

MARCOPPER MINING CORPORATION, PETITIONER, VS. SOLIDBANK CORPORATION, THE SHERIFF OF MANILA AND DEPUTY SHERIFF CARLOS BAJAR, RESPONDENTS.

G.R. No. 134049. June 17, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 44570, dismissing the petition for certiorari and prohibition with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction filed by Marcopper Mining Corporation, and its Resolution[2] dated June 5, 1998, denying the motion for reconsideration of the said decision.

The Antecedents

Petitioner Marcopper Mining Corporation (MMC, for brevity), is a domestic corporation, engaged in the mining and production of copper concentrates in Boac, Marinduque, since 1968. In order to sustain its operations, MMC entered into several loan transactions with various banks and financial institutions, including the Asian Development Bank.

Also among the transactions entered into by MMC were two foreign currency loans with respondent Solidbank Corporation, denominated as FCDU 96-049 and 96-050, for US\$1,000,000.00 each, or a total of US\$2,000,000 which were payable on demand. Each loan was covered by a promissory note in which MMC, through John E. Loney and Jose E. Reyes, signed as Maker-Borrower/Assignor. It was agreed therein that the loan would accumulate an interest of 8.75% per annum. It was, likewise, provided that the payment for the loan would be sourced from the foreign exchange proceeds from the shipment of the copper concentrates by MMC to Nippon Mining & Metals Co., Ltd. to the extent of US\$1,206,783.09 to be shipped in May 1996.

On March 24, 1996, in the course of its mining operations, a leakage occurred in the tailings of the taipan Pit in MMC's Boac, Marinduque plant, resulting in the cessation of mining operations. Consequently, the MMC failed to ship copper concentrates to Nippon Mining & Metals Co., Ltd. On March 29, 1996, the Department of Environment and Natural Resources issued a Closure Order, ordering the MMC to cease its mining operations. This was followed by a cease and desist order from the Pollution Adjudication Board.

As a result of such orders, the MMC was unable to pay for the loans it obtained from the respondent bank. In such a situation, the MMC was prompted to ask for a consolidation of FCDU 96-049 and 96-050. On July 9, 1996, the aforementioned FCDUs were consolidated into FCDU 96-808 for US\$2,000,000. It was specified therein that FCDU 96-808 was acquired by MMC as its working capital, payable on demand and repriced every thirty (30) days. However, the MMC still failed to settle its loan.

On September 19, 1996, respondent bank filed a civil complaint docketed as Civil Case No. 96-80083 for a sum of money against MMC, its President/Chief Executive Officer John E. Loney, Treasurer Jose E. Reyes and its Assistant Corporate Secretary, Teodulo C. Gabor, Jr. The respondent alleged the following in its complaint:

First Cause of Action

- On January 16, 1996, the defendant obtained a foreign currency loan from plaintiff in the amount of US\$1,000,000.00 and as evidenced thereof, the defendant corporation, through its officers, defendants JOHN B. LONEY and JOSE E. REYES, acting in their dual capacities as President/CEO and Treasurer, respectively, as well as in their personal capacities, executed on even date a Foreign Currency Denominated Promissory Note (FCDU for brevity) No. 96-049 undertaking, jointly and severally, to pay the said obligation with interest at 8.75% upon demand by plaintiff. Copy of FCDU note is hereto attached and made an integral part hereof as Annex "A."

Second Cause of Action

- On January 16, 1996, the defendants obtained a foreign currency loan from the plaintiff in the amount of US\$1,000,000.00 and as evidence thereof, the defendant corporation through its officers, defendants JOHN E. LONEY and JOSE E. REYES acting in their dual capacities as President/CEO and Treasurer, respectively, as well as in their personal capacities executed on even date a Foreign Currency Denominated Promissory Note (FCDU for brevity) No. 96-050 undertaking, jointly and severally, to pay the said obligation with interest of 8.75% upon demand by plaintiff. Copy of the FCDU note is hereto attached as Annex "B" and made an integral part hereof.

Allegations Common to Both Causes of Action

- Under the terms of the FCDU Note, parties agreed as follows:

a) in the event of default, defendants agreed to pay additionally a penalty at the rate of 2% per month until fully paid.

b) Defendants agreed to an increase or decrease as the case may be of the interest rate presently stipulated on the basis of prevailing rates either at the local or international capital markets.

c) in case of litigation, defendants agreed to pay such sum equivalent to 10% of the amount involved by way of attorney's fees.

d) in any action arising from the notes, parties agreed to submit themselves to the jurisdiction of the proper courts of Metro Manila or of the place of execution of the notes at the sole option of plaintiff.

- The defendants defaulted in the payment of the FCDU Notes and inspite (sic) repeated demands, defendants failed and refused to settle their obligations to plaintiff. Copy of the latest demand is hereto attached as Annex "C" and made an integral part hereof.

- As of September 13, 1996, defendants' obligation to plaintiff is in the amount of FIFTY-TWO MILLION NINE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 89/100 (P52,970,756.89), Philippine Currency. Copy of the Statement of Account is hereto attached as Annex "D" and made an integral part hereof;

- As a consequence of the defendants' willful refusal to pay a plainly just and valid obligation, plaintiff was constrained to engage the services of the undersigned counsel for a fee equivalent to 10% of the amount involved by way of attorney's fees.[3]

In support of its plea for a writ of preliminary attachment, the respondent also alleged, inter alia, the following:

Grounds for Issuance of Preliminary Attachment

- For and in consideration of plaintiff's extending the foreign currency loans unto the defendants, the latter made undertakings that their obligations shall be paid from the proceeds of the Purchase Order from Nippon Mining & Metal Co., Ltd. (Invoice No. SAN-47 dated January 9, 1996) covering copper concentrates to the

extent of US\$1,206,783.09 to be shipped in May 1996. These representations were reflected on the FCDU Notes (96-049 & 96-050) particularly No. 3 thereof which are bracketed and marked as Annex "A-1" for FCDU 96-049 and Annex "B-1" for FCDU 96-050, respectively, and made integral parts hereof.

- The proceeds of the shipments were never remitted to plaintiff pursuant to the defendants' commitments aforesated upon which plaintiff heavily relied upon as factors that induced it to release the amounts covered by the FCDU notes.

- As a consequence of the defendants' failure to make the remittance and to cover up their utter bad faith, they adopted a scheme whereby, they sought the consolidation of the two promissory notes into one for US\$2,000,000.00 evidenced by loan No. FCDU 96-808 duly signed this time, by defendants Jose E. Reyes and Teodulo C. Gabor, Jr. This was allowed by plaintiff upon the assurances of the aforementioned that the Secretary's Certificate attesting to their authority to commit the defendant corporation into a joint and solidary liability with them will be submitted in due time. Copy of the FCDU Note No. 96-808 is hereto attached as Annex "E" and made an integral part hereof.

- Unfortunately, the required Secretary's Certificate showing such authority was never submitted and it became evident that the assurances turned out to be another misrepresentation.

- This is a clear badge of fraud on the part of the defendants conspiring to achieve a common end of contracting an obligation that they really did not have the intention to pay at its inception.

- To further foreclose whatever chance of plaintiff in recovering the enormous indebtedness of the defendants, the latter conceived of selling defendant corporation's substantial assets in the form of shareholdings in various country clubs to make effective their plans of placing their valuable assets beyond reach of their creditors, one of the plaintiff[s] herein. Copy of defendants' letter addressed to Asian Development Bank asking for permission to sell is hereto attached as Annex "F" and made an integral part thereof.

