476 Phil. 415

SECOND DIVISION

[G.R. No. 134049, June 17, 2004]

MARCOPPER MINING CORPORATION, PETITIONER, VS. SOLIDBANK CORPORATION, THE SHERIFF OF MANILA AND DEPUTY SHERIFF CARLOS BAJAR, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 44570, dismissing the petition for certiorari and prohibition with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction filed by Marcopper Mining Corporation, and its Resolution[2] dated June 5, 1998, denying the motion for reconsideration of the said decision.

The Antecedents

Petitioner Marcopper Mining Corporation (MMC, for brevity), is a domestic corporation, engaged in the mining and production of copper concentrates in Boac, Marinduque, since 1968. In order to sustain its operations, MMC entered into several loan transactions with various banks and financial institutions, including the Asian Development Bank.

Also among the transactions entered into by MMC were two foreign currency loans with respondent Solidbank Corporation, denominated as FCDU 96-049 and 96-050, for US$1,000,000.00 each, or a total of US$2,000,000 which were payable on demand. Each loan was covered by a promissory note in which MMC, through John E. Loney and Jose E. Reyes, signed as Maker-Borrower/Assignor. It was agreed therein that the loan would accumulate an interest of 8.75% per annum. It was, likewise, provided that the payment for the loan would be sourced from the foreign exchange proceeds from the shipment of the copper concentrates by MMC to Nippon Mining & Metals Co., Ltd. to the extent of US$1,206,783.09 to be shipped in May 1996.

On March 24, 1996, in the course of its mining operations, a leakage occurred in the tailings of the taipan Pit in MMC's Boac, Marinduque plant, resulting in the cessation of mining operations. Consequently, the MMC failed to ship copper concentrates to Nippon Mining & Metals Co., Ltd. On March 29, 1996, the Department of Environment and Natural Resources issued a Closure Order, ordering the MMC to cease its mining operations. This was followed by a cease and desist order from the Pollution Adjudication Board.

As a result of such orders, the MMC was unable to pay for the loans it obtained from the respondent bank. In such a situation, the MMC was prompted to ask for a consolidation of FCDU 96-049 and 96-050. On July 9, 1996, the aforementioned

FCDUs were consolidated into FCDU 96-808 for US$2,000,000. It was specified therein that FCDU 96-808 was acquired by MMC as its working capital, payable on demand and repriced every thirty (30) days. However, the MMC still failed to settle its loan.

On September 19, 1996, respondent bank filed a civil complaint docketed as Civil Case No. 96-80083 for a sum of money against MMC, its President/Chief Executive Officer John E. Loney, Treasurer Jose E. Reyes and its Assistant Corporate Secretary, Teodulo C. Gabor, Jr. The respondent alleged the following in its complaint:

First Cause of Action

6. On January 16, 1996, the defendant obtained a foreign currency loan from plaintiff in the amount of US$1,000,000.00 and as evidenced thereof, the defendant corporation, through its officers, defendants JOHN B. LONEY and JOSE E. REYES, acting in their dual capacities as President/CEO and Treasurer, respectively, as well as in their personal capacities, executed on even date a Foreign Currency Denominated Promissory Note (FCDU for brevity) No. 96-049 undertaking, jointly and severally, to pay the said obligation with interest at 8.75% upon demand by plaintiff. Copy of FCDU note is hereto attached and made an integral part hereof as Annex "A."

Second Cause of Action

7. On January 16, 1996, the defendants obtained a foreign currency loan from the plaintiff in the amount of US$1,000,000.00 and as evidence thereof, the defendant corporation through its officers, defendants JOHN E. LONEY and JOSE E. REYES acting in their dual capacities as President/CEO and Treasurer, respectively, as well as in their personal capacities executed on even date a Foreign Currency Denominated Promissory Note (FCDU for brevity) No. 96-050 undertaking, jointly and severally, to pay the said obligation with interest of 8.75% upon demand by plaintiff. Copy of the FCDU note is hereto attached as Annex "B" and made an integral part hereof.

Allegations Common to Both Causes of Action

8. Under the terms of the FCDU Note, parties agreed as follows:

   a) in the event of default, defendants agreed to pay additionally a penalty at the rate of 2% per month until fully paid.

   b) Defendants agreed to an increase or decrease as the case may be of the interest rate presently stipulated on the basis of prevailing rates either at the local or international capital markets.

   c) in case of litigation, defendants agreed to pay such sum equivalent to 10% of the amount involved by way of attorney's fees.

d) in any action arising from the notes, parties agreed to submit themselves to the jurisdiction of the proper courts of Metro Manila or of the place of execution of the notes at the sole option of plaintiff.

9. The defendants defaulted in the payment of the FCDU Notes and inspite (sic) repeated demands, defendants failed and refused to settle their obligations to plaintiff. Copy of the latest demand is hereto attached as Annex "C" and made an integral part hereof.

10. As of September 13, 1996, defendants' obligation to plaintiff is in the amount of **FIFTY-TWO MILLION NINE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 89/100 (P52,970,756.89), Philippine Currency.** Copy of the Statement of Account is hereto attached as Annex "D" and made an integral part hereof;

11. As a consequence of the defendants' willful refusal to pay a plainly just and valid obligation, plaintiff was constrained to engage the services of the undersigned counsel for a fee equivalent to 10% of the amount involved by way of attorney's fees.[3]

In support of its plea for a writ of preliminary attachment, the respondent also alleged, *inter alia,* the following:

Grounds for Issuance of Preliminary Attachment

11. For and in consideration of plaintiff's extending the foreign currency loans unto the defendants, the latter made undertakings that their obligations shall be paid from the proceeds of the Purchase Order from Nippon Mining & Metal Co., Ltd. (Invoice No. SAN-47 dated January 9, 1996) covering copper concentrates to the extent of US$1,206,783.09 to be shipped in May 1996. These representations were reflected on the FCDU Notes (96-049 & 96-050) particularly No. 3 thereof which are bracketed and marked as Annex "A-1" for FCDU 96-049 and Annex "B-1" for FCDU 96-050, respectively, and made integral parts hereof.

12. The proceeds of the shipments were never remitted to plaintiff pursuant to the defendants' commitments aforestated upon which plaintiff heavily relied upon as factors that induced it to release the amounts covered by the FCDU notes.

13. As a consequence of the defendants' failure to make the remittance and to cover up their utter bad faith, they adopted a scheme whereby, they sought the consolidation of the two promissory notes into one for US$2,000,000.00 evidenced by loan No. FCDU 96-808 duly signed this time, by defendants Jose E. Reyes and Teodulo C. Gabor, Jr. This was allowed by plaintiff upon the assurances of the aforenamed that the Secretary's Certificate attesting to their authority to commit the defendant corporation into a joint and solidary liability with them will be submitted in due time. Copy of

the FCDU Note No. 96-808 is hereto attached as Annex "E" and made an integral part hereof.

14. Unfortunately, the required Secretary's Certificate showing such authority was never submitted and it became evident that the assurances turned out to be another misrepresentation.

15. This is a clear badge of fraud on the part of the defendants conspiring to achieve a common end of contracting an obligation that they really did not have the intention to pay at its inception.

16. To further foreclose whatever chance of plaintiff in recovering the enormous indebtedness of the defendants, the latter conceived of selling defendant corporation's substantial assets in the form of shareholdings in various country clubs to make effective their plans of placing their valuable assets beyond reach of their creditors, one of the plaintiff[s] herein. Copy of defendants' letter addressed to Asian Development Bank asking for permission to sell is hereto attached as Annex "F" and made an integral part thereof.

17. The circumstances pieced together only reinforced the claim of bad faith on the part of the defendants and are grounds for the issuance of attachment under Rule 57, Sec. 1(d) of the Revised Rules of Court, which provides:

> "In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought."
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> as well as 1(e) stating:
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> "In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors."

18. Plaintiff has sufficient causes of action and there is no sufficient security for the claims sought to be enforced herein by plaintiff other than the properties of the defendants that may still be reached by a writ of preliminary attachment, if it is immediately and expeditiously issued;

19. The amount due to plaintiff is as much as the sum hereinabove specified over and above all the counterclaim that maybe interposed by the defendants;

20. Plaintiff is ready and willing to put up a bond in such amount as may be determined to answer for all the damages that the defendants may sustain by reason of the attachment, if the Honorable Court should finally adjudge that plaintiff is not entitled thereto.[4]

The respondent prayed that, after due proceedings, judgment be rendered in its favor, viz:

P R A Y E R

WHEREFORE, it is respectfully prayed that:

1. At the commencement of this action and upon the filing of a bond in such amount as this Honorable Court may fix, a writ of preliminary attachment be forthwith issued against the properties of the defendants as satisfaction of any judgment that plaintiff may secure.

2. After trial, judgment be rendered ordering defendants, jointly and severally, to pay plaintiff the sum of **FIFTY-TWO MILLION NINE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 89/100 (P52,970,756.89) PESOS,** Philippine Currency, plus interests and charges until fully paid;

3. Such sum equivalent to 10% of the amount involved by way of attorney's fees; and

4. Costs of suit.

Plaintiff prays for other reliefs just and equitable under the premises.[5]

On September 20, 1996, the trial court issued an Order for the issuance of a writ of preliminary attachment, upon the respondent's posting of a bond duly approved by the court in the amount of P58,267,831.59.[6] The respondent posted the requisite bond, and after the same was approved by the court, a writ of preliminary attachment was issued in the respondent's favor.

The petitioner MMC filed a motion to dissolve the writ of preliminary attachment issued by the court, on the following grounds:

PLAINTIFF HAS NO CAUSE OF ACTION AGAINST DEFENDANTS.

PLAINTIFF IS NOT ENTITLED TO ATTACHMENT. THE REQUIREMENTS ENTITLING IT TO THE WRIT ARE WANTING AND THE FACTS STATED IN THE AFFIDAVIT OF ATTACHMENT ARE UNTRUE AND FALSE.

MARCOPPER AND INDIVIDUAL DEFENDANTS HAVE NOT COMMITTED FRAUD AND ARE NOT GUILTY OF FRAUD IN CONTRACTING THE DEBT OR INCURRING THE OBLIGATION UPON WHICH THE ACTION IS BROUGHT, OR IN CONCEALING OR DISPOSING OF PROPERTY FOR THE TAKING, DETENTION AND CONVERSION OF WHICH THE ACTION IS BROUGHT.

DEFENDANTS HAVE NOT REMOVED OR DISPOSED OF THEIR PROPERTIES, OR ABOUT TO DO SO, AND THERE IS NO INTENT TO DEFRAUD CREDITORS.[7]

On October 28, 1996, the petitioner filed the verified answer to the complaint, incorporating therein its special and affirmative defenses, viz: