

## SECOND DIVISION

[ G.R. No. 156303, December 19, 2007 ]

**PHILIPPINE LEISURE AND RETIREMENT AUTHORITY (FORMERLY PHILIPPINE RETIREMENT AUTHORITY), PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 57, AND PHILIPPINE RETIREMENT AUTHORITY ASSOCIATION (PRAMA), RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

Petitioner Philippine Leisure and Retirement Authority (PLRA), formerly Philippine Retirement Authority, is a government-owned and controlled corporation created by Executive Order No. 1037, entitled *Creating the Philippine Retirement Park System, Providing Funds Therefor and for Other Purposes*. The PLRA was created to develop and promote the Philippines as a retirement haven. PLRA implemented the Philippine Retirement Program (program) to attract former Filipinos, now foreigners (*balikbayans*), to invest in the Philippines. Under the program, all foreign nationals, except those classified as *restricted* by the Department of Foreign Affairs, and *balikbayans*, holders of foreign passports who are at least 35 years old, upon compliance with requirements, and payment of required fees, may be granted Special Resident Retirees Visa by the Bureau of Immigration through applications processed by PLRA.

Sometime in 1989, 12 principal retirees of PLRA organized and registered with the Securities and Exchange Commission (SEC) the Philippine Retirement Authority Members Association, Inc. (PRAMAI). In 1994, Atty. Ramon M. Collado, a principal retiree of PLRA, registered with the SEC another association, the P.R.A. Members Association Foundation, Inc. (PRAMA). PRAMAI was one of the incorporators of PRAMA. Atty. Collado, then a consultant of PLRA for Special Projects and Investments, envisioned PRAMA as a non-governmental foundation to assist PLRA in implementing the PLRA's programs.

Initially, PRAMA held its office in the office of PLRA and shared its accounting and other office systems. Subsequently, on November 17, 1997, PRAMA transferred and set up its own office systems.

After its incorporation, PRAMA executed several Memoranda of Agreement (MOAs) with PLRA's short-listed banks to promote the banks' services among PRAMA members who were PLRA's principal retirees. In the MOAs, the banks agreed to pay PRAMA a marketing fee of one-half ( $\frac{1}{2}$ ) of 1% of the total outstanding balance of the principal retirees' deposits in the listed banks.

In late December 1995, PLRA issued a resolution<sup>[1]</sup> requiring PLRA principal retirees to become PRAMA members. The resolution provided that PLRA would collect the

annual membership fee of PhP 2,000. When PRAMA transferred offices, PLRA remitted to PRAMA the membership fees it collected in the amounts of PhP 114,000 for 1997, PhP 472,000 for 1998, PhP 858,000 for 1998, and PhP 1,444,000 for 2000,<sup>[2]</sup> all duly acknowledged and receipted by PRAMA.

Meanwhile, on December 9, 1997, the PLRA Board issued another resolution<sup>[3]</sup> approving the request of PRAMA to include in their website PLRA retirement program materials and the creation of a committee composed of PLRA and PRAMA members to study all the aspects, possibilities, and the support PLRA can give PRAMA, at no cost to the government. It was aimed to enhance the program of the government, and grant authority to the Chief Executive Officer (CEO) and General Manager of PLRA to enter into a MOA with PRAMA. With the favorable opinion of the Office of the Government Corporate Counsel (OGCC), on May 28, 1999, the parties entered into a MOA.<sup>[4]</sup>

Subsequently, on March 31, 2000, after collecting PRAMA's annual membership fees since 1996, PLRA sent PRAMA a letter<sup>[5]</sup> to the effect that it would continue to collect PRAMA's membership fees for a five percent service fee based on total collections effective January 2000, in accordance with Section 44 of the Government Accounting and Auditing Manual, Vol. 1 and Administrative Order No. 197. PRAMA objected.

Thereafter, in its August 2000 issue of *PRAMA Updates*, Volume VI, Number 2, Special Health Care Issue, under the editorial column entitled *Notes from the President and What is PLRA up to?*,<sup>[6]</sup> some derogatory allegations and pejorative remarks were leveled against PLRA. PLRA promptly complained and communicated its objections to PRAMA.

In a meeting on August 24, 2000, the officers of PLRA and PRAMA tried to iron out their differences such as discrepancies in their respective records on the number of principal retirees, and the actual annual membership fee collections. PRAMA claimed that its external auditor, Alba Romeo & Co., found that about 40% of its member-retirees had not paid their annual membership dues.

