

EN BANC

[G.R. No. 194239, June 16, 2015]

WEST TOWER CONDOMINIUM CORPORATION, ON BEHALF OF THE RESIDENTS OF WEST TOWER CONDOMINIUM AND IN REPRESENTATION OF BARANGAY BANGKAL, AND OTHERS, INCLUDING MINORS AND GENERATIONS YET UNBORN, PETITIONERS, VS. FIRST PHILIPPINE INDUSTRIAL CORPORATION, FIRST GEN CORPORATION AND THEIR RESPECTIVE BOARD OF DIRECTORS AND OFFICERS, JOHN DOES, AND RICHARD DOES, RESPONDENTS.

DECISION

VELASCO JR., J.:

Nature of the Case

Before the Court is the Petition for the Issuance of a Writ of *Kalikasan* filed following the leak in the oil pipeline owned by First Philippine Industrial Corporation (FPIC) in Makati City.

The Facts

Respondent FPIC operates two pipelines since 1969, viz: (1) the White Oil Pipeline (WOPL) System, which covers a 117-kilometer stretch from Batangas to the Pandacan Terminal in Manila and transports diesel, gasoline, jet fuel and kerosene; and (b) the Black Oil Pipeline (BOPL) System, which extends 105 kilometers and transports bunker fuel from Batangas to a depot in Sucat, Parañaque. These systems transport nearly 60% of the petroleum requirements of Metro Manila and parts of the provinces of Bulacan, Laguna, and Rizal.

The two pipelines were supposedly designed to provide more than double the standard safety allowance against leakage, considering that they are made out of heavy duty steel that can withstand more than twice the current operating pressure and are buried at a minimum depth of 1.5 meters, which is deeper than the US Department of Transportation standard of 0.9 meters.

In May 2010, however, a leakage from one of the pipelines was suspected after the residents of West Tower Condominium (WestTower) started to smell gas within the condominium. A search made on July 10, 2010 within the condominium premises led to the discovery of a fuel leak from the wall of its Basement 2. Owing to its inability to control the flow, WestTower's management reported the matter to the Police Department of Makati City, which in turn called the city's Bureau of Fire Protection.

What started as a two-drum leak at the initial stages became a 15-20 drum a day affair. Eventually, the sump pit of the condominium was ordered shut down by the City of Makati to prevent the discharge of contaminated water into the drainage system of Barangay Bangkal. Eventually, the fumes compelled the residents of WestTower to abandon their respective units on July 23, 2010 and the condo's power was shut down.

Petitioner FPIC initially disowned any leak from its oil pipeline. Thus, the residents of WestTower shouldered the expenses of hauling the waste water from its basement, which eventually required the setting up of a treatment plant in the area to separate fuel from the waste water.

On October 28, 2010, the University of the Philippines-National Institute of Geological Sciences (UP-NIGS), which the City of Makati invited to determine the source of the fuel, found a leak in FPIC's WOPL about 86 meters from West Tower.

A day after, or on October 29, 2010, FPIC admitted that indeed the source of the fuel leak is the WOPL, which was already closed since October 24, 2010, but denied liability by placing blame on the construction activities on the roads surrounding West Tower.

On November 15, 2010, West Tower Condominium Corporation (West Tower Corp.) interposed the present Petition for the Issuance of a Writ of *Kalikasan* on behalf of the residents of West Tower and in representation of the surrounding communities in Barangay Bangkal, Makati City. West Tower Corp. also alleged that it is joined by the civil society and several people's organizations, non-governmental organizations and public interest groups who have expressed their intent to join the suit because of the magnitude of the environmental issues involved.^[1]

In their petition, petitioners prayed that respondents FPIC and its board of directors and officers, and First Gen Corporation (FGC) and its board of directors and officers be directed to: (1) permanently cease and desist from committing acts of negligence in the performance of their functions as a common carrier; (2) continue to check the

structural integrity of the whole 117-kilometer pipeline and to replace the same; (3) make periodic reports on their findings with regard to the 117-kilometer pipeline and their replacement of the same; (4) rehabilitate and restore the environment, especially Barangay Bangkal and West Tower, at least to what it was before the signs of the leak became manifest; and (5) to open a special trust fund to answer for similar and future contingencies in the future. Furthermore, petitioners pray that respondents be prohibited from opening the pipeline and allowing the use thereof until the same has been thoroughly checked and replaced, and be temporarily restrained from operating the pipeline until the final resolution of the case.

To bolster their petition, petitioners argued that FPIC's omission or failure to timely replace its pipelines and to observe extraordinary diligence caused the petroleum spill in the City of Makati. Thus, for petitioners, the continued use of the now 47-year old pipeline would not only be a hazard or a threat to the lives, health, and property of those who live or sojourn in all the municipalities in which the pipeline is laid, but would also affect the rights of the generations yet unborn to live in a balanced and "healthful ecology," guaranteed under Section 16, Article II of the 1987 Constitution.

On November 19, 2010, the Court issued the Writ of *Kalikasan*^[2] with a Temporary Environmental Protection Order (TEPO) requiring respondents FPIC, FGC, and the members of their Boards of Directors to file their respective verified returns. The TEPO enjoined FPIC and FGC to: (a) cease and desist from operating the WOPL until further orders; (b) check the structural integrity of the whole span of the 117-kilometer WOPL while implementing sufficient measures to prevent and avert any untoward incident that may result from any leak of the pipeline; and (c) make a report thereon within 60 days from receipt thereof.

In compliance with the writ, FPIC directors Edgar Chua, Dennis Javier, Dennis Gamab and Willie Sarmiento submitted a Joint Return^[3] praying for the dismissal of the petition and the denial of the privilege of the Writ of *Kalikasan*. They alleged that: petitioners had no legal capacity to institute the petition; there is no allegation that the environmental damage affected the inhabitants of two (2) or more cities or provinces; and the continued operation of the pipeline should be allowed in the interest of maintaining adequate petroleum supply to the public.

Respondents FPIC and its directors and officers, other than the aforementioned four (4) directors, also filed a Verified Return^[4] claiming that not all requirements for the issuance of the Writ of *Kalikasan* are present and there is no showing that West Tower Corp. was authorized by all those it claimed to represent. They further averred that the petition contains no allegation that respondents FPIC directors and officers acted in such a manner as to allow the piercing of the corporate veil.

Meanwhile, on January 18, 2011, FGC and the members of its Board of Directors and Officers filed a Joint Compliance^[5] submitting the report required by the Writ of *Kalikasan*/TEPO. They contended that they neither own nor operate the pipelines, adding that it is impossible for them to report on the structural integrity of the pipelines, much less to cease and desist from operating them as they have no capability, power, control or responsibility over the pipelines. They, thus, prayed that the directives of the Writ of *Kalikasan*/TEPO be considered as sufficiently performed, as to them.

On January 21, 2011, FPIC, in compliance with the writ, submitted its 4-page "Report on Pipeline Integrity Check and Preventive Maintenance Program."^[6] In gist, FPIC reported the following:

(I) For the **structural integrity** of the 117-kilometer pipeline, (a) the DOE engaged the services of UP-NIGS to do borehole testing on 81 pre-identified critical areas of the WOPL in eight cities and municipalities—all the boreholes showed negative presence of petroleum vapors; (b) pressure tests were conducted after the repair of the leak and results showed negative leaks and the DOE's pipeline expert, Societe General de Surveillance, New Zealand, has developed a pressure test protocol requiring a 24-hour operation of running a scraper pig through the pipeline to eliminate air gap; (c) In-Line Inspection Test, was conducted by NDT through MFL and ultrasonic. The NDT later cleared the WOPL from any damage or corrosion.

(II) For **preventive maintenance measures**, (a) Cathodic Protection Systems are installed involving the use of anode materials and the introduction of electric current in the pipeline to enhance prevention of corrosion; (b) Regular Scraper Runs through the pipeline to maintain cleanliness and integrity of the pipelines' internal surface; (c) Daily Patrols every two hours of the pipeline route to deter unauthorized diggings in the vicinity of the pipeline segments; (d) Regular coordination meetings with DPWH, MMDA and utility companies to monitor projects that might involve digging or excavation in the vicinity of the pipeline segments; (e) Installation of Security Warning Signs along the pipeline route with toll free number which can be called in the event of an accident or emergency; (f) Emergency Response Procedure of the ERT is activated by a call-out procedure; (g) Maintenance of Emergency Equipment and Repair Kit which are always on standby; and, (h) Remotely controlled Isolation Valves are in place to shut the pipeline when necessary.

On February 9, 2011, petitioners filed, and the Court eventually granted, their Motion to Set the Case for Preliminary Conference and Hearing^[7] pursuant to Sec. 11, Rule 7 of the Rules of Procedure for Environmental Cases.

On April 15, 2011, the Court conducted an ocular inspection of the WOPL in the vicinity of West Tower to determine the veracity of the claim that there were two (2) additional leaks on FPIC's pipeline. Results of the ocular inspection belied the claim.

In the meantime, petitioners also filed civil and criminal complaints against respondents arising from the same incident or leakage from the WOPL.^[8]

Since after the Court's issuance of the Writ of *Kalikasan* and the TEPO on November 19, 2010, FPIC has ceased operations on both the WOPL and the BOPL. On May 31, 2011, however, the Court, answering a query of the DOE, clarified and confirmed that what is covered by the Writ of *Kalikasan* and TEPO is only the WOPL System of FPIC; thus, FPIC can resume operation of its BOPL System.^[9]

On July 7, 2011, petitioners filed an Omnibus Motion^[10] assailing the Court's May 31, 2011 Resolution, praying for the conduct of oral argument on the issue of reopening the BOPL System. This was followed, on September 9, 2011, by a Manifestation (Re: Current Developments) with Omnibus Motion^[11] wherein petitioners invoked the precautionary principle^[12] and asserted that the possibility of a leak in the BOPL System leading to catastrophic environmental damage is enough reason to order the closure of its operation. They likewise alleged that the entities contracted by FPIC to clean and remediate the environment are illegally discharging waste water, which had not undergone proper treatment, into the Parañaque River. Petitioners, thus, prayed that respondents be directed to comply with environmental laws in rehabilitating the surroundings affected by the oil leak and to submit a copy of their work plan and monthly reports on the progress thereof. To these omnibus motions, respondents were directed to file their respective comments.

On September 28, 2011, respondent FPIC filed an Urgent Motion for Leave (To Undertake "Bangkal Realignment" Project)^[13] in order to reduce stress on the WOPL System. FPIC sought to construct a new realigned segment to replace the old pipe segment under the Magallanes Interchange, which covers the portion that leaked. Petitioners were directed to file their comment on FPIC's motion.

Report and Recommendation of the Court of Appeals

To expedite the resolution of the controversy, the Court remanded the case to the Court of Appeals (CA). By this Court's Resolution dated November 22, 2011,^[14] the appellate court was required to conduct hearings and, thereafter, submit a report and recommendation within 30 days after the receipt of the parties' memoranda.

On March 21, 2012, the preliminary conference was continued before the CA wherein the parties made admissions and stipulations of facts and defined the issues for resolution. In view of the technical nature of the case, the CA also appointed^[15] several *amici curiae*,^[16] but only four (4) filed their reports.^[17]

On December 26, 2012, the CA Former 11th Division submitted to the Court its well-crafted and exhaustive 156-page Report and Recommendation^[18] dated December 21, 2012 (CA Report). Some highlights of the Report:

1. Anent petitioners' June 28, 2011 Omnibus Motion assailing the reopening of the BOPL System, the CA directed respondent FPIC to submit the appropriate certification from the DOE as to the safe commercial operation of the BOPL; otherwise, the operation of the BOPL must also be enjoined.
2. On petitioners' September 9, 2011 Manifestation (Re: Current Developments) with Omnibus Motion, the CA directed the Inter-Agency Committee on Health to submit its evaluation of the remediation plan prepared by CH2M Hill Philippines, Inc. for FPIC. Further, the appellate court directed FPIC to strictly comply with the stipulations contained in the permits issued by the Department of Environment and Natural Resources (DENR) for its remediation activities in Barangay Bangkal, Makati City. The DENR was in turn directed by the CA to:
 - (a) monitor compliance by respondent FPIC with applicable environmental laws and regulations and conditions set forth in the permits issued;
 - (b) conduct independent analysis of end-products of the Multi-Phase Extraction System;
 - (c) conduct regular consultative meetings with the City of Makati, residents of Barangay Bangkal and other stakeholders concerning the remediation activities; and,
 - (d) evaluate the viability of the recommendation of *amicus* Dr. Benjamin R. De Jesus, Jr. to include the use of surfactants and oxygen-releasing compounds (ORCs) in the middle and terminal portions of the remediation plan.
3. Respondent's September 27, 2011 Urgent Motion for Leave (To Undertake "Bangkal Realignment" Project) was denied.
4. With regard to the March 29, 2012 Supplemental Manifestation (Re: List of *Amici Curiae* and Recent Possible Leak in the Pipeline) filed by petitioners, the CA found that the existence of another possible leak alleged by petitioners was not established. Nonetheless, to prevent such event, the CA ordered FPIC to: (i) review, adopt

and strictly observe appropriate safety and precautionary measures; (ii) closely monitor the conduct of its maintenance and repair works; and (iii) submit to the DOE regular monthly reports on the structural integrity and safe commercial operation of the pipeline.

