

## FIRST DIVISION

[ G.R. Nos. 197942-43, 199528, March 26, 2014 ]

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION,  
PETITIONER, VS. THUNDERBIRD PILIPINAS HOTELS AND  
RESORTS, INC., EASTBAY RESORTS, INC., AND HON. CICERO  
JURADO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT OF  
MANILA, BRANCH 11, RESPONDENTS.**

### DECISION

**REYES, J.:**

Three consolidated petitions for *certiorari*, all between the same parties, are before us. Petitioner Philippine Amusement and Gaming Corporation (PAGCOR), represented by the Office of the Government Corporate Counsel, claiming to interpose only pure questions of law, comes directly to this Court seeking to annul the Order<sup>[1]</sup> and Writ of Injunction<sup>[2]</sup> issued on June 23, 2011 by the Regional Trial Court (RTC) of Manila, Branch 11, in Civil Case Nos. 11-125832-33, as well as its Amended Order<sup>[3]</sup> dated October 13, 2011 and Writ of Preliminary Mandatory Injunction<sup>[4]</sup> dated October 18, 2011, for grave abuse of discretion amounting to lack or excess of jurisdiction.

### Antecedent Facts

Presidential Decree (P.D.) No. 1067-A<sup>[5]</sup> created PAGCOR on January 1, 1977 with the task to “centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by laws.” Then, under P.D. No. 1869, promulgated on July 11, 1983, all presidential decrees relative to the franchise and powers of PAGCOR, namely, P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, were consolidated into one statute and charter for PAGCOR. Sections 1(b) and 10 of P.D. No. 1869 provide:

SEC. 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

x x x x

b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: x x x (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos

without direct government involvement.

x x x x

#### TITLE IV – GRANT OF FRANCHISE

SEC. 10. *Nature and Term of Franchise.* – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

On June 20, 2007, Republic Act (R.A.) No. 9487 amended P.D. No. 1869 by extending PAGCOR'S franchise by 25 years after July 11, 2008, renewable for another 25 years, while also expanding and circumscribing its corporate powers.<sup>[6]</sup>

Under Section 3(h) of P.D. No. 1869, PAGCOR is empowered "to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, x x x, whether as principal or as an agent, x x x with any person, firm, association, or corporation."<sup>[7]</sup> Thus, on November 9, 2004, respondent Eastbay Resorts, Inc. (ERI) and its foreign principal, International Thunderbird Gaming Corporation of Canada (Thunderbird), entered into a Memorandum of Agreement (MOA)<sup>[8]</sup> with PAGCOR whereby Thunderbird through ERI committed to invest the initial sum of US\$7.5 Million in their gaming and leisure operations in Fiesta Hotel and Casino (FHC) in Eastbay Arts Recreational and Tourism Zone, Binangonan, Rizal. To secure ERI's compliance with the MOA, the amount was placed in escrow.

For its part, PAGCOR granted ERI a six-month provisional authority to operate (ATO) a casino in FHC, but maintained its "sole option" to revoke or terminate the said ATO should ERI and Thunderbird commit any material default of their undertakings, or violate any laws or rules relative to the operation of a casino in FHC, or fail to remedy the same within 30 days, or become bankrupt, and for any other analogous situation.<sup>[9]</sup>

On May 19, 2005, in a document simply called Agreement,<sup>[10]</sup> PAGCOR granted ERI and Thunderbird a "permanent" ATO co-terminus with PAGCOR's franchise, or up to July 11, 2008, followed on January 18, 2006 by another document, Addendum to the Agreement,<sup>[11]</sup> wherein ERI agreed to invest P2.5 Billion (US\$31.2 Million) more for Phases 1-2 of FHC over seven years ending in 2012, contingent on the following events:

- PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
- The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise

or the extended franchise, whichever is applicable; and

- PAGCOR grants unto [ERI] and THUNDERBIRD extension of the authority to operate the [FHC].<sup>[12]</sup>

