

SECOND DIVISION

[G.R. NO. 161957, February 28, 2005]

**JORGE GONZALES AND PANEL OF ARBITRATORS, PETITIONERS,
VS. CLIMAX MINING LTD., CLIMAX-ARIMCO MINING CORP., AND
AUSTRALASIAN PHILIPPINES MINING INC., RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Petitioner Jorge Gonzales, as claimowner of mineral deposits located within the Addendum Area of Influence in Didipio, in the provinces of Quirino and Nueva Vizcaya, entered into a co-production, joint venture and/or production-sharing letter-agreement designated as the *May 14, 1987 Letter of Intent* with Geophilippines, Inc. and Inmex Ltd. Under the agreement, petitioner, as claimowner, granted to Geophilippines, Inc. and Inmex Ltd. collectively, the exclusive right to explore and survey the mining claims for a period of thirty-six (36) months within which the latter could decide to take an operating agreement on the mining claims and/or develop, operate, mine and otherwise exploit the mining claims and market any and all minerals that may be derived therefrom.

On 28 February 1989, the parties to the *May 14, 1987 Letter of Intent* renegotiated the same into the *February 28, 1989 Agreement* whereby the exploration of the mining claims was extended for another period of three years.

On 9 March 1991, petitioner Gonzales, Arimco Mining Corporation, Geophilippines Inc., Inmex Ltd., and Aumex Philippines, Inc. signed a document designated as the *Addendum to the May 14, 1987 Letter of Intent and February 28, 1989 Agreement with Express Adhesion Thereto* (hereafter, the *Addendum Contract*).^[1] Under the *Addendum Contract*, Arimco Mining Corporation would apply to the Government of the Philippines for permission to mine the claims as the Government's contractor under a *Financial and Technical Assistance Agreement* (FTAA). On 20 June 1994, Arimco Mining Corporation obtained the FTAA^[2] and carried out work under the FTAA.

Respondents executed the *Operating and Financial Accommodation Contract*^[3] (between Climax-Arimco Mining Corporation and Climax Mining Ltd., as first parties, and Australasian Philippines Mining Inc., as second party) dated 23 December 1996 and *Assignment, Accession Agreement*^[4] (between Climax-Arimco Mining Corporation and Australasian Philippines Mining Inc.) dated 3 December 1996. Respondent Climax Mining Corporation (Climax) and respondent Australasian Philippines Mining Inc. (APMI) entered into a *Memorandum of Agreement*^[5] dated 1 June 1991 whereby the former transferred its FTAA to the latter.

On 8 November 1999, petitioner Gonzales filed before the Panel of Arbitrators,

Region II, Mines and Geosciences Bureau of the Department of Environment and Natural Resources, against respondents Climax-Arimco Mining Corporation (Climax-Arimco), Climax, and APMI,^[6] a *Complaint*^[7] seeking the declaration of nullity or termination of the *Addendum Contract*, the FTAA, the *Operating and Financial Accommodation Contract*, the *Assignment*, *Accession Agreement*, and the *Memorandum of Agreement*. Petitioner Gonzales prayed for an unspecified amount of actual and exemplary damages plus attorney's fees and for the issuance of a temporary restraining order and/or writ of preliminary injunction to restrain or enjoin respondents from further implementing the questioned agreements. He sought said reliefs on the grounds of "FRAUD, OPPRESSION and/or VIOLATION of Section 2, Article XII of the CONSTITUTION perpetrated by these foreign RESPONDENTS, conspiring and confederating with one another and with each other..."^[8]

On 21 February 2001, the Panel of Arbitrators dismissed the *Complaint* for lack of jurisdiction. Petitioner moved for reconsideration and this was granted on 18 October 2001, the Panel believing that the case involved a dispute involving rights to mining areas and a dispute involving surface owners, occupants and claim owners/concessionaires. According to the Panel, although the issue raised in the *Complaint* appeared to be purely civil in nature and should be within the jurisdiction of the regular courts, a ruling on the validity of the assailed contracts would result to the grant or denial of mining rights over the properties; therefore, the question on the validity of the contract amounts to a mining conflict or dispute. Hence, the Panel granted the *Motion for Reconsideration* with regard to the issues of nullity, termination, withdrawal or damages, but with regard to the constitutionality of the *Addendum Agreement* and FTAA, it held that it had no jurisdiction.^[9]

Respondents filed their motion for reconsideration but this was denied on 25 June 2002. The Panel of Arbitrators maintained that there was a mining dispute between the parties since the subject matter of the *Complaint* arose from contracts between the parties which involve the exploration and exploitation of minerals over the disputed area.^[10]

Respondents assailed the orders of the Panel of Arbitrators via a petition for certiorari before the Court of Appeals.

On 30 July 2003, the Court of Appeals granted the petition, declaring that the Panel of Arbitrators did not have jurisdiction over the complaint filed by petitioner.^[11] The jurisdiction of the Panel of Arbitrators, said the Court of Appeals, is limited only to the resolution of mining disputes, defined as those which raise a question of fact or matter requiring the technical knowledge and experience of mining authorities. It was found that the complaint alleged fraud, oppression and violation of the Constitution, which called for the interpretation and application of laws, and did not involve any mining dispute. The Court of Appeals also observed that there were no averments relating to particular acts constituting fraud and oppression. It added that since the *Addendum Contract* was executed in 1991, the action to annul it should have been brought not later than 1995, as the prescriptive period for an action for annulment is four years from the time of the discovery of the fraud.^[12] When petitioner filed his complaint before the Panel in 1999, his action had already prescribed. Also, the Court of Appeals noted that fraud and duress only make a

contract voidable,^[13] not inexistent, hence the contract remains valid until annulled. The Court of Appeals was of the opinion that the petition should have been settled through arbitration under Republic Act No. 876 (The Arbitration Law) as stated in Clause 19.1 of the *Addendum Contract*. The Court of Appeals therefore declared as invalid the orders dated 18 October 2001 and 25 June 2002 issued by the Panel of Arbitrators. On 28 January 2004, the Court of Appeals denied petitioner's motion for reconsideration for lack of merit.^[14]

Petitioner filed on 22 March 2004 this *Petition for Review on Certiorari* Under Rule 45 assailing the decision and resolution of the Court of Appeals. Petitioner raises the following issues:

A.

PROCEDURAL GROUND

THE HONORABLE COURT OF APPEALS SHOULD HAVE SUMMARILY DISMISSED RESPONDENTS' PETITION A *QUO* FOR FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS.

i.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT DID NOT DISMISS THE PETITION A *QUO* DESPITE RESPONDENTS' FAILURE TO COMPLY WITH THE RULES ON DISCLOSURE IN THE "VERIFICATION AND CERTIFICATION" PORTION OF THEIR PETITION A *QUO*.

ii.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT DID NOT DISMISS THE PETITION A *QUO* FILED BY RESPONDENT CLIMAX DESPITE THE LACK OF THE REQUISITE AUTHORITY TO FILE THE PETITION A *QUO*.

B.

SUBSTANTIVE GROUND

THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE PETITION A *QUO* FILED BY RESPONDENTS AND IN DENYING MOTION FOR RECONSIDERATION FILED BY PETITIONER FOR UTTER LACK OF BASIS IN FACT AND IN LAW.

i.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT PETITIONER CEDED HIS CLAIMS OVER THE MINERAL DEPOSITS LOCATED WITHIN THE ADDENDUM AREA

OF INFLUENCE.

ii.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT THE PANEL OF ARBITRATORS IS BEREFT OF JURISDICTION OVER THE SUBJECT MATTER OF CASE NO. 058.

iii.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT THE COMPLAINT FILED BY THE PETITIONER FAILED TO ALLEGE ULTIMATE FACTS OR PARTICULARS OF FRAUD.

iv.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT PETITIONER AND RESPONDENTS SHOULD SUBMIT TO ARBITRATION UNDER R.A. 876.

v.

