

THIRD DIVISION

[G.R. No. 138104, April 11, 2002]

MR HOLDINGS, LTD., PETITIONER, VS. SHERIFF CARLOS P. BAJAR, SHERIFF FERDINAND M. JANDUSAY, SOLIDBANK CORPORATION, AND MARCOPPER MINING CORPORATION, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

In the present Petition for Review on Certiorari, petitioner MR Holdings, Ltd. assails the **a)** Decision^[1] dated January 8, 1999 of the Court of Appeals in CA-G.R. SP No. 49226 finding no grave abuse of discretion on the part of Judge Leonardo P. Ansaldo of the Regional Trial Court (RTC), Branch 94, Boac, Marinduque, in denying petitioner's application for a writ of preliminary injunction;^[2] and **b)** Resolution^[3] dated March 29, 1999 denying petitioner's motion for reconsideration.

The facts of the case are as follows:

Under a "Principal Loan Agreement"^[4] and "Complementary Loan Agreement,"^[5] both dated November 4, 1992, Asian Development Bank (ADB), a multilateral development finance institution, agreed to extend to Marcopper Mining Corporation (Marcopper) a loan in the aggregate amount of US\$40,000,000.00 to finance the latter's mining project at Sta. Cruz, Marinduque. The principal loan of US\$ 15,000,000.00 was sourced from ADB's ordinary capital resources, while the complementary loan of US\$ 25,000,000.00 was funded by the Bank of Nova Scotia, a participating finance institution.

On even date, ADB and Placer Dome, Inc., (Placer Dome), a foreign corporation which owns 40% of Marcopper, executed a "Support and Standby Credit Agreement" whereby the latter agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB.

To secure the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage"^[6] dated November 11, 1992, covering substantially all of its (Marcopper's) properties and assets in Marinduque. It was registered with the Register of Deeds on November 12, 1992.

When Marcopper defaulted in the payment of its loan obligation, Placer Dome, in fulfillment of its undertaking under the "Support and Standby Credit Agreement," and presumably to preserve its international credit standing, agreed to have its subsidiary corporation, petitioner MR Holding, Ltd., assumed Marcopper's obligation to ADB in the amount of US\$ 18,453,450.02. Consequently, in an "Assignment Agreement"^[7] dated March 20, 1997, ADB assigned to petitioner all its rights,

interests and obligations under the principal and complementary loan agreements, ("Deed of Real Estate and Chattel Mortgage," and "Support and Standby Credit Agreement"). On December 8, 1997, Marcopper likewise executed a "Deed of Assignment"^[8] in favor of petitioner. Under its provisions, Marcopper assigns, transfers, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its (Marcopper's) properties, mining equipment and facilities, to wit:

Land and Mining Rights
Building and Other Structures
Other Land Improvements
Machineries & Equipment, and Warehouse Inventory
Mine/Mobile Equipment
Transportation Equipment and Furniture & Fixtures

Meanwhile, it appeared that on May 7, 1997, Solidbank Corporation (Solidbank) obtained a Partial Judgment^[9] against Marcopper from the RTC, Branch 26, Manila, in Civil Case No. 96-80083 entitled "*Solidbank Corporation vs. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.*," the decretal portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, partial judgment is hereby rendered ordering defendant Marcopper Mining Corporation, as follows:

1. To pay plaintiff Solidbank the sum of Fifty Two Million Nine Hundred Seventy Thousand Pesos Seven Hundred Fifty Six and 89/100 only (PHP 52,970,756.89), plus interest and charges until fully paid;
2. To pay an amount equivalent to Ten Percent (10%) of above-stated amount as attorney's fees; and
3. To pay the costs of suit.

"SO ORDERED."

Upon Solidbank's motion, the RTC of Manila issued a writ of execution pending appeal directing Carlos P. Bajar, respondent sheriff, to require Marcopper "to pay the sums of money to satisfy the Partial Judgment."^[10] Thereafter, respondent Bajar issued two notices of levy on Marcopper's personal and real properties, and over all its stocks of scrap iron and unserviceable mining equipment.^[11] Together with sheriff Ferdinand M. Jandusay (also a respondent) of the RTC, Branch 94, Boac, Marinduque, respondent Bajar issued two notices setting the public auction sale of the levied properties on August 27, 1998 at the Marcopper mine site.^[12]

Having learned of the scheduled auction sale, petitioner served an "Affidavit of Third-Party Claim"^[13] upon respondent sheriffs on August 26, 1998, asserting its ownership over all Marcopper's mining properties, equipment and facilities by virtue of the "Deed of Assignment."

