

FIRST DIVISION

[G.R. NO. 134030, April 25, 2006]

**REPUBLIC OF THE PHILIPPINES SUPREME COURT BAGUIO CITY
ASAPHIL CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, VS. ICENTE TUASON, JR., INDUPLEX, INC. AND
MINES ADJUDICATION BOARD, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

The present petition for review under Rule 45 of the Rules of Court assails the Decision of the Mines Adjudication Board (MAB) dated August 18, 1997, modifying the Decision dated December 11, 1991 of the Regional Executive Director, DENR-Region V, Legaspi City. The dispositive portion of the MAB Decision reads:

WHEREFORE, the Decision dated December 11, 1991 of the Regional Executive Director is hereby MODIFIED. The Agreement to Operate Mining Claim, dated May 29, 1976 is hereby CANCELLED and/or REVOKED and the appeal in so far as the Contract to Sell and Purchase Perlite Ore, dated March 24, 1975 is hereby DISMISSED for lack of merit.

SO ORDERED.^[1]

On March 24, 1975, respondent Vicente Tuason, Jr.^[2] (Tuason) entered into a Contract for Sale and Purchase of Perlite Ore with Induplex, Inc. (Induplex), wherein Induplex agreed to buy all the perlite ore that may be found and mined in Tuason's mining claim located in Taysa, Daraga, Albay. In exchange, Induplex will assist Tuason in securing and perfecting his right over the mining claim.^[3]

Thereafter, Tuason executed on May 29, 1976, an Agreement to Operate Mining Claims in favor of petitioner Asaphil Construction and Development Corporation (Asaphil).^[4]

On November 9, 1990, Tuason filed with the Bureau of Mines, Department of Environment and Natural Resources (DENR), a complaint against Asaphil and Induplex for declaration of nullity of the two contracts, namely, the Contract for Sale and Purchase of Perlite Ore, and the Agreement to Operate Mining Claims. Tuason alleged in his complaint that the stockholders of Induplex formed and organized Ibalon Mineral Resources, Inc. (Ibalon), an entity whose purpose is to mine any and all kinds of minerals, and has in fact been mining, extracting and utilizing the perlite ore in Ibalon's mining claim; that this is in violation of the condition imposed by the Board of Investments (BOI) on Induplex in its Joint Venture Agreement with Grefco, Inc. dated September 3, 1974, prohibiting Induplex from mining perlite ore, through an operating agreement or any other method; that Induplex acquired the majority stocks of Asaphil on January 14, 1989, and that 95% of Ibalon's shares were also

transferred to Virgilio R. Romero, who is a stockholder of Induplex, Asaphil and Ibalon. Tuason claimed that said acts adversely affected, not only his interest as claimowner, but the government's interest as well.^[5]

Asaphil filed its Answer, praying for the dismissal of the complaint on the ground that the DENR has no jurisdiction over the case.^[6]

Induplex filed a Motion to Dismiss the complaint, also on ground of lack of jurisdiction. Induplex contended that to fall within the jurisdiction of the DENR, the controversy should involve a mining property and the contending parties must be claimholders and/or mining operators; and that the dispute in this case involves "mineral product" and not a mining property, and the protagonists are claimholders (Tuason) and a buyer (Induplex).^[7]

The DENR, through the Regional Executive Director, found merit in Induplex's arguments and dismissed the complaint. The dispositive portion of the Regional Executive Director's Decision reads:

WHEREFORE, in view of the foregoing, the instant complaint should be, as it is hereby dismissed.

SO ORDERED.^[8]

On appeal, the MAB rendered the herein assailed Decision dated August 18, 1997. The MAB ruled that the complaint is for the cancellation and revocation of the Agreement to Operate Mining Claims, which is within the jurisdiction of the DENR under Section 7 of Presidential Decree No. 1281. The MAB also found that the acquisition by Induplex of the majority stocks of Asaphil, and Induplex's assumption of the mining operation violated the BOI prohibition. With regard, however, to the validity of the Contract for Sale and Purchase of Perlite Ore, the MAB ruled that the evidence does not support Tuason's plea for its cancellation.^[9]

Asaphil and Induplex filed a motion for reconsideration which was denied by the MAB per Order dated March 23, 1998.^[10]

Hence, the herein petition by Asaphil on the following grounds:

A. THE BOARD A QUO HAS DECIDED A QUESTION OF SUBSTANCE UNDER THE RECENTLY ENACTED MINING ACT OF 1995 (R.A. NO. 7942), NOT THERETOFORE DETERMINED BY THIS HONORABLE TRIBUNAL -

- BY VIOLATING ARTICLE 1930 OF THE CIVIL CODE OF THE PHILIPPINES WHEN IT CANCELLED ASAPHIL'S AGENCY (COUPLED WITH AN INTEREST) UNDER THE OPERATING AGREEMENT.
- BY VIOLATING ASAPHIL'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WHEN THE BOARD ADJUDICATED UPON ALLEGED VIOLATION OF THE AGREEMENT ON THE PART OF ASAPHIL, BUT WITHOUT RECEIVING EVIDENCE OF ANY SUCH VIOLATION.
- BY IGNORING ASAPHIL'S 52.5% INTEREST UNDER THE OPERATING AGREEMENT WHICH GIVES TO ASAPHIL THE RIGHT TO DETERMINE

WHETHER OR NOT THE OPERATING AGREEMENT MUST BE CANCELLED.

- BY INVALIDATING THE OPERATING AGREEMENT WITHOUT RECEIVING EVIDENCE ON THE PURPORTED GROUND FOR INVALIDATION.
- BY NOT ADJUDICATING UPON THE RIGHTS AND OBLIGATION OF TUASON AND ASAPHIL UNDER THE OPERATING AGREEMENT WHICH IS ACTUALLY IN THE NATURE OF A JOINT VENTURE AGREEMENT, BY REASON OF THE FINANCIAL RAMIFICATIONS THEREOF.

B. THE BOARD A QUO HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS -

1. BY INVALIDATING THE OPERATING AGREEMENT WITHOUT RECEIVING EVIDENCE ON THE PURPORTED GROUND FOR INVALIDATION.

2. THE ACTUATION OF THE MINES ADJUDICATION BOARD IS UNCONSTITUTIONAL, AS IT DEPRIVES THE PETITIONER OF ITS RIGHT TO PRESENT EVIDENCE ON THE ISSUE OF WHETHER OR NOT THE OPERATING AGREEMENT HAS BEEN VIOLATED, VIRTUALLY DEPRIVING THE PETITIONER OF ITS PROPRIETARY RIGHTS WITHOUT DUE PROCESS OF LAW.

3. **THE MINES ADJUDICATION BOARD ERRED IN ENTERTAINING TUASON'S APPEAL FROM THE ORDER OF DISMISSAL, AS THE LATTER WAS CONCERNED SOLELY WITH THE ISSUE OF JURISDICTION WHICH, BEING A MATTER OF LAW, IS COGNIZABLE BY THIS HONORABLE TRIBUNAL AND/OR BY THE COURT OF APPEALS.**

4. GRANTING THAT THE MINES ADJUDICATION BOARD COULD VALIDLY ASSUME THE FACTS (WITHOUT RECEIVING EVIDENCE),

a) THE MINES ADJUDICATION BOARD NONETHELESS ERRED IN ANNULING THE OPERATING AGREEMENT BETWEEN TUASON AND ASAPHIL, ON THE MERE CIRCUMSTANCE THAT A STOCKHOLDER OF INDUPLEX HAD BECOME A STOCKHOLDER OF ASAPHIL IN 1990.

b) THE MINES ADJUDICATION BOARD LIKEWISE ERRED IN ANNULING THE OPERATING AGREEMENT BETWEEN TUASON AND ASAPHIL ON THE BASIS OF THE ASAPAHIL'S PURPORTED VIOLATION OF THE TERMS OF THE OPERATING AGREEMENT.

5. THE MINES ADJUDICATION BOARD FURTHER ERRED IN ANNULING THE OPERATING AGREEMENT BETWEEN TUASON AND ASAPHIL AND AT THE SAME TIME THE BOARD UPHELD THE VALIDITY OF THE SUPPLY CONTRACT BETWEEN TUASON AND INDUPLEX BASED ON THE SAME INVALIDATING CAUSE.^[11] (Emphasis supplied)