516 Phil. 299

SECOND DIVISION

[A.C. NO. 5700, January 30, 2006]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION, REPRESENTED BY ATTY. CARLOS R. BAUTISTA, JR., COMPLAINANT, VS. ATTY. DANTE A. CARANDANG, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a verified complaint for disbarment filed by the Philippine Amusement and Gaming Corporation (PAGCOR) against Atty. Dante A. Carandang.

The complaint alleges that Atty. Carandang, respondent, is the president of Bingo Royale, Incorporated (Bingo Royale), a private corporation organized under the laws of the Philippines.

On February 2, 1999, PAGCOR and Bingo Royale executed a "Grant of Authority to Operate Bingo Games." Article V of this document mandates Bingo Royale to remit 20% of its gross sales to PAGCOR. This 20% is divided into 15% to PAGCOR and 5% franchise tax to the Bureau of Internal Revenue.

In the course of its operations, Bingo Royale incurred arrears amounting to P6,064,833.14 as of November 15, 2001. Instead of demanding the payment therefor, PAGCOR allowed Bingo Royale and respondent Atty. Carandang to pay the said amount in monthly installment of P300,000.00 from July 2001 to June 2003.

Bingo Royale then issued to PAGCOR twenty four (24) Bank of Commerce checks in the sum of P7,200,000.00 signed by respondent.

However, when the checks were deposited after the end of each month at the Land Bank, U.N. Avenue Branch, Manila, they were all dishonored by reason of Bingo Royale's "Closed Account."

Despite PAGCOR's demand letters dated November 12 and December 12, 2001, and February 12, 2002, respondent failed to pay the amounts of the checks. Thus, PAGCOR filed with the Office of the City Prosecutor of Manila criminal complaints for violations of Batas Pambansa (B.P.) Blg. 22 against respondent.

PAGCOR contends that in issuing those bouncing checks, respondent is liable for serious misconduct, violation of the Attorney's Oath and violation of the Code of Professional Responsibility; and prays that his name be stricken from the Roll of Attorneys.

In his "Opposition" to the complaint, respondent averred that he is not liable for issuing bouncing checks because they were drawn by Bingo Royale. His act of doing

so "is not related to the office of a lawyer."

Respondent explained that since the start of its operations, Bingo Royale has been experiencing financial difficulties due to meager sales. Hence, it incurred arrearages in paying PAGCOR's shares and failed to pay the amounts of the checks.

On November 20, 2001, PAGCOR closed the operations of Bingo Royale. This prompted the latter to file with the Regional Trial Court, Branch 59, Makati City, a complaint for damages against PAGCOR, docketed as Civil Case No. 01-1671.

Subsequently, Bingo Royale became bankrupt. Respondent now maintains that the dishonor of the checks was caused by circumstances beyond his control and pleads that our power to disbar him must be exercised with great caution.

On February 24, 2003, we resolved to refer this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. [1]

In his Report and Recommendation, Atty. Doroteo B. Aguila, the Investigating IBP Commissioner, made the following findings and observations:

> Whether to issue or not checks in favor of a payee is a voluntary act. It is clearly a choice for an individual (especially one learned in the law), whether in a personal capacity or officer of a corporation, to do so after assessing and weighing the consequences and risks for doing so. As President of BRI, he cannot be said to be unaware of the probability that BRI, the company he runs, could not raise funds, totally or partially, to cover the checks as they fell due. The desire to continue the operations of his company does not excuse respondent's act of violating the law by issuing worthless checks. Moreover, inability to pay is not a ground, under the Civil Code, to suspend nor extinguish an obligation. Specifically, respondent contends that because of business reverses or inability to generate funds, BRI should be excused from making good the payment of the checks. If this theory is sustained, debtors will merely state that they no longer have the capacity to pay and, consequently, not obliged to pay on time, nor fully or partially, their debt to creditors. Surely, undersigned cannot agree with this contention.
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> As correctly pointed out by complainant, violation of B.P. Blg. 22 is an offense that involves public interest. In the leading case of People v. Tañada, the Honorable Supreme Court explained the nature of the offense, thus –
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> x x x
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> > The gravamen of the offense punished by B.P. Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment xxx. The thrust of the law is to prohibit under pain of penal sanctions the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property but an offense against public