v. Muzzal*, id.

22 *Wildvalley Shipping Co., Ltd., v. Court of Appeals*, supra note 13 at 396.

23 New Civil Code, Article 1733.

24 New Civil Code, Article 1734.

25 *National Trucking and Forwarding Corp. v. Lorenzo Shipping Corporation*, 491 Phil. 151, 156 (2005).

26 Id.

common carrier is presumed under the law to have been in fault or negligent.[27]

While petitioners concede that, as a common carrier, they are bound to observe extraordinary diligence in the care and custody of the goods in their possession, they insist that they cannot be held liable for the loss of the shipments, their extraordinary responsibility having ceased at the time the goods were discharged into the custody of the customs *arrastre* operator, who in turn took complete responsibility over the care, storage and delivery of the cargoes.[28]

In contrast, respondent, submits that the fact that the shipments were not delivered to the consignee as stated in the bill of lading or to the party designated or named by the consignee, constitutes misdelivery thereof, and under the law it is presumed that the common carrier is at fault or negligent if the goods they transported, as in this case, fell into the hands of persons who have no right to receive them.

We sustain the position of the respondent.

Article 1736 and Article 1738 are the provisions in the New Civil Code which define the period when the common carrier is required to exercise diligence lasts, *viz*:

> Article 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of article 1738.
>
> Article 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

Explicit is the rule under Article 1736 of the Civil Code that the extraordinary responsibility of the common carrier begins from the time the goods are delivered to the carrier.[29] This responsibility remains in full force

---

27 Id.

28 Petition for Review on *Certiorari. Rollo*, pp. 54-56.

29 *Saludo, Jr., v. Court of Appeals*, G.R. No, 95536, 23 March 1992, 207 SCRA 498, 511.

and effect even when they are temporarily unloaded or stored in transit, unless the shipper or owner exercises the right of stoppage *in transitu*, and terminates only after the lapse of a reasonable time for the acceptance, of the goods by the consignee or such other person entitled to receive them.[30]

It was further provided in the same statute that the carrier may be relieved from the responsibility for loss or damage to the goods upon actual or constructive delivery of the same by the carrier to the consignee or to the person who has the right to receive them.[31] In sales, actual delivery has been defined as the ceding of the corporeal possession by the seller, and the actual apprehension of the corporeal possession by the buyer or by some person authorized by him to receive the goods as his representative for the purpose of custody or disposal.[32] **By the same token, there is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods**.[33]

In this case, there is no dispute that the custody of the goods was never turned over to the consignee or his agents but was lost into the hands of unauthorized persons who secured possession thereof on the strength of falsified documents. The loss or the misdelivery of the goods in the instant case gave rise to the presumption that the common carrier is at fault or negligent.

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported.[34] **When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable**.[35] **To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods**.[36] **It must do more than merely show that some other party could be responsible for the damage**.[37]

---

30 Id.

31 *Samar Mining Company, Inc. v. Nordeutscher Lloyd and C.F. Sharp and Company, Inc.*, 217 Phil. 497, 506 (1984).

32 Id.

33 Id.

34 R*egional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co., (Philippines), Inc*., G. R. No. 168151, 4 September 2009, 598 SCRA 304, 313.

35 Id.

36 Id.

37 Id.

In the present case, petitioners failed to prove that they did exercise the degree of diligence required by law over the goods they transported. Indeed, aside from their persistent disavowal of liability by conveniently posing an excuse that their extraordinary responsibility is terminated upon release of the goods to the Panamanian Ports Authority, petitioners failed to adduce sufficient evidence they exercised extraordinary care to prevent unauthorized withdrawal of the shipments. Nothing in the New Civil Code, however, suggests, even remotely, that the common carriers' responsibility over the goods ceased upon delivery thereof to the custom authorities. To the mind of this Court, the contract of carriage remains in full force and effect even after the delivery of the goods to the port authorities; the only delivery that releases it from their obligation to observe extraordinary care is the delivery to the consignee or his agents. Even more telling of petitioners' continuing liability for the goods transported to the fact that the original bills of lading up to this time, remains in the possession of the notify party or consignee. Explicit on this point is the provision of Article 353 of the Code of Commerce which provides:

> Article 353. The legal evidence of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which the disputes which may arise regarding their execution and performance shall be decided, no exceptions being admissible other than those of falsity and material error in the drafting.
>
> **After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, unless in the same act the claim which the parties may wish to reserve be reduced to writing, with the exception of that provided for in Article 366.**
>
> In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.

While surrender of the original bill of lading is not a condition precedent for the common carrier to be discharged from its contractual obligation, there must be, at the very least, an acknowledgement of the delivery by signing the delivery receipt, if surrender of the original of the bill of lading is not possible.[38] There was neither surrender of the original copies of the bills of lading nor was there acknowledgment of the delivery in the present case. This leads to the conclusion that the contract of carriage still subsists and petitioners could be held liable for the breach thereof.

---

[38] *National Trucking and Forwarding Corp. v. Lorenzo Shipping Corporation*, supra note 25 at 157.

Petitioners could have offered evidence before the trial court to show that they exercised the highest degree of care and caution even after the goods was turned over to the custom authorities, by promptly notifying the consignee of its arrival at the Port of Cristobal in order to afford them ample opportunity to remove the cargoes from the port of discharge. We have scoured the records and found that neither the consignee nor the notify party was informed by the petitioners of the arrival of the goods, a crucial fact indicative of petitioners' failure to observe extraordinary diligence in handling the goods entrusted to their custody for transport. They could have presented proof to show that they exercised extraordinary care but they chose in vain, full reliance to their cause on applicability of Panamanian law to local jurisdiction.

It is for this reason that we find petitioners liable for the misdelivery of the goods. It is evident from the review of the records and by the evidence adduced by the respondent that petitioners failed to rebut the *prima facie* presumption of negligence. We find no compelling reason to depart from the ruling of the Court of Appeals that under the contract of carriage, petitioners are liable for the value of the misdelivered goods.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The assailed Resolution of the Court of Appeals is hereby **AFFIRMED**.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO DE-CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice