

## FIRST DIVISION

[ G.R. No. 153478, October 10, 2012 ]

**MR HOLDINGS, LTD., PETITIONER, VS. SHERIFF CARLOS P. BAJAR, SHERIFF IV, RTC OF MANILA, BRANCH 26, CITADEL HOLDINGS, INC., VERCINGETORIX CORPORATION, MANILA GOLF & COUNTRY CLUB, INC. AND MARCOPPER MINING CORPORATION, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision<sup>[1]</sup> dated May 8, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 59476.

Petitioner MR Holdings, Ltd. is a non-resident foreign corporation, organized and existing under the laws of Cayman Island with business address c/o Codan Trust Company (Cayman), Ltd., Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies. It is a subsidiary corporation of Placer Dome, Inc. (Placer Dome), a foreign corporation which owns 40% of respondent Marcopper Mining Corporation (Marcopper). This Court has adjudged petitioner to be a foreign corporation engaged only in isolated transactions and not "doing business" in the Philippines.<sup>[2]</sup>

On November 4, 1992, Marcopper and Asian Development Bank (ADB) executed a "Principal Loan Agreement" and a "Complementary Loan Agreement" whereby ADB agreed to extend a loan in the aggregate amount of US\$40,000,000.00 to finance Marcopper's open-pit copper ore mining project (San Antonio Mine) at Sta. Cruz, Marinduque.<sup>[3]</sup> On even date, ADB and Placer Dome executed a "Support and Standby Credit Agreement" whereby Placer Dome agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB.

As security for the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage" dated November 11, 1992 covering substantially all of its real and personal properties including Manila Golf & Country Club (Manila Golf Club) Membership Certificate Nos. 1412 and 1444, and "Addendum to Mortgage" dated May 10, 1996.<sup>[4]</sup> The Deed of Real Estate and Chattel Mortgage and Addendum to Mortgage were registered with the Register of Deeds on November 12, 1992 and May 15, 1996, respectively.

Sometime in March, 1996, Marcopper had to stop mining operations when tons of mine waste or tailings leaked from the drainage tunnel of its Mt. Tapian pit and spilled into the waters of the Boac and Makalupnit rivers. Due to massive damage to the environment and threat of serious health problems to local residents resulting from the incident, the Department of Environment and Natural Resources

immediately issued a Closure Order, which was followed by a cease and desist order from the Pollution Adjudication Board.

Marcopper defaulted on its loan obligations to ADB. Pursuant to Placer Dome's undertaking under the "Support and Standby Credit Agreement," petitioner assumed Marcopper's obligation to ADB in the amount of US\$18,453,450.02. Consequently, under an "Assignment Agreement"<sup>[5]</sup> 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. Marcopper subsequently executed a "Deed of Assignment" (December 8, 1997) whereby Marcopper assigns, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.<sup>[6]</sup>

On account of its inability to meet production targets after the mine tailings disaster in its Marinduque project, Marcopper was sued by one of its creditors, Solidbank Corporation (Solidbank) on the foreign currency loans granted by the latter. Solidbank filed a civil complaint before the Regional Trial Court (RTC) of Manila, Branch 26, docketed as **Civil Case No. 96-80083**, entitled "*Solidbank Corporation v. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.*" Solidbank sought to collect a total amount of P52,970,756.89 plus interest, charges and litigation expenses. A writ of preliminary attachment was issued by said court on September 20, 1996, pursuant to which respondent Sheriff Carlos P. Bajar levied upon the properties of Marcopper such as personal properties consisting of club membership shares, including the subject Manila Golf Club shares.

On May 7, 1997, the Manila RTC issued in Civil Case No. 96-80083 a Partial Judgment,<sup>[7]</sup> as follows:

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 Seven Hundred Fifty Six Pesos and 89/100 only (P52,970,756.89), plus interest and charges until fully paid;
2. To pay an amount equivalent to Ten Percent (10%) of abovestated amount as attorney's fees; and
3. To pay the costs of suit.

SO ORDERED. <sup>[8]</sup>

On June 25, 1997, the RTC also granted Solidbank's motion for execution pending appeal, conditioned on its posting of a bond in the amount of P30 million in addition to the P58.2 million attachment surety bond filed with the court. The writ of execution pending appeal issued on July 7, 1997 directed Sheriff Bajar to require Marcopper "to pay the sums of money to satisfy the partial judgment." On July 11, 1997, Sheriff Bajar issued a notice of sale on execution pending appeal covering

several club membership shares, and setting the public auction sale thereof on July 21, 1997.<sup>[9]</sup>

On July 2, 1997, Marcopper filed a Petition for Certiorari and Prohibition in the CA, docketed as **CA-G.R. SP No. 44570**, praying for the issuance of a writ of preliminary injunction and the nullification of the June 25, 1997 Order of execution pending appeal. The CA, in its Resolution dated July 15, 1997, granted a temporary restraining order (TRO) enjoining the implementation of the writ of execution issued by the Manila RTC, Branch 26 in Civil Case No. 96-80083.<sup>[10]</sup>

In the meantime, petitioner pursued other remedies to protect its rights over the levied properties in Civil Case No. 96-80083. In a letter dated July 21, 1997, it formally notified the Corporate Secretary of Manila Golf Club of the assignment of mortgage under instruments duly registered, and requested the Corporate Secretary "to record and reflect the said mortgage and encumbrance upon the described shares so as to put third parties and the public in general on notice of the fact [and] existence of said mortgage."<sup>[11]</sup>

On August 4, 1997, petitioner filed in Civil Case No. 96-80083 a "Manifestation And Notice of Prior Lien" asserting in particular, its rights as assignee of the club shares of Marcopper which had been mortgaged and conveyed to ADB, including the subject Manila Golf membership shares. Petitioner requested that the "Deed of Assignment," "Deed of Real Estate and Chattel Mortgage," and "Addendum to Mortgage" be entered and made part of the records of the case "in order to warn future bidders or buyers of said mortgaged properties presently subject to execution proceedings, of the existence of [petitioner's] prior lien or encumbrance."<sup>[12]</sup>

On September 4, 1997, petitioner as assignee filed an application for extrajudicial foreclosure of the Chattel Mortgage executed on November 11, 1992. In the auction sale held on September 15, 1997, the subject club shares consisting of Marcopper's Manila Golf Club Membership Certificate Nos. 1412 and 1444, were sold to petitioner as the highest bidder, and accordingly a Certificate of Sale was issued to it by the Office of the Clerk of Court and Ex-Officio Sheriff of Makati City. On the same date, petitioner furnished the Corporate Secretary of Manila Golf Club a copy of the certificate of sale and warning the said officer "not to honor or effect any transfers or transactions involving the said shares other than the transfer of the said shares to [petitioner]."<sup>[13]</sup>

Meanwhile, on December 8, 1997, in payment of its obligations amounting to US\$19,550,747.00 as of December 31, 1997, Marcopper executed a Deed of Assignment whereby Marcopper assigned, ceded and conveyed to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.

On December 12, 1997, the CA rendered judgment dismissing the petition in CA-G.R. SP No. 44570. The CA likewise denied the motion for reconsideration filed by Marcopper. On July 15, 1998, Marcopper filed before this Court a petition for review on certiorari under Rule 45, docketed as **G.R. No. 134049** entitled "*Marcopper Mining Corporation v. Solidbank Corporation, the Sheriff of Manila and Deputy Sheriff Carlos Bajar*."<sup>[14]</sup>

On January 13, 1999, Sheriff Bajar issued in Civil Case No. 96-80083 a notice of sale on execution pending appeal which set the auction of the levied membership shares of Marcopper in various clubs on January 19, 1999. On that scheduled date, petitioner filed a "Manifestation and Warning" specifically addressed to Sheriff Bajar, all bidders and the general public, informing that the subject club shares which Sheriff Bajar intended to sell have already been acquired by petitioner at the foreclosure proceedings conducted by the Sheriff of Makati City on September 15, 1997. Petitioner likewise served an "Affidavit of Third-Party Claim" asserting such legal and beneficial ownership it acquired over the subject club membership shares by virtue of the foreclosure sale.<sup>[15]</sup>

The Manila RTC, Branch 26 denied the third-party claim, prompting the petitioner to file an independent reivindicatory action in the RTC of Boac, Marinduque against Solidbank, Marcopper and Sheriffs Bajar and Jandusay, pursuant to Rule 39, Section 16 of the 1997 Rules of Civil Procedure, as amended. The case was docketed as **Civil Case No. 98-13**. On October 6, 1998, the court in said case denied petitioner's application for a writ of preliminary injunction.

Herein respondents Citadel Holdings, Inc. (Citadel) and Vercingetorix Corporation (Vercingetorix) were the highest bidders for Manila Golf Club Membership Certificate Nos. 1412 and 1444, respectively, during the public auction conducted by Sheriff Bajar on January 19, 1999 pursuant to the writ of execution pending appeal issued in Civil Case No. 96-80083. After the Certificates of Sale have been issued to them by Sheriff Bajar, the following Order<sup>[16]</sup> dated January 26, 1999 was issued by the Manila RTC, Branch 26:

Acting on the two identical ex-parte motions filed by movants CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, which were declared awardees of MANILA GOLF AND COUNTRY CLUB CERTIFICATE NOS. 1412 and 1444, respectively, for having posted the highest bids during the Sheriff's Auction Sale on January 19, 1999, and finding both motions to be impressed with merit, the Court orders the corporate secretary and/or authorized officer of MANILA GOLF AND COUNTRY CLUB, INC. to register and transfer MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1412 to CITADEL HOLDINGS, INC. and MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1444 to VERCINGETORIX CORPORATION which were levied by virtue of the Writ of Attachment issued in the above-captioned case as early as September 20, 1996, to the movants and highest bidders CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, in place and in lieu of the old membership certificates registered in the name of the judgment-debtor, defendant MARCOPPER MINING CORPORATION, which said old membership certificates are hereby declared void and cancelled.

SO ORDERED.

Manila Golf Club's Corporate Secretary, Atty. Avelino V. Cruz, wrote petitioner's counsel informing the latter that they could not comply with petitioner's earlier request not to register any transfer of Membership Certificate Nos. 1412 and 1444 in view of the above court order "absent any further revision or amendment of that

Order by the said court or by higher courts.”<sup>[17]</sup>

On March 15, 1999, petitioner filed in the RTC of Makati City a complaint for “Reivindication of Possession/Right with Damages and Prayer for Preliminary Injunction and Temporary Restraining Order” against herein respondents, docketed as **Civil Case No. 99-605** (Branch 62). Petitioner argued that as assignee of the creditor-mortgagee, it had the right to foreclose the chattel mortgage on the subject certificates upon default of the debtor-mortgagor (Marcopper) according to the terms of the loan agreements. Having foreclosed a preferred/superior mortgage lien, all subordinate liens, such as the levy on attachment/execution for Solidbank as judgment obligee, has also been foreclosed. Petitioner thus asserted that as purchaser in the extrajudicial foreclosure sale, it became the absolute owner of the subject certificates sold by respondent sheriff at the execution sale pending appeal, including the Manila Golf Club certificates which the Manila RTC, Branch 26 directed to be transferred to respondents Citadel and Vercingetorix.

In its complaint, petitioner prayed for the following reliefs:

1. Upon the posting of a bond in such sum as may be directed by the Honorable Court, to issue a writ of preliminary injunction or temporary restraining order enjoining, pending final adjudication of the instant complaint, the defendant Manila Golf from transferring to defendants Citadel and Vercingetorix Certificate Nos. 1412 and 1444, respectively, and issuing new certificates in lieu thereof.
2. And, making said writ of preliminary injunction final upon favorable consideration of the complaint.
3. To render judgment:
  - a.) Declaring the plaintiff as the true absolute owner of Manila Golf Certificate Nos. 1412 and 1414.
  - b.) Restoring possession/right of the subject club shares to plaintiff;
  - c.) Ordering the defendant sheriff to pay damages to the plaintiff in such sums as may be proved in court but not less than the market value of the subject club shares in the sum of a total of Sixty Five Million Pesos (P65,000,000.00); exemplary damages of One Million Pesos (P1,000,000.00); litigation expenses in the sum of One Hundred Thousand Pesos (P100,000.00); attorney’s fees in the sum of Five Hundred Thousand Pesos (P500,000.00); and cost of suit.

Or, in the alternative:

4. Should judgment be to deny plaintiff’s reivindication of possession/right over the subject club shares, render judgment ordering defendant Marcopper to restitute plaintiff all such sums paid by it in consideration of the foreclosure sale, or so much thereof as will cover the consideration paid for the foreclosed Manila Golf Club shares or the total sum of Sixty Five Million Pesos (P65,000,000.00), plus legal interest