

## SECOND DIVISION

[ G.R. No. 178188, May 08, 2009 ]

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

[G.R. NO. 180674]

**CITINICKEL MINES AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. HON. JUDGE BIENVENIDO C. BLANCAFLOR, IN  
HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL  
TRIAL COURT OF PALAWAN, BRANCH 95, PUERTO PRINCESA  
CITY, PALAWAN, AND PLATINUM GROUP METAL CORPORATION,  
RESPONDENTS.**

[G.R. NO. 181141]

**PLATINUM GROUP METALS CORPORATION, PETITIONER, VS.  
CITINICKEL MINES AND DEVELOPMENT CORPORATION, ACTING  
FOR ITS OWN INTEREST AND ON BEHALF OF OLYMPIC MINES  
AND DEVELOPMENT CORPORATION, RESPONDENT.**

[G.R. NO. 183527]

**PLATINUM GROUP METALS CORPORATION, PETITIONER, VS.  
COURT OF APPEALS AND POLLY C. DY, RESPONDENTS.**

## D E C I S I O N

**BRION, J.:**

Before the Court are the following inter-related and subsequently consolidated cases:

1. **G.R. No. 178188** is a petition for review on *certiorari* filed by Olympic Mines and Development Corporation (*Olympic*) assailing the decision dated February 28, 2007,<sup>[1]</sup> and resolution dated May 30, 2007<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 97259, which effectively upheld the jurisdiction of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 95, in Civil Case No. 4199, and affirmed the injunctive writs issued therein;
2. **G.R. No. 180674** is a petition for review on *certiorari* filed by Citinickel Mines and Development Corporation (*Citinickel*) assailing the decision dated November 20, 2007 of the CA in CA-G.R. SP No. 99422, which dismissed the petition for *certiorari* filed by Citinickel against the injunctive writ<sup>[3]</sup> issued by the RTC of Puerto Princesa, Branch 95 in Civil Case No. 4199;

3. **G.R. No. 183527** is a petition for *certiorari* filed by Platinum Group Metals Corporation (*Platinum*), assailing the resolution dated March 3, 2008 of the CA in CA-G.R. SP No. 101544, which ordered the issuance of a writ of preliminary injunction enjoining the RTC of Puerto Princesa, Branch 95, from conducting further proceedings in Civil Case No. 4199; and
4. **G.R. No. 181141** is a petition for review on *certiorari* filed by Platinum against the resolution dated January 18, 2007 of the CA in CA-G.R. SP No. 97288, which dismissed the petition for *certiorari* filed by Platinum against the Panel of Arbitrators (*POA*) Resolution cancelling the Operating Agreement and its Small Scale Mining Permits (*SSMPs*).

These four (4) petitions stem from the Operating Agreement entered into by Olympic and Platinum, and the subsequent attempts made by Olympic, and thereafter its successor-in-interest Citinickel, to unilaterally terminate the same.

### **FACTUAL BACKGROUND**

#### ***Operating Agreement between Olympic and Platinum***

In 1971 and 1980, Olympic was granted "Mining Lease Contracts"<sup>[4]</sup> by the Secretary of the Department of Environment and Natural Resources (*DENR*) covering mining areas located in the municipalities of Narra and Espanola, Palawan.

On July 18, 2003, Olympic entered into an **Operating Agreement**<sup>[5]</sup> with Platinum, by virtue of which Platinum was given the exclusive right to control, possess, manage/operate, and conduct mining operations, and to market or dispose mining products on the Toronto Nickel Mine in the Municipality of Narra, with an area of 768 hectares, and the Pulot Nickel Mine in the Municipality of Espanola, covering an area of 1,408 hectares (referred to as *subject mining areas*), for a period of twenty five years. In return, Platinum would pay Olympic a royalty fee of 2½% of the gross revenues.

Olympic and Platinum applied for, and were subsequently granted the necessary government permits and environmental compliance certificates.

On April 24, 2006, Olympic sent a letter to Platinum, informing the latter of the immediate termination of the Operating Agreement on account of Platinum's gross violations of its terms, and directing Platinum to immediately surrender possession of the subject mining areas under the Operating Agreement.