5. As to the merits of the case, the CA submitted the following recommendations:

(a) That the people's organizations, non-governmental organizations, and public interest groups that indicated their intention to join the petition and submitted proof of juridical personality (namely: the Catholic Bishop's Conference of the Philippines; *Kilusang Makabansang Ekonomiya, Inc.*; Women's Business Council of the Philippines, Inc.; Junior Chambers International Philippines, Inc. – San Juan Chapter; Zonta Club of Makati Ayala Foundations; and the Consolidated Mansions Condominium Corporation) be allowed to be formally impleaded as petitioners.

(b) That respondent FPIC be ordered to submit a certification from the DOE Secretary that the WOPL is already safe for commercial operation. The certification should take into consideration the adoption by FPIC of the appropriate leak detection system to be used in monitoring the entire pipeline's mass input versus mass output. The certification must also consider the necessity of replacing the pipes with existing patches and sleeves. In case of failure of respondent FPIC to submit the required certification from the DOE Secretary within sixty (60) days from notice of the Honorable Supreme Court's approval of this recommendation, the TEPO must be made permanent.

(c) That petitioners' prayer for the creation of a special trust fund to answer for similar contingencies in the future be denied for lack of sufficient basis.

(d) That respondent FGC be not held solidarily liable under the TEPO.

(e) That without prejudice to the outcome of the civil and criminal cases filed against respondents, the individual directors and officers of FPIC and FGC be not held liable in their individual capacities.

On January 11, 2013, petitioners filed their Motion for Partial Reconsideration^[19] of the CA's Report praying that (a) instead of the DOE, the required certification should be issued by the DOST-Metal Industry Research and Development Center; (b) a trust fund be created to answer for future contingencies; and (c) the directors and officers of FPIC and FGC be held accountable.

On January 25, 2013, FPIC filed its Compliance (Re: Department of Energy Certification on the Black Oil Pipeline)^[20] and submitted the required DOE Certification^[21] issued on January 22, 2013 by DOE Secretary Carlos Jericho L. Petilla (Secretary Petilla). On March 14, 2013, petitioners countered with a Manifestation with Motion^[22] asserting that FPIC's certification is not compliant with the CA's requirement. Hence, petitioners moved that the certification should be disregarded, the 30-day period be deemed to have lapsed, and FPIC be permanently enjoined from operating the BOPL.

On July 30, 2013, the Court issued a Resolution adopting the recommendation of the CA in its Report and Recommendation that FPIC be ordered to secure a certification from the DOE Secretary before the WOPL may resume its operations. The pertinent portion of said Resolution reads:

[FPIC] is hereby **ORDERED** to submit a certification from the DOE Secretary that the pipeline is already safe for commercial operation. The certification should take into consideration the adoption by FPIC of the appropriate leak detection system to be used in monitoring the entire pipeline's mass input versus mass output. The certification must also consider the necessity of replacing the pipes with existing patches and sleeves xxx.^[23]

The DOE Secretary is **DIRECTED** to consult the [DOST] regarding the adoption of the appropriate leak detection system and the necessity of replacing the pipes with existing patches and sleeves.

On October 2, 2013, petitioners, in a Motion for Reconsideration with Motion for Clarification, emphasized that the CA found FPIC's tests and maintenance program to be insufficient and inconclusive to establish the WOPL's structural integrity for continued commercial operation.^[24] Furthermore, petitioners point out that the DOE is biased and incapable of determining the WOPL's structural integrity.

Respondents, for their part, maintain that the DOE has the technical competence and expertise to assess the structural integrity of the WOPL and to certify the system's safety for commercial operation.^[25] Respondents further allege that the DOE is the agency empowered to regulate the transportation and distribution of petroleum products, and to regulate and monitor downstream oil industry activities, including "product distribution" through pipelines.^[26]

In compliance with the Court's July 30, 2013 Resolution, the DOE Secretary issued on October 25, 2013 a Certification,^[27] attesting that the WOPL is safe to resume commercial operations, subject to monitoring or

inspection requirements, and imposing several conditions that FPIC must comply with. The Certification, in its entirety, reads:

This is to certify that based on the Pipeline Integrity Management Systems (PIMS) being implemented by [FPIC] for its [WOPL] facility, the same is safe to resume commercial operations. This certification is being issued after consultation with the [DOST] and on the basis of the following considerations, to wit:

1. DOE noted the adoption by FPIC of the appropriate leak detection system to be used in monitoring the pipeline's mass input versus mass output, as well as the other measures of leak detection and prevention adopted by the latter;
2. DOE further noted that FPIC has already undertaken realignment and reinforcement works on the current pipeline to remove majority of the patches. FPIC has likewise presented substantial and adequate documentation showing that the remaining patches and sleeves are safe, and that the use of such is recognized by the industry and complies with existing standards;
3. DOE finally noted the results of various tests and inspections done on the pipeline as indicated in the *Manifestation* submitted by the DOE on March 31, 2012, in the civil case docketed as *CA GR SP No. 00008* and entitled *West Tower Condominium, et al. [v.] First Philippine Industrial Corporation, et al.*

This certification is being issued subject to the condition that FPIC will submit itself to regular monitoring and validation by the Oil Industry Management Bureau (OIMB) of the implementation of its PIMS, particularly on the following: (a) mass or volume input versus mass or volume output loss/gain accounting; (b) results of borehole monitoring, (c) inspection of the pipeline cathodic protection and (d) pressure test.

Further, FPIC shall submit itself to any test or inspection that the DOE and DOST may deem appropriate for purposes of monitoring the operations of the WOPL facility.

The Court is fully cognizant of the WOPL's value in commerce and the adverse effects of a prolonged closure thereof. Nevertheless, there is a need to balance the necessity of the immediate reopening of the WOPL with the more important need to ensure that it is sound for continued operation, since the substances it carries pose a significant hazard to the surrounding population and to the environment.^[28] A cursory review of the most recent oil pipeline tragedies around the world will readily show that extreme caution should be exercised in the monitoring and operation of these common carriers:

- (1) On August 1, 2014, a series of powerful explosions from underground pipeline systems ripped up the streets of Kaohsiung, Taiwan, killing at least 28 people and injuring 299 more. Further, 23,600, 2,268 and 6,000 households were left without gas, power and water, respectively, in the 2-3 square kilometer blast area.^[29]
- (2) On November 22, 2013, an oil pipeline leaked, caught fire, and exploded in Qingdao, Shangdao Province in China, killing 55 people and injuring more than a hundred more.^[30]
- (3) On September 14, 2011, a fuel pipeline exploded in Kenya's capital city, Nairobi, reducing bodies to dust and flattening homes. At least 75 people died in the explosion, while more than a hundred people were injured.^[31]
- (4) In September 2010, a natural gas pipeline ruptured and set off a fireball, killing eight (8) people and leveling 38 homes in San Bruno, California in the United States.^[32]
- (5) On July 30, 2004, a rupture of an underground natural gas pipeline buried six (6) meters in Ghislenghien, Belgium resulted in 24 deaths and over 120 injuries.^[33]

On April 29 and 30, 2014, the DOE organized a dialogue between said government agencies and the FPIC. There it was stated that during the dialogue, "the division heads and a high profile team from FPIC, both from operation and management made presentations and answered questions on pipeline pumping operation and product delivery, and a detailed explanation of the FPIC PIMS' control measures, condition monitoring measures, and emergency measures, as well as its various activities and projects implemented since 2010 such as pipeline replacement and realignment in Pandacan and Bangkal, inspection and reinforcement of all patches in the WOPL, inspection and reinforcement of a number of reported dents in the WOPL, conduct of successful leak tests, and installation of boreholes that are gas-tested on a weekly basis, and the safety systems that go with the daily pipeline operation and maintenance and project execution."^[34]

On August 5, 2014, Secretary Carlos Jericho L. Petilla of the DOE submitted a letter^[35] recommending activities and timetable for the resumption of the WOPL operations, to wit:

A. Preparatory to the Test Run

I. FPIC Tasks: