

THIRD DIVISION

[G.R. No. 224112, September 02, 2020]

REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), PETITIONER, VS. BLOOMBERRY RESORTS AND HOTELS, INC. (SOLAIRE) AND BANCO DE ORO, RESPONDENTS.

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari* With Prayer for the Issuance of a Temporary Restraining Order or Status Quo Ante Order^[1] under Rule 45 of the Rules of Court, assailing the Resolution^[2] dated April 15, 2016 of the Court of Appeals (CA) in CA-G.R. AMLA Case No. 00152 denying the Urgent Motion for Additional Period of Freeze Order and Urgent Motion for Status Quo Order filed by the Republic of the Philippines as represented by the Anti-Money Laundering Council (AMLC) and granting the Urgent Motion to Lift Freeze Order^[3] filed by Bloomberry Resorts and Hotels, Inc. (BRHI).

Antecedents

In February 2016, news outlets and the media broke the story of the hacking of the account of Bangladesh Bank with the Federal Reserve Bank of New York (New York Fed) where somehow, US\$81,000,000.00 found its way to the Philippine Banking System.^[4]

In a letter dated February 16, 2016, Bangladesh Bank Governor Atiur Rahman (Governor Rahman) sought the assistance of Bangko Sentral ng Pilipinas Governor Amando M. Tetangco, Jr. (Governor Tetangco) regarding the loss of millions of US dollars from Bangladesh Bank's Account No. 021083190 with the New York Fed. According to Governor Rahman, some fraudulent payment transactions were made to the New York Fed in favour of Rizal Commercial Banking Corporation (RCBC) involving US\$81,000,000.00. Governor Rahman requested Governor Tetangco to conduct an immediate inquiry into the matter and asked for help for the recovery of the money.^[5]

Based on the Incident Report^[6] prepared by the Bangladesh Bank, the beneficiaries of the fraudulent transfer, having accounts with the RCBC are the following:

Beneficiary Name	Amount (USD)
Michael F. Cruz	6,000,039.12
Jessie Christopher M. Lagrosas	30,000,039.12
Alfred S. Vergara	20,000,000.00
Enrico T. Vasquez	25,001,583.88

Total **81,001,662.12**^[7]

On February 16, 2016, Mohammad Abdur Rab and Mohammad Jaker Hossain, the Joint Director of the Bangladesh Financial Intelligence Unit (BFIU) and the Deputy General Manager, Accounts and Budgeting Department of Bangladesh Bank, respectively, visited the AMLC Secretariat, presented the facts of their case and sought for assistance.^[8] On investigation, it was found that the following events transpired leading to the transfer of US\$29,000,000.00 to the Banco de Oro (BDO) Account No. 6280225150 of BRHI:

On February 4, 2016, an unauthorized user issued 35 SWIFT^[9] payment instructions to the New York Fed involving US\$951,000,000.00. The New York Fed did not execute 30 payment instructions for lack of beneficiary details. Five remaining payment instructions, including the transfers to Michael F. Cruz, Jessie Christopher M. Lagrosas, Alfred S. Vergara, and Enrico T. Vasquez, were cleared.^[10] The other one was put on hold because of the discrepancy in the beneficiary's name. On February 8, 2016, a public non-working holiday in the Philippines because of the Chinese New Year, Bangladesh Bank sent "stop payment" requests to RCBC. However, RCBC was able to respond only on February 9, 2016 and placed on hold the remaining proceeds amounting to just US\$68,305.00.^[11]

The remittances to the four account holders of RCBC were either transferred or withdrawn on the same day (February 5, 2016) or on the next working day (February 9, 2016).^[12]

Because of the huge amount of money transferred to the accounts of Michael F. Cruz, Jessie Christopher M. Lagrosas, Alfred S. Vergara, and Enrico T. Vasquez originating from the same payment instructions, the AMLC conducted initial investigations including the account of a certain William So Go (Go) and Kam Sin Wong.^[13] It was found that the withdrawals from the four RCBC bank accounts were eventually transferred to Go's account amounting to US\$65,668,664.37. This amount was credited to PhilRem Service Corporation's account (PhilRem), a remittance company, upon Go's instructions. The other US\$15,215,977.26 was also credited to PhilRem's account on the same day. In other words, the US\$81,000,000.00 was transferred from the four account holders of RCBC, to Go's account and eventually to PhilRem.^[14]

PhilRem was informed by Go that he intended to take advantage of the influx of Chinese casino players for the Chinese New Year. Hence, upon Go's instructions, PhilRem delivered: (1) US\$29,000,000.00 to Bloomberry Resorts and Hotels, Inc.'s (BRHI) BDO Account No. 6280225150; (2) US\$21,245,500.00 to Eastern Hawaii Leisure Company; and (3) US\$30,639,141.63 to Weikang Xu.^[15]

