Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE AMUSEMENT AND GAMING CORPORATION, Petitioner,	**G.R. Nos. 197942-43, 199528**
	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC., EASTBAY RESORTS, INC., and HON. CICERO JURADO, JR., Presiding Judge, Regional Trial Court of Manila, Branch 11, Respondents.	Promulgated: MAR 26 2014

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DECISION

REYES, *J.*:

Three consolidated petitions for *certiorari,* all between the same parties, are before us. Petitioner Philippine Amusement and Gaming Corporation (PAGCOR), represented by the Office of the Government Corporate Counsel, claiming to interpose only pure questions of law, comes directly to this Court seeking to annul the Order[1] and Writ of Injunction[2] issued on June 23, 2011 by the Regional Trial Court (RTC) of Manila, Branch 11, in Civil Case Nos. 11-125832-33, as well as its Amended Order[3] dated October 13, 2011 and Writ of

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1 Issued by Presiding Judge Cicero D. Jurado, Jr., *rollo* (G.R. Nos. 197942-43), pp. 50-55.
2 Id. at 56-57.
3 Id. at 452-458. *See* also *rollo* (G.R. No. 199528), pp. 58-64.

Preliminary Mandatory Injunction[4] dated October 18, 2011, for grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedent Facts

Presidential Decree (P.D.) No. 1067-A[5] created PAGCOR on January 1, 1977 with the task to "centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by laws." Then, under P.D. No. 1869, promulgated on July 11, 1983, all presidential decrees relative to the franchise and powers of PAGCOR, namely, P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, were consolidated into one statute and charter for PAGCOR. Sections 1(b) and 10 of P.D. No. 1869 provide:

> SEC. 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:
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> x x x x
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> b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: x x x (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.
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> x x x x
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> TITLE IV – GRANT OF FRANCHISE
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> SEC. 10. *Nature and Term of Franchise*. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

On June 20, 2007, Republic Act (R.A.) No. 9487 amended P.D. No. 1869 by extending PAGCOR'S franchise by 25 years after July 11, 2008, renewable for another 25 years, while also expanding and

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[4] *Rollo* (G.R. No. 199528), pp. 65-66.

[5] CREATING THE PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

circumscribing its corporate powers.[6]

Under Section 3(h) of P.D. No. 1869, PAGCOR is empowered "to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, x x x, whether as principal or as an agent, x x x with any person, firm, association, or corporation."[7] Thus, on November 9, 2004, respondent Eastbay Resorts, Inc. (ERI) and its foreign principal, International Thunderbird Gaming Corporation of Canada (Thunderbird), entered into a Memorandum of Agreement (MOA)[8] with PAGCOR whereby Thunderbird through ERI committed to invest the initial sum of US$7.5 Million in their gaming and leisure operations in Fiesta Hotel and Casino (FHC) in Eastbay Arts Recreational and Tourism Zone, Binangonan, Rizal. To secure ERI's compliance with the MOA, the amount was placed in escrow.

For its part, PAGCOR granted ERI a six-month provisional authority to operate (ATO) a casino in FHC, but maintained its "sole option" to revoke or terminate the said ATO should ERI and Thunderbird commit any material default of their undertakings, or violate any laws or rules relative to the operation of a casino in FHC, or fail to remedy the same within 30 days, or become bankrupt, and for any other analogous situation.[9]

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6 Section 10 of P.D. No. 1869 would now read:

SEC. 10. *Nature and Term of Franchise*. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated or to be authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR.

7 SEC. 3. *Corporate Powers*. –

x x x x

(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation.

8 *Rollo* (G.R. Nos. 197942-43), pp. 190-197.

9 Id.

On May 19, 2005, in a document simply called Agreement,[10] PAGCOR granted ERI and Thunderbird a "permanent" ATO co-terminus with PAGCOR's franchise, or up to July 11, 2008, followed on January 18, 2006 by another document, Addendum to the Agreement,[11] wherein ERI agreed to invest ₱2.5 Billion (US$31.2 Million) more for Phases 1-2 of FHC over seven years ending in 2012, contingent on the following events:

> - PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
> - The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable; and
> - PAGCOR grants unto [ERI] and THUNDERBIRD extension of the authority to operate the [FHC].[12]

On April 11, 2006, PAGCOR and respondent Thunderbird Pilipinas Hotel and Resorts, Inc. (Thunderbird Pilipinas), a newly-formed local affiliate of ERI now representing their foreign principal, Thunderbird, executed another MOA[13] whereby Thunderbird Pilipinas committed to invest a total of US$100 Million, or ₱5.2 Billion, in Fiesta Casino and Resort (FCR), a gaming and leisure complex in Poro Point Special Economic and Freeport Zone (PPSEFZ), San Fernando City, La Union. For Phase 1 of FCR, Thunderbird Pilipinas would deposit in escrow the initial amount of ₱162.3 Million, while PAGCOR would grant it a six-month provisional ATO a casino. And since Phases 2-5 of FCR to complete the US$100 Million investment would extend beyond July 11, 2008, it was also agreed that Thunderbird Pilipinas' subsequent additional investments in FCR would be made contingent upon the following conditions happening:

> - PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
> - The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable; and
> - PAGCOR grants unto THUNDERBIRD PILIPINAS extension of the authority to operate the [FCR].[14]

On October 31, 2006, the parties executed an Amendment to the Memorandum of Agreement,[15] whereby Thunderbird Pilipinas also agreed to issue a Corporate Guarantee to fund, develop and complete the FCR, failing which, it would cede and transfer over to PAGCOR its entire shares of stock in FCR, as well as lose its license to operate a casino in FCR. PAGCOR for its part granted Thunderbird Pilipinas an ATO for FCR of up to July 11, 2008, but extendible beyond the said date, under the following new

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10 Id. at 200-210.
11 Id. at 211-219.
12 Id. at 212.
13 Id. at 82-94.
14 Id. at 83.
15 Id. at 96-98.

provision:

> This Agreement shall be effective from the date of the execution of the Memorandum of Agreement [dated April 11, 2006] and shall be co-terminus with the present charter of PAGCOR or until July 11, 2008. The Memorandum of Agreement shall be extended for such period and under such terms and conditions as may be agreed upon by the parties in the event that PAGCOR is given a new franchise or its present franchise is extended by law beyond July 11, 2008, and that the authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable.[16]

In an accompanying document called License,[17] also dated October 31, 2006, Thunderbird Pilipinas' casino franchise in FCR was also stated to be co-terminus with PAGCOR, or until July 11, 2008, but extendible if and when PAGCOR's authority to issue licenses is extended. In the License, the terms and conditions for the operation of a gambling casino at PPSEFZ were specified, much like the earlier Agreement dated May 19, 2005 between PAGCOR, ERI and Thunderbird – the said Agreement also stated that the "grant of authority" to Thunderbird would be "co-terminus with the present charter of PAGCOR, or until July 11, 2008," but extendible if and when PAGCOR is given a new or extended franchise beyond July 11, 2008.

With the passage of R.A. No. 9487, Thunderbird Pilipinas and ERI (respondents) sought the formal extension of their ATOs to be made co-terminus with PAGCOR's new franchise, as well as extension of their development and investment schedules. On August 7, 2009, a year since the expiration of the respondents' previous ATOs, the Board of Directors of PAGCOR approved a retroactive month-to-month extension of their licenses from July 11, 2008, as well as a franchise extension of five years effective August 6, 2009. PAGCOR also extended ERI's investment timetable to July 2015, and that of Thunderbird Pilipinas to 2021.[18]

But to the disappointment of the respondents, on December 11 and 21, 2009 PAGCOR sent ERI and Thunderbird Pilipinas, respectively, separate blank renewal ATOs bearing a period of only six months retroactive to July 12, 2008.[19] Thunderbird Pilipinas' 4-page blank ATO, called Renewal of Authority to Operate, adverted to its investment commitment in their original MOA dated April 11, 2006, while the 12-page blank ATO of ERI, called Authority to Operate, contains similar terms of reference for casino operations as those stipulated in the October 31, 2006 license of Thunderbird Pilipinas. The respondents refused to accede to the blank ATOs, reiterating

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16 Id. at 97.
17 Id. at 99-108.
18 Id. at 109-110, 221-222.
19 Id. at 111-115, 223-235.

their understanding in their letter[20] dated March 30, 2010 that under their MOAs, their ATOs should be co-terminus with the new charter of PAGCOR. They maintained that a longer franchise was dictated by the size of their investments in the casino resorts, totaling ₱7.7 Billion; that these projects would spur tourism, economic activity and employment in Rizal and La Union; and, that an industry newcomer, Resorts World, was granted a casino franchise co-terminus with PAGCOR's, or up to 2033.

On June 2, 2010, PAGCOR wrote to Thunderbird Pilipinas that it had approved the automatic five-year extensions of its ATO up to 2033, conditioned on full and satisfactory compliance with its investment schedules.[21] The renewal ATO was to incorporate the following provision:

> The Authority to Operate is renewed commencing from the Effective Date and shall be valid for a period of five (5) years or until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with PAGCOR Charter which is until July 11, 2033 upon full compliance of THUNDERBIRD PILIPINAS of its Investment Commitment to the satisfaction of PAGCOR.[22]

Also on June 2, 2010, PAGCOR advised ERI that its revised ATO would incorporate a provision stipulating the new period, *viz*:

> "**Period"** refers to the five (5)[-]year period until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with the PAGCOR Charter which is until July 11, 2033 upon full compliance by [ERI] of its Investment Commitment, to the satisfaction of PAGCOR.[23]

On July 8, 2010, the respondents again wrote to ask for their renewal of ATOs;[24] but on November 2, 2010, now under a new Board of Directors appointed by newly-elected President Benigno S. Aquino III, PAGCOR instructed them to submit updated investment plans because they allegedly missed their previous investment timetables.[25] The respondents wrote back on November 30, 2010 to assure PAGCOR that they were fully compliant with their investment commitments, and again pleaded for a longer ATO, which they said they needed to attract investors.[26] On February 16, 2011, PAGCOR wrote for clarifications while pointing out discrepancies in the capitalization and timetables of the respondents, noting in particular that their clients had been mostly local, not foreign, players.[27]

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20 Id. at 116-119, 236-239.
21 Id. at 120.
22 Id.
23 Id. at 240.
24 Id. at 121, 241.
25 Id. at 122-123, 242-243.
26 Id. at 124-126, 244-246.
27 Id. at 152-154, 272-274.

On May 30, 2011, insisting that the respondents' ATOs had expired on August 6, 2009 without a renewal, PAGCOR served notice upon the respondents to cease their casino operations, as well as gave them until June 3, 2011 to signify their unconditional acceptance of its new terms of reference for their new licenses, or "PAGCOR will have no choice but to initiate cessation proceedings."[28] Among the new terms of reference were:

a. The respondents' investment commitment must be completed within three years from issue date of the new license;
b. The resort's minimum floor area must be 25,000 square meters, not counting residential, office and parking spaces;
c. All gaming areas shall have a gross floor area of 5,000 sq m;
d. A minimum of 200 hotel rooms must be available;
e. There must be a maximum of 1 gaming table per 4 hotels rooms;
f. There must be a maximum of 3 slot machines per 2 hotel rooms;
g. A three-year provisional license will be issued pending full compliance with the investment commitment, while the regular license shall have a period of seven years; and
h. PAGCOR's franchise fees based on gross gaming revenues shall be 40% from non-junket tables, 40% from slot machines and electronic gaming machines, and 15% from junket operations.[29]

On June 2, 2011, the respondents wrote to entreat PAGCOR to honor their previous agreements, pleading in particular that their new ATOs should expire only in 2033.[30] They reasoned that under their letter-agreements dated June 2, 2010, PAGCOR already recognized the subsistence of their new ATOs, which was why it: (a) accepted the sums of ₱230,918,586.00 and ₱238,970,180.00 from Thunderbird Pilipinas and ERI, respectively, representing its cumulative participation fee of 25% in their casino revenues from July 2010 to May 2011; (b) approved the respondents' compliance with their investment commitments; and (c) granted their applications for approval over myriad details relating to their casino operations, such as importation and installation of slot machines, machine movement, marketing and promotions, etc.

Proceedings before the RTC

Believing that they are entitled to a new franchise co-terminus with that of PAGCOR, on June 3, 2011, Thunderbird Pilipinas and ERI each filed separate complaints against PAGCOR with the RTC, docketed as Civil Case Nos. 11-125832 and 11-125833,[31] for specific performance and damages,

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28 Id. at 155-156, 275-276.
29 Id.
30 Id. at 157-160, 277-280.
31 Id. at 59-81, 166-189.

with application for temporary restraining order (TRO) and writ of preliminary prohibitory injunction. They asked the court to enjoin PAGCOR from initiating cessation proceedings against them, and after trial, to direct it to grant them a new ATO under the terms and conditions stipulated in their previous agreements.

In the afternoon of June 3, 2011, a Friday, RTC Executive Judge Amor Reyes (Judge Reyes) issued an *ex-parte* 72-hour TRO, later extended to 20 days on June 7, 2011 by Presiding Judge Cicero D. Jurado, Jr. (Judge Jurado) of Branch 11, to whom the cases were raffled on June 6, 2011, Monday. Early on June 7, 2011, Tuesday, believing that the 72-hour TRO issued by Judge Reyes had expired on June 6, 2011, PAGCOR issued a **Closure Order** against the respondents, followed the next day by the withdrawal of its monitoring teams from their casinos. Incidentally, on July 19, 2011, PAGCOR also wrote the respondents to deny their pending requests to import playing cards because "*there are no PAGCOR Monitoring Teams (PMTs) inside the Fiesta Casinos in Binangonan, Rizal and Poro Point, La Union. Under existing policies and procedures, the processing and implementation of requests are hinged on the presence of the PMT. We have no established procedures to process and evaluate requests without the PMT inside the casinos*."[32]

On June 23, 2011, Judge Jurado issued a Writ of Preliminary Prohibitory Injunction, upon a bond of ₱1 Million, enjoining PAGCOR from pursuing cessation proceedings against the respondents, to wit:

> WHEREFORE, the foregoing premises considered, let a Writ of Preliminary Prohibitory Injunction be issued in favor of Thunderbird Pilipinas Hotels and Resorts, Inc. and Eastbay Resorts, Inc. ordering defendant Philippine Amusement and Gaming Corporation, its agents, assigns, representatives, and other persons acting for or on its behalf or under its direction, to refrain from initiating and completing cessation proceedings or other similar proceedings against plaintiff Thunderbird Pilipinas Hotels and Resorts, Inc.'s business operations in the Fiesta Casino Resort in Poro Point, La Union and plaintiff Eastbay Resorts, Inc.'s business operations in Fiesta Hotel and Casino in EARTZ, Binangonan, Rizal.
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> Let the bond for the issuance of Writs of Preliminary Prohibitory Injunction be set at [₱]1,000,000.00.
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> SO ORDERED.[33]

Without seeking a reconsideration of the said order, on August 19, 2011, PAGCOR filed directly with this Court two *certiorari* petitions, **G.R. Nos. 197942** and **197943**. Pleading transcendental importance of the issues involved, as well as claiming to raise only pure questions of law,

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32 Id. at 409.
33 Id. at 55.