- The circumstances pieced together only reinforced the claim of bad faith on the part of the defendants and are grounds for the issuance of attachment under Rule 57, Sec. 1(d) of the Revised Rules of Court, which provides: "In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought."

as well as 1(e) stating:

"In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors."

- Plaintiff has sufficient causes of action and there is no sufficient security for the claims sought to be enforced herein by plaintiff other than the properties of the defendants that may still be reached by a writ of preliminary attachment, if it is immediately and expeditiously issued;

- The amount due to plaintiff is as much as the sum hereinabove specified over and above all the counterclaim that maybe interposed by the defendants;

- Plaintiff is ready and willing to put up a bond in such amount as may be determined to answer for all the damages that the defendants may sustain by reason of the attachment, if the Honorable Court should finally adjudge that plaintiff is not entitled thereto.[4]

The respondent prayed that, after due proceedings, judgment be rendered in its favor, viz:

PRAYER

WHEREFORE, it is respectfully prayed that:

- At the commencement of this action and upon the filing of a bond in such amount as this Honorable Court may fix, a writ of preliminary attachment be forthwith issued against the properties of the defendants as satisfaction of any judgment that plaintiff may secure.
- After trial, judgment be rendered ordering defendants, jointly and severally, to pay plaintiff the sum of FIFTY-TWO MILLION NINE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 89/100 (P52,970,756.89) PESOS, Philippine Currency, plus interests and charges until fully paid;
- Such sum equivalent to 10% of the amount involved by way of attorney's fees; and
- Costs of suit.

Plaintiff prays for other reliefs just and equitable under the premises.[5]

On September 20, 1996, the trial court issued an Order for the issuance of a writ of preliminary attachment, upon the respondent's posting of a bond duly approved by the court in the amount of P58,267,831.59.[6] The respondent posted the requisite bond, and after the same was approved by the court, a writ of preliminary attachment was issued in the respondent's favor.

The petitioner MMC filed a motion to dissolve the writ of preliminary attachment issued by the court, on the following grounds:

PLAINTIFF HAS NO CAUSE OF ACTION AGAINST DEFENDANTS.

PLAINTIFF IS NOT ENTITLED TO ATTACHMENT. THE REQUIREMENTS ENTITLING IT TO THE WRIT ARE WANTING AND THE FACTS STATED IN THE AFFIDAVIT OF ATTACHMENT ARE UNTRUE AND FALSE.

MARCOPPER AND INDIVIDUAL DEFENDANTS HAVE NOT COMMITTED FRAUD AND ARE NOT GUILTY OF FRAUD IN CONTRACTING THE DEBT OR INCURRING THE OBLIGATION UPON WHICH THE ACTION IS BROUGHT, OR IN CONCEALING OR DISPOSING OF PROPERTY FOR THE TAKING, DETENTION AND CONVERSION OF WHICH THE ACTION IS BROUGHT.

DEFENDANTS HAVE NOT REMOVED OR DISPOSED OF THEIR PROPERTIES, OR ABOUT TO DO SO, AND THERE IS NO INTENT TO DEFRAUD CREDITORS.[7]

On October 28, 1996, the petitioner filed the verified answer to the complaint, incorporating therein its special and affirmative defenses, viz:

Defendant Marcopper repleads the allegations in the preceding paragraphs hereof;

- Plaintiff has no cause of actions against Marcopper;
- The Foreign Currency loans (FCDU Nos. 96-049 and 96-050) set forth in plaintiffs' First and Second Causes of Action (pars. 6, 7, 8 and 9 of the Complaint) have been paid and/or extinguished. Marcopper was not in default in respect of said FCDU loans.
- Plaintiff Solidbank is one of the banks with whom Marcopper does business with. The other banks are Security Bank and Trust Company, Rizal Commercial Banking Corporation, Bank of America, NT and SA, Westmont Bank, Citibank and the Bank of Nova Scotia, a Canadian bank licensed to do business in the Philippines;

- Marcopper maintaining banking facilities with Solidbank since 1992;
- During the period 1992-1996, Marcopper has availed of financial facility from Solidbank in the form of FCDU loans secured by promissory note/s payable from proceeds of export credit or purchase order;
- The FCDU loans of 16 January 1996 under FCDU Notes 96-049 and 96-050, totalling US\$2 Million were to be paid out of proceeds of the purchase order from Nippon Mining and Metal Co., Ltd. covering copper concentrates to the extent of US\$1,206,783.09, to be shipped by Marcopper to Japan in May 1996;
- Starting March 24, 1996, Marcopper unexpectedly experienced a leakage of tailings from the Tapan Pit which caused the operations to be closed on March 25, 1996;
- Because of the magnitude, gravity and seriousness of the leakage affecting several municipalities in Marinduque where Marcopper has its mining operations, the Department of Environment and Natural Resources (DENR), the Bureau of Mines and the Pollution Control Commission ordered Marcopper to suspend its mining operations.
- Plaintiff's allegations in its Complaint that:
"12. The proceeds of the shipments were never remitted to plaintiff pursuant to the defendants' commitment aforestated upon which plaintiff heavily relied upon as factors that induced it to release the amounts covered by the FCDU notes."

and in paragraph 14 of the affidavit of attachment that:

"14. The proceeds of the shipments were never remitted to plaintiff pursuant to the defendants' commitments aforestated upon which plaintiff heavily relied upon as factors that induced it to release the amounts covered by the FCDU notes."

is untrue. Marcopper's operations have been closed and there was no May shipment of copper concentrates to Nippon Mining and Metal Co., Ltd. as forecasted in January 1996. Marcopper gave a force majeure notice to Nippon stating that its operations have been closed by the government as a consequence of the tailings leakage. The May 1996 shipment has not taken place from which to make the payment to Solidbank;

- Contrary to the obligations in paragraphs 13, 14, 15, 16 and 17 of the Complaint, Marcopper acted in good faith when it asked plaintiff for a US\$2 Million FCDU loan in July 1996 to retire the FCDU Notes of January 16, 1996, and for working capital;
- The Secretary's Certificate attesting to the authority of individual defendants Jose E. Reyes, as Treasurer, and Atty. Teodulo Gabor, Acting Corporate Secretary, to sign in behalf of Marcopper specifically denies that it represented that individual defendants Reyes and Gabor will be jointly and severally liable for the FCDU loan of Marcopper under FCDU 96-808, and/or that the aforementioned corporate officers have committed themselves to be personally or jointly and severally liable with Marcopper. Said individual defendants have no interest in said loan other than their being employees and signatories to bank accounts and/or FCDU loans of Marcopper;
- As a consequence of the March 1996 environmental incident and the closure of the mine, Marcopper's Management investigated ways of meeting its liabilities including Solidbank's loan. This request was forwarded to the Asian Development Bank (ADB), Bank of Nova Scotia and Placer Dome, Inc., who hold the assets referred in Annex "F" of the complaint as security and secondly, selling of Marcopper's assets requires the approval of said institutions. The Bank of Nova Scotia is Solidbank's largest shareholder and therefore Solidbank was aware of Marcopper's request;
- Defendant Marcopper was not in default of the FCDU loans of US\$2 Million under the Promissory Notes FCDU Nos. 96-049 and 96-050 both dated January 16, 1996 as there was no demand made upon defendant for the

payment of said notes. Moreover, the obligation under the said notes were fully paid and/or extinguished/novated;

- On July 19, 1996, Marcopper obtained from Solidbank foreign currency loan of US\$2 Million under FCDU 96-808 to retire the loans under FCDU Nos. 96-049 and 96-050, and for working capital;

- During the negotiation between Marcopper and plaintiff Solidbank which resulted in the retirement of the promissory notes dated January 16, 1996, and availment of FCDU No. 96-808, plaintiff was fully aware that Marcopper had stopped mining operations, that there was no copper concentrate production, that there was no shipment of copper concentrate to Nippon Mining and Metal Co. Ltd. and that Marcopper could not expect any payment of the FCDU loans of January 16, 1996 out of purchase order from Nippon Mining & Metal Co. Ltd. (per Invoice No. SAN-47, January 9, 1996). Fully aware of the financial and operating difficulties encountered by Marcopper, Solidbank agreed to extend to Marcopper a loan under FCDU 96-808 to enable it to retire FCDU loans 96-049 and 96-050 and for working capital to resume operations and thereby start producing concentrates for shipment;

- The demand for payment or call on said promissory note (FCDU 96-808) was not by reason of alleged fraud in incurring the debt or contraction of the obligation sued upon, or concealment or disposal or attempt to dispose of properties and assets, but for reasons stated by plaintiff Solidbank that:

“Because of a material adverse change in the condition of your company brought about by the cancellation of your environmental clearance among others. We are now compelled to make full demand of above loan. Kindly make full principal and interest payment amounting to \$2,013,993.06 on August 15, 1996 (sic).”

The averments in the affidavit of attachment that:

“To further foreclose whatever chance of plaintiff in recovering the enormous indebtedness of the defendants, the latter conceived of selling defendant corporation’s substantial assets in the form of shares in various country clubs to make effective their plans of placing their valuable assets beyond reach of other creditors, one of them plaintiff herein.” (par. 18 of Affidavit),

and that

“copy of defendants’ letter addressed to Asian Development asking for permission to sell (par. 16 of Complaint and Annex “F” thereof).”

belies plaintiff’s assertion that defendants have concealed, removed or disposed of their properties with intent to defraud creditors;

- The letter dated 07 May 1996 (Annex “F” of the Complaint) of Marcopper to the Asian Development Bank (ADB) shows that Marcopper has requested permission from ADB, a major creditor, to sell the assets consisting substantially of club shares, an aircraft and a house and lot at Forbes Park, Makati, to allow Marcopper to use the proceeds thereof to meet its financial requirements. It also informed ADB that Marcopper is “experiencing extreme financial difficulties due to the shutdown of its operations” and “for the company to survive until it resumes operation, it needs cash to finance its daily requirements.” The letter is a good faith and arms-length request. To date, Marcopper has not disposed of the club shares and other properties;

- The loan extended by plaintiff to Marcopper on July 19, 1996 is not yet due and demandable. While said FCDU note appears on its face to be payable “on demand,” the same, as in previous FCDU loans obtained from Solidbank, and other banks of Marcopper, is to be paid out of export shipments or purchase orders of copper concentrates, in accordance with Central Bank Circular and related issuance of the Bangko Sentral ng Pilipinas. Under paragraph 3 of said FCDU (Annex “E” of Complaint), the payment “on demand” is qualified by the

following stipulation: “xxx authorizing Solidbank to apply to the payment of the principal, interest or any other amount of obligations under or which may arise from this loan, at any time and without notice, any or all of the proceeds of xxx export shipments, negotiations, bills, purchase orders, or other form of agreements, or any other monies or property, coursed through or negotiated with Solidbank xxx”;

- Unfortunately, due to fortuitous event or force majeure as averred in pars. 15, 16, 17 and 18 hereof, Marcopper’s operations were ordered suspended by government authorities until the matter of the environmental incident and leakage of tailings shall have been adequately corrected. While Marcopper is temporarily unable to service its financial obligations with plaintiff, Marcopper and parties-in-interest to it; are doing everything possible to prevent recurrence of the leakage of tailings, and for the lifting of the suspension order, thereby enabling Marcopper to resume operations, make export shipment of copper concentrates and from proceeds thereof, to pay its financial obligations to Solidbank and other creditors;

- Marcopper is not reneging on its obligations under FCDU No. 96-808, but due to insuperable causes, production of concentrates from which payments on the FCDU loan has to be made, was suspended and/or temporarily stopped;

- FCDU No. 96-808 fails to express the true intent and agreement between plaintiff and Marcopper that payment of the loan shall be from proceeds of export shipment and/or purchase orders on copper concentrate production. Hence, there is a need for reformation of FCDU Note No. 96-808, to express the true agreement between plaintiff and Marcopper;

- For reasons afore-alleged in the preceding paragraphs, events and circumstances manifestly beyond the contemplation of the parties have arisen after the obtention of the FCDU loan No. 96-808 which renders temporarily impossible or extremely difficult the performance by Marcopper of its obligation thereunder. In such a situation, payment is not yet due until the conditions which prevented fulfillment has ceased to exist. Under Article 1267 of the Civil Code, the court may grant equitable relief to the obligor, herein defendant Marcopper, in whole or in part;[8]

On January 10, 1997, the respondent filed a Motion for Partial Summary Judgment against the petitioner MMC only, on the following grounds:

A

DEFENDANT MARCOPPER MINING CORPORATION ADMITS THE MATERIAL ALLEGATIONS OF THE COMPLAINT ON THE CONTRACTING OF THE SUBJECT LOANS AND THEIR NON-PAYMENT OBVIATING TRIAL.

B

DEFENDANT MARCOPPER MINING CORPORATION HAS NO REAL DEFENSE AND PLAINTIFF IS ENTITLED TO JUDGMENT FOR THE UNPAID OBLIGATIONS AS A MATTER OF LAW.[9]

Appended to the said motion was the affidavit of Mary Jean A. Go, the Manager of the Corporate Banking Group II. The petitioner MMC, as well as the other defendants in the case, opposed the motion contending that:

- THE MOTION FOR SUMMARY JUDGMENT HAS NO FACTUAL AND LEGAL BASIS. IT IS BEREFT OF MERIT.

- SUMMARY JUDGMENT IS PROPER ONLY WHEN THERE IS CLEARLY NO GENUINE ISSUE AS TO ANY MATERIAL FACT IN THE ACTION. MARCOPPER AND INDIVIDUAL DEFENDANTS HAVE GENUINE DEFENSES TENDERING FACTUAL ISSUES REQUIRING TRIAL ON THE MERITS.

- ALL DEFENDANTS HAVE SPECIAL AND AFFIRMATIVE DEFENSES AS AGAINST THE UNFOUNDED CLAIMS OF SOLIDBANK.
- INDIVIDUAL DEFENDANTS JOHN E. LONEY, JOSE E. REYES AND TEODULO C. GABOR, JR. ARE SUED BY PLAINTIFF SOLIDBANK ON ALLEGED JOINT AND SEVERAL LIABILITY WITH CORPORATE DEFENDANT MARCOPPER ON THE LATTER'S LOAN FROM SOLIDBANK.
- A PARTIAL SUMMARY JUDGMENT AGAINST MARCOPPER WITHOUT AWAITING TRIAL ON THE MERITS ON THE DEFENSES AVAILABLE TO INDIVIDUAL DEFENDANTS WILL BE A DENIAL OF THEIR RIGHT TO DUE PROCESS AS THEY WILL BE HELD JOINTLY AND SEVERALLY LIABLE WITH MARCOPPER, IF A PARTIAL SUMMARY JUDGMENT IS RENDERED AGAINST THE LATTER.[10]

The defendants appended to their Opposition the affidavit of Teodulo C. Gabor, Jr., the Vice-President/Corporate Secretary of petitioner MMC. On March 20, 1997, the Asian Development Bank, MMC, Placer Dome, Inc. and MR Holdings, Inc. as assignees, executed an Assignment Agreement.

On May 7, 1997, the trial court issued an Order granting the motion of the respondent for partial summary judgment and rendered a Partial Judgment against the petitioner MMC only. The fallo of the decision reads, viz:

WHEREFORE, PREMISES CONSIDERED, partial judgment is hereby rendered ordering defendant Marcopper Mining Corporation as follows:

- To pay plaintiff Solidbank the sum of Fifty-Two Million Nine Hundred Seventy Thousand Seven Hundred Fifty-Six and 89/100 only (P52,970,756.89), plus interest and charges until fully paid.
- To pay an amount equivalent to ten per cent (10%) of abovestated amount as attorney's fees; and
- To pay the costs of suit.

SO ORDERED.[11]

The trial court held that the answer of the petitioner failed to raise genuine issues of facts. The petitioner MMC received a copy of the partial judgment of the trial court on May 8, 1997, and, filed a notice of appeal from said judgment on May 9, 1997.[12] The respondent bank, likewise, received a copy of said judgment, on May 8, 1997 and filed a "Motion for Execution Pending Appeal" dated May 13, 1997. Over the petitioner MMC's opposition, the trial court issued an Order dated June 25, 1997 granting the respondent's motion.[13] On July 7, 1997, the court issued a Writ of Execution pending appeal.[14]

Earlier, on or on July 2, 1997, the petitioner MMC filed a Petition for Certiorari and Prohibition with a plea for a writ of preliminary injunction in the Court of Appeals, docketed as CA-G.R. SP No. 44570, for the nullification of the June 25, 1997 Order of execution pending appeal. However, the certificate of non-forum shopping embodied in the petition was executed by its counsel, Atty. Cirilo E. Doronila.[15] Nevertheless, on July 4, 1997, the CA issued a Resolution granting the petitioner's plea for a temporary restraining order. The respondent filed an Urgent Omnibus Motion to Strike Out the Petition for Certiorari and to declare the petitioner in contempt of court, on the following grounds:

Violation of SC Revised
Administrative Circulars
Nos. 28-91 and 04-94.

PETITIONER VIOLATED SUPREME COURT REVISED ADMINISTRATIVE CIRCULARS NOS. 28-91
AND 04-94 ON CERTIFICATION UNDER OATH REQUIRED TO PREVENT FORUM SHOPPING OR

MULTIPLE FILING OF PETITIONS MERITING SUMMARY DISMISSAL OF THE PETITIONS AND ALSO CONSTITUTING DIRECT CONTEMPT WHEN PETITIONER'S COUNSEL EXECUTED THE FALSE CERTIFICATION UNDER OATH HIMSELF INSTEAD OF THE PETITIONER APPLICANT OR PRINCIPAL PARTY SEEKING RELIEF AS DIRECTED IN SAID CIRCULAR.

Fatal Errors in availing Two
(2) or Twin Modes of Appeal
in the Same Case.

PETITIONER PURSUED IN THE ACTION TWO (2) OR TWIN REMEDIES OF APPEAL: FIRST, ORDINARY APPEAL AND SECOND BY CERTIORARI CONSTITUTING NOT ONLY A VIOLATION ON THE RULE OF FORUM SHOPPING BUT RESULTS IN AN ABANDONMENT OF THE ORDINARY APPEAL EARLIER TAKEN, THUS, MAKING THE TRIAL COURT'S APPEALED DECISION FINAL AND EXECUTORY.[16]

In its Comment on the petition, the respondent bank reiterated its plea that the petition be expunged; in the alternative, it prayed that the appellate court dismiss the same on the following grounds:

-1-

THE PETITION WAS CERTIFIED TO BY PETITIONER'S COUNSEL IN VIOLATION OF SUPREME COURT ADMINISTRATIVE CIRCULAR 28-91 ON CERTIFICATION ISSUED TO PREVENT FORUM SHOPPING.

-2-

PETITIONER PURSUED TWO REMEDIES OF APPEAL AND CERTIORARI BEFORE THIS COURT WHICH ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE AND WHICH ALSO CONSTITUTE FORUM SHOPPING DESERVING OUTRIGHT DISMISSAL.

-3-

SUMMARY JUDGMENT WAS JUSTIFIED AND PROPER UNDER THE PREVAILING CIRCUMSTANCES. THE PRESENT PETITION IS PATENTLY BEREFT OF ANY LEGAL OR FACTUAL MERIT AND IS OBVIOUSLY BEING PROSECUTED SOLELY AND MANIFESTLY FOR DELAY CONSIDERING THE:

3.1) Unqualified admission of petitioner of the material allegations of the complaint found in paragraphs 6, 7 & 8 of its Answer to the Complaint, as well as its admission for the non-payment of its obligations to the private respondent obviating the necessity of a full-blown trial.

3.2) Obvious lack of genuine issue as to any material and real defenses entitling respondent bank to a judgment as a matter of law (Sec. 3, Rule 35, Amended Rules of Court).

-4-

THE ISSUANCE OF A SPECIAL ORDER OF EXECUTION PENDING APPEAL IS JUSTIFIED CONSIDERING THAT RECOVERY UNDER THE JUDGMENT RENDERED BY THE TRIAL COURT MAY BE RENDERED INUTILE AND NUGATORY CONSIDERING THE FOLLOWING MATERIAL AND SUPERVENING CIRCUMSTANCES, MORE PARTICULARLY, THE MANY CASES, BOTH CIVIL AND CRIMINAL, AND LABOR CLAIMS FILED AGAINST THE PETITIONER AND ITS TOP MANAGEMENT OFFICIALS, TO WIT:

4.1) Claims for P1.2-Billion damages filed by the Municipality of Boac and the Province of Marinduque.

4.2) Demand for the settlement of P26-Million in unpaid fines by the Dept. of Environment and Natural Resources (DENR).

4.3) Pending Multi-Million labor claims for unpaid wages and other separation benefits by its regular work force which were laid off as a consequence of the closure and stoppage of the mining operations at its minesite in the Province of Marinduque.

4.4) Unpaid loans running into Millions incurred from various Commercial Banks notably Philippine Commercial International Bank (PCIBank) and Rizal, etc. and its material and mining equipment suppliers and dealers.

