

OLYMPIC MINES AND DEVELOPMENT CORP., PETITIONER, VS. PLATINUM GROUP METALS CORPORATION, RESPONDENT.

G.R. No. 178188. August 14, 2009

Ponente: BRION, J.

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BRION, J.:

We resolve in this Resolution: (1) the motions for reconsideration of the Court's Decision of May 8, 2009 in these consolidated cases filed by Olympic Mines and Development Corporation (Olympic),^[1] Citinickel Mines and Development Corporation (Citinickel),^[2] and Polly Dy (Dy);^[3] and (2) the motions to elevate the same cases to the Court En Banc.^[4]

The dispositive of the Court's May 8, 2009 Decision declared:

WHEREFORE, premises considered, we rule as follows:

a)

in G.R. No. 178188 (Olympic Mines v. Platinum Group Metals Corporation): Olympic's petition is denied for lack of merit and the assailed CA Decision in CA-G.R. SP No. 97259 is AFFIRMED;

b)

in G.R. No. 183527 (Platinum Group Metals Corporation v. Court of Appeals): The assailed CA Resolution in CA-G.R. SP No. 101544 is REVERSED and SET ASIDE;

c)

in G.R. No. 180674 (Citinickel Mines and Development Corporation v. Judge Bienvenido Blancaflor and Platinum Group Metals Corporation): The questioned CA Decision in CA-G.R. SP No. 99422 is AFFIRMED; and

d)

in G.R. No. 181141 (Platinum Group Metals Corporation v. Citinickel Mines and Development Corporation): The CA decision in CA-G.R. SP No. 97288 is REVERSED and SET ASIDE. The POA Resolution, having been issued in violation of a previously issued writ of preliminary injunction, is ANNULLED and SET ASIDE.

BACKGROUND FACTS

In 1971 and 1980, Olympic was granted "Mining Lease Contracts" by the Secretary of the Department of Environment and Natural Resources (DENR) covering mining areas located in Palawan. With the passage of Republic Act No. 7942 or the Philippine Mining Act of 1995 (Mining Act),^[5] these mining lease contracts became the subject of Mineral Production Sharing Agreement (MPSA) applications by Olympic.

On July 18, 2003, Olympic entered into an Operating Agreement with the Platinum Group Metals Corporation (Platinum), under which Platinum was given the exclusive right to control, possess, manage/operate, and conduct mining operations, and to market or dispose mining products found in the Toronto Nickel Mine in the Municipality of Narra and in the Pulot Nickel Mine in the Municipality of Espanola (subject mining areas) for a period of twenty-five years. In return, Platinum bound itself to pay Olympic a royalty fee of 2½ of the gross revenues.

In 2006, Olympic made various attempts to terminate the Operating Agreement and to deprive Platinum of its rights and interests over the subject mining areas, alleging that Platinum committed gross violations of the Operating Agreement. These attempts included:

a)

sending Platinum a letter on April 24, 2006 to inform Platinum that it was terminating the Operating Agreement and demanding the immediate return of the possession of the subject mining areas;

b)

filing a complaint with a prayer for the issuance of an injunctive writ against Platinum on April 25, 2006 before the Regional Trial Court (RTC) of Puerto Princesa, Branch 52 (docketed as Civil Case No. 4181) to enjoin Platinum from conducting mining operations on the subject mining areas and to recover possession thereof;

c)

filing a letter with Governor Joel T. Reyes of Palawan on May 18, 2006 to inform the governor of the termination of the Operating Agreement and to ask for the revocation of Platinum's Small Scale Mining Permits (SSMPs);

d)

sending another letter to Platinum on June 8, 2006 to inform Platinum that it would file legal actions for the alleged violations of the Operating Agreement; and

e)

filing two administrative cases[6] before different agencies of the DENR, both with the intent to terminate the Operating Agreement and to revoke Platinum's SSMPs.

During the pendency of the two administrative cases, Olympic transferred its MPSA applications (which necessarily included all its mining rights over the subject mining areas) to Citinickel via a Deed of Assignment dated June 9, 2006, without notice to or the consent of Platinum. The Regional Director of the Mines and Geosciences Bureau approved the assignment of rights on September 6, 2006.

