

## SECOND DIVISION

[ G.R. No. 119602, October 06, 2000 ]

**WILDVALLEY SHIPPING CO., LTD. PETITIONER, VS. COURT OF  
APPEALS AND PHILIPPINE PRESIDENT LINES INC.,  
RESPONDENTS.**

### DECISION

**BUENA, J.:**

This is a petition for review on certiorari seeking to set aside the decision of the Court of Appeals which reversed the decision of the lower court in CA-G.R. CV No. 36821, entitled "Wildvalley Shipping Co., Ltd., plaintiff-appellant, versus Philippine President Lines, Inc., defendant-appellant."

The antecedent facts of the case are as follows:

Sometime in February 1988, the Philippine Roxas, a vessel owned by Philippine President Lines, Inc., private respondent herein, arrived in Puerto Ordaz, Venezuela, to load iron ore. Upon the completion of the loading and when the vessel was ready to leave port, Mr. Ezzar del Valle Solarzano Vasquez, an official pilot of Venezuela, was designated by the harbour authorities in Puerto Ordaz to navigate the Philippine Roxas through the Orinoco River.<sup>[1]</sup> He was asked to pilot the said vessel on February 11, 1988<sup>[2]</sup> boarding it that night at 11:00 p.m.<sup>[3]</sup>

The master (captain) of the Philippine Roxas, Captain Nicandro Colon, was at the bridge together with the pilot (Vasquez), the vessel's third mate (then the officer on watch), and a helmsman when the vessel left the port<sup>[4]</sup> at 1:40 a.m. on February 12, 1988.<sup>[5]</sup> Captain Colon left the bridge when the vessel was under way.<sup>[6]</sup>

The Philippine Roxas experienced some vibrations when it entered the San Roque Channel at mile 172.<sup>[7]</sup> The vessel proceeded on its way, with the pilot assuring the watch officer that the vibration was a result of the shallowness of the channel.<sup>[8]</sup>

Between mile 158 and 157, the vessel again experienced some vibrations.<sup>[9]</sup> These occurred at 4:12 a.m.<sup>[10]</sup> It was then that the watch officer called the master to the bridge.<sup>[11]</sup>

The master (captain) checked the position of the vessel<sup>[12]</sup> and verified that it was in the centre of the channel.<sup>[13]</sup> He then went to confirm, or set down, the position of the vessel on the chart.<sup>[14]</sup> He ordered Simplicio A. Monis, Chief Officer of the President Roxas, to check all the double bottom tanks.<sup>[15]</sup>

At around 4:35 a.m., the Philippine Roxas ran aground in the Orinoco River,<sup>[16]</sup> thus

obstructing the ingress and egress of vessels.

As a result of the blockage, the Malandrion, a vessel owned by herein petitioner Wildvalley Shipping Company, Ltd., was unable to sail out of Puerto Ordaz on that day.

Subsequently, Wildvalley Shipping Company, Ltd. filed a suit with the Regional Trial Court of Manila, Branch III against Philippine President Lines, Inc. and Pioneer Insurance Company (the underwriter/insurer of Philippine Roxas) for damages in the form of unearned profits, and interest thereon amounting to US \$400,000.00 plus attorney's fees, costs, and expenses of litigation. The complaint against Pioneer Insurance Company was dismissed in an Order dated November 7, 1988.<sup>[17]</sup>

At the pre-trial conference, the parties agreed on the following facts:

- "1. The jurisdictional facts, as specified in their respective pleadings;
- "2. That defendant PPL was the owner of the vessel Philippine Roxas at the time of the incident;
- "3. That defendant Pioneer Insurance was the insurance underwriter for defendant PPL;
- "4. That plaintiff Wildvalley Shipping Co., Inc. is the owner of the vessel Malandrion, whose passage was obstructed by the vessel Philippine Roxas at Puerto Ordaz, Venezuela, as specified in par. 4, page 2 of the complaint;
- "5. That on February 12, 1988, while the Philippine Roxas was navigating the channel at Puerto Ordaz, the said vessel grounded and as a result, obstructed navigation at the channel;
- "6. That the Orinoco River in Puerto Ordaz is a compulsory pilotage channel;
- "7. That at the time of the incident, the vessel, Philippine Roxas, was under the command of the pilot Ezzar Solarzano, assigned by the government thereat, but plaintiff claims that it is under the command of the master;
- "8. The plaintiff filed a case in Middleburg, Holland which is related to the present case;
- "9. The plaintiff caused the arrest of the Philippine Collier, a vessel owned by the defendant PPL;
- "10. The Orinoco River is 150 miles long and it takes approximately 12 hours to navigate out of the said river;
- "11. That no security for the plaintiff's claim was given until after the Philippine Collier was arrested; and
- "12. That a letter of guarantee, dated 12-May-88 was issued by the Steamship Mutual Underwriters Ltd."<sup>[18]</sup>

The trial court rendered its decision on October 16, 1991 in favor of the petitioner, Wildvalley Shipping Co., Ltd. The dispositive portion thereof reads as follows:

"WHEREFORE, judgment is rendered for the plaintiff, ordering defendant Philippine President Lines, Inc. to pay to the plaintiff the sum of U.S. \$259,243.43, as actual and compensatory damages, and U.S. \$162,031.53, as expenses incurred abroad for its foreign lawyers, plus additional sum of U.S. \$22,000.00, as and for attorney's fees of plaintiff's

local lawyer, and to pay the cost of this suit.

"Defendant's counterclaim is dismissed for lack of merit.

"SO ORDERED."<sup>[19]</sup>

Both parties appealed: the petitioner appealing the non-award of interest with the private respondent questioning the decision on the merits of the case.

After the requisite pleadings had been filed, the Court of Appeals came out with its questioned decision dated June 14, 1994,<sup>[20]</sup> the dispositive portion of which reads as follows:

"WHEREFORE, finding defendant-appellant's appeal to be meritorious, judgment is hereby rendered reversing the Decision of the lower court. Plaintiff-appellant's Complaint is dismissed and it is ordered to pay defendant-appellant the amount of Three Hundred Twenty-three Thousand, Forty-two Pesos and Fifty-three Centavos (P323,042.53) as and for attorney's fees plus cost of suit. Plaintiff-appellant's appeal is DISMISSED.

"SO ORDERED."<sup>[21]</sup>

Petitioner filed a motion for reconsideration<sup>[22]</sup> but the same was denied for lack of merit in the resolution dated March 29, 1995.<sup>[23]</sup>

Hence, this petition.

The petitioner assigns the following errors to the court *a quo*:

1. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT UNDER PHILIPPINE LAW NO FAULT OR NEGLIGENCE CAN BE ATTRIBUTED TO THE MASTER NOR THE OWNER OF THE "PHILIPPINE ROXAS" FOR THE GROUNDING OF SAID VESSEL RESULTING IN THE BLOCKAGE OF THE RIO ORINOCO;
2. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE FINDINGS OF FACTS OF THE TRIAL COURT CONTRARY TO EVIDENCE;
3. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE "PHILIPPINE ROXAS" IS SEAWORTHY;
4. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING VENEZUELAN LAW DESPITE THE FACT THAT THE SAME HAS BEEN SUBSTANTIALLY PROVED IN THE TRIAL COURT WITHOUT ANY OBJECTION FROM PRIVATE RESPONDENT, AND WHOSE OBJECTION WAS INTERPOSED BELATEDLY ON APPEAL;
5. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN AWARDING ATTORNEY'S FEES AND COSTS TO PRIVATE RESPONDENT WITHOUT ANY FAIR OR REASONABLE BASIS

WHATSOEVER;

6. RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT PETITIONER'S CAUSE IS MERITORIOUS HENCE, PETITIONER SHOULD BE ENTITLED TO ATTORNEY'S FEES, COSTS AND INTEREST.

The petition is without merit.

The primary issue to be determined is whether or not Venezuelan law is applicable to the case at bar.

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.<sup>[24]</sup>

A distinction is to be made as to the manner of proving a written and an unwritten law. The former falls under Section 24, Rule 132 of the Rules of Court, as amended, the entire provision of which is quoted hereunder. Where the foreign law sought to be proved is "unwritten," the oral testimony of expert witnesses is admissible, as are printed and published books of reports of decisions of the courts of the country concerned if proved to be commonly admitted in such courts.<sup>[25]</sup>

Section 24 of Rule 132 of the Rules of Court, as amended, provides:

"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." (Underscoring supplied)

The court has interpreted Section 25 (now Section 24) to include competent evidence like the testimony of a witness to prove the existence of a written foreign law.<sup>[26]</sup>

In the noted case of ***Willamette Iron & Steel Works vs. Muzzal***,<sup>[27]</sup> it was held that:

"... Mr. Arthur W. Bolton, an attorney-at-law of San Francisco, California, since the year 1918 under oath, quoted verbatim section 322 of the California Civil Code and stated that said section was in force at the time the obligations of defendant to the plaintiff were incurred, i.e. on November 5, 1928 and December 22, 1928. This evidence sufficiently established the fact that the section in question was the law of the State of California on the above dates. A reading of sections 300 and 301 of our Code of Civil Procedure will convince one that these sections do not

exclude the presentation of other competent evidence to prove the existence of a foreign law.

"`The foreign law is a matter of fact ...You ask the witness what the law is; he may, from his recollection, or on producing and referring to books, say what it is.' (Lord Campbell concurring in an opinion of Lord Chief Justice Denman in a well-known English case where a witness was called upon to prove the Roman laws of marriage and was permitted to testify, though he referred to a book containing the decrees of the Council of Trent as controlling, Jones on Evidence, Second Edition, Volume 4, pages 3148-3152.) x x x."

We do not dispute the competency of Capt. Oscar Leon Monzon, the Assistant Harbor Master and Chief of Pilots at Puerto Ordaz, Venezuela,<sup>[28]</sup> to testify on the existence of the *Reglamento General de la Ley de Pilotaje* (pilotage law of Venezuela)<sup>[29]</sup> and the *Reglamento Para la Zona de Pilotaje N° 1 del Orinoco* (rules governing the navigation of the Orinoco River). Captain Monzon has held the aforementioned posts for eight years.<sup>[30]</sup> As such he is in charge of designating the pilots for maneuvering and navigating the Orinoco River. He is also in charge of the documents that come into the office of the harbour masters.<sup>[31]</sup>

Nevertheless, we take note that these written laws were not proven in the manner provided by Section 24 of Rule 132 of the Rules of Court.

The *Reglamento General de la Ley de Pilotaje* was published in the *Gaceta Oficial*<sup>[32]</sup> of the Republic of Venezuela. A photocopy of the *Gaceta Oficial* was presented in evidence as an official publication of the Republic of Venezuela.

The *Reglamento Para la Zona de Pilotaje N° 1 del Orinoco* is published in a book issued by the *Ministerio de Comunicaciones* of Venezuela.<sup>[33]</sup> Only a photocopy of the said rules was likewise presented as evidence.

Both of these documents are considered in Philippine jurisprudence to be public documents for they are the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of Venezuela.<sup>[34]</sup>

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.<sup>[35]</sup> The latter requirement is not a mere technicality but is intended to justify the giving of full faith and credit to the genuineness of a document in a foreign country.<sup>[36]</sup>

It is not enough that the *Gaceta Oficial*, or a book published by the *Ministerio de Comunicaciones* of Venezuela, was presented as evidence with Captain Monzon attesting it. It is also required by Section 24 of Rule 132 of the Rules of Court that a certificate that Captain Monzon, who attested the documents, is the officer who had legal custody of those records made by a secretary of the embassy or legation,