4.5) Criminal complaints in Marinduque Court filed against defendant John E. Loney, President/CEO Marcopper and his two top officials for violating mining and environmental laws, punishable by fine and/or imprisonment.[17]

In its comment, the respondent appended news items appearing in (1) the January 11, 1997 issue of the Philippine Daily Inquirer; (2) the May 30, 1997 issue of the Philippine Star; and (3) an opinion column of the April 7, 1997 issue of the Manila Times on the May 7, 1996 Letter of petitioner MMC to the Asian Development Bank.[18]

For its part, the petitioner alleged the following in its comment: (a) the fine of P26,000,000 imposed on the petitioner by the Pollution Adjudication Board is the subject of its petition in the Court of Appeals in Marcopper Mining Corporation vs. the Pollution Adjudication Board, docketed as CA-G.R. SP No. 44656; (b) the claims for alleged unpaid wages of its former employees are pending in court; (c) the petitioner had not yet been sued by its bank creditors except by the respondent; (d) the criminal complaints against its former officers are pending in the courts; and, (e) it is not in the brink of bankruptcy.

On December 12, 1997, the Court of Appeals rendered judgment dismissing the petition. The appellate court ruled that the petitioner adopted two different modes of appeal, at the same time; as such, it is guilty of forum shopping because it assailed in its petition, not only the June 25, 1997 Order of the trial court but also the merits of the trial court's partial judgment. The CA also held that the Certification of Non-Forum Shopping executed by its counsel, Atty. Cirilo E. Doronila, was fatally defective, warranting the dismissal of the petition. Finally, the CA ruled that the June 25, 1997 Order of the trial court was issued in accordance with the Rules of Court and case law.

The Present Petition

The petitioner's motion for reconsideration having been denied by the CA, the petitioner filed its petition in this Court on July 15, 1998, contending as follows:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT THE VERIFICATION/CERTIFICATION AGAINST FORUM SHOPPING OF THE PETITION IN CA-G.R. SP NO. 44570 WAS IMPROPER AND NOT A SUBSTANTIAL COMPLIANCE WITH THE RULES.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT PETITIONER IS GUILTY OF FORUM-SHOPPING.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE REGIONAL TRIAL COURT'S ORDER OF JUNE 25, 1997.

IV

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NO GENUINE ISSUES WERE RAISED THEREBY DEPRIVING PETITIONER OF ITS RIGHT TO PRESENT EVIDENCE IN SUPPORT OF ITS AFFIRMATIVE AND SPECIAL DEFENSES.[19]

For its part, the respondent put forth the following contentions:

THE COURT OF APPEALS ACTED CORRECTLY WHEN IT RULED THAT THE VERIFICATION/CERTIFICATION AGAINST FORUM SHOPPING OF THE PETITION IN CA-G.R. SP NO. 44570 BY PETITIONER'S COUNSEL WAS IMPROPER AND NOT A SUBSTANTIAL COMPLIANCE WITH THE RULES.

THE COURT OF APPEALS ACTED CORRECTLY WHEN IT RULED THAT PETITIONER IS GUILTY OF FORUM SHOPPING FOR FILING A NOTICE OF APPEAL OF THE DECISION AND LATER A PETITION FOR CERTIORARI AND PROHIBITION OF THE ORDER GRANTING EXECUTION PENDING APPEAL.

THE COURT OF APPEALS ACTED CORRECTLY WHEN IT AFFIRMED THE REGIONAL TRIAL COURT'S ORDER DATED JUNE 25, 1997 GRANTING PRIVATE RESPONDENT SOLIDBANK'S MOTION FOR EXECUTION PENDING APPEAL.

THE COURT OF APPEALS ACTED CORRECTLY WHEN IT RULED THAT NO GENUINE ISSUES WERE RAISED, THUS, PETITIONER WAS NOT DEPRIVED OF ITS RIGHT TO PRESENT EVIDENCE IN SUPPORT OF ITS AFFIRMATIVE AND SPECIAL DEFENSES.[20]

...

PETITIONER MARCOPPER CEASED TO BE THE REAL PARTY-IN-INTEREST WITHIN THE PURVIEW OF SECTION 2, RULE 3 OF THE 1997 RULES OF CIVIL PROCEDURE AS A RESULT OF THE ASSIGNMENT OF THE ENTIRE MINING EQUIPMENT, MACHINERIES AND FACILITIES BY MARCOPPER TO MR HOLDINGS LTD., INC.

PETITIONER IS A STRANGER TO THE PETITION AND NOW ESTOPPED FROM ADOPTING A CONTRADICTORY POSITION AFTER CONCEDED OWNERSHIP OF ITS ENTIRE PROPERTIES TO MR HOLDINGS LTD., INC.[21]

On July 20, 1998, the petitioner filed a Supplement to Petition with a plea for a temporary restraining order or a writ of preliminary injunction, contending that the respondent was bent on having the assailed order and writ of execution of the trial court enforced by the sheriff.

For its part, the respondent opposed such petition and filed a Motion dated August 4, 1998, alleging that it was the province of Marinduque that caused the levy on the petitioner's property for non-payment of taxes due on its lands, which caused the petitioner to file a petition for certiorari in the Regional Trial Court of Marinduque in Civil Case No. 98-1 against the Provincial Treasurer of Marinduque, et al. The respondent also alleged that the petitioner ceased operations beginning the first quarter of 1996, and, as a consequence, terminated the employment of hundreds of its employees because of extreme financial difficulties. It also averred that in its Letter to the respondent dated April 2, 1997, the petitioner stated that the only possible way it could repay its unsecured creditors would be to sell certain club shares which were mortgaged to MR Holdings, Inc., the Asian Development Bank's successor-in-interest.

In its Counter-Manifestation dated October 21, 1998, the respondent alleged that the petitioner, in cahoots with MR Holdings, Inc., sought to obstruct the sale of its properties at public auction by executing a deed of assignment of its rights, properties and equipment, on the basis of which MR Holdings, Inc. filed a third-party claim over petitioner's equipment and properties in Civil Case No. 96-80083. According to the respondent, the MR Holdings, Inc. even filed a complaint for the nullification of the sheriff's sale in Civil Case No. 96-80083 in the RTC of Manila, Branch 26, with a plea for a writ of preliminary injunction, docketed as Civil Case No. 98-15. The court, however, denied the same in its Order dated October 6, 1998. The respondent prayed that disciplinary action be taken against the petitioner's counsel of record for making false allegations in support of its motion for

a writ of preliminary injunction.

It turned out that the petitioner, in payment of its obligations amounting to US\$19,550,747.00[22] as of December 31, 1997, executed a Deed of Assignment on December 28, 1997 in favor of MR Holdings, Inc. covering its properties, equipment and facilities.[23]

The Issues

The threshold issues for resolution are the following: (a) whether or not the petitioner ceased as the real party-in-interest in the case when it executed a Deed of Assignment covering properties, mining equipment and facilities described therein in favor of MR Holdings Ltd., Inc.; (b) whether the petitioner is guilty of forum shopping; (c) whether the petitioner failed to comply with Section 5, Rule 7 of the Rules of Civil Procedure (which was taken from SC Administrative Circular No. 04-94); and, (d) whether the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in granting the respondents' motion for execution pending appeal.