Fearing the consequences of Olympic's various attempts to invalidate the Operating Agreement, Platinum filed a complaint for quieting of title, damages, breach of contract, and specific performance against Olympic before the RTC of Puerto Princesa, Palawan, Branch 95 on June 14, 2006 (docketed as Civil Case No. 4199). Olympic filed a motion to dismiss alleging that the trial court was without jurisdiction to rule on the issues raised in the complaint, as these involved a mining dispute requiring the technical expertise of the Panel of Arbitrators (POA). The RTC, through Judge Blancaflor, denied Olympic's motion to dismiss.[7]

On July 21, 2006, Judge Blancaflor issued an order granting Platinum's application for a writ of preliminary injunction. The writ directed Olympic, its assignees, successors-in-interest, agents, and representatives, to respect Platinum's rights under the Operating Agreement. Judge Blancaflor thereafter issued another order[8] granting Platinum's application for an extended writ of preliminary injunction to enjoin the DENR and its offices and

agencies from acting in any manner that will disturb the status quo or impede or affect the full enjoyment of Platinum's rights under the Operating Agreement. The validity of the injunctive writs and the jurisdiction of the RTC to hear Civil Case No. 4199 are the main focuses of G.R. Nos. 178188, 183527, and 180674.

Meanwhile, Citinickel, after the execution of the Deed of Assignment, also made several attempts to invalidate the Operating Agreement, in the way its predecessor Olympic did. It filed Civil Case No. 06-0185 before the RTC of Parañaque, Branch 258, on June 21, 2006 for rescission of the Operating Agreement; the trial court dismissed the case on the grounds of forum shopping and improper venue, among others. Two other administrative cases[9] filed by Citinickel against Platinum for the cancellation of its (Platinum's) permits were likewise dismissed.

While Civil Case No. 06-0185 was pending before the RTC of Parañaque, however, Citinickel filed another administrative action with the POA of the DENR, docketed as POA Case No. 002-06-B, asking for a writ of injunction against Platinum and for the cancellation of the Operating Agreement. This time, Citinickel succeeded; the POA issued a resolution dated October 30, 2006 (POA Resolution) cancelling the Operating Agreement and Platinum's SSMPs, and Platinum was ordered to cease and desist from operating the subject mining areas. The validity of the POA Resolution in light of the writs of injunction issued in Civil Case No. 4199 is the subject of the fourth case, G.R. No. 181141.

For a more graphic presentation, as in the Court's Decision of May 8, 2009, we reprint the table summarizing the cases filed by the parties involving the Operating Agreement:

Case Number

Parties

Cause of Action

Status

Civil Case No. 4181 (RTC Palawan, Branch 52)

Olympic v. Platinum

Complaint for injunction to enjoin Platinum from continuing mining activities filed on April 25, 2006

- May 16, 2006 Order dismissing the complaint for injunction after finding that unilateral termination of the Operating Agreement was illegal (Branch 52 Order).

- Olympic did not appeal the Order.

PMRB Case No. 001-06

Olympic v. Platinum

Complaint for revocation of Platinum's SSMPs dated May 18, 2006

- August 16, 2006 Resolution dismissing complaint on the basis of the Branch 52 Order, which had become final and executory.

Civil Case No. 4199 (RTC Palawan, Branch 95)

Platinum v. Olympic

Complaint for quieting of title, damages, and specific performance

- July 21, 2005 Order granting the writ of preliminary injunction against Olympic and Citinickel

- August 15, 2006 Order denying Olympic's motion to dismiss/suspend proceedings

DENR POA Case No. 2006-01-B

Olympic v. Platinum

Petition to cancel Operating Agreement and revoke Platinum's SSMPs dated June 8, 2006

- June 20, 2006 Notice of Withdrawal filed by Olympic

Civil Case No. 06-0185 (RTC Paranaque)

Citinickel v. Platinum

Complaint to rescind Operating Agreement dated June 21, 2006

- December 22, 2006 Order dismissing complaint on the ground of forum shopping and improper venue.

- Citinickel did not appeal the Order.

PMRB Case No. 002-06

Citinickel v. Platinum

Petition to cancel Platinum's SSMPs dated July 12, 2006

- September 12, 2006 Resolution dismissing the petition on the basis of the injunctive writ issued in Civil Case No. 4199 and the forum shopping committed by Citinickel.

