

SECOND DIVISION

[G.R. No. 128010, February 28, 2000]

**REPUBLIC OF THE PHILIPPINES AND HON. JEREMIAS DOLINO,
IN HIS CAPACITY AS REGIONAL EXECUTIVE DIRECTOR,
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
(DENR) REGION VII OFFICE, PETITIONERS, VS. HON. COURT OF
APPEALS, HON. ISAIAS P. DICDICAN, IN HIS CAPACITY AS
PRESIDING JUDGE, BRANCH 11, RTC, CEBU CITY, AND EMRO
INTERNATIONAL, INC., RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals, dated January 28, 1997, which in effect sustained the order, dated October 16, 1995, of the Regional Trial Court, Branch 11, Cebu City, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, let a writ of preliminary prohibitory injunction issue restraining, prohibiting or preventing the respondent and all those who may be acting in his behalf from cancelling and/or revoking, or threatening to cancel and/or revoke, or causing the cancellation and/or revocation of, the Foreshore Lease Contract between the petitioner and the Republic of the Philippines over the foreshore land located in Ibo, Lapu-Lapu City, subject to the petitioner's posting of an injunction bond in the sum of ten thousand pesos (P10,000.00).^[2]

The facts are as follows:

On March 23, 1994, private respondent EMRO International, Inc. (EMRO), represented by Emilio M.R. Osmeña, entered into a Foreshore Lease Contract with petitioner Republic of the Philippines, represented by Department of Environment and Natural Resource (DENR) - Region VII Executive Director Jeremias Dolino. The pertinent provisions of the contract state:

WITNESSETH

FIRST - That the PARTY OF THE FIRST PART, for and in consideration of the rents, covenants and conditions hereinafter contained, to be paid, kept and performed by the PARTY OF THE SECOND PART, has demised, leased and let, and does hereby demise, lease and let unto said PARTY OF THE SECOND PART, the land, together with the appurtenances thereunto of right belonging, lying and being in the barrio of Ibo, Municipality of Lapu-Lapu City, Province of Cebu, Philippines, being a part of the public domain, the property of the said Republic of the Philippines and more particularly described on page 7 of this contract, and Survey

SECOND. -- TO HAVE AND TO HOLD the said described premises unto the said PARTY OF THE SECOND PART for the full term of twenty five (25) years, from and including the First day of April 1994, at a yearly rental of SIXTY THOUSAND NINE HUNDRED THREE and 50/100 (P60,903.50) Philippine Currency, to be paid annually in advance on or before the FIRST day of APRIL of each and every year, during the life of this lease, at the Community Environment and Natural Resources Office (CENRO) which lease may be renewed for another period of twenty five (25) years at the option of the PARTY OF THE FIRST PART, and if the circumstances of the case would so warrant. All rents payable to the PARTY OF THE FIRST PART, under this lease shall draw interest at the rate of four per centum (4%) per annum from and after the date they become due as provided herein.

. . . .

SEVENTH. - That the said PARTY OF THE SECOND PART, shall not sublet the whole or any part of the premises herein described, or the improvements therein, assign this lease, or encumber ANY rights thereunder, without permission, in writing of the Regional Executive Director, DENR-7, Banilad, Mandaue City first had and obtained.

. . . .

TENTH. - It is further covenanted and agreed that for a breach of any of the covenants herein by the said PARTY OF THE SECOND PART save these covenants for breach of which special provision is made, the PARTY OF THE FIRST PART may elect to declare this agreement rescinded and void and, after having given thirty (30) days notice in writing to the said PARTY OF THE SECOND PART, may enter and take possession of the said premises and all improvements actually existing thereon, and the said PARTY OF THE SECOND PART hereby covenants and agreed to give up the possession thereof.^[3]

Five months later, on August 25, 1994, EMRO entered into a Memorandum of Agreement with Alta Resource Group, Inc. (ALTA) for the purpose of leasing to the latter, at a minimum guaranteed rent of \$100,000.00, "certain premises and existing facilities, rights, services and privileges on and in connection with the [former's] marina." The contract states in part:

ARTICLE I

PREMISES

The LESSOR does hereby lease unto the LESSEE certain premises and existing facilities, rights, services and privileges on and in connection with the marina, and more particularly hereinafter set forth:

- a. Exclusive use of the berthing space in the marina of the LESSOR for the vessels of the LESSEE intended to be used for the latter's

floating hotel/casino operations. The said berthing space have been set forth and shown in the sketch plan marked as Exhibit "A" which is attached hereto and made an integral part hereof.

- b. The full and free right of ingress to and egress from the premises referred to above for the LESSEE, its employees, agents, passengers, customers, guests, patrons, invitees, its or their suppliers of materials or furnishers of services, equipment, vehicles, machinery and other property for all purposes contemplated by this agreement
- c. The use by the LESSEE, its employees, customers, guest, patrons, invitees, suppliers and other licenses, without charge of a designated vehicular parking space within the premises of the marina consisting of approximately TWO THOUSAND SIX HUNDRED (2,600) square meters.

. . . .

ARTICLE V

IMPROVEMENTS

The LESSEE, at its own cost and expense, may construct or install in the premises any structures or improvements, including dredging or deepening of piles, construction of mooring dolphins, widening the construction of causeways within the marina premises, equipment and storage tank, on the surface or underground, that it shall determine to be necessary for upgrading of existing facilities or use in connection with its floating hotel/casino operations; provided, however, that the LESSOR shall have the right to inspect the plans and specifications of any such structures and improvements prior to construction or installation thereof and to refuse to permit such construction or installation if the external appearance thereof does not meet LESSOR's reasonable requirements for substantial conformity of appearance of structures in the marina, or if the type of construction or installation or the location thereof does not meet the LESSOR's reasonable requirements for safe use of the marina and other appurtenances by others authorized to do so and provided, finally, any and all immovable structures or improvements introduced by the LESSEE, its successors or assigns on the premises in question shall *ipso facto* belong to or pertain to the LESSOR upon the expiration of the term of this agreement.