On the first issue, the respondent contends that the petitioner executed such Deed of Assignment in favor of MR Holdings Ltd., Inc. on December 8, 1997, or four days before the appellate court rendered its assailed decision; in executing the said deed, the petitioner ceased to be a real party-in-interest under Section 2, Rule 3 of the 1997 Rules of Civil Procedure. The respondent further asserts that, under the said deed, the petitioner absolutely transferred the ownership of its properties "lock, stock and barrel" to MR Holdings Ltd., Inc. Hence, the petitioner no longer stands to be benefited or injured by the judgment in this case; nor can it be considered the party entitled to the avails of the suit. More so, the respondent notes, since MR Holdings Ltd., Inc., is a wholly-owned subsidiary of Placer Dome, Inc., which, in turn, owns and manages the petitioner. The respondent argued that its stance is further buttressed by the complaint in Civil Case No. 98-15 in the RTC of Manila filed by MR Holdings Ltd., Inc. to annul the levy of the personal properties based on the writ of execution pending appeal issued by the court.[24]

The petitioner, for its part, contends otherwise, and insists that:

- The fact that MR Holdings owns the mining properties, machineries and facilities, does not at all affect petitioner's right to maintain and continue the prosecution of its petition. There is a partial judgment against petitioner to pay Solidbank P52.970 Million, which is on appeal before the Court of Appeals.
- The acquisition by MR Holdings of the mining properties and facilities does not and has not obliterated the partial judgment which can be enforced within ten (10) years. (Sec. 6, Rule 39 of the 1997 Rules of Civil Procedure, as amended).
- That petitioner "now stands as a 'shell' corporation with no physical asset to speak of, since all its properties are now owned by MR Holdings Ltd., Inc. (par. 1.10, Supplemental Comment)," does not at all address the issues raised in this petition on the invalidity of the proceedings before the trial court and its order of execution pending appeal dated June 25, 1997.
- MR Holdings' ownership of the mining properties and facilities and whether or not Solidbank can collect now on its partial judgment has no materiality and relevance to the grounds raised and reliefs prayed for in the petition to set aside the decision and resolution dated December 23, 1997 and June 5, 1998, respectively, of the Court of Appeals, and to nullify the trial court's order of June 25, 1997. It cannot be denied that petitioner stands to be injured by the questioned decision, resolution and order, and therefore it is entitled to the avails of the suit – the instant petition – to nullify and set aside the decision and order.
- Moreover, Solidbank refuses to accept the validity of the Deed of Assignment of the mining properties and facilities to MR Holdings Ltd. as shown by its allegations at p. 4 of its Supplemental Comment that "private

respondent does not concede to the veracity of the claimed Deed of Assignment.”

- Consequently, insofar as Solidbank is concerned, it does not recognize the ownership of MR Holdings over the mining properties and facilities subject of the deed of assignment. Hence, any disposition of said properties under a writ of execution to enforce the summary partial judgment would continue to affect the interest of the petitioner. In fact, in the Sheriff’s proceedings on execution of the partial judgment in Civil Case No. 96-80083, the trial court denied the third-party claim of MR Holdings, Ltd.[25]

The Ruling of the Court

The contention of the respondent does not persuade. Section 19, Rule 3 of the Rules of Court provides:

SEC. 19. Transfer of interest. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

The original party remains, either as party-petitioner or party-respondent, as the case may be, despite the transfer pendente lite. It does not lose its personality as the real party-in-interest merely because of the transfer of interest to another pendente lite. The records show that the petitioner executed the Deed of Assignment pendente lite, while the case was still on appeal before the Court of Appeals. Neither the petitioner nor its assignee filed a motion in the appellate court or in this Court for the substitution of the assignee as party-petitioner in lieu of the present petitioner.[26] Besides, the party injured by the partial judgment of the trial court is the petitioner and not the assignee. This is so since under the trial court’s partial judgment against the petitioner ordering execution pending appeal, the petitioner is liable to the respondent in the principal amount of P52,970,756.89 plus the amount of P5,297,075.00 as attorney’s fees. The obligation of the petitioner to the respondent under the partial decision of the trial court has not been assigned to and accepted by MR Holdings Ltd., Inc. The real party-in-interest to assail the execution of the partial judgment is the petitioner, being the judgment debtor, and not MR Holdings Ltd., Inc. Moreover, the respondent itself contends that the petitioner executed the deed of assignment to defraud the petitioner’s creditors because it was executed only on December 8, 1997, after the trial court had already issued its order granting the respondent’s motion for execution pending appeal.

On the second issue, the Court of Appeals ruled that the petitioner is guilty of forum shopping because, aside from appealing the writ of error from the trial court’s partial judgment, the petitioner, likewise, assailed the merits of the partial decision in its petition for certiorari and prohibition in CA-G.R. SP No. 44570. The petitioner, for its part, assails the ruling of the appellate court, contending that its appeal by writ of error from the partial decision of the trial court is different from its petition for certiorari and prohibition in the Court of Appeals, wherein it assailed an interlocutory order of the trial court – the June 25, 1997 Order granting execution of the partial judgment of the trial court pending appeal. The petitioner argues that its petition for certiorari and prohibition in the appellate court does not involve, much less constitute, an attack on the merits of the appealed partial decision of the trial court. Moreover, the decision of the appellate court in CA-G.R. SP No. 44570 does not constitute a bar to the appeal of the petitioner from the trial court’s partial judgment.

We agree with the petitioner.

There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal on certiorari) in another.[27] The test for determining whether a party violates the rule against forum shopping is where a final judgment in one case will amount to res judicata in the action under consideration or where the elements of litis pendentia are present. In *Buan vs. Lopez*,[28] we held that litis pendentia exists if the following requisites are present:

(a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of

rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to res judicata in the action under consideration.[29]

In this case, the petitioner interposed an appeal by writ of error from the partial judgment of the trial court. In its appeal, the petitioner sought the reversal of such partial decision, and prayed for a trial of Civil Case No. 96-80083 on its merits where the parties would be accorded the right to adduce their respective evidence. On the other hand, the petitioner, in its petition for certiorari and prohibition in the Court of Appeals, assailed the June 25, 1997 interlocutory order of the trial court which granted the motion of the respondent for execution pending appeal, where it was alleged that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction and that it had no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law to nullify such order. The petitioner, likewise, prayed for the issuance of a writ of certiorari and prohibition nullifying the June 25, 1997 Order of the trial court and the writ of execution pending appeal issued in favor of the respondent as follows:

And after due proceedings, this Petition be given DUE COURSE, and judgment rendered on a writ of Certiorari nullifying and setting aside the Order of 25 June 1997 of respondent judge in Civil Case No. 96-80083 entitled "Solidbank Corporation, plaintiff, versus Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr., respondents," Regional Trial Court of Manila, Branch 26, and all proceedings taken in furtherance thereof, for being null and void and rendered with grave abuse of discretion. A Writ of Prohibition be further issued perpetually enjoining all respondents from enforcing the said Order of 25 June 1997.

Such other just and equitable relief and remedies are prayed for.[30]

The rights asserted, the issues raised and the reliefs prayed for by the petitioner in its petition for certiorari and prohibition are different from those in its appeal from the partial judgment of the trial court.

Contrary to the ruling of the appellate court, the petitioner's allegation in its petition for certiorari and prohibition in the appellate court, that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction when the trial court granted the respondent's motion for execution pending appeal on the finding that the petitioner's appeal thereon was dilatory, predicated, in turn, on its ruling in its partial judgment that the petitioner did not raise any genuine issues in its answer to the complaint of the private respondent, did not thereby render the petitioner guilty of forum shopping. The petitioner did not seek to have the partial judgment of the trial court reversed by the appellate court. The petitioner merely pointed out that the RTC acted arbitrarily and capriciously when it declared, in its June 25, 1997 Order, that the appeal was dilatory. Apropos is the ruling of this Court in *International School, Inc. of Manila vs. Court of Appeals, et al.*, [31] thus:

Forum shopping is present when in the two or more cases pending there is identity of parties, rights or causes of action and reliefs sought. While there is an identity of parties in the appeal and in the petition for review on certiorari filed before this Court, it is clear that the causes of action and reliefs sought are identical, although petitioner ISM may have mentioned in its appeal the impropriety of the writ of execution pending appeal under the circumstances obtaining in the case at bar. Clearly, there can be no forum shopping when in one petition a party questions the order granting the motion for execution pending appeal, as in the case at bar, and, in a regular appeal before the appellate court, the party questions the decision on the merits which finds the party guilty of negligence and holds the same liable for damages therefor. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice-versa. Hence, reliance on the principle of forum shopping is misplaced.[32]

In fine, the petition filed in the appellate court did not involve the merits of the petitioner's appeal from the partial decision of the trial court. The petitioner was only questioning the June 25, 1997 Order of the trial court which

granted the respondent's motion for execution of the partial decision of the trial court pending appeal. The petition assailing the June 25, 1997 Order before the appellate court is not a bar to its consideration of the merits of the appeal from the partial decision of the trial court. Indeed, to bar the petitioner from assailing the June 25, 1997 Order of the trial court would be to deprive it of its remedy under Rule 65 of the Rules of Court.

On the third issue, we agree with the respondent that the petitioner failed to comply with Section 5, Rule 7 of the 1997 Rules of Civil Procedure which took effect on July 1, 1997, because the certification of non-forum shopping embodied in its petition for certiorari and prohibition was executed by its counsel, and not by its duly authorized representative or officer. The said rule which was taken from Supreme Court Circular No. 04-94 provides, viz:

SEC. 5. Certification against forum shopping.— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court when his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.[33]

The requirement to file a certification of non-forum shopping in an initiatory pleading is mandatory. Compliance with the certification against forum shopping is separate from and independent of the second case of forum shopping itself.[34] The failure of a party to submit a certification against forum shopping cannot be excused by the fact that the petitioner is not guilty of forum shopping. An initiatory pleading without the corresponding certification against forum shopping may be dismissed without prejudice. Subsequent compliance with the requirement will not excuse a party's failure to comply in the first instance.[35]

The certification against forum shopping must be executed by the party-pleader and not by his counsel. The rationale for the rule was explained by this Court in *Digital Microwave Corporation vs. Court of Appeals*,[36] thus:

The reason the certification against forum shopping is required to be accomplished by petitioner himself is because only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies. Even his counsel may be unaware of such fact. For sure, his counsel is aware of the action for which he has been retained. But what of other possible actions?

We reject the petitioner's contention that there was no need for any authorized officer of the petitioner to execute the requisite certification, on its mere assertion that Atty. Cirilo Doronila, being the litigating counsel in all cases filed by the petitioner, had personal knowledge of the said cases; hence, the certification of Atty. Doronila is more than sufficient compliance with the rules.

First. In the verification executed by Atty. Doronila embodied in the petition, no declaration was made that the only counsel of the petitioner in all cases filed by it is the Quasha Ancheta Peña & Nolasco Law Offices, and that Atty. Doronila was assigned as the litigation counsel in all the said cases. The petitioner is not precluded from

engaging the services of another counsel for its other cases to be filed in court.

Second. The Court cannot accept the petitioner's submission that the certification may be executed by counsel and not by the party-pleader as mandated by the rule, on the mere claim that such counsel is his counsel de parte in all the cases filed by it. Such submission would defeat the very purpose of the rules, as it would give the party the sole discretion whether or not to comply therewith. As this Court ruled in *Melo vs. Court of Appeals*,^[37]

Every party filing a complaint or any other initiatory pleading is required to swear under oath that he has not committed nor will he commit forum shopping. Otherwise, we would have an absurd situation where the parties themselves would be the judge of whether their actions constitute a violation of said Circular and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of Circular 04-94.

The petitioner, however, pleads that it be spared the consequences of its procedural lapse, and prays that the Court resolve the issue raised in its petition on its merits, namely, whether the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction when it ordered the execution of its decision pending appeal, and whether the appellate court erred in affirming the said order.

We agree with the petitioner. In *Uy vs. Bank of the Philippine Islands*,^[38] we held that the apparent merits of the petition should be deemed as a special circumstance or compelling reason to exempt a party from the sanction of the denial of its petition for non-compliance with Section 5, Rule 7 of the Rules of Court. Besides, this Court has the power to suspend its own rules where, as in this case, the ends of justice would be served thereby.

This brings us to the last issue.

Section 2, Rule 39 of the 1997 Rules of Civil Procedure provides:

Sec. 2. Discretionary execution-

(a) Execution of a judgment or final order pending appeal. – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reason to be stated in a special order after due hearing. ...

Execution pending appeal is an extraordinary remedy, being more of the exception rather than the rule.^[39] This rule is strictly construed against the movant because courts look with disfavor upon any attempt to execute a judgment which has not acquired finality. Such execution affects the rights of the parties which are yet to be ascertained on appeal.^[40]

There are three requisites for the grant of an execution of a judgment pending appeal, which the movant, not the adverse party, must establish with clear and convincing evidence: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and, (c) the good reason must be stated in the order.^[41]

It is not intended obviously that execution pending appeal shall issue as a matter of course. Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity.^[42] The existence of good reasons is what confers

discretionary power on a court to issue a writ of execution pending appeal.[43] The “reasons” allowing execution must constitute superior circumstance demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.[44]

In the present recourse, the respondent filed, with proper notice to the petitioner, a motion for execution pending appeal before the expiration of the period to file an appeal on the following grounds:

3.1 The summary judgment rendered in the above-captioned case show there is no genuine controversion of the issues by the corporate defendant;

3.2. That any appeal undertaken by the same would be of frivolous nature designed to unreasonably delay and/or deprive the plaintiff the recovery of its legitimate claims against corporate defendant herein;

3.3. That plaintiff is willing to put up a supersedeas bond as this Court may fix for the issuance of the writ of execution pending appeal.[45]

The trial court ordered the execution of its decision pending appeal as follows:

As the bases for the execution pending appeal prayed for, plaintiff cites, among others, an offer to post a bond in an amount equal the value sought to be enforced, which bond shall answer for any damage defendant may suffer in the event the judgment rendered by the Court is reversed or modified on appeal.

After a careful consideration of the grounds relied upon by both parties, this Court finds and so holds that although defendant Marcopper Mining Corporation filed its Notice of Appeal on May 9, 1997 and plaintiff Solidbank filed its Motion for Execution Pending Appeal only on May 13, 1997 or four (4) days later, the Court has not lost jurisdiction over the case as the latter pleading was filed within fifteen (15) days period from receipt of the Court’s decision (*Eudula vs. Court of Appeals*, 211 SCRA 546).

Likewise, contrary to the defendant corporation’s claim, the questioned decision, being one anchored on a clear finding that no genuine controversion of the issues has been raised, deserves implementation pending appeal, in keeping with truth and justice. Indeed, if required bond is properly posted, rights of the defendant would be amply guaranteed and protected.