On September 26, 2000, PRAMA wrote PLRA to inform the latter that it was sending its accountant, Eleonora D. Gamaru, to the latter's office to reconcile the records of the member-retirees with the remittances to PRAMA.<sup>[7]</sup> On September 27, 2000, PLRA sent PRAMA a letter<sup>[8]</sup> expressing both gratitude and exception to the two editorials in the *PRAMA Updates* August 2000 issue.

When Gamaru went to the PLRA office to reconcile records, she complained she was not given all the records. PLRA denied her allegations in a letter dated October 2, 2000,<sup>[9]</sup> explaining that it furnished Gamaru records pertaining only to the annual membership dues of the retirees which were the object of Gamaru's reconciliation. It did not furnish Gamaru records on visitorial and ID fees of the principal retirees as these payments concerned only PLRA.

On October 9, 2000, PLRA wrote another letter<sup>[10]</sup> to PRAMA concerning the amount of PhP 10,811,433 allegedly due to PRAMA based on PRAMA's schedule of membership fees for the years 1997 through August 23, 2000. PLRA also requested

for photocopies of PRAMA's receipt books for these years to verify the figures and to identify the retirees who have not yet paid their membership fees.

Earlier, on October 6, 2000, in PRAMA's letter/reply, it explained that, among others, it still needed to reconcile and update their records. PRAMA said PLRA had not given it accurate data on the final figures of member-retirees and, consequently, it could not give accurate figures of their collections. In particular, PRAMA explained that Gamaru had worked only for two days, and after she reviewed the files for October 1996, she discovered that several retirees paid the annual membership dues but these were not remitted by PLRA. She also claimed that PLRA Acting Deputy General Manager Bernardino and PLRA CEO and General Manager Atty. Vernetta Umali-Paco refused her access to the November and December 1996 files such that she could not continue her review of the files.

PRAMA also said that the discrepancies reflected in the records were increasing and had been unreported for years; hence, it informed PLRA of its resolution authorizing Atty. Collado to conduct an investigation on what seemed were anomalies and to take legal action.

Exchanges of letters between PRAMA and PLRA ensued.

Meanwhile, on November 8, 2000, PRAMA asked PLRA for an updated list of investor retiree-members with their addresses and nationality to offer them insurance development services, e.g., comprehensive Philam health care, memorial plans, Philamlife and Golden Village finance management, etc.<sup>[11]</sup> PLRA explained PRAMA's request could not be acted upon since it did not have these data.

PLRA accused PRAMA of sowing seeds of discontent and suspicion among PLRA's principal retirees, and of breach of the MOA. PLRA referred the rescission of the MOA to the OGCC. The OGCC opined that PLRA through its Board of Trustees could unilaterally rescind the MOA because PRAMA violated the MOA. Consequently, in a meeting on December 11, 2000, the PLRA Board of Trustees resolved to terminate the MOA.

On January 25, 2001, PRAMA instituted a *Complaint for Specific Performance with Prayer for Preliminary Injunction*,<sup>[12]</sup> docketed as Civil Case No. 01-112, against PLRA before the Makati City Regional Trial Court (RTC). PRAMA alleged that the termination of the MOA was illegal and PLRA had yet to remit all membership fee collections covering 1996 to 2000.

### **The RTC granted preliminary injunction**

After the hearings on the preliminary injunction, the RTC through its April 30, 2001 Order<sup>[13]</sup> granted PRAMA's prayer for an injunctive writ. The trial court found that the parties had agreed verbally that PRAMA would acquire and develop the facilities and benefits for the retirees, while PLRA would remit to PRAMA PhP 2,000 per retiree as membership dues per year to fund expenses. The trial court also found that PLRA, without prior notice and without addressing the problem of reconciling the records, unilaterally terminated the MOA; terminated the appointment of Atty. Collado as consultant of PLRA for Special Projects and Investments; and rescinded the authorization for compulsory membership of PLRA retirees to the PRAMA. The

trial court concluded that PRAMA had established its right *in esse* to be protected; PLRA had no legal cause to rescind the MOA; and the MOA did not contain any provision authorizing automatic cancellation of the MOA. The RTC concluded that court intervention was needed in the event that the terms of the MOA were violated. The RTC granted and issued the preliminary mandatory injunction against PLRA.

The April 30, 2001 Order disposed:

WHEREFORE, upon posting a bond in the amount of PHP One (1) Million (P1,000,000.00), the same to be approved by the Court, let a writ of preliminary mandatory injunction issue compelling the defendant to reinstate the MOA and for the defendant to faithfully comply with the remittance of all monies due the plaintiff.

SO ORDERED.

Aggrieved, PLRA assailed the April 30, 2001 RTC Order before the Court of Appeals (CA).

On January 31, 2002, the CA rendered the assailed Decision<sup>[14]</sup> denying PLRA's petition for certiorari. The *fallo* reads:

WHEREFORE, the petition is DENIED. The Order, dated 30 April 2001 issued by the public respondent is hereby AFFIRMED. Accordingly, let this case be remanded to the Regional Trial Court, Makati City, Branch 57 for further proceedings and proper disposition with dispatch. Needless to state, petitioner PRA's motion for the issuance of a writ of preliminary injunction is rendered moot and academic.

The appellate court said that the RTC did not commit grave abuse of discretion in granting the preliminary mandatory injunction as the injunction fulfilled all requirements and was well supported by sufficient evidence.

On February 14, 2002, the RTC issued an Order<sup>[15]</sup> resolving PRAMA's *Motion to Order Defendant to Comply with the Implementation of the Preliminary Mandatory Injunction and to Cite for Contempt* and *Motion to Implement the April 30, 2001 Order*, which were duly opposed by PLRA.

On March 4, 2002, PLRA concurrently filed its Motion for Reconsideration of the January 31, 2002 CA Decision, which was denied by the CA only on November 27, 2002.

On April 29, 2002, the RTC issued two orders. The First Order<sup>[16]</sup> denied PRAMA's motion to cite PLRA for contempt<sup>[17]</sup> for failure to comply with the February 14, 2002 Order. At the same time, it put PLRA on notice to comply within five (5) days from date of receipt; otherwise, it would be cited for contempt without further notice. The Second Order<sup>[18]</sup> denied PLRA's motion for reconsideration of the February 14, 2002 Order.

On May 8, 2002, PLRA filed a Manifestation informing the RTC that the reinstatement of the MOA and of Atty. Collado as consultant of PLRA was already included in the agenda of the next board meeting of the PLRA trustees, and that

PLRA had already sent appropriate letters to the banks.

On June 13, 2002, the RTC issued an Order<sup>[19]</sup> granting PRAMA's Motion for Clarificatory Order, and disregarding PLRA's Comment to the motion. The dispositive portion reads:

Above premises considered, this Court hereby GRANTS the Motion of the plaintiff [in] toto and reinstate the Order dated 14 February 2002 as follows:

WHEREFORE, defendant through its Board of Trustees and General Manager and Chief Executive Officer is ordered to do the following:

1. Reinstate the Memorandum of Agreement (MOA) that was terminated on December 11, 2000;
2. Reinstate Mr. Ramon M. Collado as the Consultant of PRA for Special Projects and Investments;
3. Pay to PRAMA Foundation Inc. the one half percent (0.5%) of the commission received by PRA from the accredited banks since January 2001 up to today, representing the one half percent (0.5%) of the total deposit of the retiree-members; and
4. Give necessary instruction to the depository banks, namely: Equitable PCI Bank, Solid Bank (now Metropolitan Bank and Trust Company), Bank of Commerce, and Chinatrust that from now on, to pay PRAMA Foundation Inc. the fee of one half percent (0.5%) per annum of the total average daily balance of funds deposited by foreign retirees under the program of PRA with the banks to be paid monthly.

Defendant's failure to comply with this Order upon receipt hereof shall be construed by the Court as deliberate disobedience to its processes and shall be cited for contempt. Defendant is therefore ordered to report to the Court on its compliance of this Order specifically the proof of the reinstatement of the MOA, proof of payment to PRAMA Foundation, Inc. and give necessary instruction to the depository banks to pay PRAMA Foundation, Inc. the fee of one half percent (0.5%) per annum monthly, and the reinstatement of Mr. Ramon Collado as the Consultant of PRA for Special Projects and Investment on the next day from receipt of this Order.

SO ORDERED.

The following day, OIC Erlina P. Lozada filed a Motion with Manifestation.<sup>[20]</sup>

On June 18, 2002, the RTC issued an Order prompted by PRAMA's Manifestation<sup>[21]</sup> which asked the court to cite for contempt the PLRA Board of Trustees and PLRA officers Atty. Umali-Paco and OIC Lozada. The dispositive portion of the Order reads:

WHEREFORE, pursuant to the Order of the Court dated 14 February 2002 as clarified in the Order dated 13 June 2002 and noting the Manifestation