

THIRD DIVISION

[G.R. No. 201785, April 10, 2019]

**DIAMOND DRILLING CORPORATION OF THE PHILIPPINES,
PETITIONER, V. CRESCENT MINING AND DEVELOPMENT
CORPORATION, RESPONDENT.**

[G.R. No. 207360, April 10, 2019]

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
PETITIONER, V. DIAMOND DRILLING CORPORATION OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

A. REYES, JR., J.:

Can the Department of Environment and Natural Resources (DENR), through a court order, be compelled to amend a Mineral Production Sharing Agreement (MPSA) to reflect the acquisition by judicial sale of a partial interest therein? This is the question posed by these petitions, which stem from the Order^[1] dated August 31, 2011 issued by the Regional Trial Court (RTC) of Makati City, Branch 133, in Civil Case No. 00-055. The said order directed the Secretary of Environment and Natural Resources to amend MPSA No. 057-96-CAR by appending the name of Diamond Drilling Corporation of the Philippines (DDCP) as joint contractor thereto with forty percent (40%) ownership therein. The validity of the order was questioned in two separate petitions for *certiorari* filed before the Court of Appeals (CA), resulting in two conflicting decisions: one upholding,^[2] and another annulling^[3] the order. The Court is now asked to resolve the conflict.

The Facts^[4]

On October 27, 1993, Crescent Mining and Development Corporation (Crescent), a Filipino corporation, and Pacific Falcon Resources Corporation (PFRC), a Canadian corporation, entered into a Joint Venture Agreement (JVA) in preparation for the formation of a joint venture to undertake copper and gold mining operations within a 534-hectare area in Guinaoang and Bulalacao, Mankayan, Benguet (the Guinaoang Project).

On November 12, 1996, the Republic of the Philippines, through then DENR Secretary Victor Ramos, and by virtue of Republic Act (R.A.) No. 7942^[5] (Mining Act) and DENR Administrative Order No. 96-40, awarded MPSA No. 057-96-CAR to Crescent. Under the agreement, Crescent was granted the exclusive right to conduct initial exploration and possible development and commercial utilization of minerals that may be found within the Guinaoang Project area.

On August 5, 1997, Crescent and PFRC executed a Letter-Agreement amending the JVA. Under their new arrangement, PFRC acquired a 40% stake in the Guinaoang

Project. A copy of the Letter-Agreement was then sent by the parties to, and recorded in, the Regional Office of the Mines and Geosciences Bureau (MGB) in Baguio City.

On January 11, 2000, DDCP, PFRC's drilling contractor, filed a Complaint for collection of sum of money with damages and prayer for the issuance of a writ of preliminary attachment against PFRC before the RTC of Makati City.

After *ex parte* presentation of evidence, the trial court issued an Order dated January 28, 2011 granting the application for the issuance of a preliminary attachment.^[6] PFRC's 40% share in the Guinaoang Project was attached and levied upon through a Notice of Attachment/Levy which was served upon the office of the MGB of the Cordillera Autonomous Region (CAR), where the 40% share is officially recorded.

After PFRC failed to file its responsive pleading within the reglementary period, the trial court issued an Order dated January 5, 2001 declaring PFRC in default.^[7]

On April 23, 2001, the trial court rendered a Decision^[8] holding PFRC liable to DDCP in the amount of US \$307,726.00 for aggregate unpaid billings, interest, and attorney's fees, as well as for the amount of P300,000.00 as exemplary damages.

On October 19, 2001, Entry of Judgment was issued in the case and, at DDCP's instance, a writ of execution was issued by the trial court. By virtue thereof, the 40% interest of PFRC in the Guinaoang Project was levied. Thereafter, a Notice of Levy on Execution over the said 40% interest was served on, and caused to be recorded with, the MGB-CAR.

On December 31, 2001, PFRC's interest in the Guinaoang Project was publicly auctioned whereupon DDCP came out as the highest bidder. Thereafter, a Certificate of Sale was issued by the Sheriff of the RTC of Makati City in favor of DDCP. The sale was duly registered with the MGB-CAR. Hence, DDCP became the 40% equitable owner.

In 2008, DDCP requested the MGB to record its 40% interest in the Guinaoang Project. The request was denied by then DENR-MGB Director Horacio C. Ramos (Director Ramos) on the ground that DDCP has not acquired any interest in MPSA No. 057-96-CAR since the said Agreement is between the government and Crescent; that PFRC has no equity in Crescent; and, that the decision in Civil Case No. 00-055 only involves PFRC, and not Crescent.