In the light of the foregoing, there is hardly any question that plaintiff’s Motion for Execution Pending Appeal is meritorious.[46]

The appellate court affirmed the trial court’s order as well as the writ of execution issued by it based on the said order, not only on the pleadings of the parties in the RTC but also based on the documents, newspaper items, etc., submitted by the parties and their pleadings in the appellate court, viz:

Anent the issue of the propriety of the Order dated June 25, 1997 of the respondent court granting Solidbank’s Motion for Execution Pending Appeal, We find that the said order is based on valid grounds, and on its finding that no genuine issues has been raised by the petitioner. Moreover, petitioner’s rights are amply protected and guaranteed by the bond in the amount of P30 Million which was posted by Solidbank, in addition to its surety bond of P58.2 Million which has been filed with the respondent court. The petitioner has not shown sufficient justification why the said order granting execution pending appeal should be set aside, while private respondent Solidbank has established why the Order granting execution pending appeal should be sustained, to wit: the liabilities incurred by the petitioner consisting of unpaid fines imposed by the Department of Environment and Natural Resources; the claims for unpaid wages by petitioner’s employees, as well as the criminal charges filed against petitioner Marcopper officers, and its liabilities in various commercial banks, as well as the net loss of P103 Million they incurred arising from the cessation of its mining operations due to the massive leakage of mine mining tailing that took place in Marinduque in March, 1996.[47]

We do not agree with the trial court and the appellate court.

The issue of whether the petitioner raised genuine issues in its answer to the complaint is the subject of the appeal of the petitioner via a writ of error to the appellate court. In *Philippine Bank of Communications, Inc. vs. Court of Appeals*,^[48] we held that it is not for the trial court to determine the merits of its decision it rendered and use the same as basis for its order allowing execution of its decision pending appeal. The determination of the merits of the trial court is lodged in the appellate court. The trial court cannot preempt the decision of the appellate court on the merits of the petitioner's appeal of the trial court's decision, and use it as basis for affirming the trial court's order of execution pending appeal.

The filing of a bond cannot make up or substitute for the absence of any good reason for the execution pending appeal.^[49] The mere filing of a bond by a successful party is not a "good reason" for ordering execution pending appeal. Indeed, in *International School, Inc. of Manila vs. Court of Appeals*,^[50] we held that:

"x x x to consider the mere posting of a bond a 'good reason' would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."

In fine, the rule is now settled that the mere filing of a bond by the successful party is not a good reason for ordering execution pending appeal, as "a combination of circumstances is the dominant consideration which impels the grant of immediate execution, the requirement of a bond is imposed merely as an additional factor, no doubt for the protection of the defendant's creditor."

In fine, the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction when it issued the assailed order granting execution of its decision pending appeal based on the reasons embodied in the said order. Hence, the assailed order is a nullity. The appellate court consequently erred when it affirmed the said order.

The appellate court, likewise, erred in justifying the execution of the RTC decision pending appeal on the following allegations of the respondent: (1) that fines were imposed on the petitioner by the Pollution Adjudication Board; (2) the claims for unpaid wages of its employees whose employment were terminated; (3) the criminal charges filed against the petitioner's former officials and employees; (4) the petitioner's liabilities to commercial banks; and, (5) the alleged net losses amounting to more than P103,000,000 incurred by the petitioner arising from the cessation of its mining operations due to the massive leakage of mine tailings. These allegations of the respondent in the Court of Appeals were not cited by the trial court in its assailed order for execution pending appeal. Moreover, the respondent failed to adduce evidence to prove the said claims in the trial court. It was only in the Court of Appeals that the respondent made such allegations as additional grounds for execution pending appeal of the RTC decision. The task of the appellate court in the certiorari proceedings before it was to merely determine whether the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction in allowing execution pending appeal for reasons embodied in the said order and not for grounds or reasons extraneous thereto.

Furthermore, as gleaned from the CA records, the respondent's claim that the petitioner incurred a net loss is based on a news item printed in the August 4, 1997 issue of the Manila Bulletin.^[51] The validity of the fines imposed by the Pollution Adjudication Board is the subject of the petitioner's action in the Court of Appeals, entitled *Marcopper Mining Corporation vs. The Pollution Adjudication Board, et al.*, and docketed as CA-G.R. SP No. 44656 raffled to the Sixth Division. The respondent has not submitted to the Court of Appeals, and even in this Court, any final and executory decision of the appellate court, ruling adversely against the petitioner. Neither did the respondent adduce in evidence any final judgment convicting the former officers and employees of the

petitioner of violating environmental laws, or any ruling of the National Labor Relations Commission in favor of such employees with an award for money claims. The respondent, likewise, did not adduce any complaint against the petitioner filed by any of its creditors.

In fine, even the reasons cited by the appellate court to justify its affirmance of the assailed Order of the RTC has not been clearly established by the respondent.

IN LIGHT OF ALL THE FOREGOING, the petition in this case is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 44570 and the assailed Order of the RTC in Civil Case No. 96-80083 dated May 7, 1997 and the Writ of Execution issued by the RTC on the basis of the said Order, are REVERSED AND SET ASIDE.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Consuelo Ynares-Santiago (now an Associate Justice of the Supreme Court), with Associate Justices Bernardo Ll. Salas and Demetrio G. Demetria, concurring.

[2] Rollo, p. 53.

[3] CA Rollo, pp. 050-053.

[4] Id. at 053-056.

[5] Id. at 056-057.

[6] Id. at 076.

[7] Id. at 071.

[8] Id. at 083-090.

[9] Id. at 094.

[10] Id. at 110.

[11] Id. at 043-044.

[12] Rollo, p. 125.

[13] Id. at 136-137.

[14] Id. at 366-367.

[15] Id. at 032-033.

[16] Id. at 167.

[17] Id. at 178-180.

[18] CA Rollo, pp. 137-201.

[19] Rollo, p. 15.

[20] Id. at 290.

[21] Id. at 326.

[22] Id. at 280.

[23] Id. at 279.

[24] Id. at 332-348.

[25] Id. at 438-439.

[26] *Commodities Storage & Ice Plant Corporation vs. Court of Appeals*, 274 SCRA 439 (1997).

[27] *Philippine Economic Zone Authority vs. Judge Vianzon*, 336 SCRA 309 (2000).

[28] 145 SCRA 34, cited in *Fortich vs. Corona*, 289 SCRA 624 (1998).

[29] Cited in *Antifonda vs. Sandiganbayan*, 358 SCRA 335 (2001).

[30] CA Rollo, p. 032.

[31] 309 SCRA 474 (1999).

[32] Id. at 480.

[33] *Idem*, *supra*.

[34] *Melo, et al. vs. Court of Appeals, et al.*, 218 SCRA 94 (1999).

[35] *Ibid*.

[36] 328 SCRA 286 (2000).

[37] *Supra*.

[38] 336 SCRA 419 (2000).

[39] *Maceda, Jr. vs. Development Bank of the Philippines*, 313 SCRA 233 (1999).

[40] *Ibid*.

[41] *Id*.

[42] *Ong vs. Court of Appeals*, 203 SCRA 38 (1991).

[43] *Roxas vs. Court of Appeals*, 157 SCRA 370 (1988).

[44] *Ong vs. Court of Appeals*, *supra*.

[45] CA Rollo, p. 636.

[46] *Id*. at 49-50.

[47] *Id*. at 49-50.

[48] 279 SCRA 364 (1997).

[49] *Productive International Resources Corporation vs. Court of Appeals*, 259 SCRA 510 (1996).

[50] *Supra* at note 31.

[51] CA Rollo, p. 321.

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