Upon the denial of its "Affidavit of Third-Party Claim" by the RTC of Manila,^[14] petitioner commenced with the RTC of Boac, Marinduque, presided by Judge Leonardo P. Ansaldo, a complaint for reivindication of properties, etc., with prayer

for preliminary injunction and temporary restraining order against respondents Solidbank, Marcopper, and sheriffs Bajar and Jandusay.^[15] The case was docketed as Civil Case No. 98-13.

In an Order^[16] dated October 6, 1998, Judge Ansaldo denied petitioner's application for a writ of preliminary injunction on the ground that **a)** petitioner has no legal capacity to sue, it being a foreign corporation doing business in the Philippines without license; **b)** an injunction will amount "to staying the execution of a final judgment by a court of co-equal and concurrent jurisdiction;" and **c)** the validity of the "Assignment Agreement" and the "Deed of Assignment" has been "put into serious question by the timing of their execution and registration."

Unsatisfied, petitioner elevated the matter to the Court of Appeals on a Petition for Certiorari, Prohibition and Mandamus, docketed therein as CA-G.R. SP No. 49226. On January 8, 1999, the Court of Appeals rendered a Decision holding that Judge Ansaldo did not commit grave abuse of discretion in denying petitioner's prayer for a writ of preliminary injunction, ratiocinating as follows:

"Petitioner contends that it has the legal capacity to sue and seek redress from Philippine courts as it is a non-resident foreign corporation not doing business in the Philippines and suing on isolated transactions.

x x x

x x x

"We agree with the finding of the respondent court that petitioner is not suing on an isolated transaction as it claims to be, as it is very obvious from the deed of assignment and its relationships with Marcopper and Placer Dome, Inc. that its unmistakable intention is to continue the operations of Marcopper and shield its properties/assets from the reach of legitimate creditors, even those holding valid and executory court judgments against it. There is no other way for petitioner to recover its huge financial investments which it poured into Marcopper's rehabilitation and the local situs where the Deeds of Assignment were executed, without petitioner continuing to do business in the country.

x x x

x x x

"While petitioner may just be an assignee to the Deeds of Assignment, it may still fall within the meaning of "doing business" in light of the Supreme Court ruling in the case of *Far East International Import and Export Corporation vs. Nankai Kogyo Co.*, 6 SCRA 725, that:

'Where a single act or transaction however is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes doing or engaging in or transacting business in the Philippines.'

"Furthermore, the court went further by declaring that even a single act may constitute doing business if it is intended to be the

beginning of a series of transactions. (*Far East International Import and Export Corporation vs. Nankai Kogyo Co. supra*).

"On the issue of whether petitioner is the bona fide owner of all the mining facilities and equipment of Marcopper, petitioner relies heavily on the Assignment Agreement allegedly executed on March 20, 1997 wherein all the rights and interest of Asian Development Bank (ADB) in a purported Loan Agreement were ceded and transferred in favor of the petitioner as assignee, in addition to a subsequent Deed of Assignment dated December 28, 1997 conveying absolutely all the properties, mining equipment and facilities of Marcopper in favor of petitioner.

"The Deeds of Assignment executed in favor of petitioner cannot be binding on the judgment creditor, private respondent Solidbank, under the general legal principle that contracts can only bind the parties who had entered into it, and it cannot favor or prejudice a third person (*Quano vs. Court of Appeals*, 211 SCRA 40). Moreover, by express stipulation, the said deeds shall be governed, interpreted and construed in accordance with laws of New York.

"The Deeds of Assignment executed by Marcopper, through its President, Atty. Teodulo C. Gabor, Jr., were clearly made in bad faith and in fraud of creditors, particularly private respondent Solidbank. The first Assignment Agreement purportedly executed on March 20, 1997 was entered into after Solidbank had filed on September 19, 1996 a case against Marcopper for collection of sum of money before Branch 26 of the Regional Trial Court docketed as Civil Case No. 96-80083. The second Deed of Assignment purportedly executed on December 28, 1997 was entered into by President Gabor after Solidbank had filed its Motion for Partial Summary Judgment, after the rendition by Branch 26 of the Regional Trial Court of Manila of a Partial Summary Judgment and after the said trial court had issued a writ of execution, and which judgment was later affirmed by the Court of Appeals. While the assignments (which were not registered with the Registry of Property as required by Article 1625 of the new Civil Code) may be valid between the parties thereof, it produces no effect as against third parties. The purported execution of the Deeds of Assignment in favor of petitioner was in violation of Article 1387 of the New Civil Code x x x. " (Emphasis Supplied)

Hence, the present Petition for Review on Certiorari by MR Holdings, Ltd. moored on the following grounds:

"A. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN COMPLETELY DISREGARDING AS A MATERIAL FACT OF THE CASE THE EXISTENCE OF THE PRIOR, REGISTERED 1992 DEED OF REAL ESTATE AND CHATTEL MORTGAGE CREATING A LIEN OVER THE LEVIED PROPERTIES, SUBJECT OF THE ASSIGNMENT AGREEMENT DATED MARCH 20, 1997, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF

PETITIONER'S CASE.

B. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN MAKING A FACTUAL FINDING THAT THE SAID ASSIGNMENT AGREEMENT IS NOT REGISTERED, THE SAME BEING CONTRARY TO THE FACTS ON RECORD, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF PETITIONER'S CASE.

C. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN MAKING A FACTUAL FINDING ON THE EXISTENCE OF AN ATTACHMENT ON THE PROPERTIES SUBJECT OF INSTANT CASE, THE SAME BEING CONTRARY TO THE FACTS ON RECORD, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF PETITIONER'S CASE.

D. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING THAT THE SAID ASSIGNMENT AGREEMENT AND THE DEED OF ASSIGNMENT ARE NOT BINDING ON RESPONDENT SOLIDBANK WHO IS NOT A PARTY THERETO, THE SAME BEING CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE ON PRIOR REGISTERED MORTGAGE LIENS AND ON PREFERENCE OF CREDITS.

E. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN FINDING THAT THE AFOREMENTIONED ASSIGNMENT AGREEMENT AND DEED OF ASSIGNMENT ARE SHAM, SIMULATED, OF DUBIOUS CHARACTER, AND WERE MADE IN BAD FAITH AND IN FRAUD OF CREDITORS, PARTICULARLY RESPONDENT SOLIDBANK, THE SAME BEING IN COMPLETE DISREGARD OF, VIZ: (1) THE LAW AND ESTABLISHED JURISPRUDENCE ON PRIOR, REGISTERED MORTGAGE LIENS AND ON PREFERENCE OF CREDITS, BY REASON OF WHICH THERE EXISTS NO CAUSAL CONNECTION BETWEEN THE SAID CONTRACTS AND THE PROCEEDINGS IN CIVIL CASE NO. 96-80083; (2) THAT THE ASIAN DEVELOPMENT BANK WILL NOT OR COULD NOT HAVE AGREED TO A SHAM; SIMULATED, DUBIOUS AND FRAUDULENT TRANSACTION; AND (3) THAT RESPONDENT SOLIDBANK'S BIGGEST STOCKHOLDER, THE BANK OF NOVA SCOTIA, WAS A MAJOR BENEFICIARY OF THE ASSIGNMENT AGREEMENT IN QUESTION.

F. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING THAT PETITIONER IS WITHOUT LEGAL CAPACITY TO SUE AND SEEK REDRESS FROM PHILIPPINE COURTS, IT BEING THE CASE THAT SECTION 133 OF THE CORPORATION CODE IS WITHOUT APPLICATION TO PETITIONER, AND IT BEING THE CASE THAT THE SAID COURT MERELY RELIED ON SURMISES AND CONJECTURES IN OPINING THAT PETITIONER INTENDS TO DO BUSINESS IN THE PHILIPPINES.