#### ***Civil Case No. 4181 and the Branch 52 Order***

On April 25, 2006, Olympic instituted an action for the issuance of an injunctive writ before the RTC of Puerto Princesa, Branch 52 (docketed as Civil Case No. 4181) against Platinum. In its prayer, Olympic sought to enjoin Platinum from conducting mining operations on the subject mining areas, and also to recover possession thereof. Civil Case No. 4181 essentially involved the issue of whether Olympic can unilaterally terminate the Operating Agreement on account of the alleged gross violations committed by Platinum, and accordingly, prevent the latter from

continuing its mining operations. The RTC, through an Order dated May 16, 2006 (*Branch 52 Order*), ruled that it did not; the trial court found that Platinum substantially complied with the terms of the Operating Agreement and declared that Olympic's unilateral termination thereof was legally impermissible.<sup>[6]</sup> The RTC thus dismissed Olympic's complaint.

### ***Administrative Complaints Instituted by Olympic***

Instead of seeking relief against the Branch 52 Order (which thus became final and executory), Olympic then filed two cases with different agencies of the DENR:

- 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. This was dismissed through a Resolution dated August 16, 2006, on the basis of the Branch 52 Order which found Olympic's unilateral rescission of the Operating Agreement to be illegal<sup>[7]</sup>; and
- b. 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. This case was subsequently withdrawn by Olympic on June 20, 2006

### ***Assignment of Rights under the Operating Agreement***

While these two administrative cases were pending, Olympic transferred its applications for mineral agreements, including its rights under the Operating Agreement, to Citinickel *via* a Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. This assignment was thereafter approved by the Regional Director of the Mines and Geosciences Bureau (*MGB*) on September 6, 2006.

### ***Civil Case No. 06-0185***

After the assignment, Citinickel filed Civil Case No. 06-0185 before the RTC of Parañaque, Branch 258, on June 21, 2006, seeking to invalidate the Operating Agreement based on Platinum's alleged violation of its terms. This action was also dismissed by the trial court, citing forum shopping and improper venue as among the grounds for dismissal.<sup>[8]</sup> Citinickel did not bother to appeal this dismissal, opting instead to find other remedies.

### ***Administrative Cases Instituted by Citinickel***

Citinickel thereafter filed three administrative cases: PMRB Case No. 002-06, DENR Environmental Management Bureau (*EMB*) Case No. 8253, and POA Case No. 2006-02-B.

PMRB Case No. 002-06, where Citinickel sought the cancellation of Platinum's SSMPs, was dismissed through a Resolution dated September 12, 2006, on the basis of the injunctive writ issued in Civil Case No. 4199, as well as the finding of the PMRB that Citinickel committed forum shopping.<sup>[9]</sup>

DENR EMB Case No. 8253 was instituted by Citinickel requesting for the cancellation of the Environmental Compliance Certificates (ECCs) of Platinum; although granted by the EMB, and later affirmed by the DENR Secretary, the cancellation of Platinum's ECCs was reversed by the Office of the President.

While Civil Case No. 06-0185 (for the rescission of the Operating Agreement) was pending before the RTC of Paranaque, Citinickel filed a complaint, docketed as POA Case No. 002-06-B, with the POA of DENR, asking for a writ of injunction against Platinum and for the cancellation of the Operating Agreement. This time, Citinickel's relentless efforts to have the Operating Agreement cancelled bore fruit - the POA issued a Resolution dated October 30, 2006 (*POA Resolution*)<sup>[10]</sup> that cancelled the Operating Agreement as well as Platinum's SSMPs, and ordered Platinum to cease and desist from operating the subject mining areas.

Through a petition for *certiorari*, Platinum questioned the POA Resolution before the CA; the case was docketed as CA-G.R. SP No. 97288. The appellate court, however, dismissed Platinum's *certiorari* petition,<sup>[11]</sup> upon finding that Platinum failed to file a motion for reconsideration of the POA Resolution with the Mines Adjudication Board (MAB) - the body which has appellate jurisdiction over decisions or orders of the POA pursuant to Section 78 of the Republic Act No. 7942 or the Philippine Mining Act of 1995 (*Mining Act*) - before elevating the case to the CA.

