

## SECOND DIVISION

[ G.R. No. 118900, February 27, 2003 ]

**JARDINE DAVIES INSURANCE BROKERS, INC., PETITIONER, VS. HON. ERNA ALIPOSA, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 150 OF THE MAKATI REGIONAL TRIAL COURT, CITY (PREVIOUSLY MUNICIPALITY) OF MAKATI AND ROLANDO M. CARLOS, IN HIS CAPACITY AS ACTING TREASURER OF MAKATI, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Pursuant to Republic Act No. 7160, otherwise known as the Local Government Code of 1991, the then Sangguniang Bayan of Makati enacted Municipal Ordinance No. 92-072, otherwise known as the Makati Revenue Code, which provides, *inter alia*, for the schedule of real estate, business and franchise taxes in the Municipality of Makati at rates higher than those in the Metro Manila Revenue Code.

On May 10, 1993, the Philippine Racing Club, Inc. ("PRCI" for brevity), a taxpayer of Makati, appealed to the Department of Justice ("DOJ" for brevity) for the nullification of said ordinance, alleging that it was approved without previous public hearings, in violation of the Local Government Code and Article 276 of its Implementing Rules, and that some of the ordinance's provisions were unconstitutional:

(2) "The 'in-lieu-of-all-taxes' clause of the franchise of the Philippine Racing Club, Inc. exempts it from payment of the real property tax, annual business tax and other new taxes imposed by the ordinance here in question. To withdraw the exemption would impair the obligation of contract in violation of its constitutional right as franchise holder.

(3) "The imposition of the franchise tax is not within the scope of the taxing powers of the Municipality of Makati (Sections 134, 137 and 142 of Republic Act No. 7160 and Articles 223, 226 and 231 of Rule XXX of the Implementing Rules and Regulations of the Local Government Code of 1991). and

(4) "The Municipality of Makati already shares 5 of the 25% franchise tax provided for in Section 8 of the franchise of the Philippine Racing Club, Inc. To allow the said municipality to impose another franchise tax and to base the tax on the gross annual receipts, as it does in the ordinance, would certainly be unjust, excessive, oppressive or confiscatory (Section 130 of Republic Act No. 7160 and Article 219 of Rule XXX of the Implementing Rules and Regulations).<sup>[1]</sup>

Although required by the DOJ to comment on the appeal, respondent Makati failed to do so.

On July 5, 1993, the DOJ came out with a resolution<sup>[2]</sup> declaring “null and void and without legal effect” the said ordinance for having been enacted in contravention of Section 187 of the Local Government Code of 1991 and its implementing rules and regulations.<sup>[3]</sup>

On August 19, 1993, respondent Makati sought a reconsideration of the ruling of the DOJ. Pending resolution of its motion, said respondent filed a petition *ad cautelam*<sup>[4]</sup> with the Regional Trial Court (RTC) of Makati, entitled *Hon. Jejomar C. Binay and the Municipality of Makati, Petitioners, v. Hon. Franklin M. Drilon, Department of Justice and Philippine Racing Club, Inc., Respondents*, and docketed as Case No. 93-2844. The case was raffled to Branch 148 of the Makati RTC. Respondent Makati alleged, *inter alia*, that public hearings were conducted before the approval of the ordinance and hence the ordinance was valid. It prayed that after due proceedings judgment be rendered in its favor, thus:

WHEREFORE, petitioners respectfully pray that this Honorable Court promulgate judgment:

(a) declaring null and void the DOJ Decision dated July 5, 1993; and

(b) allowing the full implementation of Makati Municipal Ordinance No. 92-072.

Petitioners pray for such further or other reliefs as this Honorable Court may deem just and equitable.<sup>[5]</sup>

In the meantime, respondent Makati continued to implement the ordinance. Petitioner Jardine Davies Insurance Brokers, Inc., a duly-organized corporation with principal place of business at No. 222 Sen. Gil J. Puyat Avenue, Makati, Metro Manila, was assessed and billed by Makati the amount of P63,822.47 for taxes, fees and charges under the ordinance for the second quarter of 1993. It was again billed by respondent Makati the same amount for the third quarter of 1993 and the same amount for the fourth quarter of 1993. Petitioner did not protest the assessment for its quarterly business taxes for the second, third and fourth quarters of 1993 based on said ordinance effective April 1, 1993. Petitioner, in fact, paid the said amounts on April 26, 1993 (for the second quarter), July 12, 1993 (for the third quarter) and October 19, 1993 (for the fourth quarter), respectively, without any protest. Respondent Makati issued the corresponding receipts in favor of petitioner.<sup>[6]</sup>

On January 30, 1994, petitioner wrote the municipal treasurer of Makati requesting that respondent Makati compute its business tax liabilities in accordance with the Metro Manila Revenue Code and not under the ordinance considering that said ordinance was already declared by the DOJ null and void. Petitioner likewise requested that respondent Makati credit the overpayment in the total amount of P27,854.91 for the second to fourth quarters of 1993 against its 1994 liabilities for 1994, or in the alternative, for Makati to refund the said amount to petitioner.

In a Letter<sup>[7]</sup> dated February 4, 1994, respondent Makati, through Maximo L.

Paulino Jr., Acting Chief of its Municipal License Division, denied the request of petitioner for tax credit/refund. Respondent Makati insisted that the questioned ordinance code was valid and enforceable pending the final outcome of its petition *ad cautelam* with the Regional Trial Court of Makati.

In the meantime, on October 26, 1993, the RTC rendered judgment in Case No. 93-2844 granting the petition of Makati and declaring the ordinance valid. On November 9, 1993, the DOJ issued a memorandum to the Chief State Counsel directing the latter to refrain from accepting any appeal or to act on pending appeals on the validity/constitutionality of the ordinance until the same shall have been finally resolved by courts of competent jurisdiction.

When informed of the denial by respondent Makati of its letter-request, petitioner filed a complaint on March 7, 1994 with the RTC of Makati against respondents Makati and its Acting Municipal Treasurer. The case was raffled to Branch 150 of said court. Petitioner alleged in its complaint that in view of the resolution of the DOJ declaring the Makati Revenue Code "null and void and without legal effect," the provisions of the Metro Manila Revenue Code continued to remain in full force and effect; however, petitioner was assessed and billed by respondent Makati for taxes, fees and charges for second, third and fourth quarters for 1993 beginning on April 4, 1993 up to October 14, 1994 at rates fixed in the ordinance despite the nullity thereof. Petitioner prayed that after due proceedings judgment be rendered as follows:

1. Declaring as NULL AND VOID Municipal Ordinance No. 92-072, (Makati Revenue Code) of the Municipality of Makati and ordering Defendants to refund or issue as tax credit in favor of Plaintiff the sum of P27,854.91 plus interest.
2. Assuming without admitting that the Municipal Ordinance No. 92-072 (Makati Revenue Code) is valid, declaring that the rates imposed by said ordinance accrue only on July 1, 1993 and ordering Defendants to refund or issue as tax credit in favor of Plaintiff the sum of P9,284.97.<sup>[8]</sup>

On May 18, 1994, respondents Makati and its Acting Municipal Treasurer filed a motion to dismiss<sup>[9]</sup> the complaint on the ground of prematurity. They argued that petitioner's cause of action was predicated on the appealed resolution of the DOJ, and unless and until nullified by final judgment of a competent court, the ordinance remained in full force and effect.

On May 26, 1994, petitioner opposed the motion to dismiss of respondents, contending that its complaint was not predicated solely on the invalidity and unconstitutionality of the ordinance but also on its claim that the ordinance took effect only in July 1, 1993 but Makati applied the ordinance effective April 1, 1993. Petitioner further averred that under Section 166 of the Local Government Code, new taxes, fees or charges or charges provided for in the ordinance shall accrue on the first day of the quarter following the effectivity of the new ordinance. Hence, assuming that the tax ordinance was valid, the same should have been enforced only from the "first (1<sup>st</sup>) day of the quarter following next the effectivity of the ordinance imposing such new levies or rates" as provided for in Section 166 of the Local Government Code.