

## FIFTH DIVISION

[ CA-G.R. SP NO. 89305, August 14, 2006 ]

**ROBUST ROCKS RESOURCES CORPORATION, PETITIONER, VS. HON. ENRIQUE T. GARCIA, JR., IN HIS PERSONAL CAPACITY AS THE GOVERNOR OF THE PROVINCE OF BATAAN, AND EMERLINDA S. TALENTO IN HER PERSONAL CAPACITY AND HER OFFICIAL CAPACITY AS PROVINCIAL TREASURER OF THE PROVINCE OF BATAAN, RESPONDENTS.**

### DECISION

**ROMILLA-LONTOK, J.:**

Robust Rocks Resources Corporation, (Robust Rocks), organized and registered with the Securities and Exchange Commission, in its petition filed with this Court alleges that it operates rock quarrying in Bataan with Quarry Permit No. QP-B-97-001 which was periodically renewed.

In the year 2002, the province of Bataan, through its Provincial Governor, Leonardo Roman, imposed upon Robust Rocks sand and gravel tax at 10% of the fair market value of quarry resources extracted and real property tax on its machineries without any depreciation allowance which Robust Rocks pegged at 5% of the machineries' original cost for each year of use.

Robust Rocks disputed said impositions, despite which, the Provincial Treasurer issued on November 14, 2002 a Notice of Sale of petitioners' properties for said unpaid assessments.

On December 5, 2002, Robust Rocks filed with the RTC, Balanga, Bataan a petition for Prohibition and Mandamus with Prayer for a Temporary Restraining Order/Preliminary Injunction to enjoin respondent from proceeding with said sale; from collecting said assessed taxes and to maintain the status quo. Said complaint, docketed as SPL No. 045-ML, is assigned to Br. 4, RTC, Balanga, Bataan. A TRO for 72 hours was issued to preserve the status quo. The parties mutually agreed to comply with the status quo order. (*Rollo, p. 133*).

Robust Rocks further alleged that respondent Enrique Garcia, Jr. failed and refused to issue the corresponding quarry permits despite payment of required fees and approval of previous renewal applications and issued a Closure Order through Executive Order No. 14. Armed men in civilian clothes, Robust Rock claims, were utilized by respondents to threaten its officers and employees.

Robust Rocks prayed for the declaration of Executive Order No. 14 as invalid and unlawful; an order for respondent Enrique T. Garcia, Jr. to issue appropriate quarry permits and for respondents to cease and desist from implementing the closure order; from harassing its personnel and subcontractors; collecting the imposed

taxes; and for payment of damages.

The petition was amended to exclude the prayer for the declaration of Executive Order 14 invalid and unlawful.

A temporary restraining order was issued by this Court on May 5, 2005 for respondents to refrain from stopping petitioner's quarry operations by dispatching armed men to intimidate its employees.

Respondents, in their Comment, claimed that Robust Rocks failed to show clear legal right for entitlement to mandamus. Robust Rocks is not the real party-in-interest. The applications for renewal were filed by Antonio Dy, Vicente B. Alarcon, Rolando Glorio and Red D. Vidal, who also paid the renewal fees and to whom the receipts were issued. The requirements for renewal as follows:

1. Area clearance that the area applied for is not in conflict with others;
2. Operation plan specifying restoration and rehabilitation of the area applied for;
3. Project study showing the economic feasibility of the project, volume, proposed production rate and machineries and equipment to be used; map of the area indicating the stages in which excavations are to be undertaken and proof of financial capability and technical competence to undertake the project;
4. Certification from the Barangay Chairman and Municipal Mayor that the operation is not detrimental to public interest;
5. Clearance from government agencies and owners of adjacent lands which may be affected by the permit.
6. Environmental Compliance Certificate;
7. Written commitment that the Provincial Government shall be allowed to extract and have sand, gravel and other construction materials from permit area, provided that the materials shall be for the Provincial Government's own use; that the materials shall not be commercial quantity and there will be a written authorization from the Governor, or in his absence, the ENRO.

were not complied with.

Robust Rocks violated the provisions of R.A. 7942 by continuing the operations despite expiration of the permits and exhaustion of the allowable quantity of One Million (1,000,000) cubic meters of quarry materials. Records of the Office of the Provincial Treasurer show 1,123,828.51 cubic meters to have been already extracted by Robust Rocks. (Annex "5", Comment, *Rollo*, pp. 208-213). Not only is said violation a ground for non-renewal of permit. It entails criminal liability.

Respondents further claim that Robust Rocks is guilty of forum-shopping. The issue