

## FIRST DIVISION

[ G.R. No. 192679, October 17, 2016 ]

**ANTONIO ESCOTO, PETITIONER, VS. PHILIPPINE AMUSEMENT  
AND GAMING CORPORATION, RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

An appeal of the decision of a trial court upon a question of law must be by petition for review on *certiorari* to be filed in this Court.

#### The Case

The petitioner challenges the resolutions promulgated on December 23, 2009<sup>[1]</sup> and June 2, 2010,<sup>[2]</sup> whereby the Court of Appeals (CA) respectively affirmed the decision rendered on October 28, 2004<sup>[3]</sup> by the Regional Trial Court (RTC) in Olongapo City granting the respondent's motion to dismiss in Civil Case No. 215-0-2003, and denying the petitioner's motion for reconsideration.

#### Antecedents

The petitioner and the late Edgar Laxamana were promoters/agents of Legend International Resort Limited (LIRL). As one of their promotional schemes, they organized a tourist-oriented cockfighting derby to be held on May 8 and 10, 2003 within the premises of LIRL within the Subic Bay Freeport Zone. For this purpose, they obtained a permit to conduct the event from the Subic Bay Metropolitan Authority (SBMA).<sup>[4]</sup> Learning of the event, the respondent immediately advised LIRL to desist because cockfighting activity was outside its competence as a hotel casino resort.<sup>[5]</sup>

This prompted the promoters to bring their suit for injunction with application for a temporary restraining order (TRO) and writ of preliminary injunction in the RTC (Civil Case No. 215-0-2003). They averred that the respondent should be enjoined from ordering LIRL to desist from holding the cockfighting derby because the charter of the respondent did not include the supervision, control and regulation of cockfighting activities in the premises of LIRL within the Subic Bay Freeport Zone; that the authority to regulate such activities was within the powers of the SBMA under Republic Act No. 7227; and that there was nothing that should prevent LIRL from holding the: cockfighting derby after the SBMA had issued the permit for such purpose.

Initially, the RTC issued a 20-day TRO to preserve the *status quo* between the parties.

On its part, the respondent objected to the issuance of the TRO, and urged the dismissal of Civil Case No. 215-0-2003 on the following grounds, namely: (a) the promoters were not the real parties in interest to maintain the suit; (b) they had no clear legal right to be protected; and (c) the conduct of the cockfighting derby was not a right but a mere privilege, and that, as such, the compliance with the law was mandatory before anyone could exercise the privilege. The respondent stated that one of the laws that the promoters had not complied with was Presidential Decree No. 449 (*Cockfighting Law of 1974*), which required a license for the cockfighting event to be issued by the relevant city or municipality.<sup>[6]</sup>

Eventually, on October 28, 2004, the RTC dismissed the complaint, disposing:

WHEREFORE, in view of the foregoing considerations, judgment is rendered in favor of the defendant and against the plaintiffs as follows:

1. Dismissing the plaintiffs' complaint for permanent injunction against the defendants implementing the cease and desist order for the holding of cockfight derby within the Subic Bay Freeport Zone;
2. Declaring that only the local government units can issue cockfighting license or permits to be held at [a] licensed cockpit arena within the Subic Bay Freeport Zone; and
3. Ordering plaintiffs to pay defendant the amount of P70,000.00 as attorney's fees plus the costs of the suit.

SO ORDERED.<sup>[7]</sup>

The RTC declared that the plaintiffs were not the real parties in interest because the permit for the event had been issued by SBMA in favor of LIRL; that they had no right to be protected by of injunction; that the licensing authority of the SBMA for tourism-related activities did not include cockfighting derbies even if the same were tourism-related; that the power to grant licenses and permits to conduct cockfighting derbies belonged to the local government units concerned (*i.e.*, the City of Olongapo, and the Municipalities of Morong, Bataan and Subic, Zambales); that the conduct of the cockfighting derby in question could not be allowed because no permit had been issued by any of the local government units concerned; that damages for lost earnings could not be granted to the respondent because its claim had not been established; that attorney's fees were justified because the parties had stipulated during the pre-trial on their entitlement therefor, and had agreed on the amounts to be granted for that purpose; and that the respondent as the victorious litigant and the based on the court's discretion should recover P70,000.00 as attorney's fees.

The plaintiffs appealed, assigning errors to the RTC, as follows:

*First Assigned Error:* The issue raised on the merits of the case is already moot and academic; *alternatively*, the Court *a quo* committed an error in declaring that the permission or license to hold a one-time cockfight held (sic) at the Subic Bay Free Port Zone does not full [sic] within the

authority of the Subic Bay Metropolitan Authority (SBMA) under Republic Act No. 7227.

*Second Assigned Error:* The Court *a quo* committed an error in awarding attorney's fees in favor of the defendants and against the plaintiffs.<sup>[8]</sup>

On its part, the respondent moved to dismiss the appeal, arguing that based on their appellant's brief, the promoters were submitting issues of a purely legal nature; and that consequently their appeal should be taken to the Court by petition for review on certiorari to raise only questions of law.

As stated, on December 23, 2009, the CA dismissed the appeal for raising only pure questions of law that were outside the competence of an ordinary appeal under Rule 41 of the *Rules of Court*.<sup>[9]</sup> It ruled that the propriety of the award of attorney's fees had ceased to be a factual issue after the parties had admitted that the winning party would be entitled to the award, as in fact they had even stipulated on the amount to be thus awarded; and that it would be unjust to allow the promoters to renege on their admissions regarding the recovery of the award of attorney's fees. The *fallo* reads:

**WHEREFORE**, the Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED**.

**SO ORDERED.**<sup>[10]</sup>

After the CA denied his motion for reconsideration, the petitioner now appeals to the Court.

### **Issue**

Did the CA err in dismissing the appeal?

### **Ruling of the Court**

We affirm the CA.

To start with, the determination of whether or not the appeal was upon a question of law was within the discretion of the CA as the appellate court. In making its determination thereon, the CA correctly relied on the assignment of errors expressly made in the appellant's brief of the petitioner. Its determination that the issues were purely legal questions deserved respect. The correctness of the determination should be assumed unless there is a clear showing of the CA thereby committing error or gravely abusing its discretion.<sup>[11]</sup> Regrettably, the petitioner did not show so herein.

The modes of appealing a judgment or final order of a court of law have been outlined in Section 2, Rule 41 of the *Rules of Court*, viz.: