

## SECOND DIVISION

**[ ADM. MATTER NO. RTJ-04-1848, October 25, 2005 ]**

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), REPRESENTED BY ATTY. CARLOS R. BAUTISTA, JR., COMPLAINANT, VS. HON. ROMULO A. LOPEZ, PRESIDING JUDGE, BRANCH 34, REGIONAL TRIAL COURT, MANILA, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

PAGCOR filed the instant administrative complaint against Judge Romulo A. Lopez of the Regional Trial Court (RTC) of Manila, Branch 34, seeking his dismissal from the service for alleged gross ignorance of the law and for his disbarment for such ignorance, violation of the lawyer's oath and the Code of Professional Responsibility.

The administrative complaint stemmed from the proceedings in Civil Case No. 00-99133,<sup>[1]</sup> entitled, *Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) vs. PAGCOR, Department of Interior and Local Government (DILG), and Secretary Alfredo S. Lim*, filed with the RTC of Manila and assigned by raffle to Branch 34 presided by respondent Judge. The antecedents and the pertinent proceedings that transpired therein are as follows:

On June 17, 1999, PAGCOR entered into an Agreement with FILGAME and BELLE Jai-Alai Corporation (BELLE) for the resumption of the Jai-Alai operations in the country.<sup>[2]</sup> FILGAME and BELLE jointly agreed to provide funds, at no cost to complainant, for pre-operating expenses and working capital. PAGCOR shall manage, operate and control all aspects of the Jai-Alai operations.

On October 19, 2000, the Office of the President of the Philippines issued a Memorandum addressed to Alicia Li. Reyes, then PAGCOR Chairperson and Chief Executive Officer, directing her to take immediate steps to close down all PAGCOR facilities and outlets in Jai-Alai, on-line bingo and internet casino gaming.

On October 20, 2000, DILG, through then Secretary Alfredo S. Lim, caused the closure of the Jai-Alai main fronton.

Thus, on November 6, 2000, FILGAME and BELLE filed the case for Specific Performance and Injunction with prayer for Damages and Temporary Restraining Order (TRO), and Writ of Preliminary Injunction<sup>[3]</sup> against PAGCOR, DILG and Secretary Alfredo Lim, docketed as Civil Case No. 00-99133 and raffled to herein respondent Judge.

On November 10, 2000, respondent issued a writ of temporary restraining order effective for 20 days.

On November 29, 2000, this Court rendered a decision in the cases, entitled, *Raoul B. Del Mar vs. PAGCOR, BELLE and FILGAME* and *Federico S. Sandoval II and Michael T. Defensor vs. PAGCOR*,<sup>[4]</sup> the decretal portion of which reads:

WHEREFORE, the petitions are GRANTED. Respondents PAGCOR, Belle Jai-Alai Corporation and Filipinas Gaming Entertainment Totalizator Corporation are enjoined from managing, maintaining and operating jai-alai games, and from enforcing the agreement entered into by them for that purpose.

Motions for Reconsideration filed by PAGCOR, BELLE and FILGAME were subsequently denied.

Consequently, FILGAME and BELLE filed a Motion to Admit Amended Complaint<sup>[5]</sup> with the trial court where the cause of action was changed, *i.e.*, from Specific Performance to Recovery of Sum of Money, inasmuch as plaintiffs could no longer ask for specific performance of their agreement with complainant since the Court had declared the agreement without force and effect. Thus, FILGAME and BELLE sought to recover their pre-operating expenses and/or investments totaling P1,562,145,661.87 including the goodwill money of P200,000,000.00 which they allegedly invested with the complainant. Complainant filed an opposition on the ground that there is a substantial change in the complaint and cause of action.

On November 27, 2001, respondent issued an Order<sup>[6]</sup> admitting the amended complaint and directing complainant and DILG to file their answer.

Complainant filed a motion to dismiss the amended complaint<sup>[7]</sup> on the ground that the trial court had not acquired jurisdiction over the case for failure of the plaintiffs to pay the prescribed docket fees considering that the docket fee originally paid was only P1,212.00. It claimed that per the affidavit of Atty. Ma. Concepcion Gloria,<sup>[8]</sup> complainant's representative, she attested to the fact that as computed by the Docket Fee Assessor, the amended complaint, which sought recovery of the P1,562,145,661.87 including the P200,000,000 goodwill money, should have docket fees of P15,775,903.68.

On June 19, 2002, respondent issued an Order<sup>[9]</sup> denying complainant's motion to dismiss and directed it to file its answer. Respondent judge made the following ratiocination:

Considering the parties arguments, this Court is of the opinion and so holds that there is no basis for dismissing the amended complaint since the original complaint was filed and the corresponding docket fee was paid by the plaintiff, the Court had acquired jurisdiction over the said complaint. Having done so, and considering the rule for the payment of the docket fees set forth in the Sun Insurance Office, Ltd. with respect to initiatory pleadings, there is no firm ground to dismiss the Amended Complaint.

Under the said ruling "where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the Court may allow

payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period." If a late payment of the docket fee is allowed in filing initiatory pleading to vest jurisdiction to the Court, with more reason the same leniency should be afforded in an amended pleading/complaint which sets out additional/new cause of action necessitating the increase of the docket fee. The plaintiff is correct in not immediately paying the additional filing fee before the amended complaint is admitted for why will it pay when there is no assurance that the amended complaint will be admitted.

Once jurisdiction is acquired and vested in a Court, said Court maintains its jurisdiction until judgment is had. (Aruego, Jr., et al. vs. CA, 254 SCRA 711-719). Such acquired jurisdiction is not lost by the amendment of a pleading that raises additional/new cause(s) of action. The jurisdiction of a Court is not lost even if additional docket fees are required by reason of the amendment.

In the same ruling in Sun Insurance case, "any additional filing (docket) fee shall constitute a lien on the judgment and that it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee provided that the cause of action has not prescribed."

Moreover in Yuchengco vs. Republic, 333 SCRA 368, 381, the Supreme Court even allowed the payment of the filing fees beyond the prescriptive period.

Complainant then filed its Answer with compulsory counterclaim.<sup>[10]</sup> A pre-trial conference was conducted. On October 10, 2002, respondent issued a Pre-trial Order<sup>[11]</sup> and at the same time directed the parties to submit their respective comments and/or manifestations on the said order. The pre-trial order listed 13 issues to be resolved.

During the October 25, 2002 hearing, FILGAME and BELLE manifested their intention to file a Motion for Summary Judgment which they subsequently filed. Complainant filed its opposition thereto. Respondent did not conduct any hearing on the motion for summary judgment.

On May 19, 2003, respondent rendered his decision by way of Summary Judgment<sup>[12]</sup> in favor of FILGAME and BELLE where complainant was ordered to return and pay the sum of P1,562,145,661.87, representing the amount of pre-operating expenses and/or investment including the goodwill money given by plaintiffs and the release of P500,000.00 cash bond posted in support of the TRO.

On June 10, 2003, complainant filed its notice of appeal<sup>[13]</sup> which was subsequently withdrawn.

On June 12, 2003, complainant filed with the Court of Appeals (CA) a petition for *certiorari* seeking the annulment of the respondent's decision by way of summary judgment for having been rendered without or in excess of jurisdiction and with grave abuse of discretion.<sup>[14]</sup>

On July 8, 2003, complainant filed the present administrative case charging respondent with gross ignorance of the law and for violations of the Lawyer's Oath and Code of Professional Responsibility in connection with his actions in Civil Case No. 00-99133.

In a Resolution dated January 26, 2004,<sup>[15]</sup> we deferred action on this complaint until the final resolution of the petition for *certiorari* filed before the CA.

On January 21, 2004, a judgment by compromise agreement<sup>[16]</sup> was rendered by the CA in the *certiorari* case filed with it and an entry of judgment was subsequently made.<sup>[17]</sup> Thereafter, complainant sought the continuation of the pending administrative case because there was no longer any legal impediment with the resolution of the *certiorari* case.

Complainant charges respondent for gross ignorance of the law and procedure in (1) admitting the amended complaint of plaintiffs FILGAME and BELLE in Civil Case No. 00-99133 despite the fact that (a) the amended complaint is a total change of theory of the case; and (b) that the required filing fees for the amended complaint were not paid; and (2) in rendering summary judgment (a) despite the fact that respondent found the existence of 13 factual issues to be resolved; (b) without conducting a hearing on the motion for summary judgment; (c) based on the alleged implied admission rather than on the personal knowledge of witnesses and other affiants; and (d) despite the fact that plaintiffs were estopped from denying the existence of these 13 issues raised in the pre-trial order.

Complainant contends that respondent denied its motion to dismiss the amended complaint without requiring plaintiffs FILGAME and BELLE to pay the correct docket fees within a reasonable time from the admission of the amended complaint, thus the court is deprived of its lawful docket fees in the amount of P15,774,691.68; that respondent's reliance on the third rule enunciated in the *Sun Insurance*, *i.e.*, allowing docket fee to constitute as lien on the judgment, finds no application in the civil case since the P1.5 Billion claim is not in the nature of an award not specified in the pleading.

Complainant claims that respondent Judge was grossly ignorant of the law when he disregarded the 13 factual issues enumerated in his Pre-trial Order dated October 10, 2002 and rendered a summary judgment on the case; that in rendering a summary judgment, he disposed of the case with undue haste thus depriving it of its day in court; that no hearing was conducted by respondent for purposes of resolving FILGAME and BELLE's motion for summary judgment as provided under Section 3, Rule 35 of the Rules on Civil Procedure; that although opposition, reply and rejoinder were submitted by the parties, the same appeared to be inadequate considering the mandatory nature of the summary hearing.

Complainant avers that respondent granted summary judgment based on its alleged implied admissions when it failed to specifically deny certain material allegations in the amended complaint and other pleadings of FILGAME and BELLE; that such is contrary to Section 5, Rule 35 and jurisprudence.

In his Comment, respondent denied having committed gross ignorance of the law in

admitting the amended complaint since dismissal is not the consequence provided for in not paying the right docket fee at the time the complaint or initiatory pleading is filed; that the trial court acquires jurisdiction over a claim by the filing of appropriate pleading and payment of the prescribed filing fee but when subsequently the judgment awards a claim not specified in the pleading, the additional filing fee therefor shall constitute a lien on the judgment.

He argues that the grant of summary judgment despite the existence of a list of issues in his Pre-trial Order dated October 10, 2002 was not even final and only listed issues or matters which complainant refused to admit when counsel for BELLE and FILGAME asked for stipulations; that the holding of a trial type hearing is not absolutely indispensable for the court to rule on a motion for summary judgment; that he granted the motion for summary judgment not solely on the implied admissions made by complainant but based on the evidence on record and that complainant's contention that plaintiffs are estopped from challenging the list of issues in the Pre-trial Order is without basis since plaintiffs had vigorously insisted for a summary judgment.

Complainant filed a Reply where it claimed that because of respondent's undue haste in rendering summary judgment, some of its evidence were suppressed.

Respondent filed his Rejoinder where he stated that in his Order dated February 19, 2004, he required the payment of additional docket fees on the amended complaint which was complied with; that since it was the clerk of court who computed the same, any deficiency can still be collected by issuing another order. He denied the suppression of evidence since the alleged evidence were not attached to its answer to the amended complaint.

Complainant filed a Sur-rejoinder claiming that the additional docket fees were based on the compromise agreement entered by the parties in the CA in the amount of P120 million and not in the amended complaint for recovery of money in the amount of P1.56 billion.

In a Resolution dated September 15, 2004,<sup>[18]</sup> the Court referred the case to Justice Noel G. Tijam of the CA for investigation, report and recommendation.

The Investigating Justice submitted his Report recommending the dismissal of the administrative and the disbarment complaint against respondent for patent lack of merit, based on the following findings:

*Anent the issue on non-payment of docket fees on the amended complaint -*

Based on the evidence, the undersigned Investigator finds that Respondent Judge did not commit gross ignorance of the law in admitting the amended complaint. There is no evidence that the respondent Judge acted in bad faith or was motivated by fraud, dishonesty or corruption in issuing the assailed order.

It is a well-settled rule that once the jurisdiction of the court attaches, it continues until the case is finally terminated. The trial court cannot be ousted therefrom by subsequent happenings of events, although of a character would have prevented jurisdiction from attaching in the first