

## SECOND DIVISION

[ G.R. No. 176628, March 19, 2012 ]

**PHILIPPINE TOURISM AUTHORITY, PETITIONER, VS.  
PHILIPPINE GOLF DEVELOPMENT & EQUIPMENT, INC.,  
RESPONDENT.**

### RESOLUTION

**BRION, J.:**

Before this Court is a petition for *certiorari*, under Rule 65 of the 1997 Rules of Civil Procedure, to annul the decision<sup>[1]</sup> dated December 13, 2006 of the Court of Appeals (CA) in CA G.R. SP No. 90402. This CA decision dismissed the petition for annulment of judgment which sought to set aside the decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Muntinlupa City, Branch 203, in Civil Case No. 03-212. The RTC held the Philippine Tourism Authority (PTA) liable for its unpaid obligation to Philippine Golf Development & Equipment, Inc. (PHILGOLF).

### FACTUAL BACKGROUND

On April 3, 1996, PTA, an agency of the Department of Tourism, whose main function is to bolster and promote tourism, entered into a contract with Atlantic Erectors, Inc. (AEI) for the construction of the Intramuros Golf Course Expansion Projects (PAR 60-66) for a contract price of Fifty-Seven Million Nine Hundred Fifty-Four Thousand Six Hundred Forty-Seven and 94/100 Pesos (P57,954,647.94).

The civil works of the project commenced. Since AEI was incapable of constructing the golf course aspect of the project, it entered into a sub-contract agreement with PHILGOLF, a duly organized domestic corporation, to build the golf course amounting to Twenty-Seven Million Pesos (P27,000,000.00). The sub-contract agreement also provides that PHILGOLF shall submit its progress billings directly to PTA and, in turn, PTA shall directly pay PHILGOLF.<sup>[3]</sup>

On October 2, 2003, PHILGOLF filed a collection suit against PTA amounting to Eleven Million Eight Hundred Twenty Thousand Five Hundred Fifty and 53/100 Pesos (P11,820,550.53), plus interest, for the construction of the golf course. Within the period to file a responsive pleading, PTA filed a motion for extension of time to file an answer.

On October 30, 2003, the RTC granted the motion for extension of time. PTA filed another motion for extension of time to file an answer. The RTC again granted the motion.

Despite the RTC's liberality of granting two successive motions for extension of time, PTA failed to answer the complaint. Hence, on April 6, 2004, the RTC rendered a

judgment of default, ruling as follows:

WHEREFORE, judgment is hereby rendered, ordering the defendant to pay plaintiff:

1. The amount of Eleven Million, Eight Hundred Twenty Thousand, Five Hundred Fifty Pesos and Fifty Three Centavos (P11,820,550.53), representing defendant's outstanding obligation, plus interest thereon of twelve percent (12%) per annum from the time the unpaid billings of plaintiff were due for payment by the defendant, until they are fully paid.
2. The amount of Two Hundred Thousand Pesos (P200,000.00), as attorney's fees.
3. The amount of One Hundred Twenty Eight Thousand, Five Hundred Twenty Nine Pesos and Fourteen Centavos (P128,529.14), as filing fees and other costs of litigation.
4. The amount of Three Hundred Thousand Pesos (P300,000.00), as moral damages.
5. The amount of One Hundred Fifty Thousand (Pesos (P150,000.00), as nominal damages, and
6. The amount of Two Hundred Fifty Thousand Pesos (P250,000.00), as exemplary damages.

SO ORDERED.<sup>[4]</sup>

On July 11, 2005, PTA seasonably appealed the case to the CA. But before the appeal of PTA could be perfected, PHILGOLF already filed a motion for execution pending appeal with the RTC. The RTC, in an Order dated June 2, 2004, granted the motion and a writ of execution pending appeal was issued against PTA. On June 3, 2004, a notice of garnishment was issued against PTA's bank account at the Land Bank of the Philippines, NAIA-BOC Branch to fully satisfy the judgment.

PTA filed a petition for *certiorari* with the CA, imputing grave abuse of discretion on the part of the RTC for granting the motion for execution pending appeal. The CA ruled in favor of PTA and set aside the order granting the motion for execution pending appeal.

On July 11, 2005, PTA withdrew its appeal of the RTC decision and, instead, filed a petition<sup>[5]</sup> for annulment of judgment under Rule 47 of the Rules of Court. The petition for annulment of judgment was premised on the argument that the gross negligence of PTA's counsel prevented the presentation of evidence before the RTC.

On December 13, 2006, the CA dismissed the petition for annulment of judgment for lack of merit. PTA questions this CA action in the present petition for *certiorari*.

### **THE PETITION**

The petition cites three arguments: *first*, that the negligence of PTA's counsel amounted to an extrinsic fraud warranting an annulment of judgment; *second*, that since PTA is a government entity, it should not be bound by the inactions or negligence of its counsel; and *third*, that there were no other available remedies left for PTA but a petition for annulment of judgment.

### **OUR RULING**

#### **We find the petition unmeritorious.**

The Rules of Court specifically provides for deadlines in actions before the court to ensure an orderly disposition of cases. PTA cannot escape these legal technicalities by simply invoking the negligence of its counsel. This practice, if allowed, would defeat the purpose of the Rules on periods since every party would merely lay the blame on its counsel to avoid any liability. The rule is that "a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique[,], and unless such acts involve gross negligence that the claiming party can prove, the acts of a counsel bind the client as if it had been the latter's acts."<sup>[6]</sup>

In *LBC Express - Metro Manila, Inc. v. Mateo*,<sup>[7]</sup> the Court held that "[g]ross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected." This cannot be invoked in cases where the counsel is merely negligent in submitting his required pleadings within the period that the rules mandate.

It is not disputed that the summons together with a copy of the complaint was personally served upon, and received by PTA through its Corporate Legal Services Department, on October 10, 2003.<sup>[8]</sup> Thus, in failing to submit a responsive pleading within the required time despite sufficient notice, the RTC was correct in declaring PTA in default.

#### ***There was no extrinsic fraud***

"Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent."<sup>[9]</sup> Under the doctrine of this cited case, we do not see the acts of PTA's counsel to be constitutive of extrinsic fraud.

The records reveal that the judgment of default<sup>[10]</sup> was sent via registered mail to PTA's counsel. However, PTA never availed of the remedy of a motion to lift the order of default.<sup>[11]</sup> Since the failure of PTA to present its evidence was not a product of any fraudulent acts committed outside trial, the RTC did not err in declaring PTA in default.

#### ***Annulment of judgment is not the proper remedy***

PTA's appropriate remedy was only to appeal the RTC decision. "Annulment of