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LEGAL FINESSE

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PHILIPPINE MINING ACT DECLARED CONSTITUTIONAL

FNS TAKES PART IN LANDMARK CASE

FNS joined the Philippine mining industry in hailing the Supreme Court's denial "with finality", on 2 February 2005, of the motion for reconsideration of the petitioners in LA BUGAL-B'LAAN TRIBAL ASSOCIATION INC., ET AL. vs. VICTOR O. RAMOS, ET AL. (G.R. No. 127882) asking the Tribunal to reverse its ruling last December 2004 allowing foreign mining firms to undertake mining exploration and development with the Government. The case stemmed from a petition questioning the constitutionality of the 1995 Financial and Technical Assistance Agreement (FTAA) between the government and Western Mining Corporation Philippines, now Tampakan Mineral Resources Corporation (co-represented by FNS) *, and R.A. 7942, the Philippine Mining Act, and its Implementing Rules and Regulations. Earlier, in January 2004, the Supreme Court declared the Philippine Mining Act unconstitutional and ruled that :"By allowing foreign contractors to manage or operate all the aspects of the mining operation, the above-cited provisions of R.A. 7942 have in effect conveyed beneficial ownership over the nation's mineral resources to these contractors, leaving the State with nothing but bare title thereto."

Nevertheless, in December 2004, the High Court, upon the motion for reconsideration of the respondents, overruled its earlier decision and found that foreign contractors who had infused much needed capital and technological know-how into mining ventures with the government were entitled to some leeway of management in the day-to-day activities as long as full control and supervision remained with the State. The Court, upon a more circumspect evaluation, ruled that the FTAA and the Mining Act were fundamentally and legally sound because the State, as the protector of both the country's natural resources and the people's interest in the nation's wealth, remained in control of the mining ventures through the safeguards present in both the FTAA and the Mining Act. The High Court, voting 10 to 4, ruled that the La Bugal-B'laan Tribal Association's motion for reconsideration failed to convince the Court, nor any of its members, to reverse its finding of the legality of the FTAA and the Mining Act. According to the Court, "all the conceivable aspects of this litigation-factual, constitutional, legal, philosophical, technical, financial, ecological, environmental and technological-have all been extensively taken up and addressed during the court's lengthy and purposeful debates and deliberations".

The latest ruling of the Court affirmed the December 2004 reversal when it declared: "The issue of how much 'profit' the nation should or could derive from the exploration, development and utilization of the country's mineral resources is a policy matter, over which we must allow the President and Congress maximum discretion in using the resources of our country in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country". This ruling now validates the participation of foreign mining companies in exploration, processing and large scale mining activities in the Philippines. FNS expects new mining clients to avail of the Firm's services given its experience and expertise in mining law developed over the years.

* FNS represents other major mining clients such as Lafayette Mining Limited, Indophil Resources Ltd., Sur-American Gold Corporation, Mindoro Resources Limited, and Newmont Asia Mining Limited.

LEGISLATION

Anti-Violence Against Women and Their Children Act of 2004

Approved on March 8, 2004, Republic Act 9262, otherwise known as the "*Anti-Violence Against Women and Their Children Act of 2004*", sharply focused on the often ignored social issue of violence perpetrated against women and children (more specifically, domestic violence). The new law breathes life to the declared policy of the State which values the dignity of women and children and guarantees full respect for human rights.

The law provides stiff criminal penalties for a wide variety of acts constitutive of the crime of violence against women and their children, which include: (i) actual or threatened physical harm; (ii) restriction of the woman or her child's freedom of movement or conduct by force or intimidation; (iii) deprivation of financial support; (iv) engaging in conduct that alarms or causes substantial emotional or psychological distress to the woman or her child; and (v) sexual, verbal, or emotional abuse (Sec. 5).

But what perhaps may be considered as the most potent safeguard provided by the law for woman and child victims of violence is the "Protection Orders." As defined in the law, a protection order is that issued for the purpose of preventing further acts of violence against a woman and her child, as specified in the preceding paragraph. The relief granted under a protection order serves the purpose of saving the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control of her life and the child's. Relief comes in different forms: the perpetrator may be prohibited, under pain of punishment, from committing any of the unlawful acts defined in the law; removed or excluded from the residence of the victim; directed to provide support for the woman and her child; directed to make restitution for actual damages caused by the violence inflicted; and/or the woman victim may be awarded custody of her children. Courts are likewise authorized to grant such other forms of relief as necessary to protect and provide for the safety of the victim.

Incidentally, the power to issue protection orders is not exclusive to courts of law. Woman and child victims of violence may likewise apply for protection orders from the *Punong Barangay*, who is authorized to issue the so-called "Barangay Protection Orders."

NOTARIAL PRACTICE

Beginning August 1, 2004, all notaries public are required to observe the new Rules on Notarial Practice. The new Rules primarily seek to curb abuses in notarial practice, and modernize the Notarial Law which was promulgated way back in the 1940s. The following are the significant changes introduced by the new Rules:

A notary public may not perform a notarial act "outside his regular place of work or business". This means that no notarial act shall be performed outside the premises of a notary's office where he renders legal and notarial services. However, on certain "exceptional occasions or situations", a notarial act may be performed, at the request of the parties, in public offices, convention halls, public function areas in hotels and similar places, hospitals and other medical institutions, or any place where a party to the instrument requiring notarization is under detention, provided that the aforementioned sites are within the territorial jurisdiction of the court which issued the notary's commission.

A notary public is now disqualified from performing a notarial act if he is a party to the instrument to be notarized, or if he will receive any commission, fee or consideration except for the notarial fees and travel expenses allowed by the Supreme Court, or if he is a spouse, common-law partner, ancestor, descendant or relative by affinity or consanguinity of the principal within the fourth civil degree.

A notary public is prohibited from notarizing a blank or incomplete document, or one without the appropriate notarial certification.

A notary public is expressly prohibited from performing a notarial act if the signatory to the document (1) is not in his presence and (2) is not personally known by him or otherwise identified by him through "competent evidence of identity" which is limited to (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, or (b) the oath or affirmation of one credible witness who is personally known to the notary public and who personally knows the individual, or of two credible witnesses who each personally knows the individual and shows to the notary public documentary identification. Note that although the residence tax certificate is no longer sufficient to identify the principal, the latter must still present the same to the notary public, as required by C.A. 465.

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PSYCHOLOGICAL INCAPACITY

REPUBLIC OF THE PHILIPPINES VS. LOLITA QUINTERO-HAMANO
G.R. No. 149498, May 20, 2004.

In October 1986, Tashio Hamano, a Japanese national, and Lolita Quintero, a Filipina, started a common law relationship in Japan. They settled in the Philippines for one month, but, Hamano went back to Japan and stayed for about six months in 1987. On November 16, 1987, Quintero gave birth to their child.

On January 14, 1988, Quintero and Hamano were married before Judge Balderia of the Municipal Trial Court of Bacoor, Cavite. One month after their marriage, Hamano went to Japan and promised to return to the Philippines by Christmas of 1988. He sent money to Quintero for two months but failed to give further financial support. Quintero wrote to her spouse several times but the latter never responded. He visited the Philippines sometime in 1991 but did not bother to see his family.

In 1996, Quintero filed a petition for declaration of nullity of her marriage to Hamano on the ground of psychological incapacity. Hamano failed to file a responsive pleading. Thereafter, the case was referred to the prosecutor for investigation. Having found that no collusion exists between the parties, the court allowed Quintero to present evidence ex-parte. She testified that Hamano abandoned his family and offered documentary evidence in support thereof. The Trial Court rendered a decision declaring the marriage of Hamano and Quintero to be null and void. The Court of Appeals affirmed the said judgement, but the OSG appealed to the Supreme Court.

The lone issue is whether or not Quintero successfully proved Hamano's psychological incapacity to fulfill his marital responsibilities.

In reversing the decision of the Appellate Court, the Supreme Court held that the totality of evidence presented by Quintero fell short of proving that Hamano was psychologically incapacitated to assume his marital responsibilities. Hamano's act of abandonment was doubtlessly irresponsible but it was never alleged nor proven that the same was due to some kind of psychological illness. Although, as a rule, there was no need for an actual medical examination, it would have greatly helped Quintero's case had she presented evidence that medically or clinically identified Hamano's illness.

Furthermore, there was no showing that the case was not just an instance of abandonment in the context of legal separation. Quinetro was only able to prove Hamano's physical absence, but not his psychological illness. Psychological defect cannot be presumed from the mere fact that Hamano abandoned his family immediately after the celebration of the marriage. There was no proof of a natal or supervening disabling factor, or an adverse integral element in Hamano's personality structure that effectively incapacitates him from accepting and complying with the obligations essential to marriage.

PROVING FILIATION

ROSALINA P. ECETA VS. MA. THERESA VELL LAGURA ECETA
G.R. No. 157037, May 20, 2004.

During the subsistence of their marriage, Isaac and Rosalina Eceta begot a son named Vicente. The couple acquired several properties, among which is the disputed property located in Quezon City. Isaac died in 1967 leaving behind Rosalina and Vicente as his compulsory heirs.

In 1977, Vicente died. His compulsory heirs were his mother, Rosalina, and his illegitimate child, Ma. Theresa. In 1991, Ma. Theresa filed a case for "Partition and Accounting With Damages" against Rosalina alleging that by virtue of her father's death, she became Rosalina's co-heir and co-owner of the Quezon City property. Rosalina, on the other hand, argued that the property is paraphernal in nature and thus belonged to her exclusively. The Trial Court ruled that Ma. Theresa was entitled to one-fourth share of the property. The Court of Appeals reduced Ma. Theresa's share to one-eighth. Rosalina raised the matter to the Supreme Court via Petition for Review.

The issue is whether or not the certified xerox copy of the certificate of live birth is competent to prove the alleged filiation of Ma. Theresa as an illegitimate daughter of her alleged father Vicente Eceta.

In affirming the decision of the Court of Appeals, the Supreme Court held that Ma. Theresa successfully established her filiation with Vicente by presenting a duly authenticated birth certificate, which the latter himself signed, and which act alone is deemed to be an acknowledgement of his paternity over Ma. Theresa. The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or any authentic writing is, in itself, a consummated act of acknowledgement of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition, it is in itself a voluntary recognition that does not require a separate action for judicial approval.

ILLEGAL DISMISSAL

PHILIPPINE JOURNALISTS, INC. VS. MICHAEL MOSQUEDA
G.R. NO. 141430, May 7, 2004

After the 1986 EDSA revolution, Philippine Journalists, Inc. (PJI), was sequestered by the Presidential Commission on Good Government (PCGG) and placed under the management of PCGG. However, PJI had two contending Board of Directors, the Olivares Group and the PCGG Group. The Olivares group then passed Resolution No. 92-2 designating Michael Mosqueda, as Chairman of a Task Force, to protect the properties, funds and assets of PJI and enforce or implement directives, instructions and orders of the Olivares group.

On February 5, 1992, Abraham J. Buenaluz, Officer-in-charge of PJI's Administrative Services Division, issued a memoradum to Mosqueda and the other members of the Task Force charging them with "serious misconduct prejudicial to the interest of the company and/or present management; willful breach of trust and confidence; conflict of interest; and disloyalty under the PJI Personnel Handbook". After opportunity was given to Mosqueda and the other members of the Task Force to explain their side, they were terminated.

The issue is whether or not there was illegal dismissal.

The Supreme Court upheld the findings of the Labor Arbiter that Mosqueda and the members of the Task Force "were victims of power play in the corporation. There is nothing wrong with Resolution 92-2 because even the PCGG is duty bound to safeguard the assets of the corporation (PJI). To punish them with dismissal for following instructions to safeguard the assets of the corporation (PJI) just because it was given by the said (crony) group is the perfect example of illegal dismissal." That being the case, they are rightfully entitled to an award of full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed the date of his illegal dismissal up to the time of his actual reinstatement pursuant to Article 279 of the Labor Code and RA 6715.

STRIKING EMPLOYEES

Elizabeth C. Bascon and Noemi V. Cole vs. Court of Appeals, et. al., GR No. 144899, February 5, 2004

Petitioners were employees of Metro Cebu Community Hospital ("MCCH") and members of the NAMA-MCCH, a labor union of MCCH employees. An intra-union dispute arose between NAMA-MCCH and its mother federation, the National Labor Federation. Knowing the existence of an intra-union dispute, MCCH denied the union's request to review the collective bargaining agreement ("CBA") and deferred CBA negotiations. By reason of this refusal to negotiate, the union initiated a series of mass actions, notwithstanding certifications issued by the Department of Labor and Employment that NAMA-MCCH is not a registered labor organization.

Petitioners participated in the mass actions by wearing black and red armbands and roaming around the hospital with placards. Subsequently, petitioners were terminated from employment on the grounds that they participated in an illegal strike and had defied an alleged order of MCCH to desist from further participating in the strike.

The issues are whether or not petitioners were validly terminated for (1) allegedly participating in an illegal strike and/or (2) gross insubordination to the order to stop wearing armbands and putting up placards.

The Court ruled that petitioners were illegally dismissed from employment. Art. 264 of the Labor Code provides that "any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status x x x." Thus, while a union officer can be terminated for mere participation in an illegal strike, an ordinary striking employee, like petitioners, must have participated in the commission of illegal acts during the strike. In this case, petitioners' actual participation in the illegal strike was limited to wearing armbands and putting up placards. Neither such wearing of armbands nor said putting up of placards can be construed as an illegal act. They are, per se, within the mantle of constitutional protection under freedom of speech.

Also, Art. 282 of the same Code provides that "an employer may terminate an employment for any of the following causes: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; x x x." However, willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to