Upon finding of probable cause that BRHI's BDO Account No. 6280225150 was related to the unlawful activity of hacking, the AMLC issued a resolution^[16] authorizing the AMLC Secretariat to file, through the Office of the Solicitor General (OSG), an *ex parte* petition for the issuance of a freeze order against the subject account.^[17] On March 15, 2016, the CA issued the freeze order effective for 30 days. At that time, the BRHI's BDO Account contained P1,377,354,671.23.^[18] In its Resolution, the CA was convinced that there was ample basis to believe that the bank account in the name of BRHI with BDO was related to or involved in unlawful

activities or offenses of money laundering under Republic Act No. (R.A.) 9160, as amended.^[19] However, considering that BRHI is widely regarded as a legitimate business entity that caters to the needs of the public concerning leisure and entertainment, the CA limited the duration of the Freeze Order to 30 days only.^[20]

On March 17, 2016, the AMLC also filed an application for bank inquiry with the CA which was granted in a Resolution^[21] dated March 18, 2016. The CA held that based on the totality of the facts and circumstances surrounding BDO Account No. 6280225150 in the name of BRHI, there is at least a *prima facie* ground to believe that the BDO account is related to an unlawful activity such as hacking or cracking within the purview of R.A. 9160, as amended.^[22] Hence, the CA granted the application for bank inquiry to enable the AMLC to obtain material relevant information on the transactions involving BDO Account No. 6280225150.^[23]

The Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee) hearings also yielded the same finding that BRHI received fund transfers from PhilRem in the total amount of P1,365,000,000.00 (equivalent to US\$29,000,000.00).^[24] This amount was traced as having been sourced from the stolen funds of Bangladesh Bank.^[25]

For its part, BRHI claims that it is the casino operator of Solaire Resort and Casino (Solairé) located at the Entertainment City in Parañaque. As a casino operator, it is not a covered institution under the Anti-Money Laundering Act of 2001 (AMLA) at the time the incident happened.^[26]

BRHI explained that the subject BDO account is a bank account for peso payments or deposits/remittances to BRHI. The details of the bank account are given to junket operators, premium players or high rollers to enable them to deposit money that they will use to engage in gaming in Solairé. A junket operator is a person or entity that markets and arranges casino games to foreign casino players providing them with credits and other services, and bringing them to Solairé to play casino games, and in return, they receive commissions.^[27]

Premium players are high rollers or very important customers who play on a rolling chip program or higher limit games. Premium players are required to put up "front money" before they can play in Solairé. Front money is the capital that the premium player deposits in an account with the casino. This front money is exchanged with non-negotiable chips which can only be played and cannot be encashed. Premium players are required to play and roll their front money in order to earn rebates or commissions from the casino. The funds that a premium player deposits into the bank account of the casino become payment to the casino for purchase of non-negotiable chips; hence, owned by the casino.^[28]

On February 5, 2016, a Chinese national from Macau named Ding Zhize (Ding) advised BRHI that he and his companions will remit millions of dollars to Solairé to be used by a group of Chinese players who intended to play during the Chinese New Year. Ding was introduced to BRHI by Wang Xin (Wang) and Gao Shuhua (Gao) who were known high rollers and who had previously played in Solairé.^[29] Hence, on February 5 and 10, 2016, BRHI received from the BDO account of PhilRem the total amount of P1,365,000,000.00. This amount was used by the group of Ding as front money to play in Solairé.^[30]

BRHI claims that at the time of the remittance, there was no reason for it to suspect that the amount could be related to any unlawful activity as the same was received and deposited in the account of BRHI in the regular course of business. The deposit of P1,365,000,000.00 was not unusual because being a casino, BRHI regularly deals with large amounts of money. Also, the deposit coincided with the Chinese New Year which is a known season for Chinese high rollers to splurge.^[31]

When the amount of money was deposited in the account of BRHI, it was exchanged for value – the non-negotiable chips. By February 29, 2016, the whole amount was fully used to play and had been converted to non-negotiable chips.^[32]

On February 29, 2016, news articles broke out about the hacking of the Bangladesh Bank account and mentioned Solaire. On March 10, 2016, BRHI deemed it prudent to take reasonable measures to curtail any damage that said allegations, if the same turned out to be true, would cause. Hence, BRHI froze whatever remaining balance the Ding group had in their accounts and their members were barred from playing in Solaire. However, all that remained from the accounts of the Ding group amounted to P107,350,602.00 plus cash in various currencies amounting to P1,347,069.00.^[33]

Upon receipt of the freeze order issued by the CA, BRHI filed an *Urgent Motion to Lift Freeze Order*^[34] while the AMLC filed an Urgent Motion for Additional Period of Freeze Order.^[35]

On April 15, 2016, the CA issued the assailed Resolution^[36] granting the *Urgent Motion to Lift Freeze Order* filed by BRHI and directing the BDO to unfreeze Account No. 628022510 in the name of BRHI. The disquisition of the CA is reproduced below, to wit:

x x x x

Our initial findings that there exists probable cause to justify the issuance of an *Ex Parte* Freeze Order against Solaire would no longer hold in view of the AMLC's failure to establish within the period given that the Subject Account was acquired through unlawful means or illegal activity. Its argument that the proceeds of the Subject Account form part of the funds stolen from Bangladesh Bank remains within the realms of speculation. Even now, the AMLC could not give a link, direct or indirect, that would connect to the proposition, nay suspicion, that the proceeds of the Subject Account form part of the funds stolen from the Bangladesh Bank. Worse, it miserably failed to demonstrate that the circumstances surrounding the funding of the said account. Although the AMLC admitted that the Subject Account was in the name of Solaire, a legitimate casino operator, it sic adamantly characterized the frozen funds as proceeds of an unlawful activity. Again, this argument, bordering on mere insinuation, does not convincingly shed light on the alleged illegal character of the Subject Account. Thus, absent a clear and more definite showing that the Subject Account which was initially frozen contains the same funds stolen from Bangladesh Bank, We cannot accede to AMLC's request for an extension of the effectivity of the *Ex Parte* Freeze Order.

Solaire, on the other hand, persuasively explained that the monies, initially frozen, already form part of its corporate funds, inclusive of payments and deposits of other junket and premium clients and not the

money purportedly taken from Bangladesh Bank. The funds in the Subject Account were already 'converted or used' by a certain Ding to purchase non-negotiable chips in Solaire which in turn were played in the latter's various playing programs and in the process, were eventually transferred to other junket operators/players under the auspices of Ding even prior to the issuance of the Freeze Order. This may appear self-serving and complex even to those unfamiliar with how a casino operation works, but We accord probative merit to this claim given movant AMLC's abject failure, thus far, to rise above the speculative nature of its submission against Solaire. Thus, Solaire's assertion that the funds in the Subject Account were utilized in the normal and regular operation of its casino business, thus, not tainted with irregularity nor illegality, which is contrary to the AMLC's claim, has to be accorded due credence.

x x x x^[37]

Aggrieved, the AMLC filed its Petition for Review on *Certiorari* With Prayer for the Issuance of a Temporary Restraining Order or Status *Quo Ante* Order dated May 3, 2016.^[38] We issued a Temporary Restraining Order on May 19, 2016 and directed BRHI to Comment on the Petition. BRHI filed its Comment^[39] and thereafter, the AMLC filed its Reply.^[40] BDO also filed a manifestation that in compliance with the CA's Resolution, it has already lifted the Freeze Order over the account even before receiving the TRO issued by the Court. The parties were directed to file their respective memoranda.^[41]

In its Memorandum^[42] dated April 6, 2017, the AMLC insists that contrary to HRBI and BDO's assertions, the assailed Resolution is not a *fait accompli*.^[43] Upon receipt of BDO of the TRO, it should have re-froze BRHI's subject account.^[44] The AMLC maintains that the initial finding of probable cause should stand because the verified petition for freeze order and its supporting documents were unrebutted by BRHI.^[45] According to the AMLC, it had sufficiently demonstrated that the amount totalling to P1,365,000,000.00 that was deposited by PhilRem to BRHI's BDO account came from the unauthorized international inward remittances from the account of Bangladesh Bank in the New York Fed.^[46] The AMLC chronologically presented every transfer of funds starting from the unauthorized payment instructions that triggered the remittance of the US\$81,000,000.00 to the four spurious accounts in RCBC which was consolidated in similar spurious account of Go. The entire amount was credited to PhilRem's account which transferred P1,365,000,000.00 to BRHI's account. This trail leads to no other conclusion but the fact that the subject account is related to an unlawful activity.^[47] Since money is essentially fungible and can easily be commingled with other moneys, a deposit that can be traced to an unlawful activity is considered tainted and despite the passage of time or further commingling with other funds, it remains tainted.^[48] The AMLC also countered that BRHI failed to present any evidence that would support its claim that a certain Ding owned the money deposited in the subject account as front money.^[49] The AMLC also faulted BRHI in failing to exercise due diligence and sound business practice because it did not take necessary steps to scrutinize the money deposited in its account. It should have confirmed the legitimacy and accuracy of transactions coming in.^[50]