WHETHER THE HONORABLE COURT OF APPEALS DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT THE ACTION TO DECLARE THE NULLITY OF THE ADDENDUM CONTRACT, FTAA, OFAC AND AAAA ON THE GROUND OF FRAUD HAS PRESCRIBED.

The issues for resolution in this petition for review are:

(a) Whether there was forum-shopping on the part of respondents for their failure to disclose to this Court their filing of a *Petition to Compel for Arbitration* before the Regional Trial Court of Makati City, Branch 148, which is currently pending.

(b) Whether counsel for respondent Climax had authority to file the petition for certiorari before the Court of Appeals considering that the signor of the petition for certiorari's Verification and Certification of Non-forum Shopping was not authorized to sign the same in behalf of respondent Climax.

(c) Whether the complaint filed by petitioner raises a mining dispute over which the Panel of Arbitrators has jurisdiction, or a judicial question which should properly be brought before the regular courts.

(d) Whether the dispute between the parties should be brought for arbitration under Rep. Act No. 876.

Let us deal first with procedural matters.

Petitioner claims that respondents are guilty of forum-shopping for failing to disclose before this Court that they had filed a *Petition to Compel for Arbitration* before the RTC of Makati City. However, it cannot be determined from petitioner's mere allegations in the *Petition* that the *Petition to Compel for Arbitration* instituted by respondent Climax-Arimco, involves related causes of action and the grant of the same or substantially the same reliefs as those involved in the instant case. Petitioner did not attach copies of the *Petition to Compel for Arbitration* or any order or resolution of the RTC of Makati City related to that case.

Furthermore, it can be gleaned from the nature of the two actions that the issues in the case before the RTC of Makati City and in the petition for certiorari before the Court of Appeals are different. A petition for certiorari raises the issue of whether or not there was grave abuse of discretion, while the *Petition to Compel for Arbitration* seeks the implementation of the arbitration clause in the agreement between the parties.

Petitioner next alleges that there was no authority granted by respondent Climax to the law firm of Sycip Salazar Hernandez & Gatmaitan to file the petition before the Court of Appeals. There is allegedly no Secretary's Certificate from respondent Climax attached to the petition. The Verification and Certification only contains a statement made by one Marianne M. Manzanias that she is "also the authorized representative of [respondent Climax]" without presenting further proof of such authority. Hence, it is argued that as to respondent Climax, the petition filed before the Court of Appeals is an unauthorized act and the assailed orders of the Panel of Arbitrators have become final.

Under Section 3, Rule 46 of the Rules of Court, a petitioner is required to submit, together with the petition, a sworn certification of non-forum shopping, and failure to comply with this requirement is sufficient ground for dismissal of the petition. The requirement that petitioner should sign the certificate of non-forum shopping applies even to corporations, the Rules of Court making no distinction between natural and juridical persons. The signatory in the case of the corporation should be "a duly authorized director or officer of the corporation" who has knowledge of the matter being certified.^[15] If, as in this case, the petitioner is a corporation, a board resolution authorizing a corporate officer to execute the certification against forum-shopping is necessary. A certification not signed by a duly authorized person renders the petition subject to dismissal.^[16]

On this point, we have to agree with petitioner. There appears to be no subsequent compliance with the requirement to attach a board resolution authorizing the signor Marianne M. Manzanias to file the petition in behalf of respondent Climax. Respondent also failed to refute this in its *Comment*.^[17] However, this latter issue becomes irrelevant in the light of our decision to deny this petition for review for lack of jurisdiction by the Panel of Arbitrators over the complaint filed by petitioner, as will be discussed below.

We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the Panel of Arbitrators have jurisdiction over the complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the