DENR POA Case No. 2006-02-B

Citinickel v. Platinum

Complaint to cancel Operating Agreement and to issue injunction against Platinum dated July 19, 2006

- October 30, 2006 Resolution cancelling OA and SSMP of Platinum (POA Resolution)

EMB letter- complaints filed as DENR EMB Case No. 8253

Citinickel v. Platinum

Complaint to cancel ECCs issued to Platinum dated July 31, 2006

- Elevated to DENR Secretary by Citinickel on account of alleged inaction of EMB

- Sept 25, 2006 Order of DENR Secretary cancelling the ECCs issued to Platinum

- Nov 22 Order denying MR of Platinum

- Feb 26, 2007 Decision of the Office of the President reversing DENR Secretary's Order that cancelled the ECCs

Civil Case No. Q-07-59855 (RTC Quezon City, Branch 76)

Citinickel v. DENR

Petition for mandamus to compel DENR Secretary to confiscate and hold mineral ores stockpiled in Palawan pier

- May 4, 2007 Order dismissing the petition for lack of merit and forum shopping.

THE COURT'S MAY 8, 2009 DECISION

The consolidated cases raised the following matters:

a)

in G.R. No. 178188, Olympic claimed that the RTC of Palawan was without jurisdiction to hear Civil Case No. 4199 (Platinum's action for quieting of title) since it is the POA that has exclusive jurisdiction over the case;

b)

in G.R. No. 183527, Platinum assailed the Court of Appeals (CA) resolution[10] that granted Dy's petition to nullify the injunctive writs issued by the RTC of Palawan in Civil Case No. 4199 and to enjoin the trial court from hearing and conducting further proceedings in the same case. Platinum likewise questioned Dy's standing to assail the injunctive writs that were not addressed against her;

c)

in G.R. No. 180674, Citinickel assailed the injunctive writ issued against it in Civil Case No. 4199, as it was allegedly never impleaded in the case even though it was an indispensable party; and

d)

in G.R. No. 181141, Platinum assailed the POA Resolution terminating the Operating Agreement, as it was issued in violation of the injunctive writs issued in Civil Case No. 4199 and in blatant disregard of the rules on forum shopping.

The Court, through the May 8, 2009 decision, resolved to deny Olympic's and Citinickel's petitions in G.R. No. 178188 and 180674, and to grant Platinum's petitions in G.R. Nos. 183527 and 181141.

The Court upheld the RTC Palawan's jurisdiction to hear Civil Case No. 4199 after finding that the main issue to be resolved - the validity of Olympic's unilateral termination of the Operating Agreement - is a judicial question, not a mining dispute. Platinum's complaint merely sought to protect its interest or title in the subject mining areas and to remove all doubts regarding the Operating Agreement's continuous effectivity by having a competent court declare that Olympic's unilateral termination of the Operating Agreement was unlawful. In other words, Platinum invoked the RTC's jurisdiction for a judicial confirmation of the Operating Agreement's validity and existence, that, to the Court's mind, is clearly a legal question.

More importantly, after dissecting Section 77 of the Mining Act that outlined the POA's jurisdiction, we found that a dispute involving an Operating Agreement is clearly outside the bounds of the POA's jurisdiction. Section 77 of the Mining Act reads:

Sec. 77. Panel of Arbitrators. - xxx. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- Disputes involving rights to mining areas;
- Disputes involving mineral agreements or permits;
- Disputes involving surface owners, occupants and claimholders/concessionaires; and
- Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. [Emphasis supplied.]

Citing recent jurisprudence, particularly *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*,^[11] the Court ruled that Section 77(a) refers to an "adverse claim, protest, or opposition to an application for a mineral agreement." Notably, even Justice Tinga, in his dissent, conceded that Section 77(a) of the Mining Act does not apply to Platinum's complaint.^[12]

Section 77(b), on the other hand, pertained to disputes involving mineral agreements or permits - terms that have acquired technical meanings under Section 3 (ab) of the Mining Act:

ab. Mineral agreement means a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

Obviously the Operating Agreement, being a purely civil contract between two private entities, cannot in any way be considered a mineral agreement whose fundamental nature requires that it be a contract between the government and a contractor.

Based on these findings, the Court affirmed the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95 to hear Civil Case No. 4199. Corollary, we held that the RTC of Palawan could not validly be enjoined from hearing the case, correcting thereby the erroneous ruling on this point by the CA.

In the same Decision, we did not find persuasive Citinickel's argument that the injunctive writ was not binding against it for Platinum's failure to implead it as an indispensable party. To begin with, the execution of the Deed of Assignment on June 9, 2006 was done surreptitiously or without any notice to Platinum, in violation of Section 13 of the Operating Agreement; Platinum understandably could not be faulted for not impleading Citinickel as defendant when it filed Civil Case No. 4199 on June 14, 2006. Even if Platinum had known of the assignment at the time it filed the complaint, Platinum was still not required to implead Citinickel since the assignment only took effect after the DENR Secretary or his representative had given his approval, pursuant to DENR Administrative Order No. 96-40 (DENR AO No. 96-40) or the Revised Implementing Rules and Regulations of the Mining Act. The DENR Secretary's approval only occurred on September 6, 2006 - long after Civil Case No. 4199 had been filed and the injunctive writ issued. Citinickel, being a mere successor-in-interest of Olympic, was bound by the July 21, 2006 injunction order. It was for this reason, as well as the finding of blatant forum shopping by Olympic and Citinickel, that we resolved to nullify the October 30, 2006 POA Resolution terminating the Operating Agreement.

THE MOTIONS FOR RECONSIDERATION

The various motions filed by Olympic, Citinickel, and Dy all raise substantially the same issues, which can be reduced to the following:

- a) whether the RTC of Palawan or the POA has jurisdiction over Platinum's complaint for quieting of title, breach of contract, damages and specific performance (Civil Case No. 4199);
- b) whether Citinickel was an indispensable party in Civil Case No. 4199 and should have been impleaded to make the injunctive writ binding against it; and
- c) whether Dy has the standing to have the injunctive writs issued in Civil Case No. 4199 nullified.

Also, both Olympic and Citinickel pray that their motions for reconsideration be referred to the Court En Banc for resolution.

THE COURT'S RULING

Referral to Court En Banc
is unwarranted

In their motions, Olympic and Citinickel harp on the Court's split majority in its May 8, 2009 Decision. Since the votes of members of the Court's Second Division were closely divided - 3 to 2 in favor of denying their claims, the movants suggest that the resolution of the issues involved in these consolidated cases is better referred to the Court En Banc.

The Constitution itself decrees that the Supreme Court can sit En Banc or in divisions of three, five, or seven members.[13] Cases or matters heard by a division shall be decided or resolved with the concurrence of the majority of the Members who actually took part in the deliberations of the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members.[14] Under SC Circular No. 2-89 (Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to a Division), a decision of a Division of the Court, when concurred in by a majority of its Members who actually took part in the deliberations on the issues in a case and voted thereon, is a decision of the Supreme Court. The Supreme Court sitting En Banc is not an appellate court in relation with the Divisions to which the latter's decisions may be appealed. Each division of the Court is not a body inferior to the Court En Banc, and sits veritably as the Court En Banc itself.[15]

Undoubtedly, a decision by majority of a division of the Supreme Court - whether the vote is a split 3-2 vote or a unanimous decision - is still a decision of the Supreme Court. Therefore, the fact the May 8, 2009 Decision was reached by a 3-2 vote is not, by itself, sufficient ground to refer the case to the Court En Banc.

More importantly, we observe that Olympic and Citinickel merely rehashed the same issues and arguments we already discussed and passed upon in our May 8, 2009 Decision. The Court En Banc's time and resources would simply be wasted in resolving cases that neither modified nor reversed a doctrine or principle of law established En Banc or in a division. Thus, we resolve to deny the motions to refer these cases to the Court En Banc.

I. The Issue of Jurisdiction

Olympic and Citinickel claim that the doctrine that should be applied in these consolidated cases is that laid down in *Gonzales v. Climax-Arimco Mining*,^[16] not the doctrine settled in the *Celestial* case. Admittedly, the tribunals or bodies participating in the jurisdictional conflict in the present consolidated cases more closely resemble those involved in *Gonzales* than those in *Celestial*. *Gonzales* involved the issue of whether or not it was the regular court or the POA that has jurisdiction to resolve the presented dispute. *Celestial*, on the other hand, involved the issue of whether or not it was the Secretary of the DENR or the POA who has jurisdiction to cancel a mining lease contract or existing mineral agreement. Under the ruling in *Gonzales* that:

[T]he resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.

The Complaint is not about a dispute involving rights to mining areas, nor is it a dispute involving claimholders or concessionaires. The main question raised was the validity of the Addendum Contract, the FTAA and the subsequent contracts. xxx.

xxxx

Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function. [Emphasis supplied.]