The MGB, through Director Ramos, also ratiocinated that the JVA between PFRC and Crescent as regards the Guinaoang Project is a private matter between the said corporations such that the conveyance by PFRC to DDCP of its interest therein is not within the DENR Secretary's authority to approve.

In view of the denial, DDCP filed a Motion dated June 2, 2011 praying that an order be issued directing the DENR Secretary, thru the MGB Director, to amend MPSA No. 057-96-CAR by incorporating the 40% ownership of DDCP therein. The DENR Secretary and the MGB Acting Director filed their Comment and Vehement Opposition to the Motion, etc. dated August 12, 2011 on the grounds that they cannot be bound by any issuance of the court as they are not parties in the proceedings; that the amendment of MPSA No. 057-96-CAR can only be made by the mutual agreement of the parties thereto, that is, the Government of the

Philippines and Crescent; and, that DDCP has not presented any compelling reason for the amendment of MPSA No. 057-96-CAR.

After the parties' submissions, the trial court issued the assailed Order^[9] on August 31, 2011 granting DDCP's motion. The decretal portion of the issuance reads:

WHEREFORE, the Secretary of the [DENR]; thru the Director of the [MGB], is hereby **DIRECTED** to **AMEND** [MPSA] No. [0]57-96-CAR by **APPENDING** the name of [DDCP] as joint contractor thereto with forty percent (40%) ownership therein, subject to compliance with nationality and other qualification requirements of [R.A.] No. 7942, or the Philippine Mining Act of 1995, and its implementing Rules and Regulations.

SO ORDERED.^[10] (Emphases in the original)

Its motion for reconsideration having been denied, the DENR filed a petition for *certiorari* with the CA, which was docketed as CA-G.R. SP No. 124038. Crescent also assailed the order through another petition for *certiorari*, which was docketed as CA-G.R. SP No. 121603.

Rulings of the CA

CA-G.R. SP No. 121603

On January 30, 2012, the CA 17th Division rendered a Decision^[11] in favor of Crescent, disposing thus:

WHEREFORE, premises considered, the Petition is **GRANTED**. The Order dated 31 August 2011 of the [RTC], National Capital Judicial Region, Makati City, Branch 133, in Civil Case No. 00-055 is **ANNULLED**; and all the respondents, as well as any person/s acting for and on their behalf, are **ENJOINED** from enforcing or implementing the same. Public respondent is hereby ordered to **immediately desist** from conducting further proceedings in connection with the Motion dated 02 June 2011 filed by private respondent in Civil Case No. 00-055. Costs against private respondent.

SO ORDERED.^[12] (Emphases in the original)

The CA 17th Division agreed with Crescent's assertion that the trial court no longer had jurisdiction to issue the assailed order, as DDCP's motion to amend MPSA No. 057-96-CAR is essentially a motion for execution of the Decision dated April 23, 2001 which was filed beyond the five-year period within which a decision may be executed by motion. The CA 17th Division also held that the relief granted by the assailed order is not a part of the execution proceedings, and is therefore outside the ambit of the trial court's general supervisory control over the execution process.

CA-G.R. SP No. 124038

In its Decision^[13] dated December 14, 2012, the CA 2nd Division ruled against DENR and in favor of DDCP, disposing thus:

WHEREFORE, the instant petition is **DENIED**. The assailed issuances **STAND**. No costs.

SO ORDERED.^[14]

Relying on Section 30 of R.A. No. 7942 and Section 46 of DENR Administrative Order No. 20-21, the CA 2nd Division held that the assignment of the 40% share in the Guinaoang Project in favor of PFRC should be deemed automatically approved, since the DENR failed to act on the registration of the JVA between Crescent and PFRC. Therefore, PFRC became the absolute owner of a 40% share in MPSA No. 057-96-CAR. This contractual interest being a form of property, it was liable to levy and execution upon a judgment, as was done by the Sheriff of the RTC of Makati City, Branch 133 in favor of DDCP. Adopting the reasoning of the trial court, the CA further held that the order did not constitute an intrusion into the power and prerogatives of the DENR-MGB under R.A. No. 7942 because it was merely a consequence of Crescent's voluntary divestment of the 40% share in favor of PFRC and the subsequent judicial proceedings which led to the transfer of such share to DDCP. Notably, the CA 2nd Division viewed the order as part of the execution proceedings, such that the court's "general supervisory control" over the execution process remains applicable.

The DENR and DDCP filed their respective motions for reconsideration which were both denied by the appellate court. Aggrieved, both sought recourse to this Court. DDCP's petition for review was filed on June 25, 2012 and was docketed as G.R. No. 201785;^[15] while the DENR's petition for review was filed on June 24, 2013 and was docketed as G.R. No. 207360.^[16] In a Resolution^[17] dated August 7, 2013, the Court granted the Solicitor General's motion to consolidate the two cases.

The Issues

DDCP raises the following issues in G.R. No. 201785:

- A. THE HONORABLE CA GRAVELY ERRED WHEN IT RULED THAT THE COURT A *QUO* ACTED IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION, IN GRANTING DDCP'S MOTION TO DIRECT THE DENR/MGB TO AMEND THE MPSA; and
- B. THE HONORABLE CA SHOULD HAVE OUTRIGHTLY DISMISSED THE PETITION FOR *CERTIORARI* AND PROHIBITION BECAUSE CRESCENT HAD OTHER PLAIN, SPEEDY AND ADEQUATE REMEDIES IN THE ORDINARY COURSE OF LAW THAT IT INEXPLICABLY FAILED TO AVAIL OF.^[18]

The DENR raised the following issues in its petition:

- I. WHETHER THE DENR CAN BE BOUND BY THE TERMS OF THE TRIAL COURT'S DECISION IN CIVIL CASE NO. 00-055 WITHOUT BEING A PARTY THERETO;
- II. WHETHER THE TERMS OF A FINAL AND EXECUTORY DECISION CAN BE MODIFIED DURING ITS EXECUTION STAGE;
- III. WHETHER OR NOT THE ORDER OF THE TRIAL COURT DIRECTING THE AMENDMENT OF THE MPSA TO INCLUDE DDCP AS A NEW JOINT CONTRACTOR CONTRAVENED THE PROVISIONS OF THE PHILIPPINE MINING ACT OF 1995, ITS IMPLEMENTING RULES AND REGULATIONS (IRR), AND THE TERMS OF MPSA NO. 057-96-CAR ITSELF;

IV. WHETHER OR NOT THE AMENDMENT OF THE MPSA IS A DISCRETIONARY FUNCTION ON THE PART OF THE DENR, WHOSE PERFORMANCE CANNOT BE DIRECTED BY JUDICIAL ORDER; and

V. WHETHER THE ACQUISITION BY DDCP OF PFRC'S 40% INTEREST IN THE GUINAOANG PROJECT COVERED BY MPSA NO. 057-96-CAR, CONSTITUTES A CONVEYANCE BY ASSIGNMENT UNDER R.A. NO. 7942.^[19]

The core issue raised by these petitions is the existence of grave abuse of discretion in the issuance of the Order dated August 31, 2011.

Ruling of the Court

The petitions assail the Order on both procedural and substantive grounds. The Court, therefore, groups the issues accordingly and discusses them *ad seriatim*.

In G.R. No. 201785, DDCP puts in issue: 1) the propriety of Crescent's resort to *certiorari*; and 2) the appellate court's finding that the order was issued beyond the reglementary period for executing a decision by motion. In G.R. No. 207360, the DENR puts in issue: 1) its subjection to the order despite not being a party to DDCP's collection case; and 2) the effect of the order on the final and executory decision in DDCP's collection case.

Propriety of resort to certiorari

The Court is not obliged to tackle this issue, as DDCP did not raise it before the appellate court. In *Dimaandal v. PO2 Ilagan, et al.*,^[20] the Court said:

At the outset, we reiterate the well-settled rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency, or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time is barred by [estoppel].

Note that this principle forbids parties from changing their theory of the case. A party, after all, is bound by the theory he adopts and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.^[21] (Citations omitted)

Propriety of execution by motion

"It is axiomatic that after a judgment has been *fully satisfied*, the case is deemed terminated once and for all."^[22] "[I]t is when the judgment has been *satisfied* that the same passes beyond review, for *satisfaction thereof is the last act and end* of the proceedings."^[23] In *Vda. de Paman v. Judge Señeris*,^[24] the Court held that "[a] case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every