On April 11, 2006, PAGCOR and respondent Thunderbird Pilipinas Hotel and Resorts, Inc. (Thunderbird Pilipinas), a newly-formed local affiliate of ERI now representing their foreign principal, Thunderbird, executed another MOA<sup>[13]</sup> whereby Thunderbird Pilipinas committed to invest a total of US\$100 Million, or P5.2 Billion, in Fiesta Casino and Resort (FCR), a gaming and leisure complex in Poro Point Special Economic and Freeport Zone (PPSEFZ), San Fernando City, La Union. For Phase 1 of FCR, Thunderbird Pilipinas would deposit in escrow the initial amount of P162.3 Million, while PAGCOR would grant it a six-month provisional ATO a casino. And since Phases 2-5 of FCR to complete the US\$100 Million investment would extend beyond July 11, 2008, it was also agreed that Thunderbird Pilipinas' subsequent additional investments in FCR would be made contingent upon the following conditions happening:

- PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
- The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable; and
- PAGCOR grants unto THUNDERBIRD PILIPINAS extension of the authority to operate the [FCR].<sup>[14]</sup>

On October 31, 2006, the parties executed an Amendment to the Memorandum of Agreement,<sup>[15]</sup> whereby Thunderbird Pilipinas also agreed to issue a Corporate Guarantee to fund, develop and complete the FCR, failing which, it would cede and transfer over to PAGCOR its entire shares of stock in FCR, as well as lose its license to operate a casino in FCR. PAGCOR for its part granted Thunderbird Pilipinas an ATO for FCR of up to July 11, 2008, but extendible beyond the said date, under the following new provision:

This Agreement shall be effective from the date of the execution of the Memorandum of Agreement [dated April 11, 2006] and shall be co-terminus with the present charter of PAGCOR or until July 11, 2008. The Memorandum of Agreement shall be extended for such period and under such terms and conditions as may be agreed upon by the parties in the event that PAGCOR is given a new franchise or its present franchise is extended by law beyond July 11, 2008, and that the authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable.<sup>[16]</sup>

In an accompanying document called License,<sup>[17]</sup> also dated October 31, 2006, Thunderbird Pilipinas' casino franchise in FCR was also stated to be co-terminus with PAGCOR, or until July 11, 2008, but extendible if and when PAGCOR's authority to issue licenses is extended. In the License, the terms and conditions for the operation of a gambling casino at PPSEFZ were specified, much like the earlier Agreement

dated May 19, 2005 between PAGCOR, ERI and Thunderbird – the said Agreement also stated that the “grant of authority” to Thunderbird would be “co-terminus with the present charter of PAGCOR, or until July 11, 2008,” but extendible if and when PAGCOR is given a new or extended franchise beyond July 11, 2008.

With the passage of R.A. No. 9487, Thunderbird Pilipinas and ERI (respondents) sought the formal extension of their ATOs to be made co-terminus with PAGCOR’s new franchise, as well as extension of their development and investment schedules. On August 7, 2009, a year since the expiration of the respondents’ previous ATOs, the Board of Directors of PAGCOR approved a retroactive month-to-month extension of their licenses from July 11, 2008, as well as a franchise extension of five years effective August 6, 2009. PAGCOR also extended ERI’s investment timetable to July 2015, and that of Thunderbird Pilipinas to 2021.<sup>[18]</sup>

But to the disappointment of the respondents, on December 11 and 21, 2009 PAGCOR sent ERI and Thunderbird Pilipinas, respectively, separate blank renewal ATOs bearing a period of only six months retroactive to July 12, 2008.<sup>[19]</sup> Thunderbird Pilipinas’ 4-page blank ATO, called Renewal of Authority to Operate, adverted to its investment commitment in their original MOA dated April 11, 2006, while the 12-page blank ATO of ERI, called Authority to Operate, contains similar terms of reference for casino operations as those stipulated in the October 31, 2006 license of Thunderbird Pilipinas. The respondents refused to accede to the blank ATOs, reiterating their understanding in their letter<sup>[20]</sup> dated March 30, 2010 that under their MOAs, their ATOs should be co-terminus with the new charter of PAGCOR. They maintained that a longer franchise was dictated by the size of their investments in the casino resorts, totaling P7.7 Billion; that these projects would spur tourism, economic activity and employment in Rizal and La Union; and, that an industry newcomer, Resorts World, was granted a casino franchise co-terminus with PAGCOR’s, or up to 2033.

On June 2, 2010, PAGCOR wrote to Thunderbird Pilipinas that it had approved the automatic five-year extensions of its ATO up to 2033, conditioned on full and satisfactory compliance with its investment schedules.<sup>[21]</sup> The renewal ATO was to incorporate the following provision:

The Authority to Operate is renewed commencing from the Effective Date and shall be valid for a period of five (5) years or until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with PAGCOR Charter which is until July 11, 2033 upon full compliance of THUNDERBIRD PILIPINAS of its Investment Commitment to the satisfaction of PAGCOR.<sup>[22]</sup>

Also on June 2, 2010, PAGCOR advised ERI that its revised ATO would incorporate a provision stipulating the new period, *viz*:

**“Period”** refers to the five (5)[-]year period until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with the PAGCOR Charter which is until July 11, 2033 upon full compliance by [ERI] of its Investment Commitment, to the satisfaction of PAGCOR.<sup>[23]</sup>

On July 8, 2010, the respondents again wrote to ask for their renewal of ATOs;<sup>[24]</sup> but on November 2, 2010, now under a new Board of Directors appointed by newly-elected President Benigno S. Aquino III, PAGCOR instructed them to submit updated investment plans because they allegedly missed their previous investment timetables.<sup>[25]</sup> The respondents wrote back on November 30, 2010 to assure PAGCOR that they were fully compliant with their investment commitments, and again pleaded for a longer ATO, which they said they needed to attract investors.<sup>[26]</sup> On February 16, 2011, PAGCOR wrote for clarifications while pointing out discrepancies in the capitalization and timetables of the respondents, noting in particular that their clients had been mostly local, not foreign, players.<sup>[27]</sup>

On May 30, 2011, insisting that the respondents' ATOs had expired on August 6, 2009 without a renewal, PAGCOR served notice upon the respondents to cease their casino operations, as well as gave them until June 3, 2011 to signify their unconditional acceptance of its new terms of reference for their new licenses, or "PAGCOR will have no choice but to initiate cessation proceedings."<sup>[28]</sup> Among the new terms of reference were:

- a. The respondents' investment commitment must be completed within three years from issue date of the new license;
- b. The resort's minimum floor area must be 25,000 square meters, not counting residential, office and parking spaces;
- c. All gaming areas shall have a gross floor area of 5,000 sq m;
- d. A minimum of 200 hotel rooms must be available;
- e. There must be a maximum of 1 gaming table per 4 hotels rooms;
- f. There must be a maximum of 3 slot machines per 2 hotel rooms;
- g. A three-year provisional license will be issued pending full compliance with the investment commitment, while the regular license shall have a period of seven years; and
- h. PAGCOR's franchise fees based on gross gaming revenues shall be 40% from non-junket tables, 40% from slot machines and electronic gaming machines, and 15% from junket operations.<sup>[29]</sup>

On June 2, 2011, the respondents wrote to entreat PAGCOR to honor their previous agreements, pleading in particular that their new ATOs should expire only in 2033.<sup>[30]</sup> They reasoned that under their letter-agreements dated June 2, 2010, PAGCOR already recognized the subsistence of their new ATOs, which was why it: (a) accepted the sums of P230,918,586.00 and P238,970,180.00 from Thunderbird Pilipinas and ERI, respectively, representing its cumulative participation fee of 25% in their casino revenues from July 2010 to May 2011; (b) approved the respondents' compliance with their investment commitments; and (c) granted their applications for approval over myriad details relating to their casino operations, such as importation and installation of slot machines, machine movement, marketing and