Olympic and Citinickel posit that only questions involving the validity or voidness of mining contracts or agreements can be settled by the courts; other matters, especially those that require the interpretation and the application of that particular knowledge and expertise possessed by members of the POA, should be resolved by the POA.

We do not agree. Nothing in Gonzales leads to the conclusion that in mining cases, ordinary courts can only resolve questions of validity of mining contracts or agreements; rather, Gonzales simply established that these questions are more properly resolved by courts of law, as these are essentially judicial questions requiring the application of laws. Nothing more was said beyond this; Gonzales certainly did not limit the courts' authority to questions of validity of mining contracts or agreements.

Olympic and Citinickel assert that the principal issue raised in Civil Case No. 4199 was whether Platinum committed gross violations of the Operating Agreement - a contractual dispute between the parties that requires the technical expertise of the POA to resolve. Assuming this to be correct, Olympic and Citinickel's reliance on Gonzales would actually work against the grant of jurisdiction to the POA. Gonzales decreed:

Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as granting of license, permits, lease and contracts, or approving, rejecting, reinstating or canceling applications, or deciding conflicting applications, and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice. This distinction is carried on even in Rep. Act No. 7942. [Emphasis supplied.]

What is ultimately being questioned in Civil Case No. 4199 is the validity of Olympic's unilateral termination of the Operating Agreement, as similarly found by Justice Carpio Morales in her Concurring Opinion. Besides, in light of the ruling in Civil Case No. 4181 (the complaint filed by Olympic against Platinum) that Platinum substantially complied with the terms of the Operating Agreement - a ruling that Olympic never appealed - the determination of whether Platinum committed gross violations of the Operating Agreement may no longer be necessary.

Platinum's resort to a judicial action via a complaint to quiet title to question the unilateral termination of the Operating Agreement by Olympic can be likened to an action subjecting to judicial scrutiny the validity of a contracting party's extrajudicial rescission of a contract by resorting to the automatic resolution clause. We ruled in *UP v. De Los Angeles*[17] that a party contesting the extrajudicial rescission of its contract with another may seek judicial relief:

[T]he act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the

contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. xxx.

In every case where the extrajudicial resolution is contested, only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription. [Emphasis supplied.]

Section 20 of the Operating Agreement requires a 30-day notice before a party can terminate the agreement.[18] Olympic failed to show that it satisfied this requirement; indeed, a day after it sent Platinum the letter of termination, Olympic instituted Civil Case No. 4181 to enjoin Platinum from conducting mining activities on the subject mining areas.

Significantly, Gonzales never completely went into the specifics of the POA's jurisdiction as enumerated in Section 77 of the Mining Act in the same thoroughness that Celestial did. It was in Celestial that the POA's jurisdiction on disputes involving rights to mining areas and disputes involving mineral agreements or permit under paragraphs (a) and (b) of Section 77, respectively, was clarified and defined. Celestial accomplished this by tracing the development of POA's jurisdiction through a survey of the previously enacted mining laws and comparing these laws with the present Mining Act and the implementing rules and regulations.

In relation to Section 77 (a) on disputes involving rights to mining areas, Olympic contends that when Platinum filed Civil Case No. 4199, it had a pending application for MPSA; this situation allegedly brings the case within the POA's jurisdiction under Section 77 (a), as it becomes a pre-approval protest or adverse claim that Celestial spoke of. Even before Olympic raised this argument, however, Justice Leonardo-De Castro had already addressed and settled this matter in her Separate Opinion:

In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercise under the Operating Agreement was in representation of Olympic. It is conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. There can be no rival or disputing claims to a granted mineral agreement or permit.[19]

Platinum's complaint is not an adverse claim to Olympic's/Citinickel's mineral agreement application; Platinum is not making a separate bid for the mining areas covered by the Operating Agreement. On the contrary, Platinum merely wanted Olympic/Citinickel to acknowledge the validity of the Operating Agreement and to remove all doubts as to its rights under the agreement. And as pointed out, even Justice Tinga, in his dissent, recognized that Platinum's complaint does not fall under the POA's jurisdiction based on Section 77(a) of the Mining Act.

In their petitions, motions, and other pleadings, Olympic and Citinickel have thrown in every conceivable argument they could raise against the trial court's jurisdiction over Civil Case No. 4199, yet they have been unable to reconcile and explain why, despite these attacks, they themselves invoked the trial court's jurisdiction when they filed Civil Case Nos. 4181 and 06-0185 before the RTCs of Palawan and Parañaque, respectively. By their acts, Olympic and Citinickel acknowledged the authority and jurisdiction of the ordinary courts to resolve their dispute with Platinum. They are now estopped from claiming the contrary.

II. The Indispensable Party Issue

Echoing its earlier claim, Citinickel insists that the injunctive writ issued by Judge Blancaflor in Civil Case No. 4199 against it should not be sustained as it was never impleaded in the case, despite being an indispensable party. We fully addressed this issue in our May 8, 2009 Decision, and we see no need to re-address this now. We categorically said:

In this case, one fact resonates and remains unrebutted - the transfer of Olympic's rights to Citinickel was done surreptitiously, via the Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. Thus, when Platinum instituted Civil Case No. 4199 on June 14, 2006 - five days after the execution of the Deed of Assignment - Platinum was not notified of the assignment or even of the earlier Memorandum of Agreement between Olympic and Rockworks, contrary to the terms of Section 13 of the Operating Agreement xxx:

The rights and interests of either [Olympic] or [Platinum] in and under this Agreement are assignable and/or transferrable, in whole or in part, to persons or entities qualified xxx provided that the rights of both of the parties under this Agreement are preserved and maintained, unaffected or unimpaired, and provided further that the assignee undertake to be bound by all the provisions of this Agreement, provided furthermore that the assigning party shall duly notify in writing the other party of such proposed assignment and/or transfer before the actual assignment and/or transfer is done.

Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only after the approval of the DENR Secretary or his representative. Section 40 of DENR Administrative Order No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act) states:

Section 40. Transfer or Assignment of Mineral Agreement Application. - Transfer or assignment of Mineral Agreement applications shall be allowed subject to the approval of the Director/concerned Regional Director taking into account the national interest and public welfare: Provided, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation. [Emphasis supplied.]

The provision is clear - any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. xxx. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only after the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. xxx.

Citinickel additionally argues that when Section 40 of DENR AO No. 96-40 declared that the "transfer or assignment of the mineral agreement application shall be allowed subject to the approval of the Director/concerned Regional Director" of the DENR, the phrase "shall be allowed" should be construed to mean that the transfer is effective immediately, though subject to the condition of the DENR's approval. Thus, as of June 9, 2006, Citinickel claims there was already an effective transfer or assignment of Olympic's rights, and it became imperative for Platinum to implead Citinickel as defendant in its June 14, 2006 complaint to make the orders and writs issued therein binding against Citinickel.

Citinickel's argument does not merit a reversal of the Court's ruling. Section 40 of DENR AO No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act) is derived from Section 30 of the Mining Act which reads:

Section 30. Assignment/Transfer. - Any assignment or transfer of rights and obligations under any mineral agreement, except a financial or technical assistance agreement, shall be subject to the prior approval of the Secretary. Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal. [Emphasis supplied.]

If the Court were to follow Citinickel's argument, we would effectively render nugatory the requirement of prior approval and the automatic approval clause of Section 30 above. Such construction - obviously against the literal wording of the law - is beyond the powers of this Court to make, whether acting en banc or in division.

To be clear, Citinickel is not an indispensable party which must be impleaded in Civil Case No. 4199 to make the writs and orders issued therein binding against it. Rather, it is a transferee pendente lite under Section 19 of Rule 3 of the Rules of Court[20] whose inclusion or substitution lies entirely within the discretion of the court hearing the case. The formal inclusion of a successor-in-interest is not an absolute requirement as a judgment is binding against the parties and their successors-in-interest.[21]

III. The Legal Standing Issue

While Citinickel rejects the validity and binding force of the injunctive writ issued in Civil Case No. 4199 that expressly included its name, Dy, whose name was never included in either writs (July 21, 2006 injunctive writ and April 13, 2007 expanded injunctive writ), resists its probable application against her and thus sought its annulment before the CA by filing a certiorari petition against the trial court (CA-G.R. SP No. 101544). The CA issued a resolution (dated March 3, 2008) enjoining the RTC of Palawan from conducting further proceedings in Civil Case No. 4199.

We have carefully read and scrutinized the injunctive writs and failed to find any provision expressly mentioning Dy's name or even implying that it can be made enforceable against her. Dy, however, reasons that:

Due to the xxx allegations in the Amended Complaint of conspiracy and the alleged bad faith on the part of private respondent Polly Dy in directing the affairs of Rockworks and in allegedly sanctioning Rockworks' interference with the Operating Agreement of Platinum, it may be said that the order of injunction issued by the respondent Judge a quo which continues to exist also operates against private respondent Polly Dy. [Emphasis supplied.]

The argument borders on the absurd. Not being the subject of the injunctive writs, Dy has no legal standing to assail them through a certiorari petition. Under Section 1 of Rule 65, it is the person aggrieved by the assailed act of a board, tribunal or officer which has acted without or in excess of its jurisdiction who can file a petition for certiorari before the proper court.[22]

The Expanded Injunctive Writs

Before the Court finally resolves and disposes of these consolidated cases, we find it significant to clarify the extent of the coverage of the RTC's expanded injunctive writ insofar it relates to the other functions of the agencies of the DENR. As aptly observed by Justice Leonardo-De Castro:

The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, the RTC should not enjoin the DENR and its offices, or other executive/administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits. To my mind, breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.[23]

IN VIEW OF THE FOREGOING, the Court hereby resolves to DENY the Motions to Refer the Resolution of these consolidate cases to the Court En Banc filed by Olympic and Citinickel, and similarly DENY the Motions for Reconsideration of the Court's May 8, 2009 Decision filed by Olympic, Citinickel and Dy.

SO ORDERED.

Carpio Morales, (Acting Chairperson), Velasco, Jr., Leonardo De-Castro, and Peralta, JJ., concur.

[*] Designated Acting Chairperson of the Second Division per Special Order No. 618 dated April 14, 2009.

[**] Designated additional member of the Second Division per Special Order No. 619 dated April 14, 2009.

[1] Dated June 5 and 9, 2009; rollo, pp. 475-485.

[2] Dated June 10, 2009; id., pp. 511-544.

[3] Dated June 10, 2009; id., pp. 555-567.

[4] Motions dated June 15, 17 and 29, 2009 filed by Citinickel and motion dated June 26, 2009 filed by Olympic; id., pp. 617-631.

[5] Section 112. Non-impairment of Existing Mining/Quarrying Rights. - All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government: Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.

Section 113. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications. - Holders of Valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

[6] These two administrative cases filed by Olympic against Platinum were:

a. Provincial Mining Regulatory Board (PMRB) Case No. 001-06 (filed on May 18, 2006) for the revocation of the SSMPs of Platinum, on the ground of Olympic's termination of the Operating Agreement because of the alleged gross violations thereof by Platinum; and

b. Panel of Arbitrators (POA) Case No. 2006-01-B (filed on June 8, 2006) for the cancellation of the Operating Agreement and the revocation of the SSMPs of Platinum.

[7] Order dated August 15, 2006.

[8] Order dated April 13, 2007.

[9] The two administrative cases filed by Citinickel against Platinum were:

a. PMRB Case No. 002-06 for revocation of Platinum's SSMPs; and

b. EMB Case No. 8253 for revocation of Platinum's ECCs.

[10] Dated March 2, 2008 in CA-G.R. SP No. 101544.

[11] G.R. Nos. 169080, 172936, 176226, and 176319, December 19, 2007, 541 SCRA 166.

[12] See p. 28 of Justice Tinga's Dissenting Opinion.

[13] CONSTITUTION, Article VIII, Section 4 (1).

[14] *Id.*, Section 4 (3).

[15] *Apo Fruits Corporation v. CA*, G.R. No. 164195, April 30, 2008, 553 SCRA 237; *J.G. Summit Holdings, Inc. v. CA*, G.R. No. 124293, January 31, 2005, 450 SCRA 169; *Firestone Ceramics v. Court of Appeals*, G.R. No. 127022, June 28, 2000, 334 SCRA 465.

[16] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

[17] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

[18] Section 20 of the Operating Agreement states:

The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violations of the terms and conditions of this agreement.

[19] See p. 6 of J. Leonardo-De Castro's Separate Opinion.

[20] SECTION 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.

[21] I Moran, *Rules of Court*, 1963 ed., pp. 178-179.

[22] SECTION 1. Petition for certiorari.--When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[23] See p. 8 of J. Leonardo-De Castro's Separate Opinion.

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