

FIRST DIVISION

[G.R. No. 197937, April 03, 2013]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, PETITIONER, VS. SM PRIME HOLDINGS, INC., RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Petitioner appeals the Orders^[1] dated February 21, 2011 and July 25, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 166 which granted respondent's motion to dismiss on the ground of *litis pendentia*.

The factual antecedents:

Respondent SM Prime Holdings, Inc. is the owner and operator of cinema houses at SM Cebu in Cebu City. Under Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, owners, proprietors and lessees of theaters and cinema houses are subject to amusement tax as provided in Section 140, Book II, Title One, which reads:

SECTION 140. *Amusement Tax* –

(a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

x x x x

(d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interest and penalties as it may deem appropriate.

On June 21, 1993, the *Sangguniang Panglunsod* of Cebu City approved City Tax Ordinance No. LXIX^[2] pursuant to Section 140, in relation to Section 151^[3] of the

Local Government Code of 1991. Chapter XI of said ordinance provides:

CHAPTER XI

Amusement Tax

SECTION 42. *Rate of Tax.* – There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.

SECTION 43. *Manner of Payment.* – In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessee, or operators and paid to the city treasurer before the gross receipts are divided between said proprietors, lessee, operators and the distributors of the cinematographic films.

x x x x

SECTION 45. *Time of Payment.* – The tax shall be due and payable within the first twenty (20) days of the succeeding month.

On June 7, 2002, Congress approved R.A. No. 9167^[4] which created the Film Development Council of the Philippines, herein petitioner. Petitioner's mandate includes the development and implementation of "an incentive and reward system for the producers based on merit to encourage the production of quality films."^[5] The Cinema Evaluation Board (CEB) was established to review and grade films in accordance with criteria and standards and procedures it shall formulate subject to the approval of petitioner.

Films reviewed and graded favorably by the CEB are given the following privileges:

Section 13. *Privileges of Graded Films.* - Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. - A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:

1. For grade "A" films - 100% of the amusement tax collected on such films; and
2. For grade "B" films. - 65% of the amusement tax collected on such

films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

For the purpose of implementing the above incentive system, R.A. No. 9167 mandates the remittance of the proceeds of the amusement tax collected by the local government units (LGUs) to petitioner.

Section 14. *Amusement Tax Deduction and Remittances.* - All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act. No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and **remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film** within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a **surcharge** equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council. (Emphasis supplied.)

To ensure enforcement of the above provision, the law empowered petitioner not only to impose administrative fines and penalties but also to cause or initiate criminal or administrative prosecution to the violators.^[6]

On January 27, 2009, petitioner through the Office of the Solicitor General (OSG) sent a demand letter to respondent for the payment of the sum of P76,836,807.08 representing the amusement tax rewards due to producers of 89 films graded "A" and "B" which were shown at SM cinemas from September 11, 2003 to November 4, 2008.^[7]

Sometime in May 2009, the City of Cebu filed in the RTC of Cebu City (Cebu City RTC) a petition^[8] for declaratory relief with application for a writ of preliminary injunction against the petitioner, docketed as Civil Case No. **CEB-35529**. The City of Cebu sought to declare Section 14 of R.A. No. 9167 as invalid and unconstitutional on grounds that: (1) it violates the basic policy on local autonomy; (2) it constitutes an undue limitation of the taxing power of LGUs; (3) it unduly deprives LGUs of the revenue from the amusement tax imposed on theatre owners and operators; and (4) it amounts to technical malversation since revenue from the collection of amusement taxes that would otherwise accrue to and form part of the general fund of the LGU concerned would now be directly awarded to a private entity – the producers of graded films – bypassing the budget process of the LGU and without the proper appropriation ordinance from the *sanggunian*.^[9]

A temporary restraining order (TRO) was issued by the Cebu City RTC enjoining

petitioner and its duly constituted agents from collecting the amusement tax incentive award from the owners, proprietors or lessees of theaters and cinema houses within the City of Cebu; imposing surcharge on the unpaid amount; filing any case or suit of whatever kind or nature due to or arising from the failure to deduct, withhold and remit the amusement tax incentives award on the graded films of petitioner; and initiating administrative or criminal prosecution against the said owners, proprietors or lessees.^[10]

On October 16, 2009, petitioner sued the respondent for the payment of P76,836,807.08 representing the unpaid amusement tax incentive reward (with 5% surcharge for each month of delinquency) due to the producers of 89 graded films which were shown at SM Cinemas in Cebu City from September 11, 2003 to November 4, 2008, plus a 5% surcharge for each month of delinquency until fully paid. Said collection suit was docketed as Civil Case **No. 72238** of the RTC of Pasig City (Pasig City RTC), Branch 166.^[11]

Petitioner filed a Comment (In Lieu of Answer)^[12] in Civil Case No. CEB-35529 praying for the dismissal of the petition filed by the City of Cebu.

Meanwhile, respondent filed a Motion to Dismiss^[13] in Civil Case No. 72238 arguing that petitioner's complaint merits outright dismissal considering that its claim had already been extinguished by respondent's prior payment or remittance of the subject amusement taxes to the City of Cebu. Respondent called attention to Section 26 of the Implementing Rules and Regulations (IRR) of R.A. No. 9167 which directed petitioner to execute a Memorandum of Agreement (MOA) with proprietors, operators and lessees of theaters and cinemas as well as movie producers, on the systems and procedures to be followed for the collection, remittance and monitoring of the amusement taxes withheld on graded films. In the apparent absence of such MOA and the "general procedure/process" duly adopted by all proprietors, operators and lessees of theaters or cinemas, respondent has been withholding such taxes and remitting the same to the City of Cebu pursuant to Cebu City Tax Ordinance No. LXIX, as shown by the Certification^[14] dated February 5, 2009 issued by the Office of the Treasurer of Cebu City stating that respondent "had religiously remitted their monthly amusement taxes due to the Cebu City Government." Respondent pointed out that even the Cebu City Government recognizes that when it receives the amusement taxes collected or withheld by the owners, operators and proprietors of theaters and cinema houses on graded films, it is mandated to forward the said taxes to petitioner.

In its Comment^[15] on the motion to dismiss, petitioner argued that Section 14 of R.A. No. 9167 is valid and constitutional. As to respondent's defense of prior payment, petitioner asserted that the execution of a MOA with the proprietors, owners and lessees of theaters and cinema houses is not a condition *sine qua non* for a valid enforcement of the provisions of R.A. No. 9167. The IRR cited by respondent cannot prevail over the clear import of the law on which it is based, and hence respondent cannot invoke it to excuse non-payment of the amusement tax incentive rewards due to the producers of graded films which should have been remitted to petitioner in accordance with Section 14 of R.A. No. 9167. Petitioner pointed out that from the time R.A. No. 9167 took effect up to the present, all the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines, with the sole exception of Cebu

City and a number of theater establishments therein, have unanimously acceded to and have faithfully complied with the mandate of said law notwithstanding the absence of a MOA.

Respondent filed its Reply^[16] to petitioner's Comment maintaining that its remittance of the amusement tax incentive reward to the City of Cebu extinguished its obligation to petitioner, and arguing that the case should be dismissed on the additional ground of *litis pendentia*.

On August 13, 2010, respondent filed in Civil Case No. CEB-35529 a Motion for Leave to File and Admit Attached Comment-in-Intervention.^[17] In its Comment-in-Intervention With Interpleader, respondent prayed that the judgment on the validity and constitutionality of Sections 13 and 14 of R.A. No. 9167 include a pronouncement on its rights and duties as a consequence of such judgment, as it clearly has a legal interest in the success of either party in the case.^[18] On October 21, 2010, the Cebu City RTC granted respondent's motion for intervention.^[19]

On February 21, 2011, the Pasig City RTC issued the assailed order granting the motion to dismiss, holding that the action before the Cebu City RTC (Civil Case No. CEB-35529) is the appropriate vehicle for litigating the issues between the parties in Civil Case No. 72238. Moreover, said court found all the elements of *litis pendentia* present and accordingly dismissed the complaint. Petitioner's motion for reconsideration was likewise denied.

In a direct recourse to this Court, petitioner advances the following questions of law:

I

THE RTC, BRANCH 166, OF PASIG CITY UTTERLY IGNORED AND DISREGARDED THE WELL-SETTLED RULE THAT UNLESS AND UNTIL A SPECIFIC PROVISION OF LAW IS DECLARED INVALID AND UNCONSTITUTIONAL, THE SAME IS ENTITLED TO OBEDIENCE AND RESPECT.

II

THE RTC, BRANCH 166, OF PASIG CITY ERRED IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 72238 ON THE GROUND OF *LITIS PENDENTIA*.^[20]

Petitioner reiterates that every law has in its favor the presumption of constitutionality, and unless and until a specific provision of law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. In dismissing the complaint, the Pasig City RTC abdicated its solemn duty and jurisdiction to rule on the constitutional issues raised by respondent in Civil Case No. 72238 upon the mistaken assumption that only the Cebu City RTC in Civil Case No. CEB-35529 can directly determine the constitutionality of Sections 13 and 14 of R.A. No. 9167 and the indispensability of a MOA in the remittance to petitioner of amusement tax rewards due to the producers of graded films. Petitioner further