THIRD DIVISION

ATCI OVERSEAS CORPORATION, AMALIA G. IKDAL and MINISTRY OF PUBLIC HEALTH-KUWAIT	**G.R. No. 178551**
Petitioners,	Present:
	CARPIO MORALES, *Chairperson, J.,*
	BRION,
- versus -	BERSAMIN,
	VILLARAMA, JR., and
	SERENO, *JJ.*
MA. JOSEFA ECHIN,	
Respondent.	Promulgated:
	October 11, 2010

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D E C I S I O N

CARPIO MORALES, *J.*:

Josefina Echin (respondent) was hired by petitioner ATCI Overseas Corporation in behalf of its principal-co-petitioner, the Ministry of Public Health of Kuwait (the Ministry), for the position of medical technologist under a two-year contract, denominated as a Memorandum of Agreement (MOA), with a monthly salary of US$1,200.00.

Under the MOA,[1][1] all newly-hired employees undergo a probationary period of one (1) year and are covered by Kuwait's Civil Service Board Employment Contract No. 2.

Respondent was deployed on February 17, 2000 but was terminated from employment on February 11, 2001, she not having allegedly passed the probationary period.

As the Ministry denied respondent's request for reconsideration, she returned to the Philippines on March 17, 2001, shouldering her own air fare.

1[1] Annex "C" of the petition, *rollo*, pp. 59-60.

On July 27, 2001, respondent filed with the National Labor Relations Commission (NLRC) a complaint[2][2] for illegal dismissal against petitioner ATCI as the local recruitment agency, represented by petitioner, Amalia Ikdal (Ikdal), and the Ministry, as the foreign principal.

By Decision[3][3] of November 29, 2002, the Labor Arbiter, finding that petitioners neither showed that there was just cause to warrant respondent's dismissal nor that she failed to qualify as a regular employee, held that respondent was illegally dismissed and accordingly ordered petitioners to pay her US$3,600.00, representing her salary for the three months unexpired portion of her contract.

On appeal of petitioners ATCI and Ikdal, the NLRC *affirmed* the Labor Arbiter's decision by Resolution[4][4] of January 26, 2004. Petitioners' motion for reconsideration having been denied by Resolution[5][5] of April 22, 2004, they appealed to the Court of Appeals, contending that their principal, the Ministry, being a foreign government agency, is immune from suit and, as such, the

2[2] CA *rollo*, p. 197.

3[3] Id at. 32-36. Penned by Labor Arbiter Fatima Jambaro Franco.

4 [4]Id. at 26-29. Penned by Commissioner (now CA Associate Justice) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

5 [5] Id. at 30-31.

immunity extended to them; and that respondent was validly dismissed for her failure to meet the performance rating within the one-year period as required under Kuwait's Civil Service Laws. Petitioners further contended that Ikdal should not be liable as an officer of petitioner ATCI.

By Decision[6][6] of March 30, 2007, the appellate court *affirmed* the NLRC Resolution.

In brushing aside petitioners' contention that they only acted as agent of the Ministry and that they cannot be held jointly and solidarily liable with it, the appellate court noted that under the law, a private employment agency shall assume all responsibilities for the implementation of the contract of employment of an overseas worker, hence, it can be sued jointly and severally with the foreign principal for any violation of the recruitment agreement or contract of employment.

As to Ikdal's liability, the appellate court held that under Sec. 10 of Republic Act No. 8042, the "Migrant and Overseas Filipinos' Act of 1995," corporate officers, directors and partners of a recruitment agency may themselves be jointly and solidarily liable with the recruitment agency for money claims and damages awarded to overseas workers.

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6 [6] Id. at 95-104. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

Petitioners' motion for reconsideration having been denied by the appellate court by Resolution[7][7] of June 27, 2007, the present petition for review on certiorari was filed.

Petitioners maintain that they should not be held liable because respondent's employment contract specifically stipulates that her employment shall be governed by the Civil Service Law and Regulations of Kuwait. They thus conclude that it was patent error for the labor tribunals and the appellate court to apply the Labor Code provisions governing probationary employment in deciding the present case.

Further, petitioners argue that even the Philippine Overseas Employment Act (POEA) Rules relative to master employment contracts (Part III, Sec. 2 of the POEA Rules and Regulations) accord respect to the "customs, practices, company policies and labor laws and legislation of the host country."

Finally, petitioners posit that assuming *arguendo* that Philippine labor laws are applicable, given that the foreign principal is a government agency which is immune from suit, as in fact it did not sign any document agreeing to be held jointly and solidarily liable, petitioner ATCI cannot likewise be held liable, more

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7 [7] Id. at 137. Ibid.

so since the Ministry's liability had not been judicially determined as jurisdiction was not acquired over it.

