

SECOND DIVISION

[G.R. No. 170738, September 12, 2008]

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
MARCOPPER MINING CORPORATION, RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the Decision ^[1] dated June 6, 2005 and the Resolution ^[2] dated December 8, 2005, of the Court of Appeals in CA-G.R. CV No. 77594. The appellate court had affirmed with modification the Decision ^[3] dated July 2, 2002 of the Regional Trial Court (RTC) of Makati City, Branch 57, in Civil Case No. 98-1661. The RTC ordered the petitioner Rizal Commercial Banking Corporation (RCBC) to execute a Deed of Partial Release from Mortgage of six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel, and shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club in favor of respondent Marcopper Mining Corporation (Marcopper).

The facts, culled from the records, are as follows:

To finance its acquisition of 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel, Marcopper obtained a loan from RCBC in the amount of US\$13.7 Million. As security for the loan, Marcopper executed in favor of RCBC a Deed of Chattel Mortgage ^[4] dated April 23, 1996 of the 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel and a Deed of Pledge ^[5] dated August 29, 1996 covering shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club. Later, Marcopper likewise delivered to RCBC an additional Deed of Pledge ^[6] dated September 9, 1997, covering one share of stock in the Philippine Columbian Association.

Sometime in 1996, a restructuring of the loan was agreed upon by RCBC and Marcopper. In view of its inability to pay the loan, Marcopper, in a letter ^[7] dated July 1, 1997, proposed two options to RCBC: (1) to initiate foreclosure of the mortgaged assets and treat the deficiency as an unsecured creditor's claim against Marcopper's remaining assets; or (2) to accept the assignment of a Forbes Park property owned by Marcopper comprising 2,437 square meters and covered by TCT No. 321269 ^[8] (Forbes Park property) as partial payment of the loan and restructure the payment of the balance over a period of two years. The letter stated:

x x x x

Based on the foregoing, we foresee two (2) possible options for you, namely:

- 1) Initiate a foreclosure on the mortgaged assets, thereby realizing maximum cash proceeds of about \$11.6 Million. The balance will have to be relegated to the rank of unsecured obligations whose repayment will solely depend on the timing and extent of cash proceeds to be generated from the disposal of the company's assets, or
- 2) Accept our proposal which calls for the involvement of our major shareholders.

The Company may request the involvement of our major shareholders who could ensure a definite repayment plan for the principal exposure of \$13.7 Million. Said repayment plan will consist of the following components:

- a) Implementation of the assignment of the Forbes Park property for the previously agreed amount of P235 Million;
- b) Payment of the amount of P71 Million, being the peso equivalent of the difference between \$11.6 Million and \$8.9 Million (dollar equivalent of P235 Million) over a period of one (1) year on a quarterly basis, plus interest; and
- c) Payment of the balance of P55.4 Million (being the peso equivalent of the difference between the entire principal obligation of \$13.7 Million and \$11.6 Million which is the sum of Items a) and b) above, over a period of two (2) years payable quarterly.

x x x x

We believe that Option 2 above guarantees your full recovery of our principal obligation to you. Since our major shareholders have already indicated their willingness to support this repayment scheme, may we request you to accept this option for immediate implementation. ^[9]

x x x x

Representatives from both parties met on July 3, 1997, ^[10] to discuss Marcopper's proposal.

On July 8, 1997, Marcopper sent a letter to RCBC to confirm the agreements reached and to increase the principal amount under the repayment scheme of Option 2 as RCBC had raised concern about the accrued interest. The letter reads:

July 8, 1997

RIZAL COMMERCIAL BANKING CORP.

Sen. Gil Puyat Avenue
Makati City

Attention: **MR. FILADELFO ROJAS, Jr.**
Senior Vice-President

Gentlemen:

Subject: Marcopper FCDU Loan

This is to summarize our discussion and the points agreed upon during our meeting last July 3, regarding our payment proposal made in our letter to you of July 1.

In the meeting, Mr. Joost Pekelharing and I have reiterated Marcopper's proposal that with the involvement of the company's major shareholders, a definite repayment plan on the principal amount of your exposure to us be ensured.

While you raised your concern about the accrued interest, we had to explain that it may be unfair to overburden the company's major shareholders who are already overexposing themselves, if only to ensure that you will be repaid to the extent of your principal exposure to us. For this reason, we requested that said accrued interest be waived.

We then agreed on the repayment of your principal exposure to us as follows:

- 1) The principal amount was to be revised, from the original principal of \$13.7 million to \$14.327 million, which includes interest that has been capitalized;
- 2) Implementation of the assignment of the Forbes Park property for the agreed amount of P235 million, equivalent to about \$8,901,515;
- 3) Payment of the amount of \$2,698,485 over a period of one (1) year payable quarterly plus interest; and
- 4) Payment of the balance of \$2,727,000 over a period of two (2) years, payable quarterly, without interest.

It was emphasized that the restructured loans will be guaranteed by the company's major shareholders.

We believe the foregoing captures the essence of what transpired in our meeting. May we therefore, request you to indicate your conforme in the space provided for below.

Thank you.

Very truly yours,

(Sgd.)

NICANOR L. ESCALANTE

Treasurer

Conforme:

Director/SVP SUSANNE Y. SANTOS SVP FILADELFO S. ROJAS, JR.

(Sgd.)

(Sgd.)

Rizal Banking Corporation
(Authorized Signatories) [11]

RCBC Director/Senior Vice-President Susanne Y. Santos and Senior Vice-President Filadelfo S. Rojas, Jr. signed their conformity to the above letter.

In a letter dated July 31, 1997, Marcopper forwarded four documents to RCBC thus:

31 July 1997

Rizal Commercial Banking Corporation
Sen. Gil J. Puyat Avenue, Makati City

Attention : Ms. Ma. Felisa Banzon
Vice-President

Gentlemen:

Re: Deed of Release from Mortgage

In connection with the transfer of our Forbes Park Property in your favor, we are transmitting to you herewith the following documents:

1. Deed of Assignment [of the Forbes Park property] dated August 1, 1997, for BIR purposes;
2. Deed of Partial Release from Mortgage signed by the Attorney-in-Fact of MR Holdings Limited releasing from their mortgage the above-mentioned property; and
3. Copy of Secretary's Certificate of a resolution passed by the Board of Directors of MR Holdings Limited appointing as Attorney-in-Fact, Atty. Alma D. Fernandez-Mallonga. The original of said Secretary's Certificate is with Atty. Mallonga and will be presented to the Register of Deeds when required.
4. Deed of Release from Mortgage to be signed by RCBC involving the release from your mortgage six (6) Units Rig Trucks and one (1) unit Demag Shovel.

Kindly note that the release of the above-mentioned property by MR Holdings Limited from their mortgage was made on the condition that a

substitution thereof with other unencumbered and free assets and properties of the mortgagor under a second Addendum to Mortgage be effected. Inasmuch as our only free and unencumbered assets will be those that will be released by you under the Deed of Release from Mortgage mentioned under Item No. 4 above, may we therefore request that your authorized signatories sign as soon as possible the said Deed of Release from Mortgage.

Thank you for your kind assistance and cooperation

Very truly yours,

(Sgd.)

NICANOR L. ESCALANTE

Treasurer [12]

RCBC did not sign the Deed of Release from Mortgage of the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel. Instead, it returned the unsigned deed to Marcopper. However, it signed the Deed of Assignment of the Forbes Park property.

On August 22, 1997, Marcopper sent RCBC another letter transmitting additional documents.

August 22, 1997

MS. MARISSA BANZON
Vice-President
RIZAL COMMERCIAL BANKING CORPORATION
Sen. Gil J. Puyat Avenue
Makati City

Dear Marissa,

In connection with the completion of documentation of the transfer of our Forbes Park property in your favor, we are transmitting to you herewith our Promissory Notes for US\$2,698,485.00 and US\$2,727,000.00. These amounts correspond to the restructured balance of our outstanding loan with you after effecting our partial payment to you through the abovementioned assignment of our Forbes Park property.

In addition, we are sending you herewith the Surety Agreements duly executed by Mr. Teodoro G. Bernardino as surety corresponding to the restructured obligation to you. As earlier discussed with you, kindly release your letter addressed to Mr. Teodoro G. Bernardino, clarifying certain aspects of the Surety Agreement he signed in your favor.

Thank you for your kind cooperation.

Best regards.

Very truly yours,