

100 Phil. 950

[ G.R. No. L-7922. February 22, 1957 ]

**RECREATION AND AMUSEMENT ASSOCIATION OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA, THE MAYOR OF MANILA, THE CITY TREASURER OF MANILA, AND THE CHIEF OF POLICE OF MANILA, DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**FELIX, J.:**

On March 30, 1954, the Recreation and Amusement Association of the Philippines, Inc., allegedly a non-stock corporation organized and existing under the laws of the Philippines, whose 35 members are licensed owners and operators in the City of Manila, of Five-Ball-Flipper-Action-Pinball machines (also known as slot machines), filed a complaint in the Court of First Instance of said City praying that a preliminary injunction be issued to restrain the City Mayor and the City Treasurer from enforcing Ordinance No. 3628 passed by the Municipal Board of Manila on March 19, 1954, and approved by the City Mayor on the following day, which reads as follows:

“ORDINANCE NO. 3628

“AN ORDINANCE AMENDING SECTIONS SEVEN HUNDRED SEVENTY THREE AND SEVEN HUNDRED SEVENTY FOUR OR ORDINANCE NUMBERED ONE THOUSAND SIX HUNDRED KNOWN AS ‘THE REVISED ORDINANCES OF THE CITY OF MANILA’, AS LASTLY AMENDED BY ORDINANCE NUMBERED THREE THOUSAND THREE HUNDRED FORTY SEVEN.

“Be it ordained by the Municipal Board of the City of Manila, that: Section 1. Sections seven hundred seventy-three and seven hundred seventy-four of Ordinance Numbered One thousand six hundred, known as “The Revised Ordinances of the City of Manila, as lastly amended by Ordinance Numbered Three thousand three hundred forty-seven, are hereby

amended to read as follows:

“Sec. 773. *Licenses.*—No person, entity or corporation shall install or cause to be installed for the use of the public for compensation any mechanical contrivance or automatic apparatus which functions through the introduction of money not otherwise prohibited by law of weights and measures and not a gambling device, for purposes of amusement or of confronting the weight of persons or things, or printing letters or numbers, or displaying features inside the apparatus or reproducing recorded music including other kinds of machines or apparatus without having first obtained a license therefor from the City Treasurer. Such license must be posted on the apparatus concerned, Provided, that the operation or maintenance of pinball machines, not otherwise falling under the category of gambling device, shall not be allowed within a radius of two hundred (200) meters from any church, hospital, institution of learning public market, plaza, and government buildings.”Sec. 774.

*Fees.*—There shall be paid for every license granted for the installation and use of an apparatus provided in this chapter, an annual fee of P300 which is payable in advance: Provided, that person-coin operated weighing or scale machines shall pay only an annual fee of P12, payable in advance.

Sec. 2, This Ordinance shall take effect on its approval. Enacted, March 19, 1954. Approved, March 20, 1954.”

It is further prayed in the complaint that the City Mayor and the Treasurer be compelled to issue permits and licenses to the members of the said corporation upon compliance with the provisions of the ordinance (No. 3347) *enforced before the enactment of Ordinance No. 3628*; that after hearing, said ordinance be declared null and void, the writ of preliminary injunction be made permanent, and that plaintiff be granted such other relief to which it may be entitled under the law.

Acting upon this complaint, the lower court required plaintiff to file, as it did file, a bond in the amount of P2,000 for the issuance of a writ of preliminary injunction to restrain the defendant City Officials from enforcing the ordinance in question, and said writ was actually issued on April 1, 1954. Thereupon, Assistant City Fiscal filed on April 14, 1954, a motion to lift the writ of preliminary injunction issued as well as a motion to dismiss on the ground

that plaintiff has no legal capacity to sue and that the complaint states no cause of action. Defendants argue that the complaint does not state that plaintiff is the owner of any pinball machine to be affected by the ordinance in question; on the contrary, it appears from the complaint that the real parties in interest are the individual members of said organization whose names are not given. Such being the case, plaintiff association cannot be in any way adversely affected by the enforcement of the questioned ordinance, from which it follows that the complaint does not state a cause of action.

A supplement to the Motion to Dismiss and the Motion to lift the Preliminary Injunction was subsequently filed on April 21, 1954, wherein defendants' counsel endeavors to substantiate its previous contention by alleging, among others, that the ordinance subject of litigation is a valid legislation and within the power of the Municipal Board to enact; that the power of the Board to regulate slot machines is embodied in the Revised Charter of the City of Manila (section 18-(1) of Republic Act No. 409); that the regulation of the operation and maintenance of this kind of machine which they alleged to be inimical to the general welfare of the population especially the school children, is a lawful exercise of the police power of the State (section 18-*kk*), Republic Act No. 409); and that as it is a discretionary function of the Mayor to deny or issue permits and licenses, he cannot be compelled by mandamus to issue the same.

Upon defendants' motion, the hearing of the motion to dismiss was reset for *April 24, 1954*, and on that date the Court granted defendants' counsel a period of 5 days from April 26, 1954, to file an answer to plaintiff's opposition to the motions to (j)tsniiss and to lift the preliminary injunction, and another 5 days to plaintiff's counsel to reply, *if necessary*.

On *May 7, 1954*, plaintiff was served with a, "Resolucion" dated April 30, 1954, issued by the trial Judge, wherein the Court dismissed the complaint and dissolved the injunction issued thereby on the ground that the City Mayor has discretionary power to issue or refuse the issuance of a license or permit, declaring at the same time that Ordinance No. 3628 is valid and within the power of the Municipal Board to enact. The motion for reconsideration filed by plaintiff having been denied, the case was brought to us on appeal and in this instance plaintiff ascribes to the lower Court the commission of the following errors:

1. In motu proprio resolving upon the constitutionality of Ordinance No. 3628 at said stage of the proceeding (before defendants' answer and hearing on the merits), and consequently, in dissolving the writ of preliminary

injunction;

2. In finding the Mayor of Manila vested with discretionary powers to grant or refuse to issue municipal licenses and permits, and that the same cannot be controlled by Mandamus; and
3. In finding Ordinance No. 3628 valid and constitutional assuming that it had the power to do so at such stage of the proceeding.

There is no dispute that the Municipal Board of the City of Manila passed Ordinance No. 3628 limiting the operation and maintenance of a certain kind of slot machine to areas not within the radius of 200 hundred meters "from any church, hospital, institution of learning, public market, plaza and government buildings and that it increased the annual fee from P55 to P300 payable in advance. It is likewise clear that at the expiration of the period allowed the parties within which to file certain pleadings in connection with defendants' motion to dismiss, the Court issued a "Resolution" dated April 30, 1954, the dispositive part of which, translated into English, reads as follows:

"In view of the foregoing considerations the Court is of the opinion and consequently declares Ordinance No. 3628 of the City of Manila, valid and that the writ of preliminary injunction issued by this Court shall be dissolved with costs against plaintiff.

"It is to be stated in this connection that defendants did not file in time their answer to plaintiff's opposition to their two motions, but on May 4, 1954, and that is undoubtedly the reason why the Court prepared its Resolution before the lapse of plaintiff's period to reply if necessary" (which was conditioned on defendants' pleading which the latter failed to submit in time), though it was released thereafter, or on May 7, 1956. It is true that the trial Judge, instead of ruling on the motion to dismiss on either of the two grounds stated therein, namely, lack of legal capacity to sue and failure to state a cause of action, elected to ignore the same and dismissed the complaint upon its own findings. However, it is to be remembered that it was only the motion to dismiss that was set for hearing, and that section 3, Rule 8 of the Rules of Court provides for the manner in which such kind of motion may be resolved:

"Sec. 3. *Order*.—After hearing the Court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the

motion until the trial if the ground alleged therein does not appear to be indubitable.”

By arriving at a conclusion upholding the constitutionality of the ordinance and stating the reasons in support of such declaration, the lower court though in effect it passed upon the merits of the case, also assumed the lack of sufficient cause of action on the part of the plaintiff. Moreover, the question relative to the constitutionality of a statute or ordinance is one of law which does not need to be supported by evidence.

In the complaint filed with the lower court, plaintiff alleged that it was a non-stock corporation duly organized and existing in accordance with the laws of the Philippines. Subsequent inquiries from the Securities and Exchange Commission and the Bureau of Commerce disclosed that the Recreation and Amusement Association of the Philippines, Inc., is not registered and does not appear in the files of said Offices. Most probably, owners and operators of such pin-ball machines met, put up their set of officers and thus an association was formed, after which they merely folded their arms and exerted no further effort to effectuate the necessary registration that would bestow juridical personality upon it. The right to be and to act as a corporation is not a natural or civil right of any person; such right as well as the right to enjoy the immunities and privileges resulting from incorporation constitute a franchise and a corporation, therefore cannot be created except by or under a special authority from the state (Vol. II, Tolentino's Commentaries and Jurisprudence on the Commercial Law of the Philippines, p. 734). When there is no legal organization of a corporation, the association of a group of men for business or other endeavors does not absorb the personality of the group and merge it into the personality of another separate and independent entity which is not given corporate life by the mere formation of the group. Such conglomeration of persons is incompetent to act as a corporation, cannot create agents, or exercise by itself authority in its behalf. (See *Fay vs. Noble*, 7 Cushing (Mass.) 188.)

Section 1-(c), Rule 8 of the Rules of Court provides for the grounds upon which an action may be dismissed upon motion of defendant and one of them is “that the plaintiff has no legal capacity to sue.” The City Fiscal rightly capitalized on this basis because as far as the Court was concerned, appellant herein, being an association not organized as a juridical entity, did not possess the personality to conduct or maintain an action. The term “lack of legal capacity to sue” means either that the plaintiff does not have the necessary qualifications to appear in the case \* \* \* or when he does not have the character or

representation which he claims, as, when he is not a duly appointed executor or administrator of the estate he purports to represent, or that the plaintiff is not a corporation duly registered in accordance with law. (I Moran's Comments on the Rules of Court, p. 168, 1952 ed.) It may be argued that under the law plaintiff could be considered as a civil association, but in this case plaintiff-appellant does not claim to be a civil association but a corporation and as such it has no capacity to sue.

If from the records of the case We shall find, as We do: (1) that plaintiff has no legal capacity to sue; (2) that the complaint states no cause of action; and (3) that a proper and adequate interpretation of section 18, paragraphs (1) and (kk) of Republic Act No. 409, would lead Us to conclude that Ordinance No. 3628 of the City of Manila is valid, would We be justified in annulling or setting aside the order of the Court dismissing this case, just because it was issued before the filing of defendants' answer and before hearing on the merits but after defendants had submitted their motion to dismiss and argued maintaining the constitutionality of said ordinance? On the strength of the foregoing considerations, the answer is obviously in the negative.

Wherefore, the order appealed from is hereby affirmed, with costs against appellant. It is so ordered.

*Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, and Endenda, JJ., concur.*  
*Paras, C. J., Bengzon, and Padilla, JJ., concur in the result.* Reyes, J. B. L.,: concurring:

I concur, but it seems to me that the real reason warranting dismissal of the appeal is the fact that plaintiff is not the real party in interest (since it does not own the machines in question) ,and therefore has no cause of action. But I reserve my vote on the question of plaintiff's juridical personality, for the reason that although it has not been duly organized under the Corporation Law, it may,be considered a civil association.