

LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. WMC RESOURCES INTERNATIONAL PTY. LTD., AND WMC (PHILIPPINES), INC., RESPONDENTS.

G.R. No. 153885. September 24, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Elevated to this Court are twin petitions for review on certiorari under Rule 45 of the Rules of Court which involve substantially the same parties and the same subject matter, hence, have been consolidated.

The first case, G. R. No. 153885, is an appeal from the Court of Appeals Decision of February 22, 2002 in CA-G.R. Sp No. 65496, "WMC Resources Int'l. Pty. Ltd., and WMC (Philippines), Inc. v. Hon. Francisco B. Ibay, in his capacity as Presiding Judge, Regional Trial Court of Makati City, Branch 135 and Lepanto Consolidated Mining Company," and Resolution of June 6, 2002 denying reconsideration of said decision.

The second case, G. R. No. 156214, is an appeal from the Regional Trial Court (RTC) of Makati City, Branch 135 Orders dated September 9, 2002 and November 22, 2002 dismissing Civil Case No. 01-087, "Lepanto Consolidated Mining Company v. "WMC Resources Int'l. Pty. Ltd., and WMC (Philippines), Inc., Southcot Mining Corporation, Tampakan Mining Corporation and Sagittarius Mines, Inc."

The antecedents of the cases are as follows:

In a contract denominated as "Tampakan Option Agreement" dated April 25, 1991,[1] WMC Resources International Pty. Ltd. (WMC), "a wholly owned subsidiary of Western Mining Corporation Holdings Limited, a publicly listed major Australian mining and exploration company," through its local subsidiary Western Mining Corporation (Philippines), Inc. (WMCP), a corporation organized under Philippine laws, acquired the mining claims in Tampakan, South Cotabato of Southcot Mining Corporation, Tampakan Mining Corporation, and Sagittarius Mines, Inc. (Tampakan Companies).

The "Tampakan Option Agreement" was amended by subsequent agreements including Amendatory Agreement dated July 15, 1994[2] under which the Tampakan Companies were given preferential option to acquire the shares of WMC in WMCP and Hillcrest Inc. in the event it (WMC) decided to sell them.

On March 22, 1995, then President Ramos on behalf of the Republic of the Philippines, entered into a Financial and Technical Assistance Agreement (FTAA)[3] with WMCP for the large scale exploration, development and commercial exploitation of mineral resources in 99,387 hectares of lands in South Cotabato, Sultan Kudarat, Davao Del Sur and North Cotabato.

On July 12, 2000, WMC, by a Sale and Purchase Agreement,[4] sold to herein petitioner Lepanto Consolidated Mining Company its shares of stock in WMCP and Hillcrest, Inc. for \$10,000,000.00. The sale was subject to certain conditions including the Tampakan Companies' failure to accept WMCP's offer to sell the same shares, under the companies' right of first refusal provided for in the "Tampakan Option Agreement" and its amendments.

By letter of July 13, 2000,[5] WMCP tendered to the Tampakan Companies its offer for the latter to purchase WMC's shares of stock in it (WMCP) and Hillcrest, Inc.

In the meantime or by letter of August 28, 2000,[6] petitioner requested the approval by the Department of Environment and Natural Resources (DENR) Secretary of the transfer to and acquisition by it of WMCP's FTAA on account of its (petitioner's) purchase of WMC's shares of stock in WMCP, which approval of transfer was required in the FTAA agreement forged between then President Ramos and WMCP.

As the Tampakan Companies later availed of their preferential right under the "Tampakan Option Agreement,"[7] a Sale and Purchase Agreement[8] was concluded on October 6, 2000 between WMC and the Tampakan Companies over the same shares of stock priorly purchased by petitioner.

On October 12, 2000, the Tampakan Companies notified the Director of the Mines and Geosciences Bureau (MGB) of the DENR of the exercise of their preemptive right to buy WMC's equity in WMCP and Hillcrest, Inc., seeking at the same time the MGB Director's formal expression of support for the stock transfer transaction.[9]

Petitioner, getting wind of the Sale and Purchase Agreement between WMC and Tampakan Companies, wrote, by letter of October 13, 2000,[10] the DENR Secretary about the invalidity of said agreement and reiterated its request for the approval of its acquisition of the disputed shares. The MGB accordingly informed the Tampakan Companies of petitioner's position on the matter and required the submission of a comment thereto.[11]

WMCP and WMC, respondents herein, by letters to the MGB, proffered their side. Several other letters or position papers were filed by the parties with the MGB or the DENR.

The Tampakan Companies later opted to acquire the disputed shares of stock through Sagittarius Mines, Inc. WMC and Tampakan Companies thus entered into a Sale and Purchase Agreement dated January 10, 2001[12] which paved the way for the forging of two deeds of absolute sale of the shares of stock, those of WMC in WMCP and in Hillcrest, Inc., both in favor of Sagittarius Mines, Inc.[13]

On January 22, 2001, petitioner filed before the Makati RTC a complaint against herein respondents WMC, WMCP, and the three corporations comprising the Tampakan Companies, for specific performance, annulment of contracts, contractual interference and injunction (Civil Case No. 01-087). The suit principally sought the enforcement of the July 12, 2000 Sale and Purchase Agreement between petitioner and WMC and the consequent nullification of the latter's agreements with the Tampakan Companies.

Therein defendants-herein respondents filed before the Makati RTC a Joint Motion to Dismiss[14] petitioner's complaint on the ground that the court was without jurisdiction over the subject matter of the case; that petitioner's complaint had no cause of action; that petitioner was guilty of forum shopping due to the pendency of its claim with the MGB; and that petitioner also failed to exhaust administrative remedies.

Branch 135 of the Makati RTC denied herein respondents' Motion to Dismiss as it did respondents' Motion for Reconsideration.[15] Hence, respondents lodged on July 6, 2001 a special civil action for certiorari and prohibition[16] (CA-G.R. SP No. 65496) with the Court of Appeals which was granted by February 22, 2002 Decision,[17] the dispositive part of which reads:

WHEREFORE, the petition for certiorari is hereby GRANTED. The assailed Order dated March 21, 2001 and May 2, 2001 are hereby declared null and void and SET ASIDE. Respondent court is directed to desist from proceeding with Civil Case No. 01-087 and to dismiss the same on ground of forum shopping committed by private respondent. (Underscoring supplied)

Petitioner's motion for reconsideration of the appellate court's judgment was denied by Resolution of June 6,

2002,[18] hence, it filed on June 28, 2002 a petition for review on certiorari[19] before this Court (G.R. No. 153885), the first case subject of the present decision.

In the meantime, Branch 135 of the Makati RTC, upon receipt of the above-said February 22, 2002 Decision of the Court of Appeals, dismissed petitioner's complaint-Civil Case No. 01-087 by Order of March 1, 2002.[20] On petitioner's motion, the trial court, by Order of April 23, 2002,[21] suspended the effectivity of its March 1, 2002 Order in light of the pendency of petitioner's motion for reconsideration of the decision of the Court of Appeals.

The appellate court subsequently, as reflected above, denied petitioner's motion for reconsideration by Resolution of June 6, 2002 following which the trial court issued its Order of September 9, 2002[22] dismissing Civil Case No. 02-087, it holding that petitioner's appeal from the appellate court decision before this Court (G.R. No. 153885, the first case) does not interrupt the course of said civil case unless a temporary restraining order or a writ of preliminary injunction is issued against it, citing Section 7 of Rule 65, Rules of Court.

Petitioner filed a motion for reconsideration of the September 9, 2002 Order of the trial court which it denied by Order of November 22, 2002,[23] it holding that the dismissal of petitioner's complaint was merely in compliance with the Court of Appeals ruling and is deemed final until set aside by the Supreme Court. From these Orders, petitioner appealed to this Court by petition for review on certiorari[24] (G.R. No. 156214), the second case subject of the present decision.

Petitioner's appeal in the first case is premised on the following grounds:

- THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT PETITIONER WAS GUILTY OF FORUM SHOPPING. THE ELEMENTS OF FORUM SHOPPING ARE NOT PRESENT IN THE CASE AT BAR.
- THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE PETITION FOR CERTIORARI FOR LACK OF PROPER VERIFICATION.

Petitioner claims that the issues/matters raised before the RTC of Makati and those before the MGB are not dependent on each other. It argues that in bringing its July 12, 2000 Sale and Purchase Agreement with WMC to the knowledge of the DENR, it was merely requesting for the consent of the Secretary to the transfer of WMCP's FTAA to it, it not having raised any contentious issues before said office; and that the request merely called for MGB to review the respective financial and technical qualifications of both petitioner and respondent Tampakan Companies to determine who between them is fit to become the transferee of the FTAA.