No restrictions shall be placed upon LESSEE as to the architect, builders or contractors who may be employed by it in connection with the construction, installation, alteration, modification, repair or maintenance of any such structures or improvements, and the lessor shall provide free ingress to and egress from the said spaces for all persons, materials or things connected with the construction, installation, alteration, modification, repair or maintenance thereof.

ARTICLE VI

UTILITIES

The LESSEE shall, at its own cost and expense, be responsible for the installation of water, electricity, communications and such other utilities that may be needed for the LESSEE's floating hotel/casino operations. In connection therewith, the LESSEE shall, likewise, be responsible for all necessary excavations, construction, materials, operation and maintenance of and for all mains, pipes, conduits, cables, wiring, sewers and other equipment required to so provide such services in a manner adequate to supply LESSEE's need therefor under conditions from time to time prevailing.

The LESSEE shall also be responsible for payment of the use of said utilities in the premises or in connection with its hotel/casino operations.

[4]

On September 18, 1995, the Regional Technical Director for LMS DENR (Region VII), Estanislao Z. Galano, sent a memorandum to the Regional Technical Director for EMPAS DENR (Region VII), calling attention to certain alleged violations by EMRO of its Foreshore Lease Agreement with the government. The memorandum reads:

MEMORANDUM

FOR: THE REGIONAL TECHNICAL DIRECTOR FOR EMPAS DENR, Region 7,
Banilad, Mandaue City

FROM: THE REGIONAL TECHNICAL DIRECTOR FOR LMS DENR, Region 7,
Banilad, Mandaue City

SUBJECT: *APPLICATION FOR ECC OF ATLAS RESOURCE GROUP, INC.
FOR A FLOATING HOTEL/CASINO WITHIN THE CEBU YACHT (MARINA).*

In response to your Memorandum dated September 15, 1995, on the above subject, based on both ATLAS (sic) project description, which is a component of its ECC application, and the Environmental Impact Study (EIS) of EMRO International, Inc., submitted with its ECC application for the MARINA, the following are reported:

(1) The MARINA is composed of a 49,000 sq. m. wet docking area and a 6,517 sq. m. vehicle parking and drydocking space, or a total of 55,519 sq. m. In between the 2 parcels and exclusive of the MARINA is a 10 m. public easement (see attached sketch plans);

(2) About 2,600 sq. m. portion of the 6,517 vehicle parking and drydocking space has been sub-leased by EMRO to ATLAS (sic), but this space can not be exactly pinpointed within it.

(3) A berthing space has been sub-leased by EMRO to ATLAS (sic) for a floating hotel/casino inside the berthing space of the wet docking area of the MARINA, including ingress to and egress from it, which can be

anywhere within it, since this space and the access to and from it can not specifically be configured or defined.

(4) The vehicle parking and drydocking space of the MARINA appears entirely within the Mactan Export Processing Zone (MEPZ);

(5) The wet docking area of the MARINA encroaches within EMRO's Foreshore Lease Contract, while the 10 m. public easement strip to which EMRO has been committed to exclude (see attached EMRO letter) now appears to have been appropriated for use in the MARINA (see attached perspective view).

(6) The area of the Foreshore Lease Contract overlapping MARINA's wet docking area is about 14,000 sq.m., while its remaining seaward portion is about 35,000 sq.m.

(7) Since EMRO's sub-leased premises for the floating hotel/casino, including its ingress and egress, within the MARINA's wet docking area overlaps with the foreshore lease, it constitutes a violation of the lease contract since a sublease tenured by a contract qualifies as a prohibition because, as stated in the lease contract, the lessee "shall not sublet the whole or in part (sic) of the premises or the improvements therein, assign this lease or encumber any single rights thereunder, without permission..." from the DENR.

(8) Since the sub-leased premises extends outside the foreshore lease, although within the MARINA, EMRO, since it does not have any other lease with the DENR at Ibo, Lapu-Lapu City, appears to have appropriated for itself and leased a portion of the public domain without the benefit of a lease from the State.

Supplementary to the foregoing evaluation/observations and since a portion of the MEPZ appears to have been sub-leased, it is recommended that inquiry be made (as part of the evaluation of the ECC application) with the Department of Trade and Industry (DTI) or the MEPZ, which has authority over the MEPZ, whether the sub-lease has been allowed.

For record and information.

(Sgd.) ESTANISLAO Z. GALANO^[5]

Having obtained a copy of the confidential memorandum, EMRO filed on September 25, 1995 a "Petition for Declaratory Relief, Injunction, Damages with Prayer for Writ of Preliminary Injunction and/or Restraining Order" in the Regional Trial Court, Cebu City, which case was docketed as Civil Case No. CEB-17879 and later assigned to respondent Judge Isaias Dicdican.

On October 16, 1995, the court, after hearing, issued a writ of preliminary injunction on the ground that "the act of the [government] of setting the stage for the cancellation or revocation of [EMRO's] Foreshore Lease Contract through the sinister strategem of making it appear that [EMRO] violated the terms and conditions of the said contract when actually such is not the real fact is undoubtedly