Protesting the dismissal of its *certiorari* petition, Platinum filed before the Court one of the four petitions involved in these consolidated cases - **G.R. No. 181141**. Platinum contends that the non-filing of an appeal (through a motion for reconsideration) with the MAB would be useless, as the POA declared that its decision to cancel the Operating Agreement was not just its own, but also that of the DENR, which includes the MAB. Additionally, Platinum claimed that the POA Resolution<sup>[12]</sup> was patently illegal, as it contravened the injunctive writs issued in Civil Case No. 4199 (discussed next), thus the immediate need to invoke the appellate court's *certiorari* jurisdiction.

### ***Civil Case No. 4199 and the Injunctive Writs***

Civil Case No. 4199 involved a complaint for quieting of title, damages, breach of contract, and specific performance filed by Platinum against Olympic before the RTC of Puerto Princesa, Palawan, Branch 95 on June 14, 2006. The proceedings and the orders issued in this case became the subject of three of the four consolidated petitions now pending with the Court - **G.R. Nos. 178188, 180674, and 183527**. The RTC's narration provides us with a background of Civil Case No. 4199:

Alleging that Olympic's claims and misrepresentation in the letters dated April 24, 2006 [referring to the termination letter sent by Olympic to Platinum], May 18, 2006 [referring to the letter-complaint of Olympic filed in PMRB Case No. 001-06 which sought the revocation of Platinum's SSMPs], and June 6, 2008 [referring to the letter of Olympic notifying Platinum of its intention to file legal action against Platinum for gross violations of the Operating Agreement], xxx Platinum filed with Branch

95 of the RTC of Puerto Princessa City on June 14, 2006, a complaint to quiet Platinum's title/interest over the subject mining areas, to recover damages and to compel Olympic to perform its obligations under the Operating Agreement.

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**On July 21, 2006, upon xxx Platinum's motion, xxx Blancaflor, in his capacity as the presiding judge of the RTC of Puerto Princesa, Branch 95, issued [an] xxx order in Civil Case No. 4199, granting xxx Platinum's application for the issuance of a writ of preliminary injunction xxx directing Olympic, and its successor-in-interest, xxx Citinickel, to cease and desist from performing any act that would tend to impede, hamper, limit, or adversely affect xx Platinum's full enjoyment of its rights under the Operating Agreement xxx.**

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Meanwhile, on August 28, 2006, xxx Platinum filed a Motion for Leave to Amend Complaint, attaching thereto the Amended Complaint, which impleaded Olympic's Board of Directors and Rockworks Resources Corporation (Rockworks) and the latter's Board of Directors as additional defendants.<sup>[13]</sup> [Emphasis supplied.]

Olympic sought the dismissal of Platinum's Civil Case No. 4199 through a motion to dismiss where Olympic alleged that the trial court was without jurisdiction to rule on the issues raised in the case. *Olympic contended that the case involved a mining dispute requiring the technical expertise of the POA; accordingly, jurisdiction should be with the POA.* The RTC denied the motion to dismiss in a Resolution dated August 15, 2006. When Olympic failed to secure a reversal of the RTC's August 15 Resolution, it filed an appeal with the CA, docketed as CA-G.R. SP No. 97259. The CA declared that the trial court properly exercised jurisdiction over Civil Case No. 4199 because the main issue therein was whether Platinum had a claim and/or right over the subject mining areas pursuant to the Operating Agreement. The dismissal of its petition before the CA prompted Olympic to elevate the matter with this Court, through a petition for review on *certiorari*, docketed as **G.R. No. 178188.**

Citinickel, for its part, filed its own *certiorari* petition before the CA (CA-G.R. SP No. 99422), and questioned the injunctive writs issued in Civil Case No. 4199. It claimed that the writ of preliminary injunction cannot be enforced against it since it was not impleaded in the case even if it was an indispensable party; Olympic's rights under the Operating Agreement had already been transferred to it by virtue of the June 9, 2006 Deed of Assignment. The appellate court nonetheless dismissed Citinickel's petition, prompting the latter to file an appeal by *certiorari* with this Court, docketed as **G.R. No. 180674.**

Polly Dy, as a member of Rockworks' Board of Directors who was impleaded as co-defendant of Olympic in Civil Case No. 4199, filed her own *certiorari* petition (docketed as CA-G.R. SP No. 101544) against the injunctive writs issued by the trial court in the same case. Acting favorably for Polly Dy, the CA directed the issuance of a writ of preliminary injunction against the RTC of Puerto Princesa, Branch 95,