

SECOND DIVISION

[G.R. No. 170738, October 30, 2009]

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
MARCOPPER MINING CORPORATION, RESPONDENT.**

R E S O L U T I O N

QUISUMBING, J.:

For resolution is the Motion for Reconsideration^[1] filed by respondent Marcopper Mining Corporation (Marcopper) seeking to set aside the Court's Decision^[2] dated September 12, 2008 in favor of petitioner Rizal Commercial Banking Corporation (RCBC). The dispositive portion of the Decision reads:

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated June 6, 2005 and the Resolution dated December 8, 2005 of the Court of Appeals in CA-G.R. CV No. 77594 are **REVERSED** and **SET ASIDE**. Marcopper is directed to pay RCBC the following amounts expressly stipulated in the Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797:

1. US\$5,425,485.00 as the total principal amount due under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797, including the interest due on US\$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% per annum until fully paid;
2. Penalty equivalent to 36% per annum of the amount due and unpaid under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797 until fully paid; and
3. Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied. It may, however, exercise its rights, in accordance with law, to foreclose on the properties covered. No pronouncement as to costs.

SO ORDERED.^[3]

The antecedent facts as summarized in the decision sought to be reconsidered, are as follows:

To finance its acquisition of 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel, Marcopper obtained a loan from RCBC in the amount of US\$13.7 Million. As security for the loan, Marcopper executed in favor of RCBC a Deed of Chattel Mortgage dated April 23, 1996 of the 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel and a Deed of

Pledge dated August 29, 1996 covering shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club. Later, Marcopper likewise delivered to RCBC an additional Deed of Pledge dated September 9, 1997, covering one share of stock in the Philippine Columbian Association.

Sometime in 1996, a restructuring of the loan was agreed upon by RCBC and Marcopper. In view of its inability to pay the loan, Marcopper, in a letter dated July 1, 1997 proposed two options to RCBC: (1) to initiate foreclosure of the mortgaged assets and treat the deficiency as an unsecured creditor's claim against Marcopper's remaining assets; or (2) to accept the assignment of a Forbes Park property owned by Marcopper comprising 2,437 square meters and covered by TCT No. 321269 (Forbes Park property) as partial payment of the loan and restructure the payment of the balance over a period of two years. x x x x.^[4]

On July 3, 1997, representatives from both parties met to discuss Marcopper's proposal.

In a letter^[5] dated July 8, 1997 Marcopper laid down its repayment scheme under Option 2, as follows:

x x x x

- 1) The principal amount was to be revised, from the original principal of \$13.7 million to \$14.327 million, which includes interest that has been capitalized;
- 2.) Implementation of the assignment of the Forbes Park property for the agreed amount of P235 million, equivalent to about \$8,901,515;
- 3.) Payment of the amount of \$2,698,485 over a period of one (1) year payable quarterly plus interest; and
- 4.) Payment of the balance of \$2,727,000 over a period of two (2) years, payable quarterly, without interest.

x x x x

RCBC Director/Senior Vice-President Susanne Y. Santos and Senior Vice President Filadelfo S. Rojas, Jr. signed their conformity to the above repayment plan.

On July 31, 1997 Marcopper transmitted several documents to be signed by RCBC, among which, were the Deed of Assignment of its Forbes Park property and the Deed of Release from Mortgage of six (6) units Rig Trucks and one (1) unit Demag Shovel. RCBC signed the Deed of Assignment of the Forbes Park property but returned the Deed of Release from Mortgage, unsigned.

On August 22, 1997, Marcopper sent RCBC another letter transmitting two Promissory Notes for US\$2,698,485 and US\$2,727,000 which amounts correspond

to the restructured balance of its outstanding loan with RCBC after the partial payment through the assignment of the Forbes Park property. In addition, Marcopper also sent the Surety Agreements duly executed by Mr. Teodoro G. Bernardino. Marcopper also delivered to RCBC an additional Deed of Pledge dated September 9, 1997 over one share of the Philippine Columbian Association.

On September 12, 1997, Ma. Felisa R. Banzon, RCBC Vice President wrote a letter to Marcopper saying:

September 12, 1997

MARCOPPER MINING CORP.
6th Floor, V. Madrigal Bldg.
6793 Ayala Avenue
Makati City

Attention: **MR. NICANOR L.
ESCALANTE**
Treasurer

Gentlemen:

As you are aware, we have effected the transfer of ownership of the Forbes property which you used to partially settle your past due obligations with the bank. You have previously requested the release of six (6) Units Rig trucks and one (1) Demag Shovel. However, as I have previously informed you, we first need to work on some details in relation to the dacion. We still need to get approval for your request thus no commitment can be made at this time.

Very truly yours,

(Sgd.)

**MA. FELISA R.
BANZON**

Vice-President^[6]

On November 24, 1997, Marcopper's Chairman of the Board, Joost Pekelharing, wrote RCBC saying that MR Holdings, Ltd. agreed to release its lien on the Forbes Park property upon Marcopper's assurance that RCBC will release from mortgage the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel. Likewise, Marcopper had committed to MR Holdings that it will mortgage some club shares, which have been pledged to RCBC and are expected to be released, after the restructuring of the loan obligation.

On December 15, 1997, RCBC informed Marcopper that its Executive Committee had approved the release of the five Rig Haul Trucks subject to the condition that Marcopper pays the first amortization which fell due on November 24, 1997. In a subsequent letter dated December 17, 1997, RCBC informed Marcopper that it has approved the release from mortgage of the six Rig Haul Trucks and one Demag

Hydraulic Excavator Shovel as well as the release from pledge of the club shares, also subject to the same condition. When Marcopper failed to settle its obligations, RCBC sent a letter to Marcopper and Mr. Bernardino declaring the whole obligation under the non-negotiable promissory notes due and payable. However, Marcopper and its surety refused to pay.

On July 16, 1998, Marcopper filed a complaint^[7] before the RTC of Makati for Specific Performance with Damages and with Prayer for the Issuance of a Writ of Preliminary Injunction against RCBC. Marcopper alleged that it agreed to assign the Forbes Park property to RCBC to be credited to Marcopper's account in the amount of US\$8,909,515 on the condition that RCBC will execute a Deed of Release from Mortgage of the six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel and the club shares of the Baguio Country Club, Canlubang Golf and Country Club, Puerto Azul Beach and Country Club and Philippine Columbian Association, but RCBC failed to do so. Marcopper prayed that RCBC be ordered to execute a deed of partial release of mortgage and pledge, desist from declaring Marcopper's promissory notes as due and demandable, and pay damages.

The Regional Trial Court (RTC) rendered a decision in favor of Marcopper. On appeal, the Court of Appeals affirmed with modification the decision of the RTC. From the decision of the Court of Appeals, petitioner RCBC filed a petition for review on certiorari. This Court found the petition to be impressed with merit, and reversed the decision of the appellate court. We ruled in this wise:

A review of the written exchanges between the parties shows no written agreement was ever executed by RCBC and Marcopper for RCBC to execute a partial release of mortgage and pledge upon assignment to it of the Forbes Park property. The July 1, 1997 letter from Marcopper Treasurer Nicanor L. Escalante to RCBC merely listed two options of payment of Marcopper's loan to RCBC while the July 8, 1997 letter from Marcopper to RCBC modified the terms of payment as to the second option listed in the July 1, 1997 letter. The next written communication between the parties was the July 31, 1997 where Marcopper forwarded the Deed of Release of Mortgage which it requested RCBC to sign.

Even the letter dated November 24, 1997 from Marcopper Chairperson of the Board Joost Pekelharing to RCBC makes no allusion to a written contract. The letter merely stated MR Holdings agreed to release the Forbes Park property **upon Marcopper's assurance** that RCBC will release from mortgage six units Rig Haul Trucks and one unit Demag Hydraulic Excavator Shovel.

The existence of the alleged condition asserted by Marcopper was therefore to be gleaned primarily from the testimonies of its witnesses who asserted that Marcopper and RCBC had agreed on July 3, 1997 to the release of the mortgage and pledge as a condition to the assignment of the Forbes Park property and ultimately the payment of the promissory notes. However, we note that the first time that Marcopper ever mentioned the release of the pledges of club shares was in its letter dated November 24, 1997. Before that, Marcopper requested the release of the mortgage on the Rig Haul Trucks and one unit Demag Hydraulic

Excavator Shovel only. Marcopper's letter to RCBC dated July 8, 1997, which confirmed the agreements between the parties during their July 3, 1997 meeting, did not state that RCBC committed to release the mortgage and pledge, a condition which Marcopper alleged to be a material condition and which would ordinarily be included in the written confirmation had it been agreed upon. Also, on September 9, 1997, Marcopper executed a deed of pledge of one additional share of stock of the Philippine Columbian Association.^[8] x x x

Unfazed, Marcopper filed the instant motion for reconsideration alleging that:

I.

The decision reversed and set aside the factual findings of the trial court and appellate [court] primarily on the basis of a deed of pledge allegedly executed on 9 September 1997;^[9]

II.

The deed of chattel mortgage executed on the mining trucks and demag shovel was for another transaction, the opening by RCBC of a foreign standby letter of credit in favor of the U.S. Eximbank to guarantee a loan that did not push through;^[10]

III.

The 1 July 1997 letter and 8 July 1997 agreement involved the restructuring of the original bridge loan, which led to the tender of MMC's North Forbes Park property in the amount of \$8.9 Million.^[11]

Respondent Marcopper's grounds for reconsideration lack merit. Noticeably, the issues raised by Marcopper in its motion for reconsideration are new matters which have not been raised in the proceedings below and are not proper to be raised for the first time in a motion for reconsideration.

In the main, Marcopper contends that the Court reversed and set aside the factual findings of the trial court and the Court of Appeals primarily on the basis of a falsified Deed of Pledge dated September 9, 1997. A perusal of the Decision sought to be reconsidered would readily show that it was not based mainly on the deed of pledge executed on September 9, 1997, as Marcopper alleged in its motion. The Decision was reached after careful review of the written exchanges between RCBC and Marcopper, as well as other documentary and testimonial evidence presented by the parties. We found that no explicit written agreement was reached for RCBC to execute a partial release of mortgage and pledge upon assignment to it by Marcopper of the Forbes Park property.

Marcopper harps on that portion of the decision which states:

x x x x Also, on September 9, 1997, Marcopper executed a deed of pledge on one additional share of stock of the Philippine Columbian