

## SECOND DIVISION

[ G.R. No. 190080, June 11, 2014 ]

**GOLDEN VALLEY EXPLORATION, INC., PETITIONER, VS. PINKIAN MINING COMPANY AND COPPER VALLEY, INC., RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated July 23, 2009 and the Resolution<sup>[3]</sup> dated October 23, 2009 of the Court of Appeals (CA) in CA-G.R. CV. No. 90682 which reversed the Decision<sup>[4]</sup> dated August 18, 2006 of the Regional Trial Court of Makati City, Branch 145 (RTC) in Civil Case No. 01-324 and, consequently, affirmed the validity of the rescission of the Operating Agreement between petitioner Golden Valley Exploration, Inc. (GVEI) and respondent Pinkian Mining Company (PMC) covering various mining claims in Kayapa, Nueva Vizcaya, as well as the Memorandum of Agreement between PMC and respondent Copper Valley, Inc. (CVI).

#### The Facts

PMC is the owner of 81 mining claims located in Kayapa, Nueva Vizcaya, 15 of which were covered by Mining Lease Contract (MLC) No. MRD-56,<sup>[5]</sup> while the remaining 66 had pending applications for lease.<sup>[6]</sup> On October 30, 1987, PMC entered into an Operating Agreement<sup>[7]</sup> (OA) with GVEI, granting the latter “full, exclusive and irrevocable possession, use, occupancy, and control over the [mining claims], and every matter pertaining to the examination, exploration, development and mining of the [mining claims] and the processing and marketing of the products x x x,”<sup>[8]</sup> for a period of 25 years.<sup>[9]</sup>

In a Letter<sup>[10]</sup> dated June 8, 1999, PMC extra-judicially rescinded the OA upon GVEI’s violation of Section 5.01,<sup>[11]</sup> Article V thereof. Cited as further justification for its action were reasons such as: (a) violation of Section 2.03, Article II of the OA, or the failure of GVEI to advance the actual cost for the perfection of the mining claims or for the acquisition of mining rights, cost of lease applications, lease surveys and legal expenses incidental thereto; (b) GVEI’s non-reimbursement of the expenses incurred by PMC General Manager Benjamin Saguid in connection with the visit of a financier to the mineral property in 1996; (c) its non-remittance of the US\$300,000.00 received from Excelsior Resources, Ltd.; (d) its non- disclosure of contracts entered into with other mining companies with respect to the mining claims; (e) its being a mere “promoter/broker” of PMC’s mining claims instead of being the operator thereof; and (f) its non- performance of the necessary works on the mining claims.<sup>[12]</sup>

GVEI contested PMC's extra-judicial rescission of the OA through a Letter dated December 7, 1999, averring therein that its obligation to pay royalties to PMC arises only when the mining claims are placed in commercial production which condition has not yet taken place. It also reminded PMC of its prior payment of the amount of P185,000.00 as future royalties in exchange for PMC's express waiver of any breach or default on the part of GVEI.<sup>[13]</sup>

PMC no longer responded to GVEI's letter. Instead, it entered into a Memorandum of Agreement dated May 2, 2000 (MOA) with CVI, whereby the latter was granted the right to "enter, possess, occupy and control the mining claims" and "to explore and develop the mining claims, mine or extract the ores, mill, process and beneficiate and/or dispose the mineral products in any method or process," among others, for a period of 25 years.<sup>[14]</sup>

Due to the foregoing, GVEI filed a Complaint<sup>[15]</sup> for Specific Performance, Annulment of Contract and Damages against PMC and CVI before the RTC, docketed as Civil Case No. 01-324.

### **The RTC Ruling**

On August 18, 2006, the RTC rendered a Decision<sup>[16]</sup> in favor of GVEI, holding that since the mining claims have not been placed in commercial production, there is no demandable obligation yet for GVEI to pay royalties to PMC. It further declared that no fault or negligence may be attributed to GVEI for the delay in the commercial production of the mining claims because the non-issuance of the requisite Mineral Production Sharing Agreement (MPSA) and other government permits, licenses, and consent were all affected by factors beyond GVEI's control. <sup>[17]</sup> The RTC, thus, declared the rescission of the OA void and the execution of the MOA between PMC and CVI without force and effect. In this relation, it ordered PMC to comply with the terms and conditions of the OA until the expiration of its period.<sup>[18]</sup>

At odds with the RTC's ruling, PMC elevated the case on appeal to the CA.

### **The CA Ruling**

In a Decision<sup>[19]</sup> dated July 23, 2009, the CA reversed the RTC ruling, finding that while the OA gives PMC the right to rescind only on the ground of (GVEI's) failure to pay the stipulated royalties, Article 1191 of the Civil Code allows PMC the right to rescind the agreement based on a breach of any of its provisions.<sup>[20]</sup> It further held that the inaction of GVEI for a period of more than seven (7) years to operate the areas that were already covered by a perfected mining lease contract and to acquire the necessary permits and licenses amounted to a substantial breach of the OA, the very purpose of which was the mining and commercial distribution of derivative products that may be recovered from the mining property.<sup>[21]</sup> For the foregoing reasons, the CA upheld the validity of PMC's rescission of the OA and its subsequent execution of the MOA with CVI.<sup>[22]</sup>

Dissatisfied with the CA's ruling, GVEI filed a motion for reconsideration which was, however, denied by the CA in a Resolution<sup>[23]</sup> dated October 23, 2009, hence, this

petition.

### **The Issue Before the Court**

The central issue for the Court's resolution is whether or not there was a valid rescission of the OA.

### **The Court's Ruling**

The Court resolves the issue in the affirmative.

In reciprocal obligations, either party may rescind the contract upon the other's substantial breach of the obligation/s he had assumed thereunder. The basis therefor is Article 1191 of the Civil Code which states as follows:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

More accurately referred to as resolution, the right of rescission under Article 1191 is predicated on a breach of faith that violates the reciprocity between parties to the contract.<sup>[24]</sup> This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is "unjust that a party be held bound to fulfill his promises when the other violates his."<sup>[25]</sup>

**As a general rule, the power to rescind an obligation must be invoked judicially and cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation.**<sup>[26]</sup> This is so because rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.<sup>[27]</sup> **As a well-established exception, however, an injured party need not resort to court action in order to rescind a contract when the contract itself provides that it may be revoked or cancelled upon violation of its terms and conditions.**<sup>[28]</sup> As elucidated in *Froilan v. Pan Oriental Shipping Co.*,<sup>[29]</sup> "there is x x x nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention."<sup>[30]</sup>

Similarly, in *Dela Rama Steamship Co., Inc. v. Tan*,<sup>[31]</sup> it was held that judicial permission to rescind an obligation is not necessary if a contract contains a special provision granting the power of cancellation to a party.<sup>[32]</sup>

With this in mind, the Court therefore affirms the correctness of the CA's Decision upholding PMC's unilateral rescission of the OA due to GVEI's non-payment of royalties considering the parties' express stipulation in the OA that said agreement may be cancelled on such ground. This is found in Section 8.01, Article VIII<sup>[33]</sup> in relation to Section 5.01, Article V<sup>[34]</sup> of the OA which provides:

ARTICLE VIII  
CANCELLATION/TERMINATION OF AGREEMENT

**8.01 This Agreement may be cancelled or terminated prior to the expiration of the period, original or renewal mentioned in the next preceding Section only in either of the following ways:**

- a. By written advance notice of sixty (60) days from OPERATOR to PINKIAN with or without cause by registered mail or personal delivery of the notice to PINKIAN.
- b. By written notice from PINKIAN by registered or personal deliver of the notice to OPERATOR based on the failure to **OPERATOR to make any payments determined to be due PINKIAN under Section 5.01 hereof** after written demand for payment has been made on OPERATOR: Provided that OPERATOR shall have a grace period of ninety (90) days from receipt of such written demand within which to make the said payments to PINKIAN.

ARTICLE V  
ROYALTIES

5.01 Should the PROPERTIES be placed in commercial production the PINKIAN shall be entitled to a Royalty computed as follows:

- (a) For gold – 3.0 percent of net realizable value of gold
- (b) For copper and others – 2.0 percent of net realizable value

"Net REALIZABLE Value" is gross value less the sum of the following:

- (1) marketing expenses including freight and insurance;
- (2) all smelter charges and deductions;
- (3) royalty payments to the government;
- (4) *ad valorem* and export taxes, if any, paid to the government.

The **aforsaid royalties shall be paid to PINKIAN** within five (5) days after receipt of the smelter or refinery returns. (Emphases and underscoring supplied)

By expressly stipulating in the OA that GVEI's non-payment of royalties would give PMC sufficient cause to cancel or rescind the OA, the parties clearly had considered such violation to be a substantial breach of their agreement. Thus, in view of the above-stated jurisprudence on the matter, PMC's extra-judicial rescission of the OA based on the said ground was valid.

In this relation, the Court finds it apt to clarify that the following defenses raised by GVEI in its petition would not impel a different conclusion:

**First**, GVEI cannot excuse its non-payment of royalties on the argument that no commercial mining was yet in place. This is precisely because the **obligation to develop the mining areas and put them in commercial operation also belonged to GVEI** as it expressly undertook "to explore, develop, and equip the Claims to mine and beneficiate the ore thereof by any method or process"<sup>[35]</sup> and "to enter into contract, agreement, assignments, conveyances and understandings of any kind whatsoever with reference to the exploration, development, equipping and operation of the Claims, and the mining and beneficiation of the ore derived therefrom, and marketing the resulting marketable products."<sup>[36]</sup>

Records reveal that when the OA was signed on October 30, 1987, 15 mining claims were already covered by a perfected mining lease contract, *i.e.*, MLC No. MRD-56, granting to the holder thereof "the right to extract all mineral deposits found on or underneath the surface of his mining claims x x x; to remove, process and otherwise utilize the mineral deposits for his own benefit."<sup>[37]</sup> This meant that GVEI could have immediately extracted mineral deposits from the covered mineral land and carried out commercial mining operations from the very start. However, despite earlier demands made by PMC, no meaningful steps were taken by GVEI towards the commercial production of the 15 perfected mining claims and the beneficial exploration of those remaining. Consequently, seven years into the life of the OA, no royalties were paid to PMC. Compounding its breach, GVEI not only failed to pay royalties to PMC but also did not carry out its obligation to conduct operations on and/or commercialize the mining claims already covered by MLC No. MRD-56. Truth be told, GVEI's non-performance of the latter obligation under the OA actually made the payment of royalties to PMC virtually impossible. Hence, GVEI cannot blame anyone but itself for its breach of the OA, which, in turn, gave PMC the right to unilaterally rescind the same.

**Second**, neither can GVEI successfully oppose PMC's rescission of the OA on the argument that the ground to rescind the OA was only limited to its non-payment of royalties precisely because said ground was actually among the reasons for PMC's rescission thereof. Considering the stipulations above-cited, the ground for non-payment of royalties was in itself sufficient for PMC to extra-judicially rescind the OA.

In any event, even discounting the ground of non-payment of royalties, PMC still had the right to rescind the OA based on the other grounds it had invoked therefor, namely, (a) violation of Section 2.03, Article II of the OA, or the failure of GVEI to advance the actual cost for the perfection of the mining claims or for the acquisition of mining rights, cost of lease applications, lease surveys and legal expenses incidental thereto, (b) GVEI's non-reimbursement of the expenses incurred by PMC