

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),
REPRESENTED BY ATTY. CARLOS R. BAUTISTA, JR., COMPLAINANT,
VS. HON. ROMULO A. LOPEZ, PRESIDING JUDGE, BRANCH 34,
REGIONAL T...**

A.M. No. RTJ-04-1848. October 25, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

PAGCOR filed the instant administrative complaint against Judge Romulo A. Lopez of the Regional Trial Court (RTC) of Manila, Branch 34, seeking his dismissal from the service for alleged gross ignorance of the law and for his disbarment for such ignorance, violation of the lawyer's oath and the Code of Professional Responsibility.

The administrative complaint stemmed from the proceedings in Civil Case No. 00-99133,[1] entitled, Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) vs. PAGCOR, Department of Interior and Local Government (DILG), and Secretary Alfredo S. Lim, filed with the RTC of Manila and assigned by raffle to Branch 34 presided by respondent Judge. The antecedents and the pertinent proceedings that transpired therein are as follows:

On June 17, 1999, PAGCOR entered into an Agreement with FILGAME and BELLE Jai-Alai Corporation (BELLE) for the resumption of the Jai-Alai operations in the country.[2] FILGAME and BELLE jointly agreed to provide funds, at no cost to complainant, for pre-operating expenses and working capital. PAGCOR shall manage, operate and control all aspects of the Jai-Alai operations.

On October 19, 2000, the Office of the President of the Philippines issued a Memorandum addressed to Alicia Ll. Reyes, then PAGCOR Chairperson and Chief Executive Officer, directing her to take immediate steps to close down all PAGCOR facilities and outlets in Jai-Alai, on-line bingo and internet casino gaming.

On October 20, 2000, DILG, through then Secretary Alfredo S. Lim, caused the closure of the Jai-Alai main fronton.

Thus, on November 6, 2000, FILGAME and BELLE filed the case for Specific Performance and Injunction with prayer for Damages and Temporary Restraining Order (TRO), and Writ of Preliminary Injunction[3] against PAGCOR, DILG and Secretary Alfredo Lim, docketed as Civil Case No. 00-99133 and raffled to herein respondent Judge.

On November 10, 2000, respondent issued a writ of temporary restraining order effective for 20 days.

On November 29, 2000, this Court rendered a decision in the cases, entitled, Raoul B. Del Mar vs. PAGCOR, BELLE and FILGAME and Federico S. Sandoval II and Michael T. Defensor vs. PAGCOR,[4] the decretal portion of which reads:

WHEREFORE, the petitions are GRANTED. Respondents PAGCOR, Belle Jai-Alai Corporation and Filipinas

Gaming Entertainment Totalizator Corporation are enjoined from managing, maintaining and operating jai-alai games, and from enforcing the agreement entered into by them for that purpose.

Motions for Reconsideration filed by PAGCOR, BELLE and FILGAME were subsequently denied.

Consequently, FILGAME and BELLE filed a Motion to Admit Amended Complaint[5] with the trial court where the cause of action was changed, i.e., from Specific Performance to Recovery of Sum of Money, inasmuch as plaintiffs could no longer ask for specific performance of their agreement with complainant since the Court had declared the agreement without force and effect. Thus, FILGAME and BELLE sought to recover their pre-operating expenses and/or investments totaling P1,562,145,661.87 including the goodwill money of P200,000,000.00 which they allegedly invested with the complainant. Complainant filed an opposition on the ground that there is a substantial change in the complaint and cause of action.

On November 27, 2001, respondent issued an Order[6] admitting the amended complaint and directing complainant and DILG to file their answer.

Complainant filed a motion to dismiss the amended complaint[7] on the ground that the trial court had not acquired jurisdiction over the case for failure of the plaintiffs to pay the prescribed docket fees considering that the docket fee originally paid was only P1,212.00. It claimed that per the affidavit of Atty. Ma. Concepcion Gloria,[8] complainant's representative, she attested to the fact that as computed by the Docket Fee Assessor, the amended complaint, which sought recovery of the P1,562,145,661.87 including the P200,000,000 goodwill money, should have docket fees of P15,775,903.68.

On June 19, 2002, respondent issued an Order[9] denying complainant's motion to dismiss and directed it to file its answer. Respondent judge made the following ratiocination:

Considering the parties arguments, this Court is of the opinion and so holds that there is no basis for dismissing the amended complaint since the original complaint was filed and the corresponding docket fee was paid by the plaintiff, the Court had acquired jurisdiction over the said complaint. Having done so, and considering the rule for the payment of the docket fees set forth in the Sun Insurance Office, Ltd. with respect to initiatory pleadings, there is no firm ground to dismiss the Amended Complaint.

Under the said ruling "where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the Court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period." If a late payment of the docket fee is allowed in filing initiatory pleading to vest jurisdiction to the Court, with more reason the same leniency should be afforded in an amended pleading/complaint which sets out additional/new cause of action necessitating the increase of the docket fee. The plaintiff is correct in not immediately paying the additional filing fee before the amended complaint is admitted for why will it pay when there is no assurance that the amended complaint will be admitted.

Once jurisdiction is acquired and vested in a Court, said Court maintains its jurisdiction until judgment is had. (Aruego, Jr., et al. vs. CA, 254 SCRA 711-719). Such acquired jurisdiction is not lost by the amendment of a pleading that raises additional/new cause(s) of action. The jurisdiction of a Court is not lost even if additional docket fees are required by reason of the amendment.

In the same ruling in Sun Insurance case, "any additional filing (docket) fee shall constitute a lien on the judgment and that it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee provided that the cause of action has not prescribed."

Moreover in Yuchengco vs. Republic, 333 SCRA 368, 381, the Supreme Court even allowed the payment of the filing fees beyond the prescriptive period.

Complainant then filed its Answer with compulsory counterclaim.[10] A pre-trial conference was conducted. On

October 10, 2002, respondent issued a Pre-trial Order[11] and at the same time directed the parties to submit their respective comments and/or manifestations on the said order. The pre-trial order listed 13 issues to be resolved.

During the October 25, 2002 hearing, FILGAME and BELLE manifested their intention to file a Motion for Summary Judgment which they subsequently filed. Complainant filed its opposition thereto. Respondent did not conduct any hearing on the motion for summary judgment.

On May 19, 2003, respondent rendered his decision by way of Summary Judgment[12] in favor of FILGAME and BELLE where complainant was ordered to return and pay the sum of P1,562,145,661.87, representing the amount of pre-operating expenses and/or investment including the goodwill money given by plaintiffs and the release of P500,000.00 cash bond posted in support of the TRO.

On June 10, 2003, complainant filed its notice of appeal[13] which was subsequently withdrawn.

On June 12, 2003, complainant filed with the Court of Appeals (CA) a petition for certiorari seeking the annulment of the respondent's decision by way of summary judgment for having been rendered without or in excess of jurisdiction and with grave abuse of discretion.[14]

On July 8, 2003, complainant filed the present administrative case charging respondent with gross ignorance of the law and for violations of the Lawyer's Oath and Code of Professional Responsibility in connection with his actions in Civil Case No. 00-99133.

In a Resolution dated January 26, 2004,[15] we deferred action on this complaint until the final resolution of the petition for certiorari filed before the CA.

On January 21, 2004, a judgment by compromise agreement[16] was rendered by the CA in the certiorari case filed with it and an entry of judgment was subsequently made.[17] Thereafter, complainant sought the continuation of the pending administrative case because there was no longer any legal impediment with the resolution of the certiorari case.

Complainant charges respondent for gross ignorance of the law and procedure in (1) admitting the amended complaint of plaintiffs FILGAME and BELLE in Civil Case No. 00-99133 despite the fact that (a) the amended complaint is a total change of theory of the case; and (b) that the required filing fees for the amended complaint were not paid; and (2) in rendering summary judgment (a) despite the fact that respondent found the existence of 13 factual issues to be resolved; (b) without conducting a hearing on the motion for summary judgment; (c) based on the alleged implied admission rather than on the personal knowledge of witnesses and other affiants; and (d) despite the fact that plaintiffs were estopped from denying the existence of these 13 issues raised in the pre-trial order.

Complainant contends that respondent denied its motion to dismiss the amended complaint without requiring plaintiffs FILGAME and BELLE to pay the correct docket fees within a reasonable time from the admission of the amended complaint, thus the court is deprived of its lawful docket fees in the amount of P15,774,691.68; that respondent's reliance on the third rule enunciated in the Sun Insurance, i.e., allowing docket fee to constitute as lien on the judgment, finds no application in the civil case since the P1.5 Billion claim is not in the nature of an award not specified in the pleading.

Complainant claims that respondent Judge was grossly ignorant of the law when he disregarded the 13 factual issues enumerated in his Pre-trial Order dated October 10, 2002 and rendered a summary judgment on the case; that in rendering a summary judgment, he disposed of the case with undue haste thus depriving it of its day in court; that no hearing was conducted by respondent for purposes of resolving FILGAME and BELLE's motion for

summary judgment as provided under Section 3, Rule 35 of the Rules on Civil Procedure; that although opposition, reply and rejoinder were submitted by the parties, the same appeared to be inadequate considering the mandatory nature of the summary hearing.

Complainant avers that respondent granted summary judgment based on its alleged implied admissions when it failed to specifically deny certain material allegations in the amended complaint and other pleadings of FILGAME and BELLE; that such is contrary to Section 5, Rule 35 and jurisprudence.

In his Comment, respondent denied having committed gross ignorance of the law in admitting the amended complaint since dismissal is not the consequence provided for in not paying the right docket fee at the time the complaint or initiatory pleading is filed; that the trial court acquires jurisdiction over a claim by the filing of appropriate pleading and payment of the prescribed filing fee but when subsequently the judgment awards a claim not specified in the pleading, the additional filing fee therefor shall constitute a lien on the judgment.

He argues that the grant of summary judgment despite the existence of a list of issues in his Pre-trial Order dated October 10, 2002 was not even final and only listed issues or matters which complainant refused to admit when counsel for BELLE and FILGAME asked for stipulations; that the holding of a trial type hearing is not absolutely indispensable for the court to rule on a motion for summary judgment; that he granted the motion for summary judgment not solely on the implied admissions made by complainant but based on the evidence on record and that complainant's contention that plaintiffs are estopped from challenging the list of issues in the Pre-trial Order is without basis since plaintiffs had vigorously insisted for a summary judgment.

Complainant filed a Reply where it claimed that because of respondent's undue haste in rendering summary judgment, some of its evidence were suppressed.

Respondent filed his Rejoinder where he stated that in his Order dated February 19, 2004, he required the payment of additional docket fees on the amended complaint which was complied with; that since it was the clerk of court who computed the same, any deficiency can still be collected by issuing another order. He denied the suppression of evidence since the alleged evidence were not attached to its answer to the amended complaint.

Complainant filed a Sur-rejoinder claiming that the additional docket fees were based on the compromise agreement entered by the parties in the CA in the amount of P120 million and not in the amended complaint for recovery of money in the amount of P1.56 billion.

In a Resolution dated September 15, 2004,[18] the Court referred the case to Justice Noel G. Tijam of the CA for investigation, report and recommendation.

The Investigating Justice submitted his Report recommending the dismissal of the administrative and the disbarment complaint against respondent for patent lack of merit, based on the following findings:

Anent the issue on non-payment of docket fees on the amended complaint -

Based on the evidence, the undersigned Investigator finds that Respondent Judge did not commit gross ignorance of the law in admitting the amended complaint. There is no evidence that the respondent Judge acted in bad faith or was motivated by fraud, dishonesty or corruption in issuing the assailed order.

It is a well-settled rule that once the jurisdiction of the court attaches, it continues until the case is finally terminated. The trial court cannot be ousted therefrom by subsequent happenings of events, although of a character would have prevented jurisdiction from attaching in the first instance.

The trial court validly acquired jurisdiction over the amended complaint. In the case of PNOC Shipping and Transport Corp. vs. CA, the Supreme Court ruled that the plaintiff's failure to pay the docket fee corresponding

to its increased claim for damages to P600,000.00 under the amended complaint should not be considered as having curtailed the lower court's jurisdiction. Pursuant to the ruling in *Sun Insurance Office, Ltd. vs. Asuncion*, the unpaid docket fee should be considered as a lien on the judgment even though private respondent therein specified the amount of P600,000.00 as its claim for damages in its amended complaint. Besides, it is too late in the day to invoke lack of jurisdiction because the case decided by the respondent Judge elevated on appeal to the Court of Appeals has become final and executory when PAGCOR voluntarily entered into a compromise agreement in the Court of Appeals.

Respondent Judge did not deviate from the rules when he did not dismiss the amended complaint for failure to pay the additional docket fee because the court may still require the same to be paid within a reasonable time and in no case beyond the prescriptive period. The timely payment of docket fees is jurisdictional, but considerations of law and equity come into the picture. Despite the jurisdictional nature on the rule on the payment of the docket fee, the court still has discretion to relax the rule in meritorious cases.

Furthermore, the undersigned Investigator agrees with Respondent Judge's argument that the assailed Order was consistent with Sec. 3, Rule 10 of the Rules on Civil Procedure, as amended and the ruling in the case of *Pagubo vs. CA*. Indeed, although an amendment may substantially change or alter the cause of action or defense, the same must serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a "just, speedy and inexpensive disposition of every action and proceedings."

Contrary to PAGCOR's claim that Respondent Judge failed to issue an order to collect the additional docket fees, the evidence shows that Respondent Judge in fact issued an Order dated February 19, 2004, directing the Clerk of Court of the RTC of Manila to collect and require payment of docket fees within 15 days. The order was issued after the entry of judgment on a compromise which automatically lifted the TRO which earlier prevented the Respondent Judge from directing Belle and Filgame to pay the additional fees. Moreover, at PAGCOR's instance, Respondent Judge issued another Order dated October 26, 2004 directing the Clerk of Court to recompute the docket fee.

As to the claim that respondent judge rendered summary judgment despite the 13 factual issues embodied in the Pre-trial Order and that he did not find that plaintiffs are estopped from denying these factual issues -

Section 10 of Rule 8 of the Rules provides that if the defendant is without knowledge or information sufficient to form a belief as to the truth of the material averment in the complaint, he is bound to so state and this shall have the effect of denial. In such a case it is indispensable that the matter denied for lack of knowledge is alleged be clearly set forth so that the adverse party is informed of what is denied.

A scrutiny of the amended answer of PAGCOR in Civil Case No. 00-99133, shows that PAGCOR actually knows the gross and net income from the Jai-Alai operations, the tax paid by PAGCOR and the pre-operating expenses of Belle and Filgame. Considering that the Agreement between PAGCOR and Filgame and Belle provided that PAGCOR shall manage, operate and control all aspects of Jai-Alai operation pursuant to its franchise, it would have been unbelievable for them not to know the gross and net income from the Jai-Alai operations from June 1999 to December 2000; the tax paid by PAGCOR to BIR; and the effect of Jai-Alai operations on the government revenues and where the income of PAGCOR was used. Furthermore, Belle and Filgame had furnished PAGCOR a copy of the amount of pre-operating per request of PAGCOR as evidenced by a letter dated September 15, 1999 of Edgardo M. del Fonso, President of Belle Jai-Alai Corporation addressed to Renaldo Tenorio, President and Chief Operating Officer of PAGCOR and the receipt of which was not denied by PAGCOR.

PAGCOR's blanket denial of the said allegations in the amended complaint is ineffective because such facts are within PAGCOR's knowledge. Thus, said denial was properly treated as an admission.

Indeed, in a similar case, *PNB vs. Court of Appeals*, the private respondent therein denied the averments in the

complaint regarding the fact of withdrawal of \$14,056.25 in PCIB-Cagayan de Oro City Account No. 16087 and the surrounding circumstances of said withdrawal. The private respondent, however, admitted the averment in the complaint that he is the sole signatory of the subject account. The Supreme Court considered said denial as ineffective because such fact was within the knowledge of the private respondent, being the sole signatory to the said account. Private respondent's denial was consequently declared by the Supreme Court as equivalent to an admission.

Respondent Judge, therefore, correctly granted the motion for summary judgment based on the Agreement dated June 17, 1999 and the stipulation made by PAGCOR's counsel, Atty. Bautista, regarding the records of summary operations covering the period of June 1999 to October 2000 being true and correct, having been prepared by a responsible officer of PAGCOR and based on the existing records of PAGCOR.

All told, based on the evidence, PAGCOR was privy to all the material allegations in the amended complaint relating to the Jai-Alai operations. It would have been incredulous for PAGCOR to claim ignorance or lack of knowledge of said material allegations.

Convincingly, Respondent Judge had sufficient basis to render summary judgment.

As to the claim that the summary judgment was rendered without hearing -

Based on the evidence, we find that Respondent Judge did not commit gross ignorance of the law in not conducting a trial type hearing in resolving the motion for summary judgment. Well-settled is the rule that, in proceedings for summary judgment, the court is merely expected to act chiefly on the basis of what is on the records of the case and that the hearing contemplated in the Rules is not *de rigueur* as its purpose is only to determine whether the issues are genuine or not and not to receive evidence on issues set up in the pleadings.

Based on the records and the evidence presented, the trial type hearing on the motion was dispensable in view of the fact that PAGCOR's blanket/ineffective denial in its answer to the amended complaint had the effect of an admission, thus, did not raise any genuine issues. Furthermore, a hearing on the motion for summary judgment was not necessary considering that the evidence necessary for the resolution of the same was already part of the records. It is evident from the records, particularly in the minutes of the hearings held on November 22, 2002 and February 10, 2003, as well as Respondent Judge's Order issued on even dates, that PAGCOR was given ample opportunity to be heard and present its evidence in opposition to the motion for summary judgment, but PAGCOR chose not to adduce any such evidence. The scheduled hearing on the motion for summary judgment was cancelled and the motion was considered submitted for resolution without PAGCOR objecting on the absence of a hearing. PAGCOR, therefore, cannot now insist that Respondent Judge should have conducted a hearing on the motion.

As to the claim that respondent Judge granted the summary judgment based on complainant's implied admissions -

It is a recognized rule in summary judgment that the trial court can determine whether there is genuine issue on the basis of the pleadings, admissions, documents, affidavits, and/or counter-affidavits submitted by the parties. On the basis of this rule PAGCOR cannot claim that Respondent Judge was grossly ignorant of the law and procedure when he rendered summary judgment based on implied admissions of the material facts in the amended complaint and not on personal knowledge of witnesses and other affiants. PAGCOR cannot rely solely on Section 5, Rule 35 of the Rules of Court because the provision pertains only to cases when affidavits and supporting papers are submitted to establish whether there is genuine issue. Such supporting affidavits must be made on personal knowledge. Section 1, Rule 35 is explicit that the movant of the motion for summary judgment can support his motion with affidavits, depositions and admissions. It is illogical to claim that a motion for summary judgment must be resolved based on affidavits alone, considering that the Rules are clear that the motion can likewise be supported by depositions and admissions.

As to complainant's claim that respondent Judge should be disbarred because he violated the laws, rules and legal principles -

The complaint for violation of lawyer's oath and Code of Professional Responsibility is not meritorious.

The complaint for disbarment is unfounded. There was no gross ignorance of the law and procedure committed by the Respondent Judge. Considering the evidence presented, Respondent Judge conducted the proceedings in accordance with the applicable laws and procedure. To constitute gross ignorance of the law, the judge's actuation must not only be contrary to law and jurisprudence, the judge must have also been moved by bad faith, fraud, dishonesty or corruption. The records are also bereft of any showing of bad faith, fraud, dishonesty and corruption on the part of the Respondent Judge.

It is settled that in administrative proceedings, the complainant has the burden of substantiating the charges asseverated in the complaint. The complainant has the burden of proving the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent has regularly performed his duties will prevail. Applying the same in the case, PAGCOR failed to support its allegations with substantial and competent evidence to warrant the dismissal and disbarment of the Respondent Judge.

As a matter of policy, in the absence of fraud, dishonesty, and corruption, the acts of the judge in his judicial capacity are not subject of disciplinary action even though such acts are erroneous. He cannot be subjected to liability " civil, criminal, or administrative " for any of his official acts, no matter how erroneous, as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise, would be to render the judicial office untenable, for no one is called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

Well-settled is the rule that, if a party is prejudiced by the orders of a judge, his remedy lies with the proper court for proper judicial action and not with the office of the Court Administrator by means of an administrative complaint. It is an established doctrine and policy that disciplinary proceedings and criminal actions against judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as entry of judgment in the corresponding action or proceeding, is pre-requisite for the taking of other measure against the person of the judges concerned. It is only after the available judicial remedies have been exhausted and the appellate court have spoken with finality, the door to an inquiry into his criminal, civil and administrative liability may be said to have opened or closed.

Here, the administrative complaint was filed by the Complainant pending the resolution of PAGCOR's Petition for Certiorari filed before the Court of Appeals. As such, the filing of this administrative case was in disregard of the rules, if not malicious. Indeed, Civil Case No. 0099133 has not been resolved with finality at the time the administrative complaint was filed with the Supreme Court. Also, a review of the records of the case discloses the fact that counsels of PAGCOR were negligent in handling their case. Clearly, this baseless administrative case was filed merely to harass Respondent Judge in the hope that the negligence of PAGCOR's counsel would be conveniently overlooked or unjustifiably mitigated.

The Court agrees with the findings and recommendation of the Investigating Justice that the administrative complaint against respondent be dismissed.

The Court finds no gross ignorance of law committed by respondent when he admitted the amended complaint notwithstanding that such amended complaint substantially altered the cause of action of plaintiffs FILGAME and BELLE.

Section 3, Rule 10 of the Rules of Court, provides:

SECTION 3. Amendments by leave of court. Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

As held in *Valenzuela vs. CA*,^[19]

Interestingly, Section 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule in such manner that the phrase "or that the cause of action or defense is substantially altered" was stricken-off and not retained in the new rules. The clear import of such amendment in Section 3, Rule 10 is that under the new rules, "the amendment may (now) substantially alter the cause of action or defense." This should only be true, however, when despite a substantial change or alteration in the cause of action or defense, the amendments sought to be made shall serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a "just, speedy and inexpensive disposition of every action and proceeding." (emphasis supplied).

The original complaint filed by the plaintiffs was for specific performance and injunction with prayer for damages and for TRO and writ of preliminary injunction against complainant while the amended complaint was for recovery of sum of money. Such amendment to the original complaint was filed by plaintiffs FILGAME and BELLE after the Supreme Court decision declared that complainant could not enter into a joint agreement with other corporations to operate the Jai-Alai, and that the Agreement dated June 17, 1999 entered into between complainant and the plaintiffs is null and void. However, since plaintiffs had provided funds for complainant's pre-operating expenses and working capital, plaintiffs had to file an amended complaint which seeks the recovery of their expenses. Although the amended complaint substantially changed the cause of action of plaintiffs FILGAME and BELLE, the admission thereof by respondent is allowed under Section 3, Rule 10 and jurisprudence.

The Court also finds that respondent was not guilty of gross ignorance of the law when he admitted the amended complaint despite the non-payment by plaintiffs FILGAME and BELLE of additional docket fees on the amended complaint. In *Sun Insurance Office, Ltd. vs. Asuncion*,^[20] the Court laid down the rules on the payment of docket fees as follows:

- It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
- The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
- Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.^[21]

Respondent is correct in ruling in his Order dated June 19, 2002 that the court had jurisdiction over the amended complaint as it had acquired jurisdiction over the case when the original complaint was filed and the

corresponding docket fee was paid thereon. Plainly, while the payment of the prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period. Respondent also stated in the same order that this Court in the Sun Insurance case had further declared that "any additional filing (docket) fee shall constitute a lien on the judgment and that it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee provided that the cause of action has not prescribed."

In PNOG Shipping and Transport Corporation vs. CA,[22] the Court held:

With respect to petitioner's contention that the lower court did not acquire jurisdiction over the amended complaint increasing the amount of damages claimed to P600,000.00, we agree with the Court of Appeals that the lower court acquired jurisdiction over the case when private respondent paid the docket fee corresponding to its claim in its original complaint. Its failure to pay the docket fee corresponding to its increased claim for damages under the amended complaint should not be considered as having curtailed the lower court's jurisdiction. Pursuant to the ruling in Sun Insurance Office, Ltd. (SIOL) v. Asuncion, the unpaid docket fee should be considered as a lien on the judgment even though private respondent specified the amount of P600,000.00 as its claim for damages in its amended complaint.[23]

Thus, the unpaid additional docket fees should be considered as a lien on the judgment even though plaintiffs had specified the amount of P1,562,145,661.87 in the prayer of the amended complaint.

Moreover, the issue of jurisdiction for non-payment of additional docket fees is deemed abandoned as there was neither a motion for reconsideration nor a petition questioning such Order filed by complainant. In fact, when the amended complaint was admitted and respondent directed complainant to file its answer, the latter filed its Answer with compulsory counterclaim and without questioning the jurisdiction of the trial court on the ground of insufficient payment of docket fees. Complainant even invoked the court's authority when it asked for affirmative relief on its counterclaim, thus it is estopped from challenging the court's jurisdiction.[24]

Moreover, as observed by the Investigating Justice, "it is too late in the day to invoke lack of jurisdiction because the civil case decided by the respondent which was elevated on appeal to the CA has become final and executory when complainant voluntarily entered into a compromise agreement in the CA." [25] Thus, the issues raised in the petition for certiorari were not actually resolved. Thus, it becomes necessary for the Court to determine in the present administrative case whether or not respondent is guilty of gross ignorance of the law.

Respondent, in his Order dated February 19, 2004, after the entry of judgment on the compromise agreement, directed plaintiffs BELLE and FILGAME to cause the computation of the additional docket on the amended complaint, of which the Clerk of Court of Manila is directed to collect. Plaintiffs paid the amount of P1,058,732.48. However, it appeared that based on the affidavit of the collecting agent, she assessed the docket fees based on the judgment on the compromise which was presented to her by the plaintiffs and not on the amended complaint as stated in the respondent's Order dated February 19, 2004, thus docket fees collected were still insufficient. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly authorized deputy has the responsibility of making a deficiency assessment,[26] thus it is no longer the fault of respondent when there was a mistake in the assessment. However, when the matter was brought to the attention of respondent by complainant in its sur-rejoinder in this administrative complaint, respondent called the attention of the clerk of court where she was asked to recompute the same so that proper order can be issued.[27] Respondent, on November 18, 2004, issued another Order based on the compliance report submitted by the Clerk of Court that plaintiffs have still to pay the amount of P14,717,171.19 based on the claim in the amended complaint by directing the plaintiffs to pay within 15 days

from receipt. These actuations of respondent are in accordance with the Sun Insurance case.

Anent complainant's claim that respondent was grossly ignorant of the law in rendering summary judgment (a) based on implied admissions; (b) notwithstanding the 13 factual issues embodied in respondent's Pre-Trial Order dated October 10, 2002; and (c) without conducting a trial, the Court finds that these alleged errors committed by respondent pertained to the performance of his adjudicative functions.

In *Maquiran vs. Grageda*,^[28] we held:

As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are, inter alia, the special civil action of certiorari, prohibition or mandamus, or a motion for inhibition, a petition for change of venue, as the case may be.

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.

" Law and logic decree that "administrative" or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof'. Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, prosecution of the judge can be had only if "there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and ** also evidence of malice or bad faith, ignorance of inexcusable negligence, on the part of the judge in rendering said judgment or order" or under the stringent circumstances set out in Article 32 of the Civil Code.

Considering that the resolution of these issues was foreclosed when the parties entered into a compromise agreement in the petition for certiorari involving said issues, the Court, in the present administrative case, will not and cannot resolve the same for obvious reason. The least that the Court can do, under the circumstances, is to determine whether respondent may be held administratively liable for rendering the summary judgment.

The 13 issues which were embodied in the Pre-trial Order of the respondent judge are as follows:

- Whether or not plaintiffs incurred the total expenses of P1,562,145,661.87;
- Whether or not PAGCOR as a result of the expenditures which FILGAME and Belle agreed to bear PAGCOR earned P200,000,000.00 goodwill money and a net income of P197,000,000.00;
- Whether or not plaintiffs have only jointly earned P173,000,000.00 or barely 9% of their total investment of P1.56 Billion;

- Whether or not PAGCOR's Jai- Alai operations generated gross earnings in the aggregate amount of P2,826,947,353.00 from June of 1999 to November 30, 2000;
- Whether or not the average earnings for that period is P157,052,630.73 per month for that same period;
- Whether or not from the period from June 1999 to November 30, 2000 PAGCOR realized a net income of P199,738,755.31;
- Whether or not from the period of June 1999 to November 30, 2000 PAGCOR remitted the amount of P262,470,808.71 to the BIR;
- Whether or not with the reactivation of Jai-Alai operations no revenues were generated by the Philippine government;
- Whether or not PAGCOR's earnings from Jai-Alai operations contributed immensely not only in terms of boosting government's coffers but directly funding socio-economic projects;
- Whether or not Belle and FILGAME relying on the representations made by PAGCOR, the OGCC and the Department of Justice have at all times faithfully complied with their obligations and undertakings with the end in mind that they will be able to recover their investment and earn a responsible return thereon before the expiration of the agreement between Belle and PAGCOR on the year 2008;
- Whether or not Belle and FILGAME made its massive investment of financial and physical capital worth approximately P1.56 Billion relying upon PAGCOR's representation and the Philippine government's categorical and official representation through the OGCC and Department of Justice that it was legal for Belle and FILGAME to recover its investment and profit through sharing in the income form (sic) an ongoing and legally sanctioned Jai-Alai operation carried on by PAGCOR under and in accordance with the June 17, 1999 agreement between plaintiffs and PAGCOR;
- Whether or not PAGCOR closed the Jai-Alai operations before the finality of the resolution on June 19, 2001 and without legal basis;
- Whether or not PAGCOR may be required to pay Belle and FILGAME by way of quantum meruit compensation for the use of facilities and network provided to PAGCOR, and for the services and technical know how already put to service of PAGCOR and the government for the years 1999 to 2000 based on the expected return of investment of Belle and FILGAME and the projected income of PAGCOR for the period ending in 2008.[29]

A perusal of these issues convinces us that issues no. 1 and no. 13 are genuine issues which necessitate the presentation of evidence so as to establish plaintiffs FILGAME and BELLE's action for the recovery of the sum of P1.56 Billion. The Court finds that respondent erred in rendering the summary judgment, however, respondent could not be held administratively liable. To justify the taking of drastic disciplinary action, the law requires that the error or mistake of the judge must be gross or patent, malicious, deliberate or in bad faith.[30] These are not present in the instant case. The Investigating Justice finds, and the Court agrees, that there is no evidence showing that respondent acted with malice in rendering the summary judgment. This is bolstered by the fact that a judgment by compromise agreement was already rendered by the CA on the civil case and an entry of judgment was subsequently made.

Moreover, the Court finds that respondent had meticulously explained why he found no genuine issue as to the fact that plaintiffs are entitled to the recovery of their investments, to wit:

- The provisions of the June 17, 1999 Agreement between PAGCOR, BELLE and FILGAME (Exh "1") which gave PAGCOR the power to manage/operate and control all aspects of Jai-Alai operation, and the duty to both maintain separate accounts, ledgers and other records and to render periodic accounting and financial reports

relative to Jai-Alai operation.

- The fact that the Managing Head for Finance of PAGCOR's Jai-Alai Department, Mrs. Esther H. Reyes, not only testified that it was part of her job to make financial reports to management, but was able to produce both records of the daily gross receipts of Jai-Alai operations for September 2000 and October, 2000 and summaries of the results of those operations from June 1999 to October 2000.
- The fact that PAGCOR counsel, Atty. Carlos R. Bautista, Jr. categorically stipulated that the records of daily gross receipts and summaries of operations produced by Mrs. Esther H. Reyes are genuine and prepared by the corresponding Jai-Alai Department of PAGCOR based on PAGCOR's records.
- The fact that FILGAMES's Mr. Cesar Marcelo testified that PAGCOR required BELLE and FILGAME to submit valuations of the properties contributed by it to the Jai-Alai operations and that FILGAME in compliance submitted an appraisal report prepared by Cuervo Appraisers, Inc. while BELLE complied by submitting as an attachment to a letter dated September 15, 1999 to PAGCOR President Mr. Reynaldo Y. Tenorio an inventory listing the value of the assets contributed by BELLE and FILGAME to the Jai-Alai operation.[31]

We reiterate the rule that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[32]

Anent the claim that there was no hearing conducted on the motion for summary judgment, the same was with the acquiescence of PAGCOR's counsel. The records show that the motion for summary judgment was set for hearing by plaintiffs on December 1, 2002, i.e., 11 days from service of the motion as required by the Rules. In the Order dated November 22, 2000 respondent granted PAGCOR's prayer to be given 20 days to submit comment/opposition to the motion for summary judgment to copy furnish plaintiffs' counsel who is then given 7 days to file his reply and for PAGCOR to file a rejoinder. The same order states that thereafter the pending incident shall be considered submitted for resolution. Complainant did not ask for a hearing or any additional relief. It evidently agreed to the respondent's order that upon submission of those pleadings, the incident would be submitted for resolution. The signature of complainant's counsel affixed in the minutes showed his agreement thereto. In fact, in the Order dated February 10, 2003, the respondent declared that both parties agreed that the motion and the subsequent pleadings filed are submitted for resolution. Again, complainant's counsel never registered his objections thereto as he in fact affixed his signature to the minutes thereof. In *Ley Construction and Development Corporation vs. Union Bank of the Philippines*,[33] the Court held:

Admittedly, there is nothing in the records which indicates that Judge Arcangel conducted a hearing before he resolved respondent's motion for summary judgment. Nevertheless as explained in *Carcon Development Corporation v. Court of Appeals*, in proceedings for summary judgment, the court is merely expected to act chiefly on the basis of what is in the records of the case and that the hearing contemplated in the Rules is not *de rigueur* as its purpose is merely to determine whether the issues are genuine or not, and not to receive evidence on the issues set up in the pleadings.[34]

Considering the foregoing, there exists no valid ground for the disbarment of respondent.

WHEREFORE, the instant administrative complaint against respondent Judge Romulo A. Lopez is DISMISSED.

SO ORDERED.

Puno, (Chairman, Second Division), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, on leave.

[1] An amended complaint was filed to include BELLE Jai-Alai Corporation as plaintiff.

[2] Rollo, pp. 478-484.

[3] Id., pp. 566-593.

[4] 346 SCRA 485.

[5] Rollo, pp. 557-564.

[6] Id., pp. 597-599.

[7] Id., pp. 600-604.

[8] Id., pp. 605-607.

[9] Id., pp. 50-52.

[10] Id., pp. 608-614.

[11] Id., pp. 35-40.

[11] Id., pp. 42-49.

[12] Id., p. 733.

[13] Docketed as CA-G.R. SP No. 77458.

[14] Rollo, p. 383.

[15] Id., pp. 404-410; Penned by Justice Renato C. Dacudao and concurred in by Presiding Justice Cancio C. Garcia (now member of this Court) and Justice Danilo B. Pine.

[16] Id., p. 403.

[17] Id., p. 812.

[18] G.R. No. 131175, August 28, 2001, 363 SCRA 779, 787-788.

[19] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

[20] Id., p. 285.

[21] G.R. No. 107518, October 8, 1998, 297 SCRA 402.

[22] Id., p. 427.

[23] Id., p. 428.

[24] Report and Recommendation, p. 9.

[25] Rivera vs. del Rosario, G.R. No. 144934, January 15, 2004, 419 SCRA 626, 635.

[26] CA Rollo, p. 142.

[27] A.M. No. RTJ-04-1888, February 11, 2005, 451 SCRA 15, 42-44.

[28] Rollo, pp. 39-40.

[29] *Fernandez vs. Español*, A.M. No. MTJ-98-1150, April 15, 1998, 289 SCRA 1, 7, citing *Roa, Sr. vs. Imbing*, A.M. No. RTJ-93-935, March 11, 1994, 231 SCRA 57, 61; *Guillermo vs. Reyes, Jr.*, A.M. No. RTJ-93-1088, January 18, 1995, 240 SCRA 154, 161; *Alvarado vs. Laquindanum*, A.M. No. MTJ-93-835, July 3, 1995, 245 SCRA 501, 504; *Bengzon vs. Adaoag*, A.M. No. MTJ-95-1045, November 28, 1995, 250 SCRA, 344, 348.

[30] Rollo, pp. 470-471.

[31] *Balsamo vs. Suan*, A.M. No. RTJ-01-1656, September 17, 2003, 411 SCRA 189.

[32] G.R. No. 133801, June 27, 2000, 334 SCRA 443.

[33] *Id.*, p. 453.

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