

FIRST DIVISION

[G.R. No. 187972, June 29, 2010]

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION
(PAGCOR), REPRESENTED BY ATTY. CARLOS R. BAUTISTA, JR.,
PETITIONER, VS. FONTANA DEVELOPMENT CORPORATION,
RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

In this petition for review under Rule 45, the May 19, 2009 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 107247 is questioned for not nullifying the November 18, 2008 Order of the Regional Trial Court (RTC) in Manila in Civil Case No. 08-120338 that issued a temporary restraining order (TRO) against petitioner Philippine Amusement and Gaming Corporation (PAGCOR), barring PAGCOR from committing acts that allegedly violate the rights of respondent Fontana Development Corporation (FDC) under a December 23, 1999 Memorandum of Agreement (MOA).

The antecedents as culled by the CA from the records are:

Petitioner Philippine Amusement and Gaming Corporation (PAGCOR) is a government owned and controlled corporation created under Presidential Decree (PD) No. 1869 to enable the Government to regulate and centralize all games of chance authorized by existing franchise or permitted by law. Section 10 thereof conferred on PAGCOR a franchise of twenty-five (25) years or until July 11, 2008, renewable for another twenty-five (25) years. Under Section 9 thereof, it was given regulatory powers over persons and/or entities with contract or franchise with it, *viz*:

SECTION 9. *Regulatory Power.*--The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

On March 13, 1992, Republic Act No. 7227 was enacted to provide for the

conversion and development of existing military reservations, including former United States military bases in the Philippines, into Special Economic Zones (SEZ). The law also provides for the creation of the Subic Bay Metropolitan Authority (SBMA).

On April 3, 1993, then President Fidel V. Ramos issued Executive Order (EO) No. 80. Under Section 5 thereof, the Clark Special Economic Zone (CSEZ) was given all the applicable incentives granted to Subic Bay Special Economic Zone (SSEZ), viz:

SECTION 5. *Investments Climate in the CSEZ.*--Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.

Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted.

The CSEZ Main Zone covering the Clark Air Base proper shall have all the aforecited investment incentives, while the CSEZ Sub-Zone covering the rest of the CSEZ shall have limited incentives. The full incentives in the Clark SEZ Main Zone and the limited incentives in the Clark SEZ Sub-Zone shall be determined by the BCDA.

On December 23, 1999, PAGCOR granted private respondent Fontana Development Corporation (FDC) (formerly RN Development Corporation) the authority to operate and maintain a casino inside the CSEZ under a Memorandum of Agreement (MOA), stating *inter alia*:

x x x x

1. RNDC Improvements

x x x x

4. Non-exclusivity, PAGCOR and RNDC agree that **the license granted to RNDC to engage in gaming and amusement operations within CSEZ shall be non-exclusive and co-terminus with the Charter of PAGCOR, or any extension thereof, and shall be for the period hereinabove defined.** (Emphasis supplied.)

x x x x

On April 12, 2000, Clark Development Corporation (CDC) issued Certificate of Registration No. 2000-24. Pursuant to Article VII-11 thereof, the MOA was amended on July 28, 2000, September 6, 2000, December 6, 2001, June 3, 2002, October 13, 2003 and March 31, 2004.

Sometime in 2005, the Coconut Oil Refiners Association challenged before the Supreme Court the constitutionality, among others, of EO No. 80 on the ground that the incentives granted to SSEZ under RA No. 7227 was exclusive and cannot be made applicable to CSEZ by a mere executive order. The case was decided in favor of Coconut Oil Refiners Association and Section 5 aforequoted was declared of no legal force and effect.

On June 20, 2007, RA No. 9487 was enacted, extending PAGCOR's franchise up to July 10, 2033 renewable for another twenty-five (25) years, viz:

SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:

(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:

SEC. 10. *Nature and Term of Franchise.*--Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e., basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: Provided, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

x x x x

On July 18, 2008, PAGCOR informed FDC that it was extending the MOA on a month-to-month basis until the finalization of the renewal of the contract. FDC protested, claiming that the extension of PAGCOR's franchise had automatically extended the MOA: that the SC decisions, including RA Nos. 9400 and 9399, had no effect on the authority of CDC to allow the establishment of a casino inside the CSEZ; and that in *Coconut Oil Refiners Association, Inc.*, the SC did not declare void the entire EO No. 80 but only Section 5 thereof.

On October 6, 2008, after a series of dialogues and exchange of position papers, PAGCOR notified FDC that its [new] standard Authority to Operate shall now govern and regulate FDC's casino operations in place of the previous MOA. FDC moved for the reconsideration of the said decision but the same was denied. On November 5, 2008, PAGCOR instructed FDC to remit its franchise fees in accordance with the Authority to Operate.

On the same date of November 5, 2008, FDC filed before the RTC of Manila the instant complaint for Injunction against PAGCOR, contending that it could not be covered by a month-to-month extension nor by the standard Authority to Operate since the MOA was automatically renewed and extended up to 2033; that the MOA clearly provided that the same was co-terminus with PAGCOR's franchise including any extension thereof; that it had faithfully complied with the conditions under the MOA; that pursuant to the MOA, it had built a hotel-casino complex and put up other investments equivalent to P1 Billion; that it had adopted a marketing strategy to attract high roller casino players from Asia and had scrupulously met all its obligations to PAGCOR and other government agencies; and that the provisions invalidated in *Coconut Oil Refiners Association, Inc.*, principally pertained to tax and customs duty, privileges or incentives which was thereafter restored by the enactment of RA No. 9400. The complaint was docketed as the herein Civil Case No. 08-120338 and raffled to Branch 7.

The RTC summoned PAGCOR and set the hearing on the application for TRO. On November 13, 2008, PAGCOR filed its Special Appearance (for Dismissal of the Petition and the Opposition to the Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction), praying that the complaint be dismissed for lack of jurisdiction. PAGCOR contended that its decision to replace the MOA with the Authority to Operate was pursuant to its regulatory powers under Sections 8 and 9 of PD No. 1869; that under the said provisions, it was given all the powers, authority and responsibilities of the Securities and Exchange Commission (SEC) over corporations engaged in gambling; that consequently, being the SEC of said corporations, the appeal or review of its decision should have been made directly to the SC under PD No. 1869 in relation to the last paragraph of Section 6, PD No. 902-A; PAGCOR argued that administrative agencies are co-equal with RTC's; that application or operation of presidential decrees are appealable to the SC under Article VIII, Section 4(2) of the 1987 Constitution; and that there was no basis for the issuance of TRO/Writ of Preliminary Injunction since the franchise or license granted to FDC was not a property right but was merely a privilege and not a contract.

On November 18, 2008, the RTC issued the first assailed Order denying PAGCOR's motion to dismiss and granting FDC's application for a TRO. The RTC held that the SC had no exclusive jurisdiction over cases involving PAGCOR; that the cases of *Del Mar vs. PAGCOR*, *Sandoval II vs. PAGCOR*, *Jaworski vs. PAGCOR* were decided by the SC in the exercise of its discretionary power to take cognizance of cases; that it had jurisdiction over the instant complaint under Section 21(1) of Batas

Pambansa (BP) No. 129 in relation to Article VIII, Section 5(1) of the 1987 Constitution and the rule on hierarchy of courts; that although PAGCOR was granted regulatory powers, it was not extended quasi-judicial functions; and that PAGCOR is not an administrative agency but a government owned and controlled corporation. Upon the posting by FDC of the required bond of P500,000.00, the RTC issued on November 19, 2008 the second assailed Order, a TRO enjoining the implementation of the Standard Authority to Operate within a period of twenty (20) days. PAGCOR's motion for reconsideration was denied in the third assailed Order.

On December 8, 2008, the RTC issued an Order likewise denying FDC's application for the issuance of a Writ of Preliminary Injunction. The RTC ruled that FDC failed to present a clear legal right to justify its issuance; that PAGCOR was granted with legislative right to franchise to other entities the operation of gambling casinos; and that since what was granted was a license to operate and not a contract, no vested property right was at stake.

Both PAGCOR and Fontana moved for the reconsideration of the aforesaid Order. Fontana maintained that it was entitled to a Writ of Preliminary Injunction while PAGCOR wanted deleted the finding that it had the authority to issue casino license to FDC under PD No. 1869.^[1]

On February 5, 2009, PAGCOR filed a petition for certiorari and prohibition before the CA docketed as CA-G.R. SP No. 107247 entitled *PAGCOR represented by Atty. Carlos R. Bautista, Jr. v. Hon. Ma. Theresa Dolores Estoesta and Fontana Development Corporation*, questioning the November 18, 2008 Order, the November 19, 2008 Order and the December 4, 2008 Order of respondent judge.

Meanwhile, on January 30, 2009, the RTC issued an order, which reconsidered its December 8, 2008 Order and granted the writ of preliminary injunction in favor of FDC. The trial court held that since public interest is not prejudiced, the license issued may not be revoked or rescinded by mere executive action. The *fallo* reads:

WHEREFORE, having sufficiently established a prima facie proof of violation of its right as a casino licensee under the MOA, **FDC's application for the issuance of a writ of preliminary injunction is GRANTED.**

This reconsiders the Order dated December 8, 2008 insofar as it denied the issuance of a writ of preliminary injunction.

Let a writ of preliminary injunction therefore **ISSUE** to become effective only upon posting of ONE HUNDRED MILLION PESOS (P100,000,000.00).

SO ORDERED.

The Writ of Preliminary Injunction^[2] was issued on February 25, 2009.