The petition fails.

Petitioner ATCI, as a private recruitment agency, cannot evade responsibility for the money claims of Overseas Filipino workers (OFWs) which it deploys abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit, or that such foreign principal's liability must first be established before it, as agent, can be held jointly and solidarily liable.

In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, Republic Act No. 8042 precisely affords the OFWs with a recourse and assures them of immediate and sufficient payment of what is due them. *Skippers United Pacific v. Maguad*[8][8] explains:

> . . . **[T]he obligations covenanted in the recruitment agreement entered into by and between the local agent and its foreign principal are not coterminous with the term of such agreement** so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and

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8[8] G.R. No. 166363, August 15, 2006, 498 SCRA 639, 645 citing *Catan v. NLRC*, 160 SCRA 691.

> until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. **Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted**. (emphasis supplied)

The imposition of joint and solidary liability is in line with the policy of the state to protect and alleviate the plight of the working class.[9][9] Verily, to allow petitioners to simply invoke the immunity from suit of its foreign principal or to wait for the judicial determination of the foreign principal's liability before petitioner can be held liable renders the law on joint and solidary liability inutile.

As to petitioners' contentions that Philippine labor laws on probationary employment are not applicable since it was expressly provided in respondent's employment contract, which she voluntarily entered into, that the terms of her engagement shall be governed by prevailing Kuwaiti Civil Service Laws and Regulations as in fact POEA Rules accord respect to such rules, customs and practices of the host country, the same was not substantiated.

Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy.

It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual*

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9 [9] *Datuman v. First Cosmopolitan Manpower And Promotion Services, Inc*., G.R. No. 156029, November 14, 2008, 571 SCRA 41, 42.

presumption which, in this case, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l., v. NLRC*[10][10] illuminates:

> In the present case, **the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract** (e.g. specific causes for termination, termination procedures, etc.). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.
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> **In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law.** He is presumed to know only domestic or forum law.
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> **Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Thus, we apply Philippine labor laws in determining the issues presented before us.** (emphasis and underscoring supplied)

The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven. 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 which reads:

> 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

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10[10] G.R. No. 145587, October 26, 2007, 537 SCRA 409, 430.

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.** (emphasis supplied)

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.

To prove the Kuwaiti law, petitioners submitted the following: MOA between respondent and the Ministry, as represented by ATCI, which provides that the employee is subject to a probationary period of one (1) year and that the host country's Civil Service Laws and Regulations apply; a translated copy[11][11] (Arabic to English) of the termination letter to respondent stating that she did not pass the probation terms, without specifying the grounds therefor, and a translated copy of the certificate of termination,[12][12] both of which documents were certified by Mr. Mustapha Alawi, Head of the Department of Foreign Affairs-Office of Consular Affairs Inslamic Certification and Translation Unit; and respondent's letter[13][13] of reconsideration to the Ministry, wherein she noted that in her first eight (8) months of employment, she was given a rating of "Excellent" albeit it changed due to changes in her shift of work schedule.

11[11] Annex 'D" of the petition, *rollo*, pp. 61-63.

12[12] Annex "D-1" of the petition, id. at 64-66

13[13] Annex "E" of the petition, id. at 67.

These documents, whether taken singly or as a whole, do not sufficiently prove that respondent was validly terminated as a probationary employee under Kuwaiti civil service laws. **Instead of submitting a copy of the pertinent Kuwaiti labor laws duly authenticated and translated by Embassy officials thereat, as required under the Rules, what petitioners submitted were mere certifications attesting only to the correctness of the translations of the MOA and the termination letter which does not prove at all that Kuwaiti civil service laws differ from Philippine laws and that under such Kuwaiti laws, respondent was validly terminated.** Thus the subject certifications read:

x x x x

> This is to certify that the herein attached translation/s from Arabic to English/Tagalog and or vice versa was/were presented to this Office for review and certification and the same was/were found to be in order. **This Office, however, assumes no responsibility as to the contents of the document/s.**
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> This certification is being issued upon request of the interested party for whatever legal purpose it may serve. (emphasis supplied)

Respecting Ikdal's joint and solidary liability as a corporate officer, the same is in order too following the express provision of R.A. 8042 on money claims, *viz:*

SEC. 10. *Money Claims*.—Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages**. (emphasis and underscoring supplied)

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

CONCHITA CARPIO MORALES

Associate Justice

WE CONCUR:

ARTURO D. BRION

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARTIN S. VILLARAMA, JR. *Associate Justice*

MARIA LOURDES P. A. SERENO *Associate Justice*

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CONCHITA CARPIO MORALES

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RENATO C. CORONA

Chief Justice