With respect to the case before the RTC, petitioner asserts that what are principally raised therein are the non-performance by respondent WMC of its obligations to petitioner under their contract of sale and the validity of WMC's subsequent agreements with the Tampakan Companies.

Petitioner adds that the MGB is not being made to exercise quasi-judicial power or function but only recommendatory or administrative functions in contrast to what the RTC is being called upon to do.

Petitioner thus concludes that there could be no forum shopping in light of the difference in the nature of the proceedings before the two fora.

Finally, petitioner underscores that the petition brought by respondents before the Court of Appeals should have been dismissed for not having been properly verified by WMC.

Petitioner's ratiocinations do not persuade. It is clear from the proceedings before the DENR, specifically before the MGB, that the issue of which — between petitioner and respondent Tampakan Companies — possesses the better right to acquire the mining rights, claims and interests held by WMC through its local subsidiary WMCP,

especially with respect to the 1995 FTAA, had been brought to the fore. The MGB cannot just assess the qualifications of petitioner and of the Tampakan Companies as potential transferee or assignee of the rights and obligations of WMCP under the FTAA without also resolving the issue of which has priority of right to become one.

True, the questioned agreements of sale between petitioner and WMC on one hand and between WMC and the Tampakan Companies on the other pertain to transfer of shares of stock from one entity to another. But said shares of stock represent ownership of mining rights or interest in mining agreements. Hence, the power of the MGB to rule on the validity of the questioned agreements of sale, which was raised by petitioner before the DENR, is inextricably linked to the very nature of such agreements over which the MGB has jurisdiction under the law. Unavoidably, there is identity of reliefs that petitioner seeks from both the MGB and the RTC.

Forum shopping exists when both actions involve the same transactions, same essential facts and circumstances and raise identical causes of actions, subject matter, and issues.[25] Such elements are evidently present in both the proceedings before the MGB and before the trial court. The case instituted with the RTC was thus correctly ordered dismissed by the appellate court on the ground of forum shopping. Besides, not only did petitioner commit forum shopping but it also failed to exhaust administrative remedies by opting to go ahead in seeking reliefs from the court even while those same reliefs were appropriately awaiting resolution by the MGB.

As for petitioner's assailing of respondents' petition for certiorari before the Court of Appeals for not being properly verified by WMC, the same fails. The verification and certification against forum shopping of the petition was signed by a duly authorized officer of WMC in the person of Terence Gardner, Chairman of the Board and President of WMCP, who was the signing representative of WMC in the July 12, 2000 Sale and Purchase Agreement with petitioner.

With respect to the second case (G.R. No. 156214), this Court sets aside the appealed Orders of the trial court dismissing Civil Case No. 01-087. The orders are patently erroneous for the appellate court's decision directing the dismissal of the said civil case had not yet become final and executory, the appeal therefrom by petitioner to this Court-subject of the herein first case having been duly perfected.

WHEREFORE, judgment is hereby rendered in 1) G.R. No. 153885 AFFIRMING the assailed Decision of the Court of Appeals, and 2) G.R. No. 156214 SETTING ASIDE the assailed Orders of Branch 135 of the Makati Regional Trial Court.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 153-171, G.R. No. 153885.

[2] Id. at 195-213

[3] Id. at 65-121.

[4] Rollo at 44-64, G.R. No. 153885.

[5] Id. at 292.

[6] Id. at 293.

[7] Id. at 295.

- [8] Id. at 300-308.
- [9] Rollo at 296-299, G. R. No. 153885.
- [10] Id. at 310.
- [11] Id. at 350.
- [12] Rollo at 398-420, G. R. No. 153885.
- [13] Id. at 433-436.
- [14] Rollo at 25-53, G. R. No. 156214.
- [15] Id. at 54-58.
- [16] Rollo at 471-508, G. R. No. 153885.
- [17] Id. at 33-41.
- [18] Id. at 42-43.
- [19] Id. at 3-32.
- [20] Rollo at 80, G. R. No. 156214.
- [21] Id. at 95-96.
- [22] Rollo at 19-21, G. R. No. 156214.
- [23] Id. at 22-24.
- [24] Id. at 3-18.
- [25] Valencia v. Court of Appeals, 263 SCRA 275 [1996].

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