PAGCOR argued that the respondents' casino franchise is not a contractual and demandable right ***in esse*** but a mere privilege that it can revoke any time, and that this privilege had ceased since August 6, 2009 and the respondents have been operating by mere tolerance of PAGCOR. It then sought to provisionally stop Judge Jurado from hearing the complaints or granting temporary remedies to the respondents, such as ordering the consignment of the participating fees due to it. It also sought to bar them from filing a supplemental complaint and application for writ of preliminary mandatory injunction against the closure order, lest it render moot the instant petitions.

The Court declined to suspend the proceedings below, and ordered the respondents to file their comment. But meanwhile, however, the respondents on August 22, 2011 filed below a Supplemental Complaint[34] for actual damages of ₱35 Million with application for a writ of preliminary mandatory injunction, to direct PAGCOR to:

a. Return its Monitoring Teams to the gambling operations casinos of the respondents;
b. Act upon and approve the pending applications/requests of the respondents for importation of gambling equipment and paraphernalia as well as for other matters pertaining to their gambling operations; and
c. Act upon and approve any future applications/requests of the respondents on matters pertaining to their gambling operations.[35]

PAGCOR in its Comment and Opposition[36] maintained that the new reliefs sought below by the respondents did not merely aim to supplement those they were seeking in their original complaints, but were intended to re-litigate their application for preliminary mandatory injunction for issuance of their new ATOs, which the trial court already denied. It insisted that redeploying its monitoring teams to the respondents' casinos would be premature without first establishing that they have a valid license, the very factual issue below. Moreover, the RTC would be encroaching on its exclusive licensing and regulatory powers over casinos by ordering PAGCOR to permit them to import gambling paraphernalia and equipment.

After the hearing on October 3, 2011, the trial court issued its now assailed Amended Order dated October 13, 2011, finding *prima facie* evidence that a contract to operate the subject casinos had in fact been perfected between the respondents and PAGCOR, and ordered, thus:

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34 Id. at 375-392.
35 Id. at 386.
36 Id. at 416-426.

> WHEREFORE, the foregoing premises considered, let a Writ of Preliminary Mandatory Injunction be issued in favor of Thunderbird Pilipinas Hotels and Resorts, Inc. and Eastbay Resorts, Inc., ordering defendant Philippine Amusement and Gaming Corporation, its agents, assigns, representatives and other persons acting for or on its behalf, or under its direction, to:
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> a) Reinstate the monitoring teams in plaintiffs' casinos;
> b) Reasonably act upon and approve plaintiffs' pending requests on matters relative to their normal casino operations including but not limited to those contained in plaintiffs' letters dated 12 April 2011 (Exhibits "A-7-PMI" to "A-8-PMI"[)], 29 June 2011 (Exhibits "A-1-PMI" and "A-2-PMI")[,] and 12 July 2011 (Exhibits "A-3-PMI" and "A-4-PMI"); and
> c) Reasonably act upon and approve all similar requests that plaintiffs may file during the pendency of this suit.
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> Let the bond for the issuance of Writs of Preliminary Mandatory Injunction be set at ₱1,000,000.00.
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> SO ORDERED.[37]

PAGCOR received the said order on October 18, 2011, and on October 21, 2011, it filed with this Court a supplement to its urgent motion[38] reiterating its prayer for TRO and/or writ of preliminary injunction against the RTC Orders dated June 23, 2011 and October 13, 2011. On December 17, 2011, PAGCOR filed its third petition, **G.R. No. 199528**,[39] to set aside the aforesaid amended order. The Court again declined to issue a TRO or a writ of preliminary injunction but ordered the respondents to file a comment. The new petition was later consolidated with G.R. No. 197942-43. After several extensions, on April 3, 2012, the respondents filed their joint comment.

But in their Manifestation[40] dated September 11, 2012, the respondents disclosed that on May 15, 2012, the parties had submitted to the trial court a Joint Manifestation and Motion to Dismiss[41] the complaints below, and to release to PAGCOR all monies consigned in its favor. They also agreed to pay other franchise fees and tax liabilities found to be still due after audit. On May 21, 2012, the trial court approved the dismissal of Civil Case Nos. 11-125832 and 11-125833, and released to PAGCOR all monies consigned in its favor.[42]

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37 Id. at 458.
38 Id. at 446-450.
39 *Rollo* (G.R. No. 199528), pp. 3-56.
40 Id. at 571-574.
41 Id. at 575-578.
42 Id. at 581.

Petitions for *Certiorari* in the Supreme Court

On October 4, 2012, PAGCOR filed its Reply[43] in G.R. No. 199528, admitting the Joint Manifestation and Motion to Dismiss, but still reiterating all its arguments and urging that the main issue in its petitions, whether Judge Jurado gravely abused his discretion in issuing the writs of preliminary injunction despite the respondents' lack of a clear and unquestioned legal right to continue operating a casino, must still be resolved, for the reason that the controversy below is capable of repetition yet evading review, citing *Prof. David v. Pres. Macapagal-Arroyo*[44].[45] PAGCOR insisted that the RTC's amended order is a full adjudication of the respondents' complaints, as a result of which Judge Jurado effectively amended PAGCOR's Charter and took over its licensing mandate when he virtually ordered it to extend their franchises. PAGCOR also argued that a motion for reconsideration therefrom would have been entirely futile, citing *Domdom v. Third and Fifth Divisions of the Sandiganbayan*[46],[47] to wit:

> The rule [requiring the filing of a motion for reconsideration] is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo* had no jurisdiction; where **the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;** where **there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests** of the Government or **of the petitioner**, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where **the issue raised is one purely of law** or where public interest is involved.[48] (Citation omitted and emphasis supplied)

PAGCOR interposed two exceptions in *Domdom*: first, the prejudice against the government is clear, since it would lose millions in revenues from the respondents' casino operations under the parties' earlier terms of reference; and second, whether Judge Jurado gravely abused his discretion in issuing the assailed orders involves purely questions of law.

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43 Id. at 593-604.
44 522 Phil. 705 (2006).
45 *Rollo* (G.R. No. 199528), p. 595.
46 G.R. No. 182382-83, February 24, 2010, 613 SCRA 528.
47 *Rollo* (G.R. No. 199528), p. 599.
48 Supra note 46, at 533.

PAGCOR further cited *Manila International Airport Authority, et al. v. Olongapo Maintenance Services, Inc., et al.*,[49] where the Court held that a mandatory injunction being an extreme remedy should be granted only upon a showing that: (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.[50] Moreover, in *China Banking Corp., et al. v. Co, et al.*,[51] we ruled that:

> Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. **When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunction relief is improper**.[52] (Citations omitted and emphasis ours)

Our Ruling

The Court resolves to dismiss the instant petitions on several procedural and substantive grounds.

1. There is no more actual case or controversy to resolve, since the petitions have been mooted by the dismissal of the complaints below.

The Constitutional mandate of the courts in our triangular system of government is clear, so that as a necessary requisite of the exercise of judicial power there must be, with a few exceptions, an actual case or controversy involving a conflict of legal rights or an assertion of opposite legal claims susceptible of judicial resolution, not merely a hypothetical or abstract difference or dispute.[53] As Article VIII, Section 1 of the 1987 Constitution provides, "*[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*" As elaborated in *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et*

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49 567 Phil. 255 (2008).
50 Id. at 272.
51 587 Phil. 380 (2008).
52 Id. at 386-387.
53 *Didipio Earth Savers' Multi-Purpose Association, Incorporated v. Sec. Gozun*, 520 Phil. 457 (2006).

al.,[54] an actual case or controversy will assure that the courts will not intrude into areas committed to the other branches of government, to wit:

> The power of judicial review is limited to actual cases or controversies. Courts decline to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.
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> An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination.[55] (Citations omitted)

With the parties agreeing to end their differences before trial proper, the instant petitions have ceased to present a justiciable controversy for us to resolve.[56] However, as PAGCOR itself has importuned, there are procedural as well as substantive issues of such importance which it hopes this Court would help clarify for the guidance of future litigants. So shall We proceed.

2. The trial court did not abuse its discretion in extending the 72-hour TRO to 20 days.

On one particular point of controversy, PAGCOR has been insistent that the court *a quo* has no power to extend an "already" expired 72-hour *ex-parte* TRO. But the facts will clarify the matter. Civil Case Nos. 11-125832-33 were filed on June 3, 2011, a Friday, and at 4:30 that same afternoon, Judge Reyes issued an *ex-parte* 72-hour TRO to hold off any cessation proceedings threatened by PAGCOR against the respondents.[57] The next two days being a weekend, it was only on June 6, 2011, Monday, that the cases were raffled to Judge Jurado. The Court shall presume that notices, summons and copies of the complaints were duly served on PAGCOR, since it has been silent on the matter.

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54 589 Phil. 387 (2008).

55 Id. at 480-481.

56 *Madriaga, Jr. v. China Banking Corporation,* G.R. No. 192377, July 25, 2012, 677 SCRA 560, 568-569, citing *Suplico v. National Economic and Development Authority, et al.*, 580 Phil. 301, 323 (2008) and *Osmeña III v. Social Security System of the Philippines,* 559 Phil. 723, 735 (2007).

57 *Rollo* (G.R. No. 199528), pp. 450-451.

On June 7, 2011, Tuesday, Judge Jurado conducted a summary hearing on the respondents' TRO application, and when he granted the same,[58] PAGCOR verbally moved for reconsideration on the ground that Judge Reyes' 72-hour TRO had already expired and could no longer be extended. Judge Jurado denied the motion, saying that his TRO was based on his summary hearing wherein testimonies and documents were presented by the parties, whereas the 72-hour TRO issued by Judge Reyes was based merely on the respondents' initiatory pleadings. However, as Judge Jurado noted in his assailed Order[59] of June 23, 2011, PAGCOR preempted his order extending the 72-hour TRO, which was the very subject of the hearing on June 7, 2011, when it served its closure orders upon the respondents at their offices that same morning.

On June 13 and 16, 2011, the trial court heard the respondents' applications for writ of preliminary prohibitory injunction against PAGCOR's cessation order. On June 23, 2011, the 20th and last day of the TRO, Judge Jurado issued the writ. As already noted, without moving for reconsideration, PAGCOR went up directly to this Court on *certiorari.*

Concerning the grant of a writ of preliminary injunction or a TRO, the pertinent provisions of the Rules of Court are found in Sections 4 and 5 of Rule 58, *viz*:

> SEC. 4. x x x
>
> x x x x
>
> (c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.
>
> However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof, the requirement of prior or contemporaneous service of summons shall not apply.
>
> (d) **The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately**.

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58 Id. at 452-455.

59 Id. at 606-611.

> SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted. The Court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.
>
> However, subject to the provisions of the preceding sections, if the matter is of **extreme urgency** and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance, but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided herein.
>
> x x x x (Emphasis ours)

PAGCOR invoked as authority the case of *Lago v. Abul, Jr.*[60] to argue that Judge Jurado could not extend the 72-hour TRO granted by Judge Reyes. There, a case for injunction with TRO was filed on July 2, 2009 in the multi-sala RTC of Gingoog City, but allegedly without notice to the adverse party and without raffle, Judge Godofredo Abul, Jr. (Judge Abul) assumed the case, and on July 7, 2009 (a Tuesday) issued a 72-hour TRO. It was only on July 14, 2009, or after seven days, that he issued the order extending the TRO, "for another period provided that the total period should not exceed twenty (20) days." But by then the 72-hour TRO had long expired.

At first, the Court agreed with the Court Administrator that Judge Abul was grossly ignorant of the law and violated Rule 58 of the Rules of Court, on account of the following acts: (1) when the civil complaint with prayer for a TRO was filed on July 2, 2009, he assumed jurisdiction, and without a raffle and notification and service of summons to the adverse party, issued a 72-hour TRO on July 7, 2009; (2) when he set the case for summary hearing on July 14, 2009 to determine whether the TRO could be extended for another period, whereas the hearing should have been

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[60] A.M. No. RTJ-10-2255, January 17, 2011, 639 SCRA 509.

conducted within the 72-hour TRO; (3) when he eventually granted an extension of an already expired TRO to a full 20-day period; and (4) when he issued a writ of preliminary injunction without prior notice to complainants and without hearing.

PAGCOR forgot to mention, however, that the Court eventually granted Judge Abul's motion for reconsideration,[61] and dismissed the complaint against him. The Court found that in fact he did order the service of summons to the defendants on July 7, 2009, which could however be served only on July 8, 2009 (Wednesday) because the law office of the adverse counsel was 144 kilometers from Gingoog City. Moreover, a summary hearing could not be held within the 72-hour TRO because Judge Abul had hearings scheduled on July 9 (Thursday), 10 (Friday) and 13 (Monday), 2009 in his permanent station in RTC, Branch 4, Butuan City. The Court said:

> Under the circumstances, Judge Abul should not be penalized for failing to conduct the required summary hearing within 72 hours from the issuance of the original TRO. Though the Rules require the presiding judge to conduct a summary hearing before the expiration of the 72 hours, it could not, however, be complied with because of the remoteness and inaccessibility of the trial court from the parties' addresses. The importance of notice to all parties concerned is so basic that it could not be dispensed with. The trial court cannot proceed with the summary hearing without giving all parties the opportunity to be heard.
>
> It is a settled doctrine that judges are not administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. 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. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.
>
> To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the respondent judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.
>
> In this case, complainants failed to show that Judge Abul was motivated by bad faith, ill will or malicious motive when he granted the TRO and preliminary injunction. Complainants did not adduce any proof to show that impropriety and bias attended the actions of the respondent judge.[62] (Citations omitted)

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61 *Lago v. Abul, Jr.*, A.M. No. RTJ-10-2255, February 8, 2012, 665 SCRA 247.

62 Id. at 250-251.

As in *Lago,* the Court does not now find that Judge Jurado acted in bad faith or with ill will or malicious motive when he granted the TRO extension and later the preliminary injunction. It would have been irregular and unreasonable for him to act on the extension of the 72-hour TRO on June 6, 2011 when the cases were first raffled to him, and besides, under Rule 58 he had 24 hours to act thereon. On the other hand, PAGCOR should have refrained, but deliberately did not, from serving its closure orders on the respondents on June 7, 2011, knowing very well that a summary hearing was to be held that same morning on their TRO application. Indeed, seen in light of the preceding acts of PAGCOR, it can hardly be said that it acted with fairness toward the respondents so as to be permitted now to blithely take issue with the extension of the 72-hour TRO. For truly, what is of compelling consideration here is that PAGCOR was accorded notice and a chance to be heard, and when the trial court later resolved to grant the writ of preliminary injunction, it did so after hearing it out, within the 20-day TRO.

3. PAGCOR is not justified in failing to file a requisite motion for reconsideration, and to observe the hierarchy of courts.

While the question of whether to give due course to the petitions is addressed to the discretion of the Court,[63] it behooves PAGCOR to observe the applicable rules and keep in mind that the Court will not take lightly any non-observance of our settled rules as if they are mere technicalities.[64] A motion for reconsideration is a condition *sine qua non* for the special civil action of *certiorari.* As we discussed in *Republic of the Philippines v. Abdulwahab A. Bayao, et al.*:[65]

> The settled rule is that a Motion for Reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.
>
> This rule admits well-defined exceptions as follows:
>
> > Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.
> >
> > Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as

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63 *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311, 313-314.

64 *Sea Power Shipping Enterprises, Inc. v. Court of Appeals,* 412 Phil. 603, 611 (2001).

65 G.R. No. 179492, June 5, 2013.

> where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[66] (Citations omitted)

As will become more evident in our latter discussion, there is no justification for PAGCOR dispensing with a motion for reconsideration, since an earlier case, *PAGCOR v. Fontana Development Corporation*,[67] has delved into the same points it raised here.

At their roots, these petitions deal with the manner PAGCOR has exercised its licensing and regulatory powers over the respondent casino operators. The Court sees no novel issues of transcendental importance to justify its action of skipping the hierarchy of the courts and coming directly to us *via certiorari* petition. As explained in *Emmanuel A. De Castro v. Emerson S. Carlos*,[68] although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari,* prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the jurisdiction of the Supreme Court is not exclusive but concurrent with that of the CA and RTC. The petitioner has no unrestricted freedom of choice of forum, but must strictly observe the hierarchy of the courts.

> Settled is the rule that "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.
>
> A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition. The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.

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66 Id.

67 G.R. No. 187972, June 29, 2010, 622 SCRA 461.

68 G.R. No. 194994, April 16, 2013.

> In this case, petitioner justified his act of directly filing with this Court only when he filed his Reply and after respondent had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. Petitioner likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.
>
> Petitioner's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.[69] (Citations omitted)

4. The MOAs of the parties are not concerned solely with the matter of the grant, renewal or extension of a franchise to operate a casino, but they require as a concomitant condition that the proponents commit to make long-term, multi-billion investments in two resort complexes where they are to operate their casinos.

It is needless to state that a license[70] from PAGCOR to operate a casino is not absolute and unconditional as to constitute a right *in esse* which the licensee may enforce through a writ of injunction as a matter of law,[71] or treat as a property or a property right.[72] Truly, the licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure.[73] But the instant petitions do not deal merely with the matter of renewal or extension of the respondents' casino franchises. The parties' MOAs, and the amendments thereto, disclose without a doubt that the respondents' multi-billion investment commitment in their resort complexes is integrally conditioned upon the government's promise of a concomitant casino franchise, provided they comply with their investment timetables, among other things, a matter which is precisely the subject of PAGCOR's licensing and regulatory functions.

The government's objectives or motives under its investment agreements with the respondents are plain. It wants to encourage large, long-term investments in tourism-oriented resorts and facilities, by offering the investor a franchise to operate a casino therein, should it choose, from which the government will also derive a hefty share in the gaming revenues.

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69 Id.

70 Below also referred to as a "franchise" or "authority to operate."

71 *Secretary Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, 534 Phil. 741, 754 (2006).

72 *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534, 560; *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811-812.

73 *Chavez v. Romulo*, id.

But it needs no elaboration that the new terms imposed by PAGCOR amply demonstrate the onerous nature of such an investment agreement to put up an entirely new casino hotel/resort complex. Moreover, PAGCOR now demands that the respondents complete their investment commitments within a much-shortened period of three years, instead of up to 2015 or 2021; then, each resort must have a minimum of 200 hotel rooms, a minimum space of 25,000 sq m, not counting residential, office and parking spaces, and maximum gaming spaces of 5,000 sq m with a maximum of 1 gaming table per 4 hotel rooms and 3 slot machines per 2 hotel rooms; PAGCOR's share in the gaming receipts would be increased to 40% from non-junket tables, 40% from slot machines and electronic gaming machines, and 15% from junket operations; lastly, the respondents get a three-year provisional license pending full compliance with their investment commitments, while their regular license would be for seven years only, not up to 2033.

By the sheer amount of the investments required in FCR, in far-away Poro Point, San Fernando City, La Union, and in FHC, in remote Binangonan, Rizal, totaling some ₱7.7 Billion, the government needed to entice the respondents by allowing them to operate casinos in their said resorts, with the franchise periods made to depend on the actual progress of the development phases of the projects. Thus, the ATO was initially for six months; then it was up to July 11, 2008, the end of PAGCOR's original franchise; and finally, it would be made co-terminus with PAGCOR's new franchise, or up to 2033.

Nonetheless, the respondents were made to understand that PAGCOR can always revoke their casino franchises for violation of their investment commitments or their license, and Thunderbird Pilipinas knew that it might even lose its shares in FCR to PAGCOR. But as it happened, without prior determination of violation by the respondents of their MOAs, PAGCOR simply informed the respondents on June 7, 2011 that it was closing their casino operations, after they refused to accede to its new terms of reference. Under the parties' MOAs, the court would clearly need to first determine if there are any factual bases for PAGCOR's closure order, pursuant to the court's duty to determine "*whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*"[74] PAGCOR is not then correct to insist that it is raising only a pure question of law, that is, whether or not the respondents have a clear and unquestioned legal right to continue operating a casino. This is only half of the issue, the other half being whether the respondents violated the terms of their MOAs.

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74 1987 CONSTITUTION, Article VIII, Section 1.

5. The enforceability of the franchise contained in a MOA covering an investment agreement to establish and operate a casino resort complex has been upheld in *PAGCOR v. Fontana Development Corporation*.

In an earlier and very similar case, *PAGCOR v. Fontana Development Corporation*,[75] PAGCOR on December 23, 1999, granted Fontana Development Corporation (FDC) a non-exclusive license to engage in casino gaming and amusement operations inside the Clark Special Economic Zone (CSEZ), under a MOA provision that its license shall be *"co-terminus with the Charter of PAGCOR, or any extension thereof, and shall be for the period hereinabove defined."* But on July 18, 2008, now with its franchise extended for 25 years, PAGCOR informed FDC that it was renewing its MOA on a month-to-month basis only until the renewal of its ATO is finalized, to which FDC protested, insisting that its franchise was co-terminus with that of PAGCOR. On October 6, 2008, PAGCOR notified FDC that its new standard 10-year ATO would now regulate its casino operations in place of the previous MOA. On November 5, 2008, PAGCOR instructed FDC to remit its franchise fees in accordance with the ATO. FDC filed an injunction suit in the RTC, claiming its franchise is co-terminus with that of PAGCOR. It also claimed that it had faithfully complied with the conditions of its MOA, and had already spent ₱1 Billion in its hotel-casino complex in CSEZ, adopted a marketing strategy to attract high roller casino players from Asia, and met all its obligations to PAGCOR and other government agencies.

The Court held that FDC's complaint for injunction was based on a claim of violation of the MOA by PAGCOR, and under Section 19 of Batas Pambansa Bilang 129, the RTC of Manila has jurisdiction over FDC's complaint. The Court further held that PAGCOR "has no legal basis for nullifying or recalling the MOA with FDC and replacing it with its new Standard Authority to Operate (SAO). There is no infirmity in the MOA, as it was validly entered by PAGCOR under [P.D. No.] 1869 and remains valid until legally terminated in accordance with the MOA."[76] Concerning the invalidity of the 10-year SAO which PAGCOR offered to FDC, the Court was emphatic:

> Lastly, the Court has to point out that the issuance of the 10-year SAO by PAGCOR in lieu of the MOA with FDC is a breach of the MOA. The MOA in question was validly entered into by PAGCOR and FDC on December 23, 1999. It embodied the license and authority to operate a casino, the nature and extent of PAGCOR's regulatory powers over the

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75 Supra note 67.

76 Id. at 480.

> casino, and the rights and obligations of FDC. Thus, the MOA is a valid contract with all the essential elements required under the Civil Code. The parties are then bound by the stipulations of the MOA subject to the regulatory powers of PAGCOR. Well-settled is the rule that a contract voluntarily entered into by the parties is the law between them and all issues or controversies shall be resolved mainly by the provisions thereof.[77] (Citation omitted)

In stressing that PAGCOR is contractually bound by its MOA with FDC, the Court said:

> As parties to the MOA, FDC and PAGCOR bound themselves to all its provisions. After all, the terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals, good customs, or public policy. A stipulation for the **term or period** for the effectivity of the MOA to be **co-terminus with term of the franchise of PAGCOR including any extension** is not contrary to law, morals, good customs, or public policy.
>
> It is beyond doubt that PAGCOR did not revoke or terminate the MOA based on any of the grounds enumerated in No. 1 of Title VI, nor did it terminate it based on the period of effectivity of the MOA specified in Title I and Title II, No. 4 of the MOA. Without explicitly terminating the MOA, PAGCOR simply informed FDC on July 18, 2008 that it is giving the latter an extension of the MOA on a month-to-month basis in gross contravention of the MOA. Worse, PAGCOR informed FDC only on October 6, 2008 that the MOA is deemed expired on July 11, 2008 without an automatic renewal and is replaced with a 10-year SAO. Clearly it is in breach of the MOA's stipulated effectivity period which is co-terminus with that of the franchise granted to PAGCOR in accordance with Sec. 10 of PD 1869 **including any extension**. Hence, PAGCOR's disregard of the MOA is without legal basis and must be nullified. PAGCOR has to respect the December 23, 1999 MOA it entered into with FDC, especially considering the huge investment poured into the project by the latter in reliance and pursuant to the MOA in question.[78] (Citation omitted and emphasis supplied)

In conclusion, PAGCOR's sole and exclusive authority to restrict and control the operation of gambling casinos in the country cannot be said to be absolute, but must be exercised with due regard to the terms of its agreement with the licensee. This is specially so when the grant of a particular franchise to operate a casino is hinged on an entire investment agreement to establish a resort complex requiring a significant infusion of capital, wherein the investor must invest not just in a casino operation but in a complete hotel/resort complex which would house it.

WHEREFORE, premises considered, the petitions are **DISMISSED**.

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77 Id. at 481.

78 Id. at 483-484.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice