



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTONIO ESCOTO,
Petitioner,

G.R. No. 192679

Present:

- versus -

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, JJ.

PHILIPPINE AMUSEMENT AND
GAMING CORPORATION,
Respondent.

Promulgated:

OCT 17 2016

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DECISION

BERSAMIN, J.:

An appeal of the decision of a trial court upon a question of law must be by petition for review on *certiorari* to be filed in this Court.

The Case

The petitioner challenges the resolutions promulgated on December 23, 2009¹ and June 2, 2010,² whereby the Court of Appeals (CA) respectively affirmed the decision rendered on October 28, 2004³ by the Regional Trial Court (RTC) in Olongapo City granting the respondent's motion to dismiss in Civil Case No. 215-0-2003, and denying the petitioner's motion for reconsideration.

¹ *Rollo*, pp. 34-40; penned by Associate Justice Romeo F. Barza, and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Magdangal M. de Leon.

² *Id.* at 42.

³ *Id.* at 43-54; penned by Judge Eliodoro G. Ubiadas (retired).

Antecedents

The petitioner and the late Edgar Laxamana were promoters/agents of Legend International Resort Limited (LIRL). As one of their promotional schemes, they organized a tourist-oriented cockfighting derby to be held on May 8 and 10, 2003 within the premises of LIRL within the Subic Bay Freeport Zone. For this purpose, they obtained a permit to conduct the event from the Subic Bay Metropolitan Authority (SBMA).⁴ Learning of the event, the respondent immediately advised LIRL to desist because cockfighting activity was outside its competence as a hotel casino resort.⁵

This prompted the promoters to bring their suit for injunction with application for a temporary restraining order (TRO) and writ of preliminary injunction in the RTC (Civil Case No. 215-0-2003). They averred that the respondent should be enjoined from ordering LIRL to desist from holding the cockfighting derby because the charter of the respondent did not include the supervision, control and regulation of cockfighting activities in the premises of LIRL within the Subic Bay Freeport Zone; that the authority to regulate such activities was within the powers of the SBMA under Republic Act No. 7227; and that there was nothing that should prevent LIRL from holding the cockfighting derby after the SBMA had issued the permit for such purpose.

Initially, the RTC issued a 20-day TRO to preserve the *status quo* between the parties.

On its part, the respondent objected to the issuance of the TRO, and urged the dismissal of Civil Case No. 215-0-2003 on the following grounds, namely: (a) the promoters were not the real parties in interest to maintain the suit; (b) they had no clear legal right to be protected; and (c) the conduct of the cockfighting derby was not a right but a mere privilege, and that, as such, the compliance with the law was mandatory before anyone could exercise the privilege. The respondent stated that one of the laws that the promoters had not complied with was Presidential Decree No. 449 (*Cockfighting Law of 1974*), which required a license for the cockfighting event to be issued by the relevant city or municipality.⁶

Eventually, on October 28, 2004, the RTC dismissed the complaint, disposing:

WHEREFORE, in view of the foregoing considerations, judgment is rendered in favor of the defendant and against the plaintiffs as follows:

⁴ Id. at 43.

⁵ Id. at 43-44.

⁶ Id. at 45-46.

1. Dismissing the plaintiffs' complaint for permanent injunction against the defendants implementing the cease and desist order for the holding of cockfight derby within the Subic Bay Freeport Zone;
2. Declaring that only the local government units can issue cockfighting license or permits to be held at [a] licensed cockpit arena within the Subic Bay Freeport Zone; and
3. Ordering plaintiffs to pay defendant the amount of ₱70,000.00 as attorney's fees plus the costs of the suit.

SO ORDERED.⁷

The RTC declared that the plaintiffs were not the real parties in interest because the permit for the event had been issued by SBMA in favor of LIRL; that they had no right to be protected by of injunction; that the licensing authority of the SBMA for tourism-related activities did not include cockfighting derbies even if the same were tourism-related; that the power to grant licenses and permits to conduct cockfighting derbies belonged to the local government units concerned (*i.e.*, the City of Olongapo, and the Municipalities of Morong, Bataan and Subic, Zambales); that the conduct of the cockfighting derby in question could not be allowed because no permit had been issued by any of the local government units concerned; that damages for lost earnings could not be granted to the respondent because its claim had not been established; that attorney's fees were justified because the parties had stipulated during the pre-trial on their entitlement therefor, and had agreed on the amounts to be granted for that purpose; and that the respondent as the victorious litigant and the based on the court's discretion should recover ₱70,000.00 as attorney's fees.

The plaintiffs appealed, assigning errors to the RTC, as follows:

First Assigned Error: The issue raised on the merits of the case is already moot and academic; *alternatively*, the Court *a quo* committed an error in declaring that the permission or license to hold a one-time cockfight held (sic) at the Subic Bay Free Port Zone does not full [sic] within the authority of the Subic Bay Metropolitan Authority (SBMA) under Republic Act No. 7227.

Second Assigned Error: The Court *a quo* committed an error in awarding attorney's fees in favor of the defendants and against the plaintiffs.⁸

On its part, the respondent moved to dismiss the appeal, arguing that based on their appellant's brief, the promoters were submitting issues of a

⁷ Id. at 54.

⁸ Id. at 59-60.

purely legal nature; and that consequently their appeal should be taken to the Court by petition for review on *certiorari* to raise only questions of law.

As stated, on December 23, 2009, the CA dismissed the appeal for raising only pure questions of law that were outside the competence of an ordinary appeal under Rule 41 of the *Rules of Court*.⁹ It ruled that the propriety of the award of attorney's fees had ceased to be a factual issue after the parties had admitted that the winning party would be entitled to the award, as in fact they had even stipulated on the amount to be thus awarded; and that it would be unjust to allow the promoters to renege on their admissions regarding the recovery of the award of attorney's fees. The *fallo* reads:

WHEREFORE, the Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED**.

SO ORDERED.¹⁰

After the CA denied his motion for reconsideration, the petitioner now appeals to the Court.

Issue

Did the CA err in dismissing the appeal?

Ruling of the Court

We affirm the CA.

To start with, the determination of whether or not the appeal was upon a question of law was within the discretion of the CA as the appellate court. In making its determination thereon, the CA correctly relied on the assignment of errors expressly made in the appellant's brief of the petitioner. Its determination that the issues were purely legal questions deserved respect. The correctness of the determination should be assumed unless there is a clear showing of the CA thereby committing error or gravely abusing its discretion.¹¹ Regrettably, the petitioner did not show so herein.

The modes of appealing a judgment or final order of a court of law have been outlined in Section 2, Rule 41 of the *Rules of Court*, viz.:

⁹ Supra, note 1.

¹⁰ Id. at 39-40.

¹¹ *First Bancorp, Inc. v. Court of Appeals*, G.R. No. 151132, June 22, 2006, 494 SCRA 221, 238.

Section 2. *Modes of appeal.*—

(a) *Ordinary appeal.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.*— **In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.** (n)

For purposes of item (c), supra, a question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts, and a question of law exists when the doubt or difference arises as to what the law is on a certain set of facts.¹² The test of whether the question is one of law or of fact is not met by considering the appellation given to such question by the party raising it; rather, it is whether the appellate court can determine the issue without reviewing or evaluating the evidence. If no review or evaluation of the evidence is necessary, the question is one of law; otherwise, it is a question of fact.¹³

And, secondly, obviously decisive herein is the ascertainment of which law – Republic Act No. 7227 (*The Bases Conversion and Development Act of 1992*) or Republic Act No. 7160 (*The Local Government Code*) – would be controlling. This ascertainment involves a purely legal question. In view of such nature of the question being sought to be presented for review, the appeal to the CA was improper. The dismissal of the appeal by the CA was the only proper and unavoidable outcome. Indeed, Section 2, Rule 50 of the *Rules of Court* mandates the dismissal, viz.:

Section 2. *Dismissal of improper appeal to the Court of Appeals.*
— **An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court.** Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

¹² *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 517-518.

¹³ *Ortiz v. San Miguel Corporation*, G.R. No. 151983-84, July 31, 2008, 560 SCRA 654, 667.

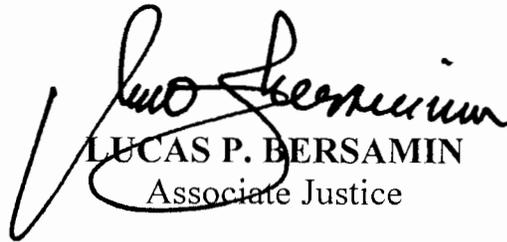
An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

Subordinate to the ascertainment of the applicable law is the matter of attorney's fees. The latter is similarly a purely legal question. This is because the parties had expressly agreed on the attorney's fees, inclusive of the amount thereof. In other words, the Court no longer has to delve into and resolve whether or not any of the parties had been compelled to litigate to protect their respective rights as to warrant the grant of attorney's fees under Article 2208 of the *Civil Code* in order to decide the matter. Verily, the Court has no alternative but to enforce the entitlement of the successful party to the fees that have been thereby transformed into liquidated damages. Liquidated damages, unlike other kinds of actual damages, require no proof.

Attempting to convince the Court that the issues raised before the CA concerned mixed questions of fact and law, the petitioner argues that there were factual issues to be resolved concerning the nature of the contract between the promoters and LIRL, and the nature of the cockfighting activity to be undertaken. The Court ignores the argument, however, because the petitioner is making it for the first time in this appeal. As a rule, points of law, theories, issues and arguments not brought to the attention of the CA as an appellate court cannot be raised for the first time at this late stage, and will not be considered by the Court on appeal. Considerations of due process impel this rule.¹⁴

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the resolutions promulgated on December 23, 2009 and June 2, 2010; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

¹⁴ *Del Rosario v. Bonga*, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 108.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO Associate Justice

M.P. Bernabe
ESTELA M. PERLAS-BERNABE Associate Justice

[Signature]
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice