

THIRD DIVISION

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

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

DECISION